

Technology Services Group End User Agreement

This Technology Services Group End User License Agreement (the "**Agreement**") dated this ___ day of _____, 2016 ("**Effective Date**") is between Technology Services Group Software, Ltd., a Illinois United States company ("**Technology Services Group**"), and _____ ("**User**"), a _____ corporation/company with its principal place of business at _____.

1. SCOPE OF AGREEMENT

1.1 Software and Support. This Agreement governs User's use of Technology Services Group Software and, if applicable, Support. "**Support**" means Technology Services Group maintenance and support. "**Software**" means the software accompanying this Agreement and branded by Technology Services Group; provided, Software does not include third-party open-source software that may be provided there with "**Order Form**" means the ordering documents placed by User. "**Subscription**" means access to the Software and, where applicable, Support for a defined period of time (the "**Subscription Period**"), as set forth in an Order Form.

2. REPORTING AND RECORDS

2.1 Reporting. User will notify Technology Services Group or the Business Partner promptly if User or employees/contractors associated with the User utilizes Technology Services Group software outside the scope of the applicable Order Form. In its notice, User will include the nature of the software usage that does not conform to the Order Form.

2.2 Records Retention. User will maintain accurate records necessary to verify the software usage. Upon Technology Services Group's written request, User will provide Technology Services Group such records within ten (10) business days.

3. LICENSE AND OWNERSHIP

3.1 Grant to User. Subject to User's compliance with this Agreement, Technology Services Group grants to User, during the Subscription Period: (a) a non-exclusive, non-transferable, non-sublicensable license to use, copy, test, and modify the Software solely for User's own internal use and limited to the usage designated in the Order Form, as applicable; (b) the rights in the third party open-source software provided with the Software, which rights are set forth in the applicable third-party licenses; and (c) for the term designated in an Order Form, the right to receive Support.

3.2 Restrictions. User will not, directly or indirectly: (a) sublicense, resell, rent, lease, distribute, market, commercialize or otherwise transfer rights or usage to: (i) the Software, (ii) any modified version or derivative work of the Software created by the User or for the User; (b) remove or alter any copyright, trademark or proprietary notice in the Software; (c) transfer, use or export the Software in violation of any laws or regulations of any government; (d) use any Support for unlicensed usage; or (e) reverse engineer, decompile or modify any encrypted or encoded portion of the Software.

3.3 Proprietary Rights. Technology Services Group and its licensors will own all right, title, and interest to the Software, Support, technology, information, code or software provided to User by Technology Services Group, including all copies or modifications made by Technology Services Group.

4. TERM AND TERMINATION

4.1 Term and Termination of Agreement. This Agreement will remain in effect for the duration of any active Subscription Period. Upon termination of User's Subscription Period, User's use of the Software will be terminated.

If User materially breaches the terms of this Agreement, and the breach is not cured (or curable) within thirty (30) days after written notice of the breach, then Technology Services Group may, upon written notice, to the breaching party, terminate this Agreement and User's access to the Software and Support.

4.2 Survival. If this Agreement is terminated for any reason, Sections 3.2, 3.3, 4.2, 5, 6.2, 7, 8 and 9 of this Agreement will survive termination.

5. CONFIDENTIALITY

5.1 Confidential Information.

(a) **Definition.** In connection with this Agreement, either party (the "**Recipient**") may obtain confidential and proprietary information ("**Confidential Information**") from the other (the "**Discloser**"). Confidential Information may include, without limitation, information about systems designs, pricing, cost data, financial information, business, sales, and marketing plans, products, product roadmaps, service programs, trade secrets, know-how, inventions, techniques, processes, programs, schematics, software, and data. Confidential Information includes information designated in writing as confidential, and any information a reasonable person would understand to be confidential or proprietary under the circumstances of its disclosure.

(b) **Exclusions.** "Confidential Information" does not include information that: (i) has been independently developed by or for the Recipient without access or reference to, or use of, Confidential Information; (ii) is lawfully received free of restriction from another source having the right to furnish such information; (iii) is or becomes lawfully in the public domain other than through a breach of this Agreement; (iv) was lawfully known by the Recipient prior to disclosure; (v) Discloser agrees in writing is free of such restrictions; or (vi) is generally disclosed by the Discloser to third parties without a duty of confidentiality.

(c) **Duties With Respect To Confidential Information.** At all times during and after the term of this Agreement, Recipient shall keep Discloser's Confidential Information confidential using the same degree of care that it uses to protect its own Confidential Information, but not less than a reasonable degree of care, and shall not disclose Discloser's Confidential Information to a third party without the Discloser's written consent, or use the Confidential Information for purposes other than the performance of this Agreement. Where disclosure is required by law, such disclosure shall not constitute a breach of this Agreement provided Recipient gives Discloser reasonable advance notice to enable Discloser to seek appropriate protection of the Confidential Information.

6. REPRESENTATIONS AND WARRANTIES

6.1 General Representations and Warranties. Technology Services Group represents and warrants that: (a) it will use reasonable skill and care in providing contracted Support; (b) the Support will be performed in a professional and workmanlike manner by qualified personnel; (c) it has the authority to enter into this Agreement with User; and (d) Technology Services Group has taken commercially reasonable measures to ensure the Software does not, at the time of delivery to User, include malicious mechanisms or code designed to damage or corrupt the Software.

6.2 Disclaimer of Warranty. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6.1, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE AND SUPPORT PROVIDED BY TECHNOLOGY SERVICES GROUP ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. TECHNOLOGY SERVICES GROUP DOES NOT GUARANTEE THAT THE USE OF THE SOFTWARE OR SUPPORT WILL BE UNINTERRUPTED, ERROR FREE, OR THAT TECHNOLOGY SERVICES GROUP WILL CORRECT ALL SOFTWARE ERRORS. FOR THE BREACH OF THE WARRANTIES SET FORTH IN SECTION 6.1, USER'S EXCLUSIVE REMEDY AND TECHNOLOGY SERVICES GROUP'S ENTIRE LIABILITY WILL BE TO UNDERTAKE COMMERCIALY REASONABLE EFFORTS TO REMEDY THE SUPPORT DEFICIENCY, SUPPLY A TEMPORARY FIX, OR MAKE AN EMERGENCY BYPASS.

7. LIMITATION OF LIABILITY AND DISCLAIMER OF DAMAGES

7.1 **Disclaimer of Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR AN ORDER FORM, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR DAMAGES OTHER THAN DIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION: ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER IN TORT, (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE; OR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, REGULATORY NON-COMPLIANCE, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN A PARTY OR ITS AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LIABILITY FOR THESE DAMAGES WILL BE LIMITED AND EXCLUDED EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

7.2 **Limitation of Liability.** NEITHER PARTY'S (OR ITS AFFILIATES') AGGREGATE AND CUMULATIVE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, STATUTE OR OTHERWISE WILL EXCEED (A) THE AMOUNTS PAID OR OWED TO TECHNOLOGY SERVICES GROUP BY USER, EITHER DIRECTLY OR THROUGH A BUSINESS PARTNER, DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY AND (B) WITH RESPECT TO BREACHES OF SECTION 5 (CONFIDENTIALITY) AND TECHNOLOGY SERVICES GROUP'S OBLIGATIONS UNDER SECTION 8 (INDEMNIFICATION), ONE (1) TIMES THE AMOUNTS PAID OR OWED TO TECHNOLOGY SERVICES GROUP BY USER, EITHER DIRECTLY OR THROUGH A BUSINESS PARTNER, DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. NOTHING IN THIS AGREEMENT IS INTENDED TO EXCLUDE OR LIMIT EITHER PARTY'S LIABILITY FOR DEATH, PERSONAL INJURY, OR PROPERTY DAMAGE CAUSED BY NEGLIGENCE, OR FOR FRAUD. NOTHING IN THIS SECTION WILL LIMIT THE FEES OWED BY USER UNDER THIS AGREEMENT FOR SOFTWARE OR SUPPORT, OR FOR EXCEEDING THE SCOPE OF THE LICENSES GRANTED OR VIOLATING THE RESTRICTIONS IN SECTION 3.

8. INDEMNIFICATION

8.1 **Defense.** If a third party initiates or threatens a legal action alleging that User's use of the Software directly infringes the third party's patent, copyright, trademark or misappropriates the third party's trade secret rights ("**Third Party Rights**") (such action, a "**Claim**"), then Technology Services Group will (a) promptly assume the defense of the Claim and (b) pay costs, damages and/or reasonable attorneys' fees that are included in a final judgment against User (without right of appeal) or in a settlement approved by Technology Services Group that are attributable to User's use of the Software; provided that User (i) is current in the payment of all applicable fees, or becomes current, prior to requesting indemnification, (ii) notifies Technology Services Group in writing of the Claim promptly after receipt of the Claim, (iii) provides Technology Services Group the right to control the defense of the Claim with counsel of its choice, and to settle such Claim at Technology Services Group's sole discretion (unless the settlement requires payment by User or requires User to admit liability), and (iv) reasonably cooperates with Technology Services Group in the defense of the Claim.

8.2 **Injunctive Relief.** If the Software becomes the subject of any actual or anticipated third party infringement claim, Technology Services Group may, at its sole option and expense, (i) procure for User the right to continue using the affected Software consistent with this Agreement, (ii) replace or modify the affected Software with functionally equivalent software that does not infringe, or, if either (i) or (ii) is not available on a basis that Technology Services Group finds commercially feasible, (iii) terminate the Agreement or applicable Order Form and refund any prepaid fees for all unused portions of the Subscription Period.

8.3 **Exclusions.** Technology Services Group will have no liability for any Claim based upon (a) use of non-current versions of the Software when Technology Services Group has made newer, non-infringing versions available User; (b) altered versions of the Software (unless the specific alteration was made by or for Technology Services Group); (c)

use, operation or combination of the applicable Software with non-Technology Services Group programs, data, equipment or documentation if such infringement would have been avoided but for such use, operation or combination; (d) Technology Services Group's compliance with designs, specifications or instructions provided by User where those designs, specifications or instructions cause the infringement; (e) use by User after notice by Technology Services Group to discontinue use of all or a portion of the Software; or (f) third-party open-source software. This section constitutes the entire liability of Technology Services Group, and User's sole and exclusive remedy, with respect to any third party claims of infringement or misappropriation of intellectual property rights.

9 **Insurance.** Technology Services Group shall at its own expense maintain in full force and effect at all times during the term of any Order Form policies of insurance with insurance companies having a rating of at least A- or better in the Best's Insurance Reposts published by A.M. Best, that meet the following minimum requirements: (1) Worker compensation insurance covering all cost, benefits and liabilities under Worker's Compensation and similar laws which may accrue in favor of any person employed by Technology Services Group for all states in which Technology Services Group operated, and Employer's Liability insurance with limits of liability of at least \$1,000,000 per accident or disease and \$1,000,000 aggregate by disease; (ii) Commercial General liability insurance, including, but not limited to premises/operations liability, contractual liability, personal and advertising liability, and products and completed operations liability, with limits of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Company shall be named as an additional insured. Limits of liability requirements may be satisfied by a combination of Commercial General Liability and Umbrella Excess Liability policies; (iii) Automobile Liability insurance, for owned, non-owned and hired vehicles used in connection with the Services to be performed under this Agreement, with limits of at least \$500,000 for bodily injury and property damage combined single limit. Limits of liability requirements may be satisfied by a combination of Automobile Liability and Umbrella Excess Liability policies. Technology Services Group shall endeavor to provide at least thirty (30) days' prior written notice to Company should the above coverages be cancelled or modified. Technology Services Group shall furnish Company with certificates upon written request. Failure to obtain and maintain required insurance shall not relieve Technology Services Group of any obligation contained in this Agreement. Any approval by Company of any of Technology Services Group's insurance policies shall not relive Technology Services Group of any obligation contained in this Agreement, including liability for claims in excess of described items.

10. GENERAL

10.1 **Notices.** Notices under this Agreement must be in writing and delivered: (a) if to Technology Services Group, to its President, with a copy to its General Counsel; (b) if to User, to its President or any individual identified in the Order Form. Notices will be deemed received when (1) delivered personally; or (2) upon confirmed delivery by a commercial express carrier.

10.2 **Compliance with Applicable Laws.** Each party will comply with all applicable laws, including applicable export control restrictions. In order for Technology Services Group to provide Support to User, it may be necessary for Technology Services Group to share information with its Affiliates, Business Partners, and/or subcontractors, which may be located worldwide. In such event, Technology Services Group will comply with Section 5 of this Agreement and with applicable data privacy laws governing the transfer of that information.

10.3 **Entire Agreement.** Except as otherwise provided in a signed agreement between the parties, this Agreement constitutes the exclusive and complete agreement between Technology Services Group and User with respect to User's use of Technology Services Group Software and/or Support, and supersedes all prior oral or written discussions, agreements or understandings.

10.4 **Force Majeure.** Force majeure events shall excuse the affected party (the "Non-Performing Party") from its obligations under this Agreement so long as the event and its effects continue. Force majeure events include, without limitation, Acts of God, natural disasters, war, riot, network attacks, acts of terrorism, fire, explosion, accident, sabotage, strikes, inability to obtain power, fuel, material or labor, or acts of any government. As soon as feasible, the Non-Performing Party shall notify the

other party of (a) its best reasonable assessment of the nature and duration of the force majeure event, and (b) the steps it is taking to mitigate its effects. If the force majeure event prevents performance for more than sixty (60) consecutive days, and the parties have not agreed upon a revised basis for performance, then either party may immediately terminate the Agreement upon written notice.

10.5 Severability/Waiver. If any provision of this Agreement is ruled invalid or unenforceable, the provision shall be severable from this Agreement so that the remaining provisions are unaffected. No waiver of any rights under this Agreement will constitute a subsequent waiver unless otherwise stated in writing.

10.6 Dispute Resolution. Illinois law shall govern all aspects of this Agreement, without regard to its conflict-of-law principles. The prevailing party in any such dispute shall recover its reasonable attorneys' fees and costs from the losing party, including any fees or costs arising from an appeal.

Agreed and Accepted:

10.7 Headings. All headings contained in this Agreement are inserted for identification and convenience and will not be deemed part of this Agreement for purposes of interpretation.

10.8 Amendment. This Agreement may not be amended or modified except in a writing signed by the parties, with specific reference to this Agreement.

10.9 Marketing. Technology Services Group may not (i) issue a press release announcing this Agreement or (ii) list Company's name or logo in a list of customers to be used for marketing purposes, in each case, without the prior written consent of User.

TECHNOLOGY SERVICES GROUP SOFTWARE, LTD.

By: _____

Name: _____

Title: _____

Date: _____

USER: _____

By: _____

Name: _____

Title: _____

Date: _____