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2. Maintenance and Support Services.

2.1 **Services.** If Licensee purchases maintenance and support services for the Software (“Services”), Merrick shall take reasonable steps to correct material nonconformities with the Software specifications in the applicable Documentation. Services shall commence on the initial delivery of the Software to Licensee and shall continue for a period of one (1) year. Thereafter, unless terminated as provided herein, Services shall be automatically renewed for additional one (1) year terms unless either party provides sixty (60) days (prior to the expiration of the then-current term) to the other party of its intention not to renew. Services will be provided from Merrick’s offices through the use of telephones or appropriate electronic means. Licensee and Merrick may agree to provide on-site services at a Licensee site, provided Licensee pays all agreed to fees and expenses pursuant to a Professional Services Agreement executed by the parties for such on-site service.

2.2 **Covered Software.** Merrick will provide Services for the most current release of the Software and the immediately preceding release. Once a release has been made generally available, Licensee should convert to the latest release in order to insure

uninterrupted service and continued support. Merrick may determine that a reported item is not a malfunction of the Software, or Merrick may release the correction as part of the next scheduled release.

2.3 **Hours of Operation.** Services are available between the hours of 8:00 a.m. and 5:00 p.m., U.S. MST, weekdays, excluding U.S. holidays observed by Merrick (the “Hours of Operation”). Licensee may receive Services by calling Merrick’s Customer Support number set forth in the Documentation.

2.4 **Exclusions.** Merrick is not required to perform Services with respect to the following: (i) assistance in resolving problems due to Licensee modification of the Software; (ii) problems encountered as a result of non-Merrick product offerings co-resident on the system hub machine; (iii) assistance in resolving software problems other than those associated with Software, including, but not limited to, problems with the hardware and its operating system, communications and system administration-related problems; (iv) assistance in migrating to new releases of other software products; (v) assistance in resolving problems due to using the Software in an operating environment not authorized by Merrick; (vi) Licensee failure to use the Software in accordance with the applicable documentation; and/or (vii) Licensee failure to use error corrections previously provided by Merrick.

2.5 **Product Updates.** Services include Updates of the Software and any associated Documentation released during the term of the Services. “Updates” means an error correction, patch, bug fix, minor modification or new release of the Software. Updates shall not include any major modifications, options or future products that Merrick in its sole discretion determines to license separately and charge a separate license fee.

2.6 **Licensee Responsibilities.** Licensee shall cooperate fully with Merrick’s reasonable requests for information, personnel and time necessary to provide Services, including providing information for Merrick to reproduce the error(s) reported by Licensee. Licensee shall assign a point of contact (“Technical Contact”). This Technical Contact will coordinate the reporting of issues to Merrick, and should be a Technical Analyst, System Administrator or Project Manager. Licensee may change its Technical Contact upon providing written notice to Merrick.

2.7 **Maintenance and Support Lapse and Reinstatement.** If Licensee terminates or interrupts Services, reinstatement of such Services and Updates that were made available by Merrick during the interruption will be provided to Licensee only upon Licensee payment of a reinstatement fee, with such fee calculated as the fees that would have been due had Services not been terminated or interrupted (“Reinstatement Fee”). If Licensee desires to renew Services after a period of non-coverage, Licensee shall request such renewal from Merrick in writing and Merrick shall have the right to accept or deny such request for renewal at its sole discretion. In the event Merrick accepts such renewal request and grants renewal of Services, Licensee shall (i)

promptly update the Software to the most current respective Update(s) of the Software, and (ii) pay Merrick the Reinstatement Fee to so update such Software. Reinstatement pursuant to this Section only entitles Licensee to Updates that were released during the interruption of the Services, but in no event entitles Licensee to receive other Services retroactively.

3. Fees, Payment, and Taxes. In consideration of the Software and Services and any accompanying licenses provided to Licensee by Merrick hereunder, Licensee shall pay Merrick the license fees, Services fees, expenses, and taxes set forth in the Software Quotation Form. All fees and expenses are quoted in U.S. dollars and Licensee shall pay the fees and expenses in U.S. dollars. Merrick shall invoice Licensee for all fees due hereunder, and unless otherwise specified in the Software Quotation Form, all amounts billed will be due and payable within thirty (30) days of date of invoice. Any payments not received by Merrick by the due date will be considered past due and interest will accrue at the rate of one and one-half percent (1.5%) per month or, if less, the highest rate permitted under applicable law. All fees and expenses specified in this Agreement are exclusive of, and Licensee shall be solely responsible for, all value-added, sales, use, import, duties, customs or other taxes applicable to the transactions contemplated by this Agreement, except for any taxes based upon Merrick's net income.

4. Term. The term of this Agreement shall commence on the Effective Date and continue until terminated by either party in accordance with Section 10 ("Term").

5. Intellectual Property. Subject only to the licenses expressly granted in this Agreement and to any agreement between Merrick and any third parties, as between Merrick and Licensee, Merrick is the sole owner of all intellectual property rights in and to: (i) the Software (including any Updates); (ii) the user guides and manuals provided by Merrick for installation and/or use of the Software ("Documentation"); and (iii) all trademarks, copyrights, trade secrets, and Confidential Information. Merrick may utilize all ideas, suggestions, feedback, improvements, data, reports or the like that Licensee provides to Merrick or otherwise make with respect to the Software without any obligation to Licensee. Licensee shall not remove any of Merrick's or its licensor's copyright, trademark and other proprietary notices contained on or in the Software, and Licensee will reproduce all such notices on all copies permitted to be made by You under this Agreement.

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7. Warranties and Disclaimers. Merrick warrants that, for a period of ninety (90) days from initial delivery of the Software to Licensee, the Software will, when properly installed and used in accordance with the Documentation supplied to Licensee, perform substantially in accordance with the specifications for the Software as described in the applicable Documentation. As Licensee's exclusive remedy and Merrick's sole obligation for breach of this warranty, Merrick shall use commercially reasonable efforts to correct any reproducible error in the Software constituting a breach of the warranty at no additional charge. Merrick does not warrant that Licensee's use of the Software will be error-free, virus-free or uninterrupted. Merrick also warrants that any media upon which Merrick provides the Software to Licensee shall be free

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8.2 By Licensee. Except for claims covered by Section 8.1, Licensee agrees to indemnify and defend Merrick from and against all third party claims arising out of or related to this Agreement (including Licensee use of the Software) or by Licensee negligence, willful misconduct or breach of the terms of this Agreement.

8.3 Indemnification Procedure. The indemnifying party's indemnification obligations under this Section 8 are conditioned upon the indemnified party (a) giving prompt notice of the claim to the indemnifying party; (b) granting sole control of the defense or settlement of the claim or action to the indemnifying party, provided that the indemnifying party shall not enter into any settlement admitting fault on behalf of the indemnified party; and (c) providing reasonable cooperation to the indemnifying party and, at the indemnifying party's request and expense, assistance in the defense or settlement of the claim.

9. Limitation on Liability. EXCEPT FOR BREACHES OF OBLIGATIONS IN SECTIONS 5, 6, AND 8, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, SUFFERED BY THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTIONS OR OTHER ECONOMIC LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY USE OF OR FAILURE TO BE ABLE TO USE THE SOFTWARE OR SERVICES. MERRICK SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATED TO (i) TRANSACTIONS PERFORMED USING THE SOFTWARE OR SERVICES; OR (ii) MODIFICATIONS TO THE SOFTWARE OR SERVICES BY LICENSEE, WHETHER SUFFERED BY LICENSEE OR ANY THIRD PARTY. Notwithstanding any provision herein to the contrary, Merrick's total aggregate liability for any damages arising out of or related to this Agreement will not exceed the fees paid by Licensee hereunder, for the Software or Service that is the subject of the action. The existence of one or more claims will not enlarge this limit. Licensee acknowledges that Merrick's pricing reflects this allocation of risk and the limitation of liability specified in this section will apply regardless of whether any limited or exclusive remedy specified in this Agreement fails of its essential purpose.

10. Termination. This Agreement and the license granted herein may be terminated immediately upon written notice (a) by either party upon the material breach by the other party of any of its obligations under this Agreement, which breach has not been cured within thirty (30) days

after the breaching party has received notice thereof, or (b) by Merrick if Licensee has violated Sections 1, 5, or 6 of the Agreement or if Licensee is past due on any payment of the fees under this Agreement for more than 60 days. Upon termination Licensee shall promptly return the Software to Merrick. This Agreement will terminate automatically if all or a substantial portion of the assets of the Licensee are transferred to an assignee for the benefit of creditors, to a receiver or to a trustee in bankruptcy, a proceeding is commenced by or against the Licensee for relief under bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days, or the Licensee is adjudged bankrupt. Upon termination of this Agreement, any applicable fees owed by Licensee through the date of termination shall become due and payable, and Licensee shall immediately cease using the Software and Services. Each party shall promptly return to the other all Confidential Information of the other party that it may have in its possession or control. Notwithstanding the termination of this Agreement for any reason, the rights and duties of the parties under Sections 1.3, 5, 6, 8, 9, 10, and 11 of this Agreement shall survive such termination and remain in full force and effect.

11. General Terms.

11.1 **Force Majeure.** If the performance of any obligation under this Agreement, except the making of payments, is prevented or interfered with by a Force Majeure (any act or condition whatsoever beyond the reasonable control of and not occasioned by the fault or negligence of the affected party), the party so affected shall be excused from such performance to the extent of such prevention or interference.

11.2 **Export Control.** The Software and deliverables from the Services may be subject to United States export control regulations. Licensee shall obtain at Licensee expense all necessary licenses, permits and regulatory approvals required by any and all governmental authorities and agencies having jurisdiction over the export and re-export of software and technical data in accordance with all applicable regulations of the Office of Export Administration of the U.S. Department of Commerce and the U.S. Treasury Department Office of Foreign Asset Control.

11.3 **Dispute Resolution.** Any unresolved disputes between the parties relating to or arising from this Agreement shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA Rules") before a single neutral and competent arbitrator selected in accordance with the AAA Rules. Such arbitration shall be held in Denver, Colorado and conducted in the English language. The cost and expense of arbitration shall be shared equally by the parties to the arbitration, regardless of which party or parties prevail. The parties agree that any breach of a party's confidentiality obligations and the license grant and restrictions set forth in this Agreement will result in irreparable injury to the other party for which there is no adequate remedy at law. Therefore, in the event of any breach or threatened breach of such obligations, the nonbreaching party will be entitled to seek equitable relief in addition to its other available legal remedies without submitting such matter to arbitration. Each party hereby irrevocably submits to the jurisdiction and venue of the state and federal courts located in Denver, Colorado for any action seeking injunctive relief hereunder.

11.4 **Miscellaneous.** The parties are independent contractors and nothing in this Agreement shall be construed to create a partnership, joint venture or employment relationship between the parties. This Agreement sets forth the entire agreement between the parties and supersedes any and all prior proposals, agreements or communications, written or oral, of the parties with respect to the subject matter hereof. This Agreement may not be modified, altered or amended, except by written instrument duly executed by both parties. No failure or delay by either party in exercising any right hereunder will operate as a waiver thereof. If either party wishes to assign or otherwise transfer this Agreement to anyone, it must obtain the other party's prior written consent (which consent shall not be unreasonably withheld), with the exception that Merrick shall be permitted to assign this Agreement

without the consent of Licensee in the event of a sale, merger, or change of control of Merrick, or a purchase of substantially all the assets of Merrick related to this Agreement. This Agreement will be binding on the parties, their successors and permitted assigns. This Agreement will be construed under the laws of the State of Colorado, without regard to its conflicts of law principles. The parties hereby disclaim the application of the 1980 U.N. Convention on Contracts for the International Sale of Goods. The English language version of this Agreement shall be controlling in the interpretation or application of the terms of this Agreement. If any provision of this Agreement is, for any reason, held invalid or illegal in any respect by an arbitrator or a court of competent jurisdiction, such inability or illegality shall not affect the validity of this Agreement itself and there shall be substituted for the affected provision, a valid and enforceable provision which most closely approximates the intent and economic effect of the invalid provision. If such provision cannot be amended so as to be valid and enforceable, then such provision is severable from this Agreement, and the remaining provisions of this Agreement shall remain valid and enforceable.