RF CODE ORDER TERMS AND CONDITIONS

These RF Code Order Terms ("**T&C**") govern transactions by which Customer (as defined below) purchases or licenses certain rights to Technology (as defined below) and related Support Services (as defined below) from RF Code, Inc. ("**RF Code**").

BY ACCEPTING THESE T&C, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE, EXECUTING AN ORDER FORM OR OTHER DOCUMENT THAT REFERENCES THESE T&C, BY USING (OR MAKING ANY PAYMENT FOR) ANY RF CODE TECHNOLOGY, ENGAGING RF CODE FOR SUPPORT SERVICES, OR BY OTHERWISE AFFIRMATIVELY INDICATING YOUR ACCEPTANCE OF THESE T&C, YOU: (i) AGREE TO THESE T&C ON BEHALF OF THE ORGANIZATION, COMPANY, OR OTHER LEGAL ENTITY FOR WHICH YOU ACT ("**Customer**"); (ii) YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND CUSTOMER AND ITS AFFILIATES TO THESE T&C. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE T&C, YOU MUST NOT ACCEPT THESE T&C AND MAY NOT USE ANY RF CODE TECHNOLOGY OR SUPPORT SERVICES.

Specific details regarding what particular Technology or Support Services are purchased or licensed and additional terms and details specific to each transaction will be specified in an Order Form (as defined below). These T&C together with any Order Form(s) constitute the "**Agreement**" by and between RF Code and Customer. The parties agree as follows:

1. DEFINITIONS

1.1 "**Affiliate**" means, with respect to Customer, any other person or entity that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Customer. As used in this definition, "control" means possession, directly or indirectly, of the power to direct the management or policies of a person or entity, whether through ownership of more than a majority interest of voting securities, control by contract, or otherwise.

1.2 "**Authorized Users**" means employees, contractors, and Affiliates of Customer for whom Customer has paid all applicable fees to permit them to access and/or use the Technology.

1.3 "**Cloud-Based Software**" means the cloud-based offering of the applicable Software hosted by or on behalf of RF Code.

1.4 "**Documentation**" means user manuals, technical manuals, and any other materials provided by or on behalf of RF Code with the Technology, in printed, electronic, or other form, that describe the installation, operation, use, or technical specifications of the Technology.

1.5 "**Firmware**" means any firmware installed by or on behalf of RF Code on the Hardware, including any upgrades to the Firmware.

1.6 "**Hardware**" means hardware ordered by Customer pursuant to an Order Form.

1.7 "**Intellectual Property Rights**" means patent rights (including patent applications and disclosures), copyrights (including rights in audiovisual works and moral rights), trade secret rights, rights of priority, and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.8 "**Major Release**" means a release of the Software in which the first field of the version string is incremented (e.g., 4.0, 5.0, 6.0). Major Releases may include new features and enhancements that break backwards compatibility and/or represent major changes to how the product is used.

1.9 "**Minor Release**" means a release of the Software in which the second field of the version string is incremented (e.g., 4.1, 4.2, 4.3). Minor Releases include new features and enhancement requests that do not break backwards compatibility and do not represent major changes to how the product is used.

1.10 "**On-Premises Software**" means Software provided to Customer in object code form and installed by or on behalf of Customer on systems owned or controlled by Customer.

1.11 "**Order Form**" means an ordering document (e.g., purchase order, statement of work, etc.), or online order specifying the Technology or Support Services to be provided hereunder that is entered into between Customer and RF Code, including any addenda and supplements thereto.

1.12 "**Purchased Hardware**" means Hardware that is purchased by Customer and, subject to payment of the applicable fees, owned by Customer.

1.13 "**Release**" means a Service Release, Minor Release, or Major Release.

1.14 "**Service Release**" means a release of the Software in which the third field of the version string is incremented (e.g., 4.0.1, 4.0.2, 4.0.2). Service Releases include bug fixes and minor changes only. These may also be referred to as "patches."

1.15 "**Scope Limitations**" means any limitations on Customer's use of the Technology specified in the applicable Order Form.

1.16 "**Software**" means the object code or cloud-based software made available by RF Code to Customer as further described in the applicable Order Form. "Software" includes, and the Agreement will apply to, any new Releases or copies of the Software.

1.17 "**Subscription**" means, with respect to Software, purchase of a time-limited license or right to access the applicable Software or, with respect to Hardware, purchase of a time-limited right to use the applicable Hardware and related Firmware.

1.18 "**Subscription Hardware**" means Hardware made available to Customer on a Subscription basis.

1.19 "**Subscription Software**" means Cloud-Based Software or On-Premises Software made available to Customer on a Subscription basis.

1.20 "**Subscription Term**" means the period beginning on the Subscription start date and ending on the Subscription end date, as specified in the applicable Order Form.

1.21 "**Support Services**" means the maintenance and support services described at www.rfcode.com/supportterms provided to Customer by or on behalf of RF Code under the Agreement.

1.22 "**Technology**" means the Hardware, Software, Firmware, and any related installation services provided by RF Code to Customer under the Agreement.

1.23 "**Warranty Period**" means the Standard Warranty Period applicable to the Technology purchased by Customer unless Customer has purchased extended warranty coverage for that Technology ("**Extended Warranty Coverage**"), in which case "Warranty Period" means the Extended Warranty Period. The "**Standard Warranty Periods**" for the Technology are as follows: (a) for the Purchased Hardware, Purchased Software, and Firmware, one year from the applicable invoice date; (b) for Subscription Software, the applicable Order Term; (c) for Subscription Hardware, the applicable Order Term. The "**Extended Warranty Period**" means the applicable extended warranty period term specified in the applicable Order Form

pursuant to which Extended Warranty Coverage was ordered by Customer.

2. ACCESS TO AND USE OF THE TECHNOLOGY AND DOCUMENTATION

2.1 <u>Orders</u>. Each Order Form is subject to and governed by these T&C. If there is a conflict between these T&C and an Order Form, these T&C will control unless the Order Form states that a specific provision of these T&C will be superseded by a specific provision of the Order Form.

2.2 <u>Subscription Software</u>

(a) <u>Cloud-Based</u>. If Customer has purchased a Subscription to Cloud-Based Software, this Section 2.2(a) applies with respect to that Cloud-Based Software. Subject to and conditioned upon Customer's strict compliance with the Agreement and payment of all applicable fees, RF Code will provide Customer access to the applicable Cloud-Based Software during the applicable Subscription Term for use by and through its Authorized Users solely in connection with Customer's internal business operations.

(b) <u>On-Premises</u>. If Customer has purchased a Subscription to On-Premises Software, this Section 2.2(b) applies with respect to that On-Premises Software. Subject to and conditioned upon Customer's strict compliance with the Agreement and payment of all applicable fees, RF Code grants to Customer, during the applicable Subscription Term, a personal, non-transferable (except as permitted in Section 11.4), non-sublicensable, non-exclusive, limited license under RF Code's rights in the On-Premises Software to do the following, solely by and through its Authorized Users: (i) download and install one copy of the On-Premises Software on production servers operated by or on behalf of Customer; (ii) use the On-Premises Software solely for Customer's internal business operations; and (iii) make a reasonable number of copies of the On-Premises Software solely for testing, backup, or archival purposes.

2.3 <u>Purchased Software</u>. If Customer has purchased a perpetual license to Software ("**Purchased Software**"), this Section 2.3 applies with respect to that Software. Subject to and conditioned upon Customer's strict compliance with the Agreement and payment of all applicable fees, RF Code grants to Customer a personal, non-transferable (except as permitted in Section 11.4), non-sublicensable, perpetual (during the Order Term), non-exclusive limited license under RF Code's rights in the applicable Purchased Software to do the following, solely by and through its Authorized Users: (a) download and install one copy of the Purchased Software on production servers operated by or on behalf of Customer; (b) use the Software solely for Customer's internal business operations; and (c) make a reasonable number of copies of the Purchased Software solely for testing, backup, or archival purposes.

2.4 <u>Firmware</u>. If Customer has purchased Purchased Hardware or a Subscription to Subscription Hardware, this Section 2.4 applies. Subject to and conditioned upon Customer's strict compliance with the Agreement and payment of all applicable fees, RF Code grants to Customer a personal, non-transferable (except as permitted in Section 11.4 or in the last sentence of this Section 2.4), non-sublicensable, non-exclusive limited license under RF Code's rights in the applicable Firmware to use the Firmware solely in connection with Customer's authorized use of the Hardware. If Customer has purchased Purchased Hardware, the foregoing license is in effect during the applicable Order Term. If Customer has purchased a Subscription to Subscription Hardware, the foregoing license is in effect during the applicable Subscription Term. Customer may transfer its rights in the Firmware installed on any Purchased Hardware that has been fully paid for by Customer to a third party solely in connection with transfer of ownership of that Purchased Hardware, and subject to the third

party's agreement to the applicable terms in these T&C relating to Firmware and Purchased Hardware.

2.5 <u>Documentation</u>. Subject to and conditioned upon Customer's strict compliance with the Agreement and payment of all applicable fees, RF Code grants to Customer a personal, non-transferable (except as permitted in Section 11.4), non-sublicensable, non-exclusive limited license during the applicable Order Term (as defined below) under RF Code's rights in the applicable Documentation to, solely by and through its Authorized Users, make a reasonable number of copies of the Documentation and use that Documentation, in each case, solely in support of its authorized use of the Technology in accordance with the Agreement.

2.6 <u>Third Party Licenses</u>. The Software, Firmware, and Documentation may include software, content, data, or other materials, including related documentation, that are owned by individuals other than RF Code and that are provided to Customer on terms that are in addition to and/or different from those contained in the Agreement ("**Third-Party Licenses**"). Customer is responsible for complying with all Third-Party Licenses. A list of certain of these Third-Party Licenses can be found at www.rfcode.com/thirdpartyterms and the applicable Third-Party Licenses are accessible via links on that site. Customer is bound by and will comply with all Third-Party Licenses. Any breach by Customer or any of its Authorized Users of any Third-Party License is also a breach of the Agreement.

2.7 <u>Hardware Delivery</u>. RF Code will use commercially reasonable efforts to deliver any Hardware purchased by Customer on a mutually agreed schedule. All Hardware will be shipped EXW (Incoterms 2010) RF Code's facility. Any claims for damages relating to delivery of Hardware must be filed directly with the carrier. The planned shipment date is an estimate only and RF Code will not be subject to liability for failure to ship on or before the planned shipment date under any circumstances. Any carrier selected by RF Code will not be deemed an agent of RF Code.

2.8 <u>Subscription Hardware</u>

(a) If Customer has purchased a Subscription to Subscription Hardware, this Section 2.8 applies with respect to that Subscription Hardware. Subject to and conditioned upon Customer's strict compliance with the Agreement and payment of all applicable fees, RF Code grants Customer the right to use the applicable Subscription Hardware during the applicable Subscription Term solely as described in this Section 2.8. The Subscription Hardware is loaned, not sold, to Customer, and will remain the property of RF Code. Customer will use a reasonable degree of care to maintain and protect the Subscription Hardware. Customer will assume all risk of loss, damage, theft, or destruction of the Subscription Hardware while it is in its possession or control or that of its agents, including any carrier, and will reimburse RF Code for any costs of repair or replacement. Customer will keep the Subscription Hardware free of all security interests, liens, and other encumbrances. RF Code may affix tags, decals, or plates to the Subscription Hardware indicating RF Code's ownership and Customer will not permit the removal or concealment of these marks.

(b) Subject to the terms and conditions of the Agreement, the Subscription Hardware is provided to Customer solely for use by Customer in connection with the Software.

(c) Customer will, at all times, keep the Subscription Hardware in its control (whether by contract or possession).

(d) During the Subscription Term applicable to the particular Subscription Hardware, Customer will, at its own expense, keep in effect an all risk insurance policy covering the Subscription Hardware in amounts reasonably sufficient to cover Customer's liabilities that may arise under the Agreement, including the cost of replacement hardware. RF Code will be

named as the loss-payee on the policy and upon request by RF Code, a copy of the policy will be delivered to RF Code.

(e) Customer will permit RF Code physical access to the Subscription Hardware at all reasonable times during normal business hours and remote access to the Subscription Hardware at all times for the purpose of inspection, providing Support Services, installation services, upgrading the Subscription Hardware, monitoring performance of the Software or Firmware, and for any other purpose reasonably contemplated by the Agreement. Upon termination or expiration of the Subscription Term applicable to the particular Subscription Hardware, RF Code will have the right to enter Customer's premises for the purpose of repossessing the applicable Subscription Hardware, and Customer hereby consents to the entry.

2.9 <u>Purchased Hardware</u>. If Customer has purchased Purchased Hardware, this Section 2.9 applies with respect to that Purchased Hardware. Customer will purchase the Purchased Hardware on the terms set forth in the Agreement. Subject to Customer's payment of all applicable fees, all right, title, and interest, and all risk of loss, damage, theft, or destruction to the Purchased Hardware passes to Customer immediately upon delivery.

2.10 <u>Audit</u>. Customer will, after reasonable prior written notice from RF Code, provide RF Code and its agents reasonable access to Customer's premises, records, and personnel so that RF Code may audit and confirm that Customer complies with the Agreement.

3. RESTRICTIONS; RESERVATION OF RIGHTS

3.1 <u>Limitations</u>. The Software, Firmware, Subscription Hardware, and Documentation are licensed, not sold, to Customer; are owned by RF Code and its licensors; and are protected by copyright and other laws of the United States and other jurisdictions. All copies of the Software, Firmware, Subscription Hardware, and Documentation: (a) are the property of RF Code; (b) are subject to the terms and conditions of the Agreement; and (c) must include all trademark, copyright, patent and other Intellectual Property Rights notices contained in the original. Customer's right to use the Technology and Documentation is subject to the Scope Limitations and contingent upon Customer's compliance with the Scope Limitations.

3.2 <u>Restrictions</u>. Customer will not: (a) use the Technology or Documentation except as expressly permitted under the terms of the Agreement; (b) reverse engineer, decompile, disassemble, modify, merge, or translate the Technology or Documentation, or attempt to discover either the layout of the Hardware or the source code of the Software or Firmware, or create derivative works of the Technology or Documentation; (c) install or otherwise use the Technology or Documentation in any way that would permit or authorize the Technology or Documentation to be used in violation of the Scope Limitations or otherwise in violation of the Agreement; (d) transfer, assign, sublicense, sell, or otherwise convey any of Customer's rights to or license in the Software, Firmware (except as specified in Section 2.4, or in connection with an assignment permitted under Section 11.4), Documentation, or Subscription Hardware or under the Agreement without the express written approval of RF Code; (e) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other Intellectual Property Rights notices provided on or with the Technology or Documentation, including any copy; (f) use Documentation or the Technology after the applicable Order Term, even if the ability to use the applicable Technology or Documentation does not automatically become disabled; or (g) use the Technology or Documentation in, or in association with, the design, construction, maintenance, or operation of any hazardous environments or systems, including: (i) power generation systems; (ii) aircraft navigation or communication systems, air traffic control systems or any other transport management systems; (iii) safety-critical applications, including medical or life-support systems, vehicle operation applications or any police, fire, or other safety response systems; and (iv) military or aerospace applications, weapons systems, or environments.

3.3 <u>Responsibility for Use of Technology and Documentation</u>. Customer is responsible and liable for all actions, and inactions with respect to the Technology and Documentation by its Authorized Users or by any other person or entity to whom Customer or an Authorized User may, directly or indirectly, provide access to or permit to use the Technology or Documentation, as if they were an action or inaction of Customer (whether that action or inaction is permitted by or in violation of the Agreement).

3.4 <u>Reservation of Rights</u>. RF Code grants to Customer a limited right to use the Software, Firmware, and Documentation as described in the Agreement. Customer will not have any rights to the Software, Firmware, or Documentation except as expressly granted in the Agreement. RF Code reserves to itself all rights in and to the Software, Firmware, and Documentation not expressly granted to Customer in accordance with the Agreement.

3.5 <u>Security Features</u>. The Technology may contain technological copy protection or other security features designed to prevent unauthorized use of the Technology, including features to protect against any use of the Technology that is prohibited or not expressly permitted under the Agreement. Customer will not, and will not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to, any of those copy protection or security features.

4. SERVICES

4.1 <u>Support Services</u>. Subject to Customer's payment of all applicable fees and compliance with its other obligations under the Agreement, RF Code will make commercially reasonable efforts to perform the Support Services for the applicable Technology. Support Services are only available for Customers who have purchased and are currently using: (i) the most current Release; or (ii) the immediately preceding Release. Customer may be required to upgrade to the most current Release if the support issues raised by Customer have been corrected in the current Release. Customer's rights under Section 9 may be limited if Customer is not using the most recent Release.

4.2 <u>Hardware and Firmware Upgrades</u>. RF Code, in its sole discretion, may upgrade the Subscription Hardware to functionally equivalent product or upgrade the Firmware to newer versions from time to time by providing Customer reasonable notice. Customer will cooperate with RF Code to perform these upgrades.

4.3 <u>Installation Services</u>. Customer may engage RF Code to perform certain installation services relating to the Software, Firmware, or Hardware. The price and description of any installation services will be specified by RF Code in the applicable Order Form. All installation services are governed by and subject to these T&C.

5. FEES AND PAYMENT

5.1 <u>Fees and Payment Terms</u>

(a) Customer will pay RF Code the fees and any other amounts owing under each Order Form, plus any applicable sales, use, excise, or other taxes, as specified in the applicable Order Form (the "**Fees**"). Additionally, Customer will pay RF Code the actual shipping fees incurred by RF Code in connection with delivery of the Technology and Documentation to Customer. Unless otherwise specified in the applicable Order Form, (i) Fees for Subscription Hardware and Subscription Software are due annually in advance, (ii) Fees for Purchased Software and Purchased Hardware are due within 30 days' of the applicable invoice date, (iii) Fees for installation services will

be charged on a time and materials basis at RF Code's then-current list rate, plus reasonable travel and expenses, invoiced monthly in arrears. Customer will pay all amounts due within 30 days of the date of the applicable invoice.

(b) Any amount not paid when due will be subject to finance charges equal to 1.5% of the unpaid balance per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid. Customer will reimburse any costs or expenses (including reasonable attorneys' fees) incurred by RF Code to collect any amount that is not paid when due. Amounts due from Customer under the Agreement may not be withheld or offset by Customer against amounts due to Customer for any reason. All amounts payable under the Agreement are denominated in United States dollars, and Customer will pay all amounts in United States dollars.

5.2 Taxes. Other than federal and state net income taxes imposed on RF Code, Customer will bear all taxes, duties, and other governmental charges resulting from the Agreement or provide a tax exempt certificate.

6. TERM AND TERMINATION

6.1 Term of the Agreement. The term of the Agreement will commence the effective date of the first Order Form entered between the parties ("**Effective Date**") and will continue until terminated in accordance with the Agreement (the "**Term**").

6.2 Order Term. "**Order Term**" means the duration of time an Order Form is in effect with respect to a particular aspect of the Technology, which is (unless earlier terminated as provided in the Agreement) determined as follows: (a) with respect to Subscription Software or Subscription Hardware, the Order Term is the applicable Subscription Term; and (b) with respect to Purchased Hardware or Purchased Software, the Order Term means the period of time commencing on the delivery date specified in the applicable Order Form and continuing until termination in accordance with the Agreement.

6.3 Notice of Material Breach or Default. Either party may terminate the Agreement or an Order Form, in whole or in part, for material breach if the other party does not cure its material breach of the Agreement within 30 days of receiving written notice of the material breach or default (which notice must include a statement of the facts relating to the material breach or default, the provisions of the Agreement that are in material breach or default, the action required to cure the material breach or default, and the non-defaulting party's intention to terminate the Agreement or the applicable Order Form if the material breach or default is not cured within 30 days after the defaulting party's receipt of that notice or any later date as may be specified in the notice). Without limiting the foregoing, any failure by Customer to timely pay to RF Code any amounts owing under an Order Form will constitute a material breach of the Agreement and the applicable Order Form. In addition to the rights provided in this Section 6.3, if Customer fails to timely pay any fees, RF Code may, without limitation to any of its other rights or remedies, suspend access to the Software, performance of Support Services, or installation services, until it receives all amounts due.

6.4 Termination for Insolvency. RF Code may terminate the Agreement, effective immediately upon written notice, if Customer files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property

6.5 Effect of Termination. Upon the termination of the Agreement or an Order Form all rights and licenses (including any rights to Technology or Documentation or Support Services) granted by RF Code to Customer under the Agreement or the terminated Order Form, as applicable, will terminate. If an Order Form is terminated, the Agreement and any other Order Forms will remain in effect. If the Agreement is terminated, all Order Forms will automatically terminate as well.

6.6 Post-Termination Obligations.

(a) If an Order Form is terminated for any reason, (i) Customer will pay to RF Code any fees, reimbursable expenses, compensation, or other amounts that have accrued prior to the effective date of the termination, (ii) any and all liabilities accrued prior to the effective date of the termination will survive, (iii) RF Code will have no obligation to perform under the terminated Order Form, as applicable, after the effective date of termination, and (iv) the parties' respective rights and obligations under Sections 1, 2.1, 2.6, 2.9, 2.10, 3, 6, 7.5, 8, 10, and 11 of the Agreement will survive.

(b) If the Agreement is terminated: (i) Customer must immediately cease use of the Subscription Software, Purchased Software, Subscription Hardware, Firmware, and Documentation, (ii) Customer will provide RF Code with a written certification signed by an authorized Customer representative certifying that all use of Subscription Software, Purchased Software, Subscription Hardware, Firmware, and Documentation has been discontinued, and (iii) Customer will, at RF Code's option, (A) provide certification from an executive officer of Customer that Customer has ceased all use of the Subscription Software, Purchased Software, Subscription Hardware, Firmware, and Documentation, or (B) at its expense, securely package and ship the Subscription Hardware, complete with all components, hard copy Documentation, and related materials, back to RF Code. Customer assumes all risk of loss, damage, theft, or destruction of the Subscription Hardware during shipping until received by RF Code. If Customer fails to return the Subscription Hardware to RF Code in a timely manner, Customer will permit RF Code to enter Customer's premises to repossess the Subscription Hardware.

7. WARRANTIES AND DISCLAIMER

7.1 Mutual Warranties. Each party represents and warrants to the other that: (a) the Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against the executing party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with the execution, delivery, or performance of the Agreement by the executing party; and (c) the execution, delivery, and performance of the Agreement by the executing party does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

7.2 Technology Warranty. During the applicable Warranty Period RF Code warrants to Customer that: (a) the Hardware will be free from defects in materials and workmanship; (b) the Software will operate in all material respects in accordance with the applicable Documentation; and (c) the Firmware will operate in all material respects in accordance with the applicable Documentation.

7.3 Remedies.

(a) To the fullest extent allowed under applicable law, Customer's sole and exclusive remedy and RF Code's entire liability for any non-conformities to the express limited warranties under Sections 7.2 will be as follows: RF Code will correct or replace the non-conforming Technology, which may include the delivery of a commercially reasonable workaround for the non-conformity; or if RF Code determines that repair or replacement of the applicable Technology is not commercially practicable, then terminate the Agreement with respect to the non-conforming Technology and provide a pro-rata refund (based on the remaining term) of the fees Customer paid attributable to the non-conforming portion of the Technology.

(b) With respect to Hardware that is eligible for repair or replacement under this Section 7.3, Customer must follow RF Code's return process which is available on RF Code's website.

7.4 <u>Limitations</u>. The warranties in Sections 7.2 and 7.2 do not apply unless (a) the Technology is installed, implemented, and operated in accordance with the Documentation and any other written instructions supplied by RF Code; (b) Customer notifies RF Code in writing of any error within 10 days of the appearance thereof and include sufficient example programs as may be necessary to demonstrate and reproduce the error; (c) Customer has not, or a third party has not, modified the Technology or combined the Technology with equipment or software other than that which is consistent with the Documentation; (iv) Customer has promptly and properly installed any and all Releases made available by RF Code to Customer; and (v) with respect to Hardware, the Hardware has not been damaged by accident or negligence on the part of Customer. If RF Code determines that any warranty claim reported by Customer falls within any of the foregoing exceptions, Customer will pay RF Code for its services at RF Code's hourly rates then in effect.

7.5 <u>Disclaimer</u>. EXCEPT FOR THE LIMITED WARRANTIES DESCRIBED IN SECTIONS 7.1, 7.2, AND 7.3, RF CODE MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE TECHNOLOGY, DOCUMENTATION, SUPPORT SERVICES, INSTALLATION SERVICES, OR OTHERWISE AND SPECIFICALLY DISCLAIMS ALL IMPLIED AND STATUTORY WARRANTIES INCLUDING THE IMPLIED WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE AS WELL AS ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. IF THAT DISCLAIMER IS NOT PERMITTED BY LAW, THE DURATION OF ANY IMPLIED WARRANTIES IS LIMITED TO 90 DAYS FROM THE DATE OF DELIVERY. IN ADDITION, RF CODE DOES NOT WARRANT THAT THE TECHNOLOGY, DOCUMENTATION, SUPPORT SERVICES, OR INSTALLATION SERVICES WILL SATISFY CUSTOMER'S REQUIREMENTS, IS WITHOUT DEFECT OR ERROR, OR THAT THE OPERATION OF THE TECHNOLOGY OR ANY INVENTION WILL BE UNINTERRUPTED. BECAUSE IT MAY NOT BE POSSIBLE FOR RF CODE TO KNOW THE EXACT PURPOSES FOR WHICH CUSTOMER ACQUIRED THE TECHNOLOGY OR ANY RELATED SERVICES UNDER THE AGREEMENT, CUSTOMER ASSUMES FULL RESPONSIBILITY FOR ITS INSTALLATION AND USE AND THE RESULTS OF THAT USE. No oral or written information given by RF Code, its agents, or employees will create any additional warranty. No modification or addition to the limited warranties set forth in the Agreement is authorized unless it is set forth in writing, references the Agreement, and is signed on behalf of RF Code by a corporate officer. This exclusion also applies to any of RF Code's subcontractors, suppliers, authorized service providers, and program developers. Some jurisdictions do not allow the exclusion or limitation of warranties, so that limitation or exclusion may not apply to Customer.

8. LIMITATIONS OF LIABILITY

IN NO EVENT WILL RF CODE OR ITS SUPPLIERS BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE, INCIDENTAL, OR INDIRECT DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THE TECHNOLOGY, DOCUMENTATION, INVENTIONS, SUPPORT SERVICES, OR INSTALLATION SERVICES INCLUDING LOST PROFITS, LOSSES ASSOCIATED WITH BUSINESS INTERRUPTION, LOSS OF USE OF THE TECHNOLOGY, LOSS OF DATA, COSTS OF RE-CREATING LOST DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, EVEN IF RF CODE HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. IN NO EVENT WILL RF CODE'S AGGREGATE LIABILITY FOR ANY CLAIM, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, ARISING OUT OF THE AGREEMENT EXCEED THE TOTAL FEES PAYABLE BY CUSTOMER UNDER THE AGREEMENT DURING THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. RF CODE'S PRICING REFLECTS THE ALLOCATION OF RISK AND LIMITATIONS ON LIABILITY CONTAINED IN THE AGREEMENT. Some jurisdictions do not allow the exclusion or limitation of damages, so this limitation or exclusion may not apply to Customer.

9. INTELLECTUAL PROPERTY INDEMNIFICATION

9.1 <u>Defense</u>. During the applicable Order Term, RF Code will defend Customer from any actual or threatened third party claim that Customer's authorized use of the Technology infringes or misappropriates any U.S. patent issued as of the Effective Date or any copyright or trade secret of any third party if: (a) Customer gives RF Code prompt written notice of the claim; (b) RF Code has full and complete control over the defense and settlement of the claim; (c) Customer provides assistance in connection with the defense and settlement of the claim as RF Code may reasonably request; and (d) Customer complies with any settlement or court order made in connection with the claim (e.g., relating to the future use of any infringing materials).

9.2 <u>Indemnification</u>. RF Code will indemnify Customer against: (a) all damages, costs, and attorneys' fees finally awarded against Customer in any proceeding under Section 9.1; (b) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by Customer in connection with the defense of that proceeding (other than attorneys' fees and costs incurred without RF Code's consent after RF Code has accepted defense of that claim); and (c) if any proceeding arising under Section 9.1 is settled, RF Code will pay any amounts to any third party agreed to by RF Code in settlement of those claims.

9.3 <u>Mitigation of Infringement Action</u>. If Customer's use of the Technology is, or in RF Code's reasonable opinion is likely to become, enjoined or materially diminished as a result of a proceeding arising under Section 9.1, then RF Code will either: (a) procure the continuing right of Customer to use the Technology; (b) replace or modify the Technology in a functionally equivalent manner so that it no longer infringes; or if, despite its commercially reasonable efforts, RF Code is unable to do either (a) or (b), RF Code will (c) terminate the portions of the Order Form relating to the Technology subject to the infringement claim and refund to Customer all unused fees pre-paid by Customer or, in the case of Purchased Software or Purchased Hardware, provide a pro rata refund based on a 5 year straight line amortization schedule.

9.4 <u>Exclusions</u>. RF Code will have no obligation under this Section 9 for any infringement to the extent that it arises out of or is based upon: (a) the combination, operation, or use of the Technology in conjunction with a service, hardware, or software not provided or authorized by RF Code under the Agreement for use with the Technology if that infringement would have been avoided but for that combination, operation, or use; (b) designs, requirements, or specifications for the Technology required by or provided by Customer, if the alleged infringement would not have occurred but for those designs, requirements, or specifications; (c) use of the Technology outside of the scope provided under the Agreement; (d) Customer's failure to use the latest Release of the Software or upgrade to the Hardware or Firmware made available to Customer by RF Code or to comply with instructions provided by RF Code, if the alleged infringement would not have occurred but for that failure; (e) any modification of the Technology not made by RF Code where that infringement would not have occurred absent that modification; or (f) unauthorized use of the Technology. Customer will reimburse

RF Code for any costs or damages that result from these actions.

9.5 Exclusive Remedy. THIS SECTION 9 STATES RF CODE'S SOLE AND EXCLUSIVE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, FOR THE ACTUAL OR ALLEGED INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT BY THE TECHNOLOGY.

10. CUSTOMER INDEMNIFICATION

10.1 Defense. Customer will defend RF Code from any actual or threatened third party claim arising out of or based upon the Customer's or an Authorized User's use of the Technology or Customer's breach of any of the provisions of the Agreement if: (a) RF Code gives Customer prompt written notice of the claim; (b) Customer has full and complete control over the defense and settlement of the claim; (c) RF Code provides assistance in connection with the defense and settlement of the claim as Customer may reasonably request; and (d) RF Code complies with any settlement or court order made in connection with the claim.

10.2 Indemnification. Customer will indemnify RF Code against: (a) all damages, costs, and attorneys' fees finally awarded against RF Code in any proceeding under Section 10.1; (b) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by RF Code in connection with the defense of that proceeding (other than attorneys' fees and costs incurred without Customer's consent after Customer has accepted defense of that claim); and (c) if any proceeding arising under Section 10.1 is settled, Customer will pay any amounts to any third party agreed to by Customer in settlement of those claims.

10.3 Exclusions. Customer will have no obligation under this Section 10 to the extent that RF Code is obligated under Section 9.1 to defend Customer against that third party claim. RF Code will reimburse Customer for any costs or damages that result from those actions.

11. GENERAL

11.1 Export. Customer will comply with all applicable laws, rules and regulations in connection with Customer's activities under the Agreement, including but not limited to export and import laws. Customer acknowledges that it is Customer's responsibility to obtain any required licenses to export and re-export the Technology. The Technology, including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer represents and warrants that the Technology is not being and will not be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals and persons on the Table of Denial Orders, the Entity List or the List of Specifically Designated Nationals, unless specifically authorized by the U.S. Government for those purposes.

11.2 Governing Law. The Agreement will be governed by the laws of the United States and the State of Texas without regard to the conflict of laws provisions of any state or jurisdiction that would result in the application of the laws of another jurisdiction. Any litigation arising from the Agreement will be brought exclusively in the state or federal courts located in Travis County, Texas. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed.

11.3 Attorneys' Fees. If either party to the Agreement brings an action to enforce or interpret the Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees and litigation costs and expenses in addition to any other appropriate relief.

11.4 Assignment. Customer may not assign or otherwise transfer any of Customer's obligations or performance, the Agreement or any licenses granted or obligations set forth in the Agreement, in each case whether voluntarily, involuntarily, by operation of law, merger, a sale of all or substantially all of Customer's assets, business reorganization or otherwise, without RF Code's prior written consent and any attempted assignment by Customer will be null and void. RF Code may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under the Agreement without Customer's consent. The Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

11.5 Severability. In the event that any provision of the Agreement is found to be unenforceable, that provision will be deemed modified to the extent necessary to allow enforceability of the provision as so limited, being intended that RF Code will receive the benefit contemplated herein to the fullest extent permitted by law, and the validity and enforceability of the remaining provisions will not be affected thereby. If any material limitation or restriction on the use of the Technology or Documentation under the Agreement is found to be illegal, unenforceable, or invalid, Customer's right to use the Technology or Documentation will immediately terminate.

11.6 Waiver. Failure of either party to require performance by the other party of any provision hereof will not affect the full right to require that performance at any time thereafter; nor will the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

11.7 Entire Agreement. The Agreement, including all referenced documents and Order Forms, is the final and complete expression of the agreement between the parties regarding the Customer's use of the Technology, Support Services, and Documentation. The Agreement supersedes, and the terms of the Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into the Agreement, except that the Agreement does not supersede any prior nondisclosure or comparable agreement between the parties executed prior to the Agreement being executed. No employee, agent, or other representative of RF Code or any vendor, reseller, or other person has any authority to bind RF Code with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in the Agreement. No usage of trade or other regular practice or method of dealing between the parties will be used to modify, interpret, supplement, or alter the terms of the Agreement. The Agreement may be changed only by a written agreement signed by an authorized agent of the party against whom enforcement is sought. RF Code will not be bound by, and specifically objects to, any term, condition or other provision that is different from or in addition to the Agreement (whether or not it would materially alter the Agreement) that is proffered by Customer in any purchase order, receipt, acceptance, confirmation, correspondence, or otherwise, unless RF Code specifically agrees to that provision in writing and signed by an authorized agent of RF Code.

11.8 U.S. Government Restricted Rights. The Software is commercial computer software, as that term is defined in 48 C.F.R. §2.101. Accordingly, if the Customer is the U.S. Government or any contractor therefor, Customer will receive only those rights with respect to the Technology and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other U.S. Government licensees and their contractors.

11.9 Relationship. RF Code will be and act as an independent contractor (and not as the agent or representative of Customer) in the performance of the Agreement. The Agreement will not be interpreted or construed as: (a) creating or

evidencing any association, joint venture, partnership, or franchise between the parties; (b) imposing any partnership or franchise obligation or liability on either party; or (c) prohibiting or restricting RF Code's performance of any services for any third party or the provision of products to any third party. Customer must not represent to anyone that Customer is an agent of RF Code or is otherwise authorized to bind or commit RF Code in any way without RF Code's prior authorization.

11.10 <u>Subcontractors</u>. RF Code may use a subcontractor or other third party to perform its duties under the Agreement so long as RF Code remains responsible for all of its obligations under the Agreement.

11.11 <u>Notices</u>. Any notice required or permitted to be given in accordance with the Agreement will be effective if it is in writing and sent by certified or registered mail, or insured courier, return receipt requested, to the appropriate party at the address set forth on the applicable Order Form and with the appropriate postage affixed. Either party may change its address for receipt of notice by notice to the other party in accordance with this Section 11.11. Notices are deemed given two business days following the date of mailing or one business day following delivery to a courier.

11.12 <u>Force Majeure</u>. RF Code will not be liable for, or be considered to be in breach of or default under the Agreement on account of, any delay or failure to perform as required by the Agreement as a result of any cause or condition beyond RF Code's reasonable control, so long as RF Code uses all commercially reasonable efforts to avoid or remove those causes of non-performance.

11.13 <u>Interpretation</u>. Section headings are used in the Agreement for convenience of reference only and will not affect the meaning of any provision of the Agreement. For purposes of the Agreement, (a) the words "include," "includes" and "including" will be deemed to be followed by the words "without limitation;"; (b) the words "such as", "for example" "e.g." and any derivatives of those words will mean by way of example and the items that follow these words will not be deemed an exhaustive list; and (c) the word "or" is used in the inclusive sense of "and/or" and the terms "or," "any," and "either" are not exclusive. No ambiguity will be construed against any party based on a claim that the party drafted the language. References to "purchase" of Purchased Software refer to purchase of a limited license to use the Software in accordance with the Agreement, not purchase of the Software itself.

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