**Software Distribution License Agreement**

THIS SOFTWARE DISTRBUTION AGREEMENT (this “**Agreement**”) is entered into by and between [NAME OF LICENSOR], a [\_\_\_\_\_] corporation (“**Licensor**”), and [NAME OF LICENSEE], a [\_\_\_] corporation (“**Licensee**”), as of [\_\_\_\_\_\_], 20[\_\_] (the “**Effective Date**”).

 WHEREAS, Licensor has developed the software product described in Schedule A attached hereto (the “**Licensed Product**”); and

 WHEREAS, Licensor and Licensee agree that Licensee shall become distributor of the Licensed Product;

 NOW THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, agrees as follows:

**1. License Grant and Deliverables.**

1.1 Reseller License; Sublicenses

 (a) Subject to the terms conditions of this Agreement, Licensor hereby grants to Licensee, for the term of this Agreement, a [worldwide,] non-transferable license to use, market and distribute the Licensed Product and related documentation (the “**Documentation**”), including all modifications, enhancements, upgrades, and new versions and releases thereof (the “**Upgrades**”), or any component thereof, [\_\_\_, solely in [DESCRIBED TERRITORY],] [,] [together with the right to sublicense and, as and to the extent expressly provided herein, make modifications of and derivative works based upon the Licensed Product].

 [(b) The form of each sublicense for the Licensed Product entered into by Licensee with its end users [or any sub-distributor] shall be subject to the prior written approval of Licensor. Licensee shall use reasonable commercial efforts to enforce the terms of which it becomes aware.]

 [(c) Licensee may not sublicense the Licensed Product to sub-distributors.]

 1.2 Ownership. Except as expressly provided in this Agreement, Licensor shall retain all right, title and interest, including all intellectual property rights, in and to the Licensed Product, the Documentation and any Upgrades, and the symbols, trademarks and service marks adopted by Licensor to identify the Licensed Product (the “**Trademarks**”).

 1.3 Licensor Deliverables. Licensor agrees as follows:

 [(a) Initial Release. Licensor shall use its best efforts to complete the beta testing for the Licensed Product and release version of the Licensed Product meeting reasonable commercial standards (the “**Initial Release**’) as soon as practicable after the Effective Date and in any event no later than [\_\_\_\_\_\_\_], 20[\_\_]. Licensor shall also use it best efforts to identify any material bugs and the current beta version of the Licensed Product and ensure that any necessary appropriate bug fixes identified in the beta testing are incorporated into the Initial Release. Licensor shall also consider and incorporate any suggested bug fixes or enhancements to the Initial Release that Licensee may reasonably request.]

 [(a) Initial Release. Licensor shall deliver the current commercial release of the Licensed Product (the “**Initial Release**”) to Licensee on the Effective Date.]

 [(b) Enhancements and New Release. Licensor shall use its best efforts to upgrade the Licensed Product and incorporate new features, functionality or bug fixes that may be reasonably requested by Licensee or its customers on a periodic basis and to make such new versions or releases available to the Licensee hereunder.]

 (c) Documentation. Licensor shall publish and make available to Licensee the Documentation for the Initial Release contemporaneously therewith and revise the Documentation in a timely manner to accurately reflect all Upgrades.

 [(d) Training. Licensor shall be responsible for initial training of Licensee’s sales force and professional services and support personnel with respect to the Licensed Product prior to the date of the Initial Release (the “**Initial Training**”) and for providing periodic training to appropriate training personnel of Licensee on all such Upgrades. Licensor shall also be responsible for providing both on-line training and in-person training, at Licensor’s offices, for all customers of the Licensed Product.]

 [(e) Implementation and Integration. Licensor shall assist Licensee in integrating Licensed Product and any Upgrades into any product or service offerings by Licensee or its strategic partners, distributors or resellers and conducting any initial implementation diagnostics on the Initial Release and all Upgrades that may be necessary or appropriate in connection with such integration efforts. If required for integration by Licensee into any of its products or service offerings, Licensor will grant access to Licensor personnel and to the source code for the Licensed Product and any Upgrades.]

 [(g) Upgrade Access. Licensor shall provide Licensee with access to all alpha and beta versions of any Upgrades and shall consider and incorporate any bug fixes, enhancements or modifications to such Upgrades that Licensee may reasonably request. In the event that Licensor does not incorporate bug fixes, enhancement or modifications a requested by Licensee, Licensee will have the right to develop, at [its] [Licensor’s] expense, such bug fixes, enhancements or modifications and Licensor will grant to Licensee personnel access to the source code for the Licensed Product and any Upgrades for such purpose.]

 [(h) Marketing Materials. Licensor shall provide Licensee with such promotional materials for the Licensed Product in camera-ready or electronic format as Licensor generally makes available to its resellers and distributors, including technical specifications, prices, drawings, and advertisement. Licensee may reproduce such promotional materials reasonably required in connection with its promotional, advertising and marketing activities in connection with the Licensed Product. Such promotional materials, including all copies and reproductions made by Licensee, shall remain the property of Licensor and, except insofar as they are distributed by Licensee in the course of its performance of its duties under this Agreement. Licensee may develop its own promotional materials for the Licensed Product, provided that such materials may be used only with the prior written consent of Licensor in its sole discretion.]

 [(I) Web Hosting. If requested in writing by Licensee, Licensor shall provide, or contract for the provision of, web hosting for any Licensed Product offered by Licensee or its strategic partners, distributors, resellers or customers hereunder, in each case at Licensee’s expense.]

1.4 Limited Exclusivity Provisions

[(a) Reseller Exclusivity. During the term of this Agreement, Licensor shall not sell license or otherwise make available the Licensed Product or any Upgrade or component thereof [to any of [LIST OF LICENSEE’S COMPETITORS], or any of their respective successors, assigns and affiliates,] provided, however, that exclusivity provisions of this Section 1.5(a) (Limited Exclusivity Provisions) shall terminate:

1. on the first anniversary of either (A) the receipt of the Initial Release by Licensee or (B) Licensor’s fulfillment of its Initial Training obligations with respect to the Initial Release under Section 1.3 (d) (Licensor Deliverable) above, whichever occurs later (the later of (A) or (B), the “**Launch Date**”), if Licensee has not, directly or indirectly, licensed or sold Licensed Product with aggregate sale price of at least $[\_\_\_\_];
2. on the second anniversary of the Launch Date if Licensee has not, directly or indirectly, licensed or sold Licensed Product during the second year following the Launch Date with an aggregate sale price of at least $[\_\_\_\_]; or
3. [NUMBER (\_\_)] days following Licensor’s notice o Licensee of its reasonable determination that Licensee is in breach of its obligation under Section 4.2 (Obligations of Licensee; Marketing) hereof, if Licensee has not cured such breach during [NUMBER (\_\_)] day period.]]

[(b) Reciprocal Licensee Restrictions. For so long as the exclusivity provisions of Section 1.5(a) (Limited Licensee Provisions) are in effect and Licensor follows such provisions, Licensee shall not offer or license any product which has substantially all of the material features and functionality of the Licensed Product and is reasonably perceived by end users as a comprehensive replacement of substitute for the Licensed Product.]

[(c) Portal Exclusivity. Licensor shall not sell, license or otherwise make available the Licensed Product to [LIST PORTALS] or any of their respective successors, assigns of affiliates (each a “**Major Portal**” and collectively, the “**Major Portals**”) during the period from the Effective Date through the [first] anniversary of the Launch Date. The foregoing restrictions shall automatically renew for successive one-year periods after such first anniversary so long as, during the twelve-month period immediately preceding the applicable anniversary date, Licensee enters into an agreement for the placement of the Licensed Product on at least one Major Portal (net of any Major Portals that cancelled or terminated agreements for such placement which had previously been entered into with Licensee).]

**2. License Fees, Royalties and Other Fees.**

[2.1 Advance. On the Effective Date, Licensee shall advance $[\_\_\_] to Licensor (the “**Advance**”) as a refundable prepayment against royalties due from Licensee pursuant to Section 2.2 (Royalties) below. [In the event that the Advance has not been fully applied by Licensee on or prior to the earlier of (a) third party anniversary of the Effective Date and (b) any bankruptcy, liquidation, merger or sale of Licensor or all or substantially all of its assets or the acceleration of any indebtedness for money borrowed by Licensor (the “**Repayment** **Date**”), Licensor shall repay the unapplied amount of the Advance, together with accrued but unpaid interest thereon at a rate of [\_\_]% per annum (based on 365-day year and compounded quarterly) from the Effective Date.]]

 2.2 Royalties

 (a) Licensee shall pay Licensor, within [NUMBER (\_\_)] days following the end of each calendar [month] [quarter] (the “**Royalty Period**”), royalties equal to [\_\_]% of all Net Revenues (as hereinafter define) generated from the sale or license of the Licensed Product by Licensee (“**Royalties**”) pursuant to this Agreement during such Royalty Period.

 (b) As used in this Agreement, “**Net Revenues**” shall mean revenues recognized by Licensee in accordance with generally accepted accounting principles as consistently applied by Licensee, net of return reserves and allowances [, and less fees and expenses payable for web hosting fees, and other similar fees and expenses incurred in connection with the offering of the Licensed Product by Licensee hereunder. In the event that such fees and expenses are incurred by Licensor for the documented and reasonable amount of such fees and expenses within [NUMBER(\_\_)] days after the end of each Royalty Period, so long as the amount of such fees does not exceed the gross revenues received by Licensee]. No credit shall be permitted for cash or early payment discounts or allowances. No other costs incurred in the manufacturing, selling, advertising, and distribution of the Licensed Products, or any taxes or fees imposed on Licensee in connection with its distribution of Licensed Products, shall be deducted, nor shall any deduction be allowed for any uncollectible accounts or allowances.

 [(c) A royalty obligation shall accrue upon the sale of a Licensed Product regardless of the time of collection by Licensee and whether or not Licensee has actually received payment for such Licensed Product. A Licensed Product shall be considered sold when Licensed Product is billed, invoiced, shipped, or paid for, whichever occurs first.]

 (d) Licensee will provide Licensor, contemporaneously with each royalty payment pursuant to Section 2.2(a) (Royalties), a royalty statement in a form acceptable to Licensor. Such royalty statement shall be certified as accurate by a duly authorized officer of Licensee reciting [, on a country-by-country basis,] the stock number, item, unit sold, description, quantity shipped, gross invoice amount, and amount billed customers less discounts, allowances and returns for each Licensed Product. Such royalty statement shall be furnished to Licensor regardless of whether any Licensed Products were sold during the applicable Royalty Period or whether any actual Royalty was owed with respect to such Royalty Period.

 [(e) Licensee agrees to pay to Licensor a minimum of $[\_\_] per Royalty Period regardless of Licensee’s actual Net Revenues during such Royalty Period.]

 [(f) If Licensee sells any Licensed Product to any affiliated or related party a price less than the regular price charged to other parties, the royalty applicable to such sale shall be computed based upon the regular price.]

 [(g) The receipt or acceptance by Licensor of any royalty statement or payment shall not prevent Licensor from subsequently challenging the validity or accuracy of such statement or payment.]

 (h) Licensee’s obligations for the payment of Royalties shall survive expiration or termination of this Agreement and will continue to accrue for so long as Licensees continues to sell any Licensed Products.

 (i) All payments due to Licensor shall be made in United States currency by check drawn on a United States bank unless otherwise specified by Licensor.

 (j) Late payments shall incur interest at rate of [\_\_] % per month from the date such payments were originally due.

 [2.3 Pledge. Licensor hereby grants to Licensee a security interest in all Licensor’s intellectual property and other technology, together with all “proceeds” of such intellectual property and other technology (as such term is defined in Section 9-102 of Revised Article of the Uniform Commercial Code), as security for the prompt repayment of the Advance as required by Section 2.1 (Advance)).

 2.4 Audit. Licensee shall maintain accounting records, in accordance with generally accepted accounting principles, to support and document Royalties payable or subject to offset in connection with this Agreement. Such records shall be retained for a period of [NUMBER (\_\_)] years after the royalties which relate to such records have been accrued and paid or offset. Licensee shall, upon written request from Licensor, provide access to such records to an independent accounting firm of nationally recognized standing chosen by Licensor and whose fees are not contingent on the outcome of such audit and shall, except as provided below, be paid by Licensor for the purpose auditing the royalties due hereunder. Such audits may be conducted no more frequently than once every twelve months and shall be subject to auditors executing a confidentiality agreement in form and substance reasonably acceptable to Licensee. If any such audit conclusively establishes a shortfall in payment to Licensor of more than [\_\_] % of the amount actually due, Licensee agrees to pay Licensor the amount of such shortfall plus the expenses of such audit.

**3. Warranties of Licensor**

3.1 Ownership of Intellectual Property. Licensor warrants that it owns all right, title and interest in the Licensed Product and the Documentation and that it has the right to grant the licenses described in Section 1 (Grant of Licenses, Deliverables) [and the security interest contemplated in Section 2 (License Fees, Royalties, and other Fees)] without the consent of any other person. Licensor represents that it not aware of any pending or threatened legal proceedings against it with respect to ownership or title in or to the Licensed Product or the Documentation. Licensor shall indemnify or hold Licensee harmless from and against any loss, cost, liability and expenses (including reasonable attorney’s fees) without limitation as to amount (but subject to the provisions of Section 8 (Limitation of Liability)) arising out of any breach or claimed breach of his warranty. [During the pendency of any injunction issued by a court of competent jurisdiction against Licensor or Licensee with respect to Licensor’s ownership of the Licensed Product or its authority to grant the licenses granted hereunder, Licensee may withhold payment of any money otherwise required to be paid hereunder.]

 3.2 Limited Warranty. Licensor warrants that [throughout the term of this Agreement [for a period of [NUMBER (\_\_)] days following delivery to Licensee of the Initial Release and each Upgrade], the Licensed Product (embodied in such release) will perform substantially in accordance with the Documentation. Licensor does not warrant that the Licensed Product will be error-fee or will operate without interruption. The foregoing warranty shall run to Licensee, its successors, assigns, and sub-licensees and shall survive inspection, test, acceptance, and payment by Licensee. In the event of breach of the foregoing warranty, at [Licensor’s] [Licensee’s] option, Licensor shall either 9a) refund any royalty payments made with respect to the defective or non-conforming Licensed Product or (b) use reasonable efforts to correct such problem. Licensee’s remedies under this Section 3.2 (Limited Warranty) shall be cumulative with any other remedy of License under this Agreement.

 3.3 Disclaimer. *Except as expressly provided in this Section 3 (Warranties of Licensor) and Section 5 (Indemnification), Licensor, hereby disclaims all other warranties to Licensee or its customers, express, implied, statutory or otherwise, with respect to the Licensed Product and the Documentation, including implied warranties of merchantability or fitness for a particular purpose.*

**4. Obligation of Licensee; Marketing**

4.1 Trademarks

 (a) Licensee shall retain all Licensor’s copyright and trademark notices on any embodiments of the Licensed Product and the Documentation used by Licensee and shall take such other steps as may be reasonably necessary to protect Licensor’s intellectual property rights in the Licensed Product. [All advertisements and promotional materials, packaging and anything else bearing a Trademark shall identify Licensor as the Trademark owner and as the manufacturer of the Licensed Product.] Licensee shall not represent or imply that it is Licensor or is affiliated with Licensor in any manner other than as the licensee.

 (b) Upon expiration or termination, Licensee will take all action necessary to transfer and assign to Licensor, or its nominee, any right, title or interest in or to any of the Trademarks, and the goodwill related thereto, which Licensee may have acquired in any manner as a result of the marketing and distribution of the Licensed Product under this Agreement, and Licensee shall cease using any Trademark.

 (c) Licensee acknowledges and agrees that all use of the Trademarks by Licensee shall inure to the benefit of the Licensor. Licensee agrees not to apply for registration of any Trademarks anywhere in the world or for any mark confusingly similar thereto. Licensor may elect to apply for registration of one or more of the Trademarks anywhere in the world at its expense and, in such event, it shall so notify Licensee and Licensee shall assist and cooperate with Licensor in connection therewith. Licensee also agrees not to use or contest, during or after the term of this Agreement, any Trademark, name, mark or designation used by the Licensor anywhere in the world (or any name, mark or designation similar thereto).

 4.2 Third-Party Infringement. Licensee shall notify Licensor promptly of any infringement of any copyrights, Trademarks, or other intellectual property or proprietary rights relating to the Licensed Product. Licensor may, in its sole discretion, take or not take whatever action it believes is appropriate in connection with such infringement. If Licensor elects to take any such action, Licensee agrees to reasonably cooperate, at no expense to Licensee, in connection therewith. If Licensor initiates and prosecutes any action with respect to infringement of any copyrights, Trademarks, or other proprietary rights relating to the Licensed Product, Licensor shall be entitled to retain all amounts (including court costs and attorneys’ fees) awarded by way of judgment, settlement, or compromise with respect thereto.

 4.3 Compliance. Licensee shall ascertain and comply with all applicable federal, state and local laws and regulations and standards of industry or professional conduct, including Internet Assigned Numbers Authority and Internet community standards (INTERNIC).

**5. Indemnification.**

 5.1 Indemnification of Licensee.

 (a) Generally. Licensor shall defend Licensee against any claim that the Licensed Product used within the scope of this Agreement infringes any patent, invention registration, copyright, trade secret or mask work right of any third party, or that any Trademark infringes any registered trademark, service mark, trade dress, or other common law trade identity right of any third party, and shall pay any settlements entered into or damage awarded against Licensee to the extent based on such a claim, regardless of the form of award (and specifically including any award of attorney’s fees or costs); provided, however, that (i) Licensee notifies Licensor promptly in writing of the claim; (ii) Licensor has sole control of the defense and all related settlement negotiations, except that Licensor shall not enter into any settlement agreement materially affecting the rights of Licensee without Licensee’s express consent; and (iii) Licensee provides Licensor with all reasonably necessary or desirable assistance, information, and authority to perform above.

 (b) Exclusion**.** Licensor shall no ability for any claim of infringement based on (i) use of any release of the Licensed Product other than the latest release provided to Licensee, if the infringement would have been avoided by use of the latest release and Licensor enables end users of earlier release of the Licensed Product to migrate to the latest release; (ii) modification of the Licensed Product by Licensee, if the infringement would have been avoided without such modification; or (iii) the combination or use of the Licensed Product with materials not furnished by Licensor, if such infringement would have been avoided by use of the Licensed Product alone and such combination or joint use was not agreed to by Licensor.

 (c) Alternatives. If any settlement agreement or judgment with respect to the Licensed Product results in final injunction against Licensor or final loss of Licensee’s ability to use or distribute the Licensed Product as provided hereunder, or if Licensor believes that the Licensed Product is likely to infringe the rights of a third party or become subject to such an injunction or loss, Licensor shall have the right, at its sole option and expense, to (i) substitute for or modify the Licensed Product so that it is non-infringing; (ii) obtain for Licensee a license to continue using and distributing the License Product; or (iii) if neither (i) nor (ii) is reasonably practicable, terminate this Agreement and refund to Licensee all Royalties paid by Licensee hereunder.

 (d) Sole Obligation. The foregoing states the sole obligation and exclusive liability of Licensor (express, implied, statutory, or otherwise) for any infringements or claims of infringement of any patent, copyright, trademark, trade secret, or other intellectual property right with respect to the Licensed Product.

**6. Term and Termination**

6.1 Initial Term. This Agreement shall become effective on the Effective Date and shall remain in effect for an initial period of [NUMBER (\_\_)] years after the Launch Date, subject to renewal for successive [NUMBER (\_\_)] year terms at the option of Licensee, unless the Agreement is earlier terminated as provided in Section 6.2 (Termination).

 6.2 Termination

 (a) If neither party defaults in payment or other material obligation under this Agreement and continues in default for period of [NUMBER (\_\_)] days after written notice of default is given to it by the other party, the other party may terminate and cancel this Agreement, in accordance with the provisions of this Section 6 (Term and Termination), immediately upon written notice of termination given to the defaulting party.

 (b) Either party may terminate and cancel this Agreement immediately by notice to the other if:

 (i) The other ceases to carry on its business; or

 (ii) A receiver or similar officer is appointed for the other and is not discharged with [NUMBER (\_\_)] days; or

 (iii) The other becomes insolvent, admits in writing its inability to pay debts as they mature, is adjudicated bankrupt, or makes an assignment for the benefit or its creditors or another arrangement of similar import; or

(iv) Proceedings under bankruptcy or insolvency laws are commenced by or against the other are not dismissed within (NUMBER (\_\_)] days.

 6.3 Effective Termination. Upon termination of this Agreement (but subject to Section 6.4 (Survival): (a) the rights and licenses granted to Licensee pursuant to this Agreement shall immediately terminate, and (b) Licensee shall cease to use market, distribute and sell the Licensed Product. With [NUMBER (\_\_)] days of termination, Licensee shall provide to Licensor a final royalty report and pay all royalties accrued through the date of termination. All end user sublicenses properly granted pursuant to Section 1 (Grant of License; Deliverables) shall survive termination. [ In the case of termination by Licensee for breach by Licensor pursuant to Section 6.2(a) (Termination) or Licensor’s insolvency pursuant to Section 6.2(b) (Termination), Licensor shall refund the remaining unapplied balance of the Advance, together with interest thereon, after adjustment for all royalties accrued through the date of termination.]

 6.4 Survival. The provisions of Section 1.2 (Ownership), Section 3 (Warranties of Licensor), Section 5 (Indemnification), Section 7 (Confidentiality), Section 8 (Limitation of Liability), Section 9 (Relationship of Parties), Section 10 (Arbitration) and Section 11 (Miscellaneous Provisions) shall survive the termination or cancellation of this Agreement for any reason.

**7. Confidentiality**

 7.1 General Provisions. Each party acknowledges and agrees that it has or may receive hereunder information which is marked or orally designated “confidential” and constitutes the proprietary confidential information of the disclosing party, and that the other party’s protection thereof is essential to this Agreement. Each party shall retain in strict confidence and not disclose any such information to any third party (except as authorized by this Agreement) without the other party’s express written consent. [The prohibitions contained in this Section 7.1 (General Provisions) preclude dissemination of such information to Licensee’s subsidiaries or affiliates.]

 7.2 Exceptions. Each party shall be relieved of its obligation of confidentiality hereunder or to the extent any information:

* 1. was in the public domain at the time of disclosure or has become in the public domain through no fault of such party;
	2. was known to such party, without restriction, at the time of disclosure as shown by its files in existence at the time of disclosure;
	3. was disclosed by such party with the prior written approval of the other party;
	4. was independently developed by such party without any use of the other party’s confidential information; or
	5. becomes known to such party, without restriction, from a source other than the other party and without breach of this Agreement.

 7.4 Scope Code Protections. Licensee shall not under any circumstances attempt, or knowingly permit others to attempt, to (a) decompile, decipher, disassemble, reverse engineer or otherwise determine the source code, structure, algorithms or ideas underlying the Licensed Product, except as and to the extent contemplated by [Section 1.3(e) (Licensor Deliverables) and] Section 1.4(c) (Source Code Escrow), (b) alter or modify the Licensed Product, or (c) attempt to disable any security devices or codes incorporated in the Licensed Product.

 7.5 Injunctive Relief. Each party acknowledges that any breach of any of its obligations with respect to confidentiality or use of the other party’s confidential information hereunder is likely to cause or threaten irreparable harm to the other party, and, accordingly, it agrees that in the event of such breach the other party shall be entitled to equitable relief to protect its interest therein, including but not limited to preliminary and permanent injunctive relief, as well as money damages.

**8. Limitation of Liability**. *Except for breaches of Section 7 (Confidentiality), in no event shall either party have any liability for any direct, incidental, special or consequential damages, however caused and on any theory of liability, arising out of this Agreement, including loss of anticipated profits, even if such party has been advised of the possibility of such damages. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.*

**9. Relationship of Parties**. Licensee is an independent contractor of Licensor and nothing contained in this Agreement shall be construed to constitute either party as a partner, joint venture, co-owner, employee, or agent of the other party, and neither party shall hold itself out as such. Neither party has any right or authority to incur, assume or create, in writing or otherwise, any warranty, liability or other obligation of any kind, express or implied, in the name of or on behalf of the other party, it being intended by both Licensor and Licensee that each shall remain an independent contractor responsible for its own actions. Licensee agrees to indemnify and hold the Company harmless from and against any damage or expenses, including reasonable attorney’s fees, arising out of Licensee’s breach of the provision of this Section 9 (Relationship of Parties).

**[10. Arbitration**

(a) All disputes, claims or controversies arising out of or relating to this Agreement or any other agreement executed and delivered pursuant to this Agreement or the negotiation, validity or performance hereof and thereof of the transactions contemplated hereby and thereby that are not resolved by mutual agreement shall be resolved solely and exclusively by binding arbitration to be conducted before [\_\_\_\_\_\_\_\_\_] or its successor (the “**Arbitrator**”). The arbitration shall be held in [LOCATION] before a single arbitrator and shall be conducted in accordance with the rules and regulations promulgated by the Arbitrator unless specifically modified herein.

 (b) The parties covenant and agree that they will participate in the arbitration in good faith. In the case of temporary or preliminary injunctive relief any party may proceed in court without prior arbitration for the limited purpose of avoiding immediate and irreparable harm. The provisions of this Section 10 (Arbitration) shall be enforceable in any court of competent jurisdiction.

 (c) Each of the parties hereto irrevocably and unconditionally consents to the exclusive jurisdiction of the Arbitrator to resolve all disputes, claims or controversies arising out of or relating to this Agreement or any other agreement executed and delivered pursuant to this Agreement or the negotiation, validity or performance hereof and thereof or the transactions contemplated hereby. Each party further irrevocably waives any objection to proceeding before the Arbitrator based upon lack of personal jurisdiction or to the laying of venue and further irrevocably and unconditionally waives and agrees not to make a claim in any court that arbitration before the Arbitrator has been brought in an inconvenient forum. Each of the parties hereto hereby consents to service of process at the address to which notices are to be given. Each party hereto agrees that its submission to jurisdiction and its consent to service of process are made for the express benefit of the other party hereto.]

**11. Miscellaneous Provisions.**

11.1 Governing Law. This Agreement will be construed in accordance with and governed by the laws of the [STATE], without giving effect to the conflict of law principles of the [STATE].

 11.2 Successors and Assigns. Except as otherwise expressly provided in this Agreement, this Agreement will be binding on, and will inure to the benefit of, the successors and permitted assigns of the parties to this Agreement [, provided that Licensee shall not assign its rights and obligations under this Agreement without the prior written consent of the Licensor]. Nothing in this Agreement is intended to confer upon any party or other than the parties hereto or their respective successors and assigns any rights or obligations under or by reason of this Agreement, except as expressly provided in this Agreement.

 11.3 Notices. All notices and other communications required or permitted hereunder will be in writing and will be delivered by hand or sent by overnight courier, fax or e-mail to

 If to Licensor

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Each party may furnish an address substituting for the address given above by giving notice to the other parties in the manner prescribed by this Section 11.3 (Notices). All notices and other communication will be deemed to have been given upon actual receipt by (or tender to and rejection by) the intended recipient or any other person at the specified address of the intended recipient.

 11.4 Severability. In the event that any provision of this Agreement is held to be unenforceable under applicable law, this Agreement will continue in full force and effect without such provision and will be enforceable in accordance with its terms.

 11.5 Construction. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of singular the plural, and the part the whole, (b) references to one gender include all genders, (c) “or” has the inclusive meaning frequently identified with the phrase “including but not limited to” or “including without limitation, “ and (e) references to “hereunder,” “herein” or “hereof” relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time.

 11.6 Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements and understandings other than this Agreement relating to the subject matter hereof.

 11.7 Amendment and Waiver. This Agreement may be amended only by written agreement executed by the parties hereto. No provision of this Agreement may be waived except by a written document executed by the party entitled to the benefits of the provision. No waiver of a provision will be deemed to be or will constitute a waiver of any other provision of this Agreement. A waiver will be effective only in the specific instance and for the purpose for which it was given and will not constitute a continuing waiver.

 11.8 Counterparts. This Agreement may be in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.

IN WITNESS WHEREOF, the undersigned have executed this Software Distribution Agreement as of the date first written above.

 LICENSOR

 [NAME OF LICENSOR]

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

LICENSEE

 [NAME OF LICENSOR]

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SCHEDULE A**

**LICENSED PRODUCT**

**EXHIBIT \_\_\_**

**FORM OF END USER LICENSE**