



INDEPENDENT SOFTWARE VENDOR STANDARD TERMS

1. DEFINITIONS

- 1.1. The defined terms in this document are set out in Schedule 1.

2. APPOINTMENT OF ISV

- 2.1. Subject to the terms and conditions of this Agreement, Licensor grants ISV, for the Term, a non-exclusive, transferable (Subject to Section 10.8 below) license in the territory set out in the Commercial Term Sheet to: (i) bundle the Product with the ISV Software to create the Combined Product (and for this purpose may modify the Product to the extent deemed necessary by ISC to create the Combined Product); and (ii) market, distribute and (where applicable) sublicense the Product, directly through its own personnel or indirectly through its Channel Partners in accordance with Clause 14, solely as part of the Combined Product.
- 2.2. In carrying out its obligations under this Agreement, ISV must at all times exercise the functions and duties under this Agreement and exercise all powers conferred under this Agreement in good faith and with the degree of care, diligence and skill that a reasonable person would exercise if they were in the ISV's position, including ensuring that it regularly and adequately trains its relevant officers, directors, employees, representatives, agents and Channel Partners so that they have the necessary competencies to allow ISV to comply with its obligations under this Agreement.
- 2.3. ISV shall ensure that any End User's use of the Product is governed either by the Product EULA or by ISV's own written end user license agreement wherein it will grant rights only in accordance with the terms and conditions of this Agreement. ISV must not grant a license in the Combined Product for a period that exceeds the Term.
- 2.4. The Product must be bundled with the ISV Software to create a Combined Product. Use of the Product is restricted to use within the Combined Product. The Product may not be used on a stand-alone basis or in connection with other software applications or services which have not been approved by Licensor.
- 2.5. ISV may modify the Product branding so that the identity of Licensor as the owner and supplier of the Product and Documentation is not apparent to the End User. Such modification, however, shall in no way alter Licensor's full ownership of all Intellectual Property rights in the Product and Documentation.
- 2.6. ISV and its Channel Partners may make and distribute

copies of the Marketing Materials with regard to marketing the Product and the Combined Product. ISV acknowledges, however, that certain materials made available by Licensor may be marked as "Not For Distribution" or "Restricted" or similarly stated (for example, books, instructional material) will not be copied without Licensor's prior written consent, but ISV may order copies as needed from Licensor.

- 2.7. This is a non-exclusive Agreement. ISV is permitted to embed the Product into its own proprietary services to form the Combined Product. While Licensor will not attempt to directly market to End Users in an effort to supplant the Product licensed by ISV or a Channel Partner as part of the Combined Product, Licensor may directly or indirectly, through distributors, resellers or other channel partners, market the Product to End Users on a stand-alone basis or as part of a combination with applications of other vendors or channel partners.

3. ISV (AND CHANNEL PARTNER) PRODUCT USE AND RESTRICTIONS

- 3.1. Licensor grants to ISV the right to make and to sublicense its Channel Partners to make, a reasonable number of copies of the Product for internal development, support, training, testing and quality assurance purposes during the Term. Where ISV is issued with one or more Non-Production Licenses, these must only be used in a non-production environment for product development, quality assurance, user acceptance testing, staging, disaster recovery, or as a test environment, an alternate environment, or for redundancy purposes.
- 3.2. Any third-party software embedded in the Product by Licensor may be used only in conjunction with the Product and may not be used separately. A list of third-party software and/or third-party software license terms is set forth in a notices file accompanying the Product, which may be updated by Licensor from time to time.
- 3.3. Certain third-party applications, components or services not shipped with the Product may be available for use with the Product by Licensor on its platform or by third parties ("**Third-Party Applications**"). ISV acknowledges and agrees that Licensor is not responsible nor liable whatsoever for any Third-Party Applications. Licensor expressly acknowledges and agrees that use of Third-Party Applications is at ISV's own discretion and risk and that the entire risk of unsatisfactory quality, performance, accuracy and effort is with ISV. Licensor acknowledges and agrees that the use of any Third-Party Applications is governed by such Third-Party



Applications' terms of use, license agreement, privacy policy, or other such terms and conditions it specifies and that any information or personal data ISV provides, whether knowingly or unknowingly, to such Third-Party Applications, will be subject to such Third-Party Applications' privacy policy, if such a policy exists. ISV is solely responsible for any fees, charges, loss or damage that results from using Third-Party Applications without any apportionment or attribution to Licensor. Insofar as ISV uses the Product with any Third-Party Applications, ISV warrants it has obtained and complied with the necessary license and has obtained a consent or right to do so from the relevant third parties.

- 3.4. Where ISV alters the Product's script or code, or any third-party component shipped with the Product, or any other electronic file accompanying the Product, ISV does so at its own risk and liability. ISV agrees to compensate Licensor for any loss or damage suffered by Licensor arising from ISV's alteration of the script or code only where the alteration violated the terms of this Agreement or infringed upon Licensor's rights.

4. OWNERSHIP

- 4.1. With respect of the Combined Product:

- 4.1.1. Licensor acknowledges that ISV and its licensors, if any, own and retain all right, title and interest, including all Intellectual Property rights in and to the ISV Software. Licensor acknowledges that it is not granted any interest any Intellectual Property Rights in the ISV Software;
- 4.1.2. Licensor agrees that ISV is the owner of all Intellectual Property rights in any front-end report content, or integration code that is not included in the Product as received by ISV from Licensor and is developed by or on behalf of ISV; and
- 4.1.3. ISV acknowledges that Licensor or its Affiliates and their respective licensors, if any, own and retain all right, title and interest, including all Intellectual Property rights in and to the Product, any Documentation, Marketing Materials, or other materials related to the Product. Subject to the licenses granted herein, ISV acknowledges that nothing contained in this Agreement grants ISV or any Channel Partner any interest in any Intellectual Property rights in the Product, Documentation or Marketing Materials.

- 4.2. Except as otherwise specifically set forth herein, or as allowed by applicable law, ISV, Channel Partners and End Users are not permitted to copy, modify, translate, decompile, disassemble, reverse-engineer, or create

derivative works of the Product except as may be copied for the sole purpose of ensuring interoperability, compatibility, security, and performance of the Combined Product.

- 4.3. Licensor's rights in the Product include all amendments, enhancements, updates, and modifications to the Product during the Term, excluding any created by ISV, whether or not any such amendments, enhancements, updates or modifications were charged for and/or paid for by ISV. ISV acknowledges and agrees that Licensor is bound by a duty of confidentiality with respect to any such amendments, enhancements, updates and modifications created by or on behalf of ISV.
- 4.4. While ISV or its Channel Partners are not required to do so, ISV (or a Channel Partner) may from time to time provide feedback to Licensor with regard to the functionality and performance of the Product, Documentation or Marketing Materials including, without limitation, identifying potential errors and improvements ("**Feedback**"). Feedback provided by ISV (or a Channel Partner) may be used by Licensor to improve or enhance the Product, Documentation or Marketing Materials, and ISV (and its Channel Partner, if applicable) hereby grants Licensor a non-exclusive, perpetual, irrevocable, royalty-free, worldwide right and license to use, reproduce, disclose, sublicense, modify, make, have made, distribute, sell, offer for sale, display, perform, create derivative works, permit distribution and otherwise exploit such Feedback, provided that such use does not disclose ISV's confidential information or infringe upon ISV's Intellectual Property rights.
- 4.5. ISV is authorized to use the trademarks and logos owned by Licensor (the "**Marks**") solely in connection with ISV's advertisement, promotion and distribution of the Product subject to the following conditions:
 - 4.5.1. The word "Yellowfin" which should never be translated;
 - 4.5.2. ISV and/or its Channel Partners must not add or delete graphic elements, translate them or connect them with any other mark, logo, graphic element or symbol;
 - 4.5.3. ISV and/or its Channel Partners do not combine logotypes with any other logo or artwork;
 - 4.5.4. When using the Marks, ISV and/or its Channel Partners must also display its company logo in a more prominent manner than the Mark; and
 - 4.5.5. ISV agrees to be bound by the Trademark Usage Guidelines from time to time (if any), which contain guidelines on proper use of Licensor Marks and updated information on



Licensors Mark registration and legends. To the extent that a Mark does not appear on the list or in the Trademark Usage Guidelines, ISV agrees that neither Licensor nor its Affiliates waive any intellectual property rights in that Licensor Mark.

5. ADDITIONAL OBLIGATIONS

- 5.1. During the Term and any period thereafter in which Clients are entitled to use the Combined Product, ISV will directly and/or indirectly through its Channel Partner(s) provide phone and First Level Support (as those terms are defined in Clause 8.2 below) to End Users and will maintain at all times an appropriately trained and staffed team of employees to meet the support obligations described in Clause 8 below.
- 5.2. Licensor will provide Second Level Support (as defined in Clause 8.4 below) directly to ISV and will maintain at all times an appropriately trained and staffed team of employees to meet the support obligations described in Clause 8 below. Licensor is under no obligation to provide support if there are unpaid invoices that are outstanding for greater than sixty (60) days.
- 5.3. Each Party agrees to:
 - 5.3.1. conduct business in a manner that reflects favorably at all times on the Product, the Combined Product, and the good name, goodwill and reputation of each Party and its Affiliates;
 - 5.3.2. avoid deception, misleading or unethical practices including but not limited to disparagement of the Product, Combined Product or the other Party and its Affiliates;
 - 5.3.3. refrain from making any statement, written or oral, to End Users, or any other individual or entity with respect to the specifications, features, capabilities or other characteristics of the Product or Combined Product that are inconsistent with the technical documentation for the Product or Combined Product as applicable; and
 - 5.3.4. make no representations, warranties or guarantees regarding the Product or Combined Product or their performance or operation, that are inconsistent with or expand the scope of any warranties contained in the license agreement applicable to the Product or Combined Product.
- 5.4. Each Party will comply with all applicable international, national, state, regional and local laws and regulations in performing its duties hereunder and in any of its dealings with respect to the Product and Combined Product.

- 5.5. The Product contains software originating with United States manufacturers and developers requiring compliance with U.S export control laws. Each Party will comply (and ISV must cause its Channel Partners to comply) with all applicable laws and regulations regarding the exporting, importing, re-importing, re-exporting and deemed exporting of the Product including, without limitation, the Australian Export Control Act 1982, U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the U.S. Office of Foreign Assets Control. Without limiting the generality of the foregoing, each Party warrants to the other that it shall not download or otherwise export or re-export or be deemed to have exported the Product:
 - 5.5.1. into, or to a national or resident of any country and/or party to which the U.S. or Australia has embargoed goods; or
 - 5.5.2. to anyone on the U.S. Treasury Department's list of Specially Designated Nations or the U.S. Commerce Department's Table of Denial Orders as amended from time to time. Each Party acknowledges that Product shipments are subject to the export laws of the United States and that such laws could delay or preclude delivery of the Product in the future; or
 - 5.5.3. to any country set forth on the U.S. Department of Commerce's list of T-5 countries (currently, Cuba, Iran, North Korea, Sudan and Syria), including any future changes to the government's list of T-5 countries.
- 5.6. If any approval or registration of this Agreement is required to make it enforceable in ISV's home country or any country in which ISV does business, or to comply with exchange regulations or other requirements so as to allow remittance abroad of any currency specified hereunder, ISV shall immediately take all required action and pay any charges incurred in connection therewith. ISV shall keep Licensor informed of its efforts in this regard. Licensor shall be under no obligation to provide the Product to ISV until ISV has provided Licensor with satisfactory evidence that such approval or registration is not required or that it has been obtained.
- 5.7. ISV shall not, during the course of this Agreement, engage in any activity likely to compromise the ability of ISV to perform its obligations under this Agreement fairly and independently. ISV shall disclose to the Licensor any activity which constitutes or may constitute a breach of the foregoing obligation within a reasonable time period.



- 5.8. During the Term of this Agreement and for six (6) months following the expiration or termination (as the context requires) of this Agreement (“**Restraint Period**”), neither Party shall solicit for employment, either directly or indirectly, any person who is employed or contracted by the other Party, unless such employment is in response to a bona fide general and non-targeted newspaper or other public media advertisement in the ordinary course of business and not as a direct result of this engagement. To the extent known, a Party shall promptly advise the other Party if a person who is employed or contracted by the other Party seeks to be employed or contracted by the first mentioned Party prior to the expiration of the Restraint Period.

6. ORDERS AND DELIVERY

- 6.1. ISV must promptly provide Licensor with the relevant host name for Licensor to set up the production license.
- 6.2. Unless Licensor determines otherwise, the Product will require a license key to operate and Licensor will forward to ISV a “**Temporary Software License Key**” for the Production License which will time out and stop the Product from functioning after a period of forty-five (45) days. It is ISV’s obligation to provide the Temporary License Key to the End User and to ensure that all End Users receiving a Temporary License Key are notified of the temporary nature of the license key and the related forty-five (45) day time-out period.
- 6.3. Upon receipt of payment of all invoiced Fees within the timeframe outlined in Clause 7.3, Licensor will forward to ISV a “**Software License Key**” for the Production License for the Product for the invoiced license period within the Term;
- 6.4. Licensor has discretion to not accept and/or process orders from ISV if there are unpaid invoices that are outstanding for greater than sixty (60) days and are not the subject of a material, bona fide dispute until payment has been made in full.
- 6.5. The Product will be delivered to ISV by electronic software delivery. Delivery is deemed complete when the Product is made available at the electronic software delivery site specified by Licensor.

7. FEES, PAYMENT AND REPORTS

- 7.1. Fees due to Licensor from ISV and any additional related terms and conditions of payment, are set forth in the Commercial Term Sheet, which is incorporated by reference.
- 7.2. ISV is free to determine its own license and maintenance prices to End Users and/or Channel Partners. Although Licensor or its Affiliates may publish suggested or list prices, these are suggestions only and ISV shall be free to determine the actual

license prices at which the Combined Product(s) will be distributed by ISV to its End Users and/or Channel Partners and any associated fees for maintenance and support services.

- 7.3. ISV must pay all Fees (plus any applicable taxes or other charges including bank fees) within thirty (30) days of the date of Licensor’s invoice, by wire transfer to a bank account designated by Licensor, unless otherwise agreed by Licensor in writing.
- 7.4. Unless otherwise specified in the Commercial Term Sheet, the Fees specified in the Commercial Terms Sheet will be automatically increased at the commencement of: (a) the first Renewal Term; and (b) each subsequent Renewal Term, to an amount which is a three percent (3%) increase on the then current Fees. For the avoidance of doubt, if an element of the Fees is specified as a percentage, this does not increase that percentage (for example, fifty percent (50%) will remain at fifty percent (50%)).
- 7.5. Invoices will be raised in the Applicable Currency set forth in the Commercial Term Sheet and payment must be made in the Applicable Currency.
- 7.6. ISV acknowledges and agrees that it is liable for all Fees due under this Agreement notwithstanding non-payment by Client to ISV.
- 7.7. In the event of ISV’s failure to pay any fees set forth in this Agreement, Licensor shall be entitled to recover its costs and expenses, including but not limited to reasonable attorneys’ fees, incurred in any collection efforts or legal action.
- 7.8. ISV will pay all import duties, transaction fees (such as, but not limited to wire transfer fees), levies or imposts, and all goods and services sales, use, value-added (VAT) or property taxes of any nature (except taxes assessed upon Licensor’s income) assessed upon or with respect to the Product or any services provided to ISV (or a Channel Partner) by Licensor.
- 7.9. If ISV disputes the whole or any portion of an amount invoiced by Licensor, ISV shall on or before the due date under Clause 7.3: (i) pay the portion of the amount stated in the invoice which is not in dispute; and (ii) notify Licensor in writing of the disputed sum (“**Disputed Sum**”). If it is resolved that some or all of the amount in dispute ought properly to have been paid at the time it was invoiced, then ISV shall pay the amount finally resolved together with interest on that amount.
- 7.10. Without limiting or foregoing any other rights or remedies available to Licensor for ISV’s delinquency in payment of amounts due, in the event ISV fails to pay amounts past due within ten (10) business days of its receipt of written notice setting forth the past-due amount, Licensor reserves the right to charge interest



on any outstanding amount at a rate equal to the lesser of (i) 15% per annum and (ii) the maximum rate permitted by law. If ISV fails to pay Fees to Licensor when due any amount owing hereunder within ten (10) business days of its receipt of written notice setting forth the past-due amount, ISV agrees to pay, in addition to any amount past due plus any accrued interest, all costs, on an indemnity basis, of collection, including without limitation all attorneys' fees and expenses of any legal proceeding required to collect amounts due.

7.11. All subsequent purchase orders and changes relating to a Client following the Initial Order is subject to the Annual Subscription Period. For example, if the Initial Order is placed on 1 January 2023, all subscriptions for that Client will expire on 31 December 2023 (or anniversary thereof where subscription is renewed) notwithstanding subsequent orders may be placed after the Initial Order.

8. SUPPORT AND MAINTENANCE

8.1. All maintenance and support services for term subscriptions will commence on the Effective Date.

8.2. ISV directly, and indirectly through its Channel Partners to the extent such Channel Partners are appropriately trained and staffed, will provide "**First Level Support**" services to all End Users including the following:

- 8.2.1. ISV will maintain a support FAQ for Channel Partners and End Users (the "**Product Installation FAQ**") specifically related to the known best practices, issues related to installation, and set-up of the Product.
- 8.2.2. Provide First Level Support with properly trained personnel, contacting Licensor Support via conference call, as necessary to resolve support issues – ISV, and/or Channel Partner as applicable, will be involved in all End User contact.
- 8.2.3. Validate End User contact information, ensure that End User is entitled to receive maintenance and support services.
- 8.2.4. Together with Channel Partners, ensure that installation and connectivity issues are properly addressed and resolved.
- 8.2.5. Obtain answers to Licensor-supplied standard questions.
- 8.2.6. Research support issues in Licensor Knowledgebase.
- 8.2.7. Answer Product questions.
- 8.2.8. Validate and diagnose problems.
- 8.2.9. Work with End User to ensure reported errors

are reproducible.

8.2.10. Recommend workarounds where possible.

8.2.11. Escalate unresolved issues to Licensor technical support according to procedures provided to ISV, including:

8.2.11.1. Providing a comprehensive brief to Licensor consisting of a documented example of the defect or error and;

8.2.11.2. If requested by Licensor, providing a listing of output and other information which Licensor requires in order to reproduce operating conditions similar to those present when any defect or error in the Product was discovered.

8.3. ISV, and its Channel Partners where applicable, must train all support staff in the Licensor support process, and keep such staff and staff training up-to-date – Licensor to provide access to internal support training materials and will host ISV staff to provide training on-site at a Licensor support facility.

8.4. Subject to Clause 8.6, and unless otherwise stated in any of the Schedules, Licensor will provide "**Second Level Support**" with respect to Product consistent with the terms of the Yellowfin Maintenance and Support Offering available at <https://www.ideracorp.com/Legal/Yellowfin/SupportPolicy>, to ISV. Licensor will, as part of part of Second Level Support, support the ISV and the Channel Partners regarding technical issues related to the installation or deployment of the Product however excludes general "how-to" regarding the installation and operation of the Product and issues that can be addressed by an applicable FAQ.

8.5. In seeking Second Level Support, ISV must:

- 8.5.1. Accept End User requests for maintenance and support services in ISV's standard technical support languages.
- 8.5.2. Enter required information into Licensor's maintenance and support trouble-ticketing system, or otherwise log-in the appropriate information for Licensor.
- 8.5.3. Contact Licensor Customer Support and advise that an issue has been reported.
- 8.5.4. Where ISV has reproduced and demonstrated for Licensor the problems or errors in question and has shown that the problem or errors are specific to the Product and not related to problems or errors with the ISV's own or another third party's software, Licensor will, as part of Second Level Support:



- 8.5.4.1. Diagnose reported issues;
- 8.5.4.2. Develop and recommend workarounds;
- 8.5.4.3. Report status of bug fixes and maintenance releases; and
- 8.5.4.4. Assist in communicating issue resolution to End User.
- 8.5.5. All Second Level Support will be in English only.
- 8.6. Licensor will only accept queries and clear defects/errors from ISV that have been screened first by the ISV, or by a Channel Partner where applicable, prior to contacting Licensor. ISV is responsible to establish, communicate, and enforce appropriate guidelines for Channel Partners' direct contact with Licensor on Second Level Support. Licensor will not provide support for any integration related issues, or any hardware, cabling or operating system components of the network configuration. The ISV, and the Channel Partners where applicable, is responsible for all systems and networks to be set up to meet Licensor specifications.

9. RECORDS AND AUDITS

- 9.1. ISV will maintain records relating to distribution of the Product and, where applicable, maintenance and support services related to the Product, together with all related financial and accounting records in accordance with generally accepted accounting practices, for a period of two (2) years after the expiration or earlier termination of this Agreement.
- 9.2. Licensor may, from time to time, request information from ISV in connection with, and relation to, its compliance (or non-compliance) with the terms of this Agreement. ISV must respond within twenty (20) Business Days of any such foregoing information request. Licensor's rights under this Clause 9.2 is independent of its auditing rights under Clause 9.3.
- 9.3. At its expense and with reasonable written notice to ISV, Licensor or a third party appointed by Licensor may audit the books, records, and if necessary, the systems of ISV for the sole purpose of ensuring compliance with this Agreement. All audits shall:
 - 9.3.1. be conducted during regular business hours at ISV's offices and shall not interfere unreasonably with ISV's activities;
 - 9.3.2. be conducted in a manner so as to treat all records and books as confidential information and so as to comply with ISV's reasonable site and network security requirements; and
 - 9.3.3. be conducted not more frequently than once in any 12-month period unless such audit reveals

a violation of this Agreement in which case Licensor may conduct additional audits in its discretion.

- 9.4. If any audit reveals that ISV has underpaid license or support Fees, ISV shall be invoiced for such underpaid Fees at the rates set forth in this Agreement and in effect at the time the audit is completed. If the underpaid fees are in excess of ten (10%) of the Fees paid by ISV for the year or other period under audit, then ISV shall also pay Licensor's reasonable costs of conducting the audit and Licensor may, at its discretion, terminate this Agreement.

10. TERM, TERMINATION, ASSIGNMENT

- 10.1. This Agreement shall commence on the Effective Date and will expire on the later of the last day of the Initial Term or any Renewal Term set forth in the Commercial Term Sheet (as applicable) unless otherwise terminated earlier in accordance with the terms of this Agreement. Upon expiration of the Initial Term, this Agreement will automatically renew for one (1) year, and continue to be renewed annually (each such renewal a "**Renewal Term**"), unless a Party provides written notice to the other Party not less than sixty (60) days' prior to the expiration of the Initial Term or any Renewal Term, that it does not intend to renew this Agreement in which event the Agreement will expire at the end of the then-current Term. Notwithstanding the foregoing, no automatic renewal shall occur unless Licensor provides ISV written notice of the impending automatic renewal at least 90 days prior to the end of the then current Initial Term or Renewal Term. The Initial Term, together with all Renewal Terms, will be considered the "**Term**" of this Agreement.
- 10.2. Licensor may terminate this Agreement at any time prior to expiration in the event that ISV defaults in any payment due to Licensor and such default continues un-remedied for a period of twenty (20) days following ISV's receipt of notice of default from Licensor.
- 10.3. Either Party may terminate this Agreement at any time *prior to* expiration in the event that the other Party fails to perform any material term or obligation herein (other than as described in 10.1 above) and such failure continues un-remedied for a period of thirty (30) days from receipt of written notice of such failure.
- 10.4. In the event any notice of termination of this Agreement is given, Licensor may require that any Product ordered be paid for by wire transfer prior to delivery.
- 10.5. This Agreement will automatically terminate with no further act or action required by either Party, if a receiver is appointed for the other Party or its property, the other Party makes an assignment for the benefit of its creditors, any proceedings are commenced by, for or against such Party under any applicable bankruptcy,



insolvency or debtor's relief law, or such Party is liquidated, wound-up, deregulated or dissolved.

10.6. Upon expiration or earlier termination of this Agreement, ISV shall immediately cease:

- 10.6.1. all distribution of the Product and shall have no further right to distribute the Product as part of the Combined Product;
- 10.6.2. all (sub)licensing of the Product and shall have no further right to (sub)license the Product as part of the Combined Product;
- 10.6.3. all use of Licensor's trademarks, logos, and trade names, and will not use any mark or name that is confusingly similar to any trade name or trademark of Licensor;
- 10.6.4. issuing licenses and, if applicable, sub-licenses to the Product; and
- 10.6.5. identifying itself or holding itself as entitled to sell or license the Product as part of the Combined Product.

10.7. All Fees due or payable hereunder, as well as the rights and obligations of the Parties under Clauses 4, 5.8, 7, 9-15, shall survive the expiration or termination of this Agreement. For the avoidance of doubt, if at the time of expiration or termination of this Agreement (as the context requires), ISV has not fully paid any fees applicable, whether invoiced or not, such fees will continue to be a debt owed by ISV to Licensor post expiration or termination (as the context requires) until such debt has been fully paid.

10.8. Neither Party may assign this Agreement nor any of its respective rights or obligations hereunder, in whole or in part (including by operation of law), without the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned or delayed, however a Party may assign this Agreement without the consent of, but upon written notice to the other Party, to any successor in interest by operation of law or pursuant to a merger, corporate reorganization, or sale of all or substantially all of such Party's assets or controlling interest. Any prohibited assignment shall be null and void. Notwithstanding the foregoing, this Agreement shall inure to the benefit of successors and permitted assigns.

11. CONFIDENTIALITY OBLIGATIONS

11.1. For purposes of this Agreement, "**Confidential Information**" means: (i) any information, technical data, or know-how (including, but not limited to, information relating to research, products, software, services, development, inventions, processes, engineering, marketing, techniques, customers, pricing, internal procedures, business and marketing plans or strategies, finances, employees and business

opportunities) which, if disclosed in written format, is marked as "Confidential" or "Proprietary" and, if disclosed orally, summarized in written format within thirty (30) days of disclosure, marked as "Confidential" and provided to the receiving Party; or (ii) that a reasonable person, based on the type of information disclosed or the circumstances surrounding its disclosure, would recognize as confidential, trade secret or proprietary information of the disclosing Party; or (iii) is a software program or related documentation, including all source and/or object code, and all parts and aspects thereof, that is the property of the disclosing Party, in whatever form and whether or not marked as "Confidential".

11.2. Notwithstanding Clause 11.1 above, the term "**Confidential Information**" shall not include information that the receiving Party can establish:

- 11.2.1. was, or has subsequently becomes, part of the public domain through no fault of the receiving Party,
- 11.2.2. was known by the receiving Party prior to disclosure hereunder and for which the receiving Party was under no prior confidentiality obligation,
- 11.2.3. was received by the receiving Party from a third party who is under no obligation of confidentiality with respect to such information, or
- 11.2.4. was developed by the receiving Party independently without benefit of, or based on, the disclosures made hereunder.

11.3. The Parties agrees that all Confidential Information:

- 11.3.1. shall, unless required to be disclosed by the receiving Party by law, regulation or order of a court of competent jurisdiction or otherwise expressly permitted under this Agreement, not be copied or distributed, disclosed or disseminated in any way or form by the receiving Party to anyone except its own employees, consultants and professional advisors (and in the case of Licensor, its subcontractors and suppliers) who have a reasonable need to know the Confidential Information and who agree to keep the material confidential;
- 11.3.2. shall be treated by the receiving Party with the same degree of care to avoid unauthorized disclosure to any third party as is used with respect to the receiving Party's own information of like importance which is to be kept secret, but with no less than reasonable care;



11.3.3. shall not be used by the receiving Party for its own purposes or for any other purpose except in performance of this Agreement; and

11.3.4. shall remain the sole property of the disclosing Party (or, if applicable, of such Party's Affiliates) or their respective licensors (if any) and be returned to the disclosing Party (along with all copies thereof) within thirty (30) days of the receiving Party's receipt of a written request from the disclosing Party setting forth the Confidential and Proprietary Information to be returned or immediately upon expiration or earlier termination of this Agreement.

11.4. Each Party acknowledges that in the event of a breach or threat of breach by a receiving Party of this Clause 11, money damages will not be adequate. Therefore, in addition to any other legal or equitable remedies, the disclosing Party shall be entitled to seek injunctions or similar equitable relief against such breach or threat of breach.

12. INDEMNIFICATION OBLIGATIONS

12.1. Subject to this Clause 12 and Clause 13 below, Licensors agree to indemnify, defend and hold harmless ISV from and against all claims, damages, losses, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) arising out of any claim by a third party asserting that the Product or any of ISV's use thereof, infringes upon any third party's patent, copyright or trademark, provided that (i) ISV promptly notifies Licensors in writing no later than thirty (30) days after ISV's notice of any potential claim, provided further that any failure to provide such notice shall only invalidate any obligation of indemnification to the extent such failure to provide timely notice materially adversely impacts Licensors' ability to defend such claim (ii) ISV shall permit Licensors to defend, compromise or settle the claim, and provided further that no settlement intended to bind ISV shall be made without ISV's express written consent and (iii) ISV gives Licensors all available information, reasonable assistance, and authority to enable Licensors to do so.

12.2. If a claim described in Paragraph 12.1 may or has been asserted, ISV will permit Licensors, at Licensors' option and expense, to (i) procure the right to continue using the Product, (ii) replace or modify the Product to eliminate the infringement while providing functionally equivalent performance or (iii) accept the return of the Product and refund to ISV the pro rata pre-paid amount for the remaining portion of the Initial Term or Renewal Term, as applicable. The foregoing in this Section shall be Licensors' sole liability and ISV's sole remedy for infringement or misappropriation of third-party intellectual property or

proprietary rights.

12.3. Licensors shall have no indemnity obligation to ISV hereunder if the violation or infringement claim results from (i) a correction or modification of the Product not provided by Licensors or its authorized representative, (ii) the failure to promptly install an Update, (iii) the combination of the Licensed Software with other non-Licensors software and (iv) continuing the allegedly infringing activity after receiving written notice of such infringement claim from Licensors.

13. WARRANTY AND DISCLAIMER; LIMITATION OF LIABILITY

13.1. Licensors warrants to ISV that during the entire Term (the "Warranty Period") of this Agreement, the Product shall perform substantially as described in the accompanying Documentation. Licensors does not warrant that (i) the Product will satisfy or may be customized to satisfy any of ISV's requirements or any other particular use or (ii) the use of the Product will be uninterrupted or error-free. Laws from time to time in force may imply warranties that cannot be excluded or can only be excluded to a limited extent. This Agreement shall be read and construed subject to any such statutory provisions.

13.2. If (i) at any time during the Term, the Product contains Errors which make the Product unable to perform substantially as described in the accompanying Documentation or (ii) during the Warranty Period, Licensors breaches the warranty set forth in Clause 13.1 above, then ISV shall promptly notify Licensors of such Error or breach and Licensors shall (A) use all commercially reasonable efforts to correct such Error or breach within thirty (30) days of notification or (B) provide ISV within thirty (30) days of notification with a plan acceptable to ISV for correcting such Error or breach. If such Error or breach is not corrected or if an acceptable plan for correcting such Error or breach is not established within such thirty (30) day period, Licensors shall replace the defective Product or, if not practicable, accept the return of the defective Product and refund to ISV the pro-rata pre-paid amount for the remaining period of the Initial Term or Renewal Term, as applicable. Licensors' obligations under this Clause 13.2 shall be waived to the extent such Error or breach is due to (I) any defect in or misconfiguration of the computer hardware upon which the Product is installed, (II) improper handling or use of the software media by ISV, or (III) an unauthorized alteration, revision or configuration of the Product or to ISV's computer system by ISV or its employees, and not due to any fault or negligence on the part of the Licensors. ISV acknowledges that this Clause 13.2 sets forth ISV's sole and exclusive remedy, and Licensors' and its authorized



representatives' sole and exclusive liability, for any breach of warranty, Error or failure of the Product to function properly.

- 13.3. Except as expressly provided in this agreement, all warranties, representations, indemnities and guarantees with respect to the product, whether express or implied, arising by law, custom, prior oral or written statements by licensor or its authorized representatives or otherwise (including, but not limited to any warranty of merchantability or fitness for particular purpose) are hereby overridden and disclaimed.
- 13.4. Under no circumstances will either Party or its authorized representatives be liable for any consequential, indirect, special, punitive, exemplary or incidental damages, whether foreseeable or unforeseeable, based on claims by either party or any third party (including, but not limited to, claims for loss of data, goodwill, profits, use of money or use of the product, interruption in use or availability of data, stoppage of other work or impairment of other assets), arising out of breach of express or implied warranty, breach of contract, breach of any intellectual property right, misrepresentation, negligence, strict liability in tort or otherwise, except only in the case of personal injury where and to the extent that applicable law requires such liability. Except for the indemnification obligations in section 12 hereof, in no event will the aggregate liability incurred in any action or proceeding against either Party or its authorized representative exceed the total amount actually paid or payable by ISV for the specific product that directly caused the damage. Notwithstanding the foregoing, neither Party's total liability in the event of a data breach shall exceed \$1,000,000.

14. CHANNEL PARTNERS

- 14.1. ISV shall, prior to distributing any Product to a Channel Partner, enter into a written mutually-executed agreement with the Channel Partner that: (a) specifies a territory that is consistent with, and no more expansive than the Territory specified herein, (b) provides Channel Partner with a non-exclusive appointment to distribute the Combined Product that is consistent with, and no more expansive than the appointment granted to ISV hereunder, (c) contains terms and conditions sufficient to allow ISV to satisfy its obligations hereunder, (d) contains terms and conditions substantially similar to Clauses 11 and 13 of this Agreement; and (e) if the ISV Agreement is terminated, expires or otherwise comes to an end, then the ISV's Agreement with its customer with respect to the Product as part of the Combined Product shall also concurrently terminate.

15. GENERAL

- 15.1. *Execution of Agreement.* This Agreement shall become effective only after it has been duly signed by the parties to this Agreement.
- 15.2. *Controlling Law, Jurisdiction and Venue.* This Agreement will be governed by and interpreted in accordance with the laws of the State of Delaware without giving effect to any choice of law rules. Licensor and ISV hereby irrevocably agree that the sole and exclusive jurisdiction and venue for any litigation arising from or relating to this Agreement or the subject matter hereof shall be in an appropriate federal or state court in the State of Delaware.
- 15.3. *Headings.* The headings used herein are for reference and convenience only and shall not be considered substantive parts of this Agreement and shall not enter into the interpretation hereof.
- 15.4. *Choice of Language.* The English language version of this Agreement shall be the official text hereof, despite translations or interpretations of this Agreement in other languages.
- 15.5. *Severability.* If any part or provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed from this Agreement without affecting the validity, legality or enforceability of any other part or provision of this Agreement which shall remain in full force and effect.
- 15.6. *Waiver.* No failure to exercise and no delay in exercising, any right, power or remedy by a Party shall operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on any Party unless made in writing.
- 15.7. *Notices.* Any notice required to be given by either Party to the other shall be deemed given on the date sent by e-mail to the other Party, provided that it is sent to the email address specified by the other Party for notifications. Both Parties agree to keep each other promptly updated regarding each Party's correct and current email address.
- 15.8. *Relationship of the Parties.* ISV's relationship with Licensor during the Term of this Agreement will be that of an independent contractor. Neither Party will have, nor will represent that it has, any power, right or authority to bind the other Party, or to assume or create any obligation or responsibility, express or implied, on behalf of the other Party or in the other Party's name. Nothing stated in this Agreement shall be construed as constituting ISV and Licensor as partners or as creating the relationships of employer/employee, franchisor/franchisee, or principal/agent between the



Parties.

15.9. *Force Majeure.* Neither Party shall be liable for any loss or damage which may be incurred as a result of any delay or failure in performance of its obligations (except failure to pay) under this Agreement or interruption of service resulting directly or indirectly from acts of God, or any causes beyond the reasonable control of such Party.

15.10. *Entire Agreement.* The Agreement consisting of the Commercial Term Sheet, ISV Standard Terms and all Schedules and attachments attached hereto constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersede any and all prior written or oral proposals, understandings or agreements between the Parties relating to the same. Each Party acknowledges that it is not entering into this Agreement on the basis of any representation not expressly contained herein. This Agreement shall not be interpreted to the disadvantage of either Party merely because it was prepared by that Party or by its legal advisors. Any amendments to this Agreement, including updates to Schedules, must be in writing and signed by an authorized representative of each Party hereto.

15.11. Unless there is an express provision in any of the documents listed below that states in clear and unambiguous language stating otherwise, the documents comprising this Agreement shall be read in the following order of precedence:

15.11.1. the latest amendments to this Agreement (if any);

15.11.2. the ISV Standard Terms (excluding the Schedules);

15.11.3. the Commercial Term Sheet;

15.11.4. the Schedules, and

where any conflict occurs between the provisions contained in two or more of the documents forming this Agreement, the document lower in the order of precedence shall where possible be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions shall be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

15.12. *Publicity and Joint Marketing.* ISV consents to Licensor identifying ISV (by name and logo) as a Licensor customer in promotional materials or during promotional events, provided that Licensor obtains prior written approval from ISV for each specific use.. If ISV no longer consents to its name and/or logo being used in this way for promotional events or materials

developed in the future, it must inform Licensor in writing. The Parties may engage in joint marketing and sales activities in addition to those otherwise addressed herein.

15.13. *Further assurances.* Each of the Parties hereby agrees to execute and procure the execution of all such further documents and do all such things as may be reasonably desirable to give full effect to the provisions of this Agreement and the Parties' intent as evidenced herein.

15.14. *Due Execution, Counterparts, and Originals.* The individual signing this Agreement on behalf of each Party represents and warrants that he or she has been duly authorized to do so. This Agreement may be executed in multiple counterparts and all of them together will be deemed to be the same Agreement. Any signed copy of the Agreement made by reliable means (e.g., electronic signature, photocopy, scanned image, or facsimile) is considered an original for all purposes.

16. MANAGED SERVICE (HOSTING)

16.1. The Supplier (Rhino Analytics) shall from time to time provide and install: (a) minor improvements, updates, enhancements, error corrections, upgrade scripts, and changes to the Supplier Software (each containing updates to the help files and documentation) ("Maintenance Releases"); and (b) new releases, new versions, updates, and modifications to the Supplier Software that do not constitute New Products (as generally available in accordance with the Supplier's timetable for releasing new versions as amended from time to time and available on request including updates to the help files and documentation) ("New Version").

16.2. Nothing in this Contract shall entitle the Client to any new version of the Products which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product ("New Product").

16.3. From the Target Go-Live Date the Supplier shall provide Hosted Services substantially in accordance with reasonable skill and care in accordance with good industry practice, subject to the terms of this Contract and provided that the Supplier does not warrant that the Client's use of Hosted Services will be uninterrupted or error free.

16.4. Subject to the Client complying at all times with the terms of this Contract, the Supplier grants to the Client a non-exclusive non-transferable license for the duration of this Contract to: (a) permit its authorized



users to use the Supplier Software via the Hosted Services for the Licensing Purpose and at all times in compliance with the Law, subject to the licensing parameters set out in the Order; and (b) use the Deliverables for the Licensing Purpose.

- 16.5. The Supplier shall not be responsible for any failure to provide Hosted Services as a result of a failure by the Client to comply with its responsibilities under this Contract and: (a) errors in or corruption of the Client Infrastructure, Connectivity Infrastructure, and/or the User Data; and/or (b) the occurrence of a Suspension Event.
- 16.6. The Supplier reserves the right at its sole discretion to suspend or limit performance of the Hosted Services in the event of (each of which shall be a **"Suspension Event"**): (a) scheduled maintenance services (for which the Supplier shall give to the Client as much notice as is reasonably practicable in the circumstances); (b) a material breach by the Client of the terms of this Contract (including a failure to pay the Fees in accordance with Clause 5); (c) where

ongoing use by the Client of Hosted Services, in the Supplier's reasonable opinion, the prospect of damaging Hosted Services or degrading performance (or actually has damaged or degraded the same); (d) the occurrence of an Event of Force Majeure.

- 16.7. In the event of a failure by the Supplier to provide Hosted Services in accordance with this Contract, the Supplier will, at its expense, use all reasonable commercial efforts to correct any such failure(s) promptly (which may include the provision of a temporary workaround). The Supplier's provision of corrective services in accordance with this Clause 2.5 shall constitute the Client's exclusive remedy for any breach of Clause 2.1. Nothing in this Clause 2.5 purports to limit the Supplier's liability for any failure of the Supplier to comply with this Clause 2.5 (for which the provisions of Clause 11 shall apply).

[SCHEDULE 1 FOLLOWS]