

# TERMS AND CONDITIONS LICENSE AND PURCHASE AGREEMENT

## 1. License.

(a) EFI grants you a limited, personal, non-transferable, non-exclusive license to use or Access the Software and Documentation solely for the purposes specified in the Documentation. Only you, your employees or authorized independent contractors, and your end users, as applicable, may use or Access the Product or Documentation. Additional terms and conditions may be provided with new Products or with an update, release, or upgrade.

(b) The Software is licensed, not sold. You have no ownership rights, express or implied, or any other rights in the Software or Documentation other than those specified in this Agreement. You may not relicense, sublicense, copy, modify, enhance, make errors corrections to, create derivative works based on, decompile, decrypt, reverse engineer, or disassemble the Software (including any database) or Documentation, or permit any third party to do so. You may not rent, lease, lend, or otherwise distribute or use the Software or Documentation in any time-sharing, service bureau, or similar arrangement, or in any manner that may cause the Software or Documentation in whole or in part to become subject to any Excluded License.

(c) If you are being granted a perpetual License, you may install only the number of copies of the Software at the Site Location(s) for which you have been granted a license for use by you, your employees or authorized independent contractors. You may make and retain one additional copy for backup purposes only, and may transfer the location of any Site Location if you obtain EFI's prior written consent.

(d) Some third-party materials distributed with the Product may be subject to other terms and conditions, which are typically found in a separate license agreement or "Read Me" file provided with those third party materials. The License does not apply to any third party software except as specified.

YOU ACKNOWLEDGE THAT THE PRODUCT MAY CONTAIN A LICENSE KEY TO PREVENT UNAUTHORIZED USE, THAT THE LICENSE KEY IS NOT A VIRUS, THAT EXECUTION OR DEACTIVATION OF THE LICENSE KEY MAY RENDER THE PRODUCT OR A PORTION OF IT INOPERABLE, AND THAT EFI MAY EXECUTE OR DEACTIVATE THE LICENSE KEY UPON TERMINATION OF YOUR LICENSE. YOU FURTHER ACKNOWLEDGE AND AGREE THAT, IF THE LICENSE KEY IS EXECUTED OR DEACTIVATED AS SPECIFIED IN THIS AGREEMENT, YOU MAY BE OBLIGATED TO PAY EFI'S THEN-CURRENT FEE TO REACTIVATE THE PRODUCT, PLUS ANY OTHER APPLICABLE FEES.

## 2. Installation and Professional Services.

(a) Installation. Unless specified in the Purchase Documentation, the installation and implementation of the Product is your exclusive responsibility. EFI has no responsibility to modify the Product to cause it to function or operate on any particular hardware system, configuration, or platform or with any other software.

(b) Professional Services. You may purchase Professional Services from EFI, and statement(s) of work may be created to more fully describe the scope, duration, and/or fees for the Professional Services and shall be governed by this Agreement. All pre-paid Professional Services must be used within twenty-four (24) months of the date you signed the Purchase Documentation or agreed to this Agreement, whichever is earlier.

(c) Compensation and Expenses. Professional Services will be provided and invoiced on a time and expense basis, at EFI's then-standard rates, pricing, and travel time policies, unless otherwise specified in the Purchase Documentation. Prices do not include reasonable out-of-pocket expenses (including economy class travel, lodging, and meals), for which you will reimburse EFI.

## 3. Subscription.

(a) If you are being granted a subscription License, such license has an Initial Term of one year from the date you signed the Purchase Documentation or agreed to this Agreement, whichever is earlier. If you do not provide written notice of termination to EFI at least 90 days before the end of the Initial Term or any Renewal Term, the term will automatically renew at EFI's then-current fees.

(b) Only you, your employees or authorized independent contractors, and your end users, as applicable, may Access the Product, and only for your business. You are solely responsible for ensuring that data entry is timely, accurate, and reflects your requirements. You shall indemnify and hold EFI harmless from any liability, damages, or costs arising from data entered by you or your end users or on your behalf.

(c) Hosted Solutions. If EFI or its designated third-party providers are hosting the Software, the following additional terms and conditions apply:

(i). EFI or its designated provider will provide those services necessary to allow you Access, including a password(s).

(ii). Data Entry. All data generated by and through your Access will reside on servers of EFI or its third party providers.

(iii). Password Security. You are solely responsible for (A) ensuring that only authorized individuals have access to passwords to Access the Product, (B) assigning roles and authority levels for your Access, (C) the conduct of individuals with Access, and (D) maintaining the confidentiality and integrity of passwords and authority levels. You shall indemnify and hold EFI harmless from any liability, damages, or costs arising from your failure to comply with this Section.

(iv). Scheduled Downtime. Downtime is required from time-to-time for regular maintenance of the technology that supports the Product. EFI will use commercially reasonable efforts to perform scheduled downtime outside normal business hours.

(v). Unexpected Outages. EFI will use commercially reasonable efforts to avoid unexpected outages and to restore Access as soon as possible. If you do not have Access for more than two (2) consecutive hours within any 24-hour period because of an unexpected outage caused by EFI, you may request credit for one day of the applicable fees (based on an average of that month's invoice). THIS IS YOUR SOLE AND EXCLUSIVE REMEDY AND EFI'S ENTIRE LIABILITY FOR UNSCHEDULED DOWNTIME OR OUTAGES, AND EFI WILL NOT BE LIABLE FOR ANY DAMAGES RELATED TO ANY UNSCHEDULED DOWNTIME OR OUTAGES.

#### 4. Consent to Use Data.

YOU ACKNOWLEDGE AND AGREE THAT EFI MAY COLLECT AND USE TECHNICAL DATA AND RELATED INFORMATION TO FACILITATE PROVIDING AND/OR CONFIRMING AUTHORIZED USE OF PRODUCTS, ACCESS, PROFESSIONAL SERVICES, AND/OR MAINTENANCE TO AND BY YOU. YOU AGREE THAT EFI MAY (I) USE THIS INFORMATION TO IMPROVE ITS PRODUCTS, TO PROVIDE CUSTOMIZED SERVICES OR TECHNOLOGIES TO YOU, AND/OR TO CONFIRM AUTHORIZED USE, (II) TRANSFER THIS INFORMATION TO EFI'S AFFILIATES, AGENTS, AND PARTNERS, AND (III) TRANSFER THIS INFORMATION TO THE UNITED STATES AND/OR ANY OTHER COUNTRY WHERE EFI OR ITS AFFILIATES, AGENTS, AND PARTNERS MAINTAIN FACILITIES.

#### 5. Fees and Payments.

(a). You agree to pay all applicable Fees.

(b). Title and risk of loss for any media or hardware for the Product transfers to you at EFI's designated manufacturing plant(s) or warehouse(s). If the Product is delivered electronically, risk of loss shall transfer to you upon when the Product or Access is made available to you.

#### 6. Product Maintenance.

(a). Subject to your timely payment of all applicable Fees, EFI or its designated provider will provide you with Maintenance for the Product. Maintenance terms automatically renew unless cancelled by either party with written notice at least 30 days before the renewal date.

(b). You must possess a valid License to use any upgrade or update. By using an upgrade or update, your license to any previous version of the Product automatically terminates. If you (i) have an out-of-date version of the Product or (ii) are not current on Maintenance due to your failure to timely pay Maintenance Fees and wish to update your version of the Product, you must pay any unpaid fees and may be subject to additional fees to transfer or convert any old data. EFI reserves the right to discontinue Maintenance for all out-of-date versions of the Product.

#### 7. Warranty and Disclaimer.

(a). Limited Warranties. EFI warrants to you that (i) EFI has the right to grant the License, (ii) subject to your timely payment of all applicable Maintenance Fees, the Product as delivered to you will perform materially in accordance with EFI's then-current, applicable specifications if all available updates, upgrades, and bug-fixes are properly installed, and (iii) any Professional Services you purchase will be provided in good and workmanlike manner consistent with generally accepted industry standards. This warranty shall not apply to defects attributable to (A) any equipment or software not provided or approved for use by EFI, (B) any modification of the Product by you, your employees, or any third party acting on your behalf, (C) any accident, neglect, misuse, or abuse by you, your employees, or any third party acting on your behalf, or (D) exposure of the Product to conditions outside the range of environmental, power, and operating specifications provided by EFI. You must cooperate fully and promptly with EFI's attempts to identify the cause of any claimed breach of this limited warranty.

(b). Security. You agree to be solely responsible for (i) ensuring the confidentiality, security, and integrity of your network connectivity, data, and servers, (ii) preventing and bearing the risk of any loss or damage to any data on your servers, and (iii) maintaining archive and backup copies of any data.

(c). WARRANTY DISCLAIMER. THE PRODUCT IS PROVIDED "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES AND REMEDIES IN THIS AGREEMENT ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED. EFI, ITS SUPPLIERS, AND LICENSORS SPECIFICALLY DISCLAIM ANY OTHER WARRANTIES AND REMEDIES,

INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; ANY IMPLIED WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; AND ANY WARRANTIES RELATING TO SECURITY. EFI MAKES NO WARRANTY, IMPLIED OR OTHERWISE, REGARDING THE PERFORMANCE OR RELIABILITY OF ANY OTHER PRODUCTS, SERVICES, OR ANY THIRD PARTY PRODUCTS (SOFTWARE OR HARDWARE) OR SERVICES. THERE IS NO WARRANTY OR REPRESENTATION THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED, FAULT-TOLERANT, SECURE, OR ERROR-FREE, OR THAT THE PRODUCT WILL BE FREE FROM DEFECTS OR INFRINGEMENT OR VIOLATION OF ANY INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOUR SOLE AND EXCLUSIVE REMEDY, AND THE ENTIRE LIABILITY OF EFI AND ITS SUPPLIERS, RELATING TO ALL PRODUCTS, SERVICES, AND WARRANTIES SHALL BE, AT EFI'S OPTION, (1) TO REPAIR OR REPLACE THE PRODUCT OR RE-PERFORM THE SERVICE THAT DOES NOT MEET THE LIMITED WARRANTY, OR (2) PROVIDE A REFUND OF THE THEN-CURRENT REASONABLE COMMERCIAL VALUE (IF ANY) FOR THE PRODUCT OR SERVICE THAT DOES NOT MEET THE LIMITED WARRANTY. EXCEPT AS PROVIDED IN THIS AGREEMENT, THERE SHALL BE NO REFUNDS, RETURNS, EXCHANGES, OR REPLACEMENTS. EFI MAKES NO WARRANTY, IMPLIED OR OTHERWISE, REGARDING THE PERFORMANCE OR RELIABILITY OF ANY THIRD PARTY HARDWARE PRODUCTS, AND EFI WILL PASS THROUGH ANY THIRD PARTY WARRANTY TO CUSTOMER AS PERMITTED.

### **8. Infringement Indemnification.**

EFI will indemnify you from IP Claims and reimburse you for damages paid by you to the party bringing the IP Claim pursuant to a final, non-appealable judgment that the Product directly infringes any Third Party IP Rights. You agree that EFI shall be relieved of its obligations under this Section unless you notify EFI in writing within 10 business days of learning of the IP Claim, and give EFI proper and full information, assistance, and exclusive authority to defend or settle the IP Claim. If the Product or any part of it is in EFI's opinion likely to become the subject of a claim of infringement of Third Party IP Rights, or if it is adjudicatively determined that the Product or any part of it infringes Third Party IP Rights, EFI may at its option (i) obtain for you a license or right to use the Third Party IP Rights so you can continue to use the Product, or (ii) replace or modify the Product with other suitable and reasonably equivalent non-infringing technology or parts, or (iii) if it is not commercially reasonable to take the actions described in clauses (i) or (ii) in this sentence, terminate your License and, if you return the Product to EFI, refund a portion of the license fee paid by you equal to the then-current reasonable commercial value (if any)

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of the Product. EFI shall not be responsible, liable, or obligated to indemnify or reimburse you if the alleged infringement arises out of (i) compliance with your requirements or specifications that are outside EFI's standard specifications for the Product, (ii) any addition or incorporation to or modification of the Product at your request, (iii) any combination of the Product with any product or software not provided by EFI, or (iv) use of the Product in the practice of a process or system other than that for which it was intended. In any event as described in the preceding sentence, you shall defend and/or settle any claim brought against EFI at your own expense, and shall indemnify EFI against any costs, legal fees, other expenses, and damages required for the defense or settlement of the claim.

THE RIGHTS GRANTED TO YOU IN THIS SECTION ARE YOUR SOLE AND EXCLUSIVE REMEDIES FOR ANY ALLEGED INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

### **9. LIMITATION OF LIABILITY.**

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL EFI OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY, OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT, THE PRODUCTS, SERVICES, OR YOUR USE OF OR INABILITY TO USE OR ACCESS THE PRODUCTS OR ANY PORTION OF IT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EFI IS NOT RESPONSIBLE FOR ANY LOST PROFITS OR REVENUE, LOSS OF USE OF THE PRODUCT, LOSS OF DATA, THE COST OF RECOVERING ANY DATA, THE COST OF SUBSTITUTE SOFTWARE OR SERVICES, OR CLAIMS BY THIRD PARTIES (OTHER THAN AS DESCRIBED IN THE SECTION ON INFRINGEMENT INDEMNIFICATION). EXCEPT FOR INSTANCES INVOLVING EFI'S WILLFUL MISCONDUCT, EFI WILL NOT BE LIABLE FOR DAMAGES ARISING FROM ANY BREACH, UNAUTHORIZED ACCESS, MISUSE, OR INTRUSION RELATED TO YOUR DATA ON EFI'S OR ITS SUPPLIERS' SERVERS OR ANY NETWORK YOU USE IN CONNECTION WITH THE PRODUCT.

IN NO CASE SHALL EFI'S TOTAL LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATED TO THE PRODUCTS, SERVICES, ACCESS, AND/OR THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, UNDER STATUTE, OR OTHERWISE) EXCEED THE TOTAL AMOUNT OF THE FEES ACTUALLY PAID BY YOU IN THE 12 MONTHS PRECEDING THE CLAIM FOR THE EFI PRODUCT, SERVICES, OR ACCESS GIVING RISE TO THE CLAIM. YOU AGREE THAT THIS AMOUNT IS SUFFICIENT TO SATISFY THE ESSENTIAL PURPOSE OF THIS AGREEMENT, THAT THIS AMOUNT IS A FAIR AND

REASONABLE ESTIMATE OF ANY LOSS AND DAMAGE LIKELY TO BE SUFFERED IN THE EVENT OF ANY WRONGFUL ACT OR OMISSION BY EFI OR ITS SUPPLIERS AND LICENSORS, AND THAT THE PRICE OF THE PRODUCT, PROFESSIONAL SERVICES, OR ACCESS REFLECTS THIS ALLOCATION OF RISK. YOU AGREE THAT THE FOREGOING LIMITATIONS OF LIABILITY AND DISCLAIMERS FORM AN ESSENTIAL ELEMENT OF THIS AGREEMENT, WITHOUT WHICH EFI WOULD NOT HAVE LICENSED OR SOLD THE PRODUCT TO YOU OR PROVIDED YOU WITH ACCESS.

BECAUSE SOME JURISDICTIONS DO NOT ALLOW SOME OR ALL OF THE EXCLUSIONS OR LIMITATIONS OF LIABILITY IN THIS AGREEMENT, SOME OR ALL OF THEM MAY NOT APPLY TO YOU.

### **10. Proprietary Rights & Confidential Information.**

(a). No Implied Conveyance of Proprietary Rights. The Product, Documentation, and any Work Product are the valuable, confidential, and proprietary property of EFI, its suppliers and licensors. EFI is not conveying any of its Intellectual Property Rights, except the limited rights specified in this Agreement. You must maintain and reproduce all copyright, trademark, patent, and other proprietary notices on the Product in the same form and manner as delivered by EFI.

(b). Protection of Information. You must not disclose any of EFI's Confidential Information, and must take precautions with respect to EFI's Products and Confidential Information that are at least as protective as you take to protect your own confidential information and proprietary rights of the greatest sensitivity. You must advise your employees and authorized independent contractors of the confidential and proprietary nature of the Product and EFI's Confidential Information and of the restrictions imposed by this Agreement, and confine access to the Product and EFI's Confidential Information to those individuals who need it in the ordinary course and scope of their employment or relationship with you. Except as specified in this Agreement, you may not directly or indirectly disclose any part of the Product, EFI's Confidential Information, or Documentation to any third party.

(c). Termination; Injunctive Relief. Your violation of the confidentiality obligations or of EFI's Intellectual Property Rights may cause irreparable damage that cannot be fully remedied by money damages. In the event of any actual or threatened violation, you agree that EFI will be entitled, in addition to any other remedy available to it, to (i) terminate this Agreement, retake possession of the Product, execute the License Key, and/or terminate Access, and/or (ii) obtain injunctive or other equitable relief from any court of competent jurisdiction to prevent any further violation.

(d). Use of Your Trademarks and Logos. Subject to any reasonable use guidelines, you grant EFI a non-exclusive, worldwide, royalty-free license to use Customer Marks in connection with this Agreement, for use with the Product, for promoting EFI's Products in marketing materials, print, or on-line advertising, and for identifying you as an EFI customer. You shall also secure for EFI any rights or sublicenses required for EFI's use of the trademarks or service marks of your Affiliates. EFI acknowledges that (i) Customer Marks are owned solely and exclusively by you or your Affiliates, (ii) EFI has no other rights, title, or interest in or to Customer Marks, and (iii) all use and goodwill of Customer Marks by EFI shall inure to the benefit of you and your Affiliates.

### **11. No Assignment.**

You may not assign or transfer, voluntarily, by operation of law, or otherwise, any rights under this Agreement without EFI's prior written consent, which may be withheld, delayed, or conditioned in EFI's sole discretion. Any attempted assignment or transfer without EFI's consent shall be null and void.

### **12. Export Law Compliance.**

The Product and related technology, information, and materials are subject to the export laws and regulations of the United States. You must comply with those and any other applicable export laws or regulations. You are solely responsible for obtaining any necessary export licenses and exemptions. The Product and related technology, information, and materials may not be exported or re-exported to any U.S.-embargoed country, to any person or entity on any list of prohibited parties designated by the U.S. government, or otherwise in violation of any export law or regulation.

### **13. Termination.**

(a). This Agreement may be terminated immediately upon written notice to the other party (i) by EFI, if you fail to make any required payment other than Maintenance Fees, (ii) by the non-breaching party, if you or EFI fails to cure a material breach within 30 days after written notice from the non-breaching party, or (iii) by EFI, if you cease doing business as a going concern, become the object of voluntary or involuntary bankruptcy or liquidation proceedings that are not dismissed within 60 days after the initial filing, or if a receiver is appointed with respect to a substantial portion of your assets.

(b). Upon termination, you must promptly (i) pay EFI all unpaid fees accrued before the termination, (ii) return all EFI Confidential Information and the Product, and (iii) return any materials, programs, manuals, and other items related to or derived from the Product in your possession or control. EFI shall use commercially reasonable efforts to provide you with any

proprietary data belonging to you in the format in which it is stored by EFI at the time of termination.

#### 14. Audit Rights.

EFI may audit your use of or Access to the Product. Any audit will take place after prior notice to you, during regular business hours, and in a manner that does not unreasonably interfere with your normal business. If the audit shows that you are using or accessing the Product in a way that violates this Agreement, EFI may invoice you for such use or Access, including late fees, interest, and expenses associated with the audit. If you do not timely pay that invoice, EFI may exercise its termination rights and pursue any other rights or remedies available to it.

#### 15. General Provisions.

(a). Taxes. Except with respect to income recognized by EFI, you will be liable for all tariffs, duties, and taxes, however designated or levied, based on your possession, use of, or Access to the Product, this Agreement, and/or any Professional Services, including but not limited to sales, use, value added, excise, services, personal property, or other taxes.

(b). Governing Law. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sales of Goods or any other international treaty or convention. Rather, this Agreement shall be governed in all respects by the laws of the State of California, USA, without regard to conflicts of laws principles. For all disputes related to this Agreement, the Product, Access, or any services provided under this Agreement, each party consents to the exclusive personal jurisdiction and venue of the state and federal courts in and for Santa Clara County, California, USA.

(c). Severability; Interpretation. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by any court of competent jurisdiction, that provision will be fully severable and this Agreement will be construed and enforced as if it were not included. This Agreement shall be interpreted fairly in accordance with its terms and without any strict construction in favor or against either party. The captions are for convenience only and do not affect the scope, intent, or meaning of the provisions. Any failure or delay to enforce any provision of this Agreement shall not be deemed a waiver of EFI's right to do so.

(d). Language. This Agreement is only in English, which shall be controlling in all respects. If EFI has provided you with a translation, you agree that the translation is for your convenience only and that the English-language version, not the translation, will be legally binding. If there are any conflicts or inconsistencies between the English-language version and a translation, the English-language version will control. Any notices relating to this Agreement shall be in writing in English.

(e). Entire Agreement and Modification. This Agreement constitutes the full and complete agreement between you and EFI with respect to the Product and supersedes all prior negotiations, understandings, and agreements between us related to the Product. Any waiver, modification, or amendment will be effective only if in writing signed by you and EFI. This Agreement will inure to the benefit of and be binding upon you and EFI and each of our respective successors and permitted assigns.

(f). Independent Contractors. You and EFI, and our respective employees and representatives, are and shall be independent contractors with respect to the other party. Neither party by virtue of this Agreement shall have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

(g). Survival. The provisions of this Agreement that relate to fees and payment terms, ownership of intellectual property and proprietary rights, export law compliance, termination, confidentiality, infringement indemnification, warranty disclaimers, limitation of liability, governing law, survivability, force majeure, severability and interpretation, definitions, modification and use of software products owned or distributed by Microsoft, Oracle or Adobe included in an EFI Product shall survive termination of this Agreement.

(h). Force Majeure. Except for payment of monies, no party shall be liable for its failure to perform any obligations on account of strikes, shortages, failure or acts of suppliers, riots, insurrection, fires, flood, storm, explosions, acts of God, war, military operations, acts of terrorism whether actual or threatened, acts of a public enemy, epidemics, quarantines, governmental action, labor conditions, earthquakes, material shortages, or any cause that is similar to those enumerated or beyond the reasonable control of such party.

(i). Compliance With Laws. You may only use the Product in compliance with all applicable laws and regulations. Upon written notice to you, EFI may modify or suspend your use of or Access to the Product as necessary to comply with any law or regulation. Both parties acknowledge their responsibilities and commitments to abide by and comply with international anti-corruption laws, including but not limited to the United States Foreign Corrupt Practices Act and the United Kingdom Anti-Bribery Act, and any amendments and regulations relating to those laws, in addition to each of our own ethical guidelines (EFI's Code of Conduct is available online at <http://ir.efi.com/documentdisplay.cfm?DocumentID=6820>). Specifically, for example, no employee, or any individual or entity acting on behalf of or for the benefit of either EFI or Customer, shall give or receive anything of value, or anything that may be perceived as valuable, to or from a government official or any other individual for the purpose of influencing any act, securing any improper advantage, or obtaining or retaining business.

(j). U.S. Government Restricted Rights. Use, duplication, or disclosure of the Product by the United States Government is subject to restrictions as set forth in FAR 12.212 or DFARS 227.7202-3 - 227.7202-4 and, to the extent required under U.S. federal law, the minimum restricted rights as set out in FAR 52.227-14, Restricted Rights Notice (June 1987) Alternate III(g)(3) (June 1987) or FAR 52.227-19 (June 1987). To the extent any technical data is provided pursuant to the Agreement, such data is protected per FAR 12.211 and DFARS 227.7102-2 and to the extent explicitly required by the U.S. Government, is subject to limited rights as set out in DFARS 252.227.7015 (November 1995) and DFARS 252.227-7037 (September 1999). If any of the above-referenced agency regulations are modified or superseded, the subsequent equivalent regulation shall apply. The name of the Contractor is Electronics For Imaging, Inc.

## **16. Products that include EFI Monarch Planner.**

(a). The term “Product” as used in this Agreement includes the Adobe® PDF Library SDK and related documentation, and any upgrades, modified versions, updates, additions, and copies thereof.

(b). If the Product includes font software, you may embed the font software, or outlines of the font software, into your electronic documents to the extent that the font vendor copyright owner allows for such embedding. The fonts contained in this package may contain both Adobe Systems Incorporated (“Adobe”) and non-Adobe owned fonts. You may fully embed any font owned by Adobe.

(c). You are hereby notified that Adobe, a Delaware corporation located at 345 Park Avenue, San Jose, CA 95110-2704 is a supplier of EFI and a third-party beneficiary to this Agreement to the extent that this Agreement contains provisions which relate to your use of any software, font programs, typefaces, and/or trademarks licensed or supplied by Adobe. Such provisions are made expressly for the benefit of Adobe and are enforceable by Adobe in addition to EFI.

## **17. E-Commerce Applications.**

If you have obtained a License for EFI e-commerce software, the following additional terms and conditions apply (as applicable):

(a). Use at Site Location. You may use or Access the Product only for activity at the Site Location. If you have more than one facility, you may not use or Access the Product for activity at any facility other than the Site Location(s) for which you have been granted a license.

(b). Links. You represent and warrant that you have the right to create and maintain, or to allow EFI to create and

maintain, all Links to the Product and any other websites mutually agreed upon between you and EFI. You agree to incorporate EFI’s “Powered by EFI” logo on any website utilizing EFI e-commerce software.

(c). Relationships with Third Parties. Use of or Access to the Product does not create a contract or other obligation between you and any of your customers or between EFI and any of your customers or vendors. EFI cannot and does not guarantee the performance of any of your customers, vendors, or other third parties. EFI shall have no liability in connection with any dispute between you and any third party. Any such dispute shall not relieve you of any obligation to EFI under this Agreement.

## **18. EFI Metrix.**

If you have a License for EFI Metrix software, EFI will provide you with a security key(s) to use the Product and grants you a limited, non-transferable, non-exclusive right and license to use the security key required for use with the Product. The Product may be accessed and used only by the number of concurrent users for whom you have obtained security keys or passwords. Safekeeping of the security keys and passwords is your responsibility. If you lose or otherwise disable the Security Key, your License may be terminated. Additional license fees may be charged for replacement security keys and passwords.

## **19. Products that include Microsoft software (such as Windows or SQL Server).**

(a). The term “Product” as used in this Agreement includes certain Microsoft software and related documentation, associated media, “online” or electronic documentation, upgrades and updates. EFI does not own these products and the use thereof is subject to certain rights and limitations.

(b). Microsoft is not responsible for any support services for the Product. Notwithstanding the foregoing, in the event any support issues arise related to the Microsoft software that cannot be resolved by EFI, support to you may be provided by Microsoft pursuant to the Microsoft Premier support services agreement, or a similar type agreement, between EFI and Microsoft.

(c). The Product is not fault-tolerant. The Product is not designed or intended for use in any situation where failure or fault of any kind of the Product could lead to death or serious bodily injury of any person, or to severe physical or environmental damage (“High Risk Use”). You are not licensed to use the Product in, or in conjunction with, High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: aircraft or other modes of human mass transportation, nuclear or chemical facilities, and Class III medical devices under the Federal Food, Drug, and Cosmetic Act. Customer agrees not to use the Product in, or in

connection with, any High Risk Use. You are responsible for taking all appropriate measures to ensure the safe use of the Product if used for such purposes and EFI and its suppliers, including Microsoft, shall not be liable for any claims or damages arising from such use.

## **20. Products that include software products owned or distributed by Oracle.**

(a). The term “Product” as used in this Agreement includes certain software products provided by EFI that are owned or distributed by Oracle USA, Inc. (“Oracle”) and related program documentation (the “Oracle Programs”), EFI does not own the Oracle Programs and the use thereof is subject to certain rights and limitations. The Oracle Programs included herein are subject to a restricted use license and can only be used in conjunction with the Product. Oracle or its licensors retain all ownership of intellectual property rights to the Oracle Programs. You are hereby notified that Oracle is a supplier of EFI and a third-party beneficiary to this Agreement to the extent that this Agreement contains provisions which relate to your use of the Oracle Programs. Such provisions are made expressly for the benefit of Oracle and are enforceable by Oracle in addition to EFI.

(b). You acknowledge and agree that you are prohibited from (i) publishing any results of benchmark tests run on the Oracle Programs, (ii) using the Oracle Programs for rental, timesharing, subscription service, hosting, or outsourcing, and (iii) removing or modifying any program markings or notice of Oracle’s or Oracle’s licensors’ proprietary rights.

(c). To the extent not prohibited by law, in no event will Oracle be liable for (i) any damages, whether direct, indirect, incidental, special, punitive or consequential, and (ii) any loss of profits, revenue, data or data use, arising from the use of the Oracle Programs.

(d). You hereby permit EFI to (i) report any audit results obtained pursuant to this Agreement above to Oracle to the extent such results are related to the Oracle Programs, or (ii) assign such rights to audit your use of the Oracle Programs to Oracle.

(e). You are hereby notified that some Oracle Programs may include source code that Oracle may provide as part of its standard shipment of such programs, which source code shall be governed by the terms of this Agreement.

(f). The Computer Information Transactions Act shall not apply to this Agreement.

(g). You acknowledge and agree that in the event a third party technology may be appropriate or necessary for use with some Oracle Programs, it shall be specified in the Product package documentation or as otherwise noted, and such third

party technology is licensed to you only for use with the Product under the terms of the third party license agreement specified in the Product package documentation or as otherwise noted, and not under the terms of this Agreement.

## **21. Open Source Software.**

Some versions of the Products contain open source software. Open source software is licensed to you under that software’s own license terms, which can be found in the “Help,” “About,” “Read Me,” or other specified portion of the Product. You are responsible for complying with any terms and conditions applicable to any open source software. To the extent that this Agreement imposes greater restrictions on you than the open source software license terms, the open source software license terms shall control, but solely with respect to such open source software.

## **22. EFI Optitex and EFI Generation Digital.**

If you have a License for EFI Optitex or EFI Generation Digital products, the following additional terms and conditions apply:

(a) Except as noted below, if you are being granted a perpetual License to the Product, you may only use, install and operate the Product on a single computer, which shall be identified with a USB dongle or a software key, and you may not use, install, or operate the Product on a server multi-user system, or permit such prohibited use, installation or operation. If you are being granted a “Floating User” perpetual License, you may use, install and operate the Product on a server-based multi-user system, *provided that* at no time may your total number of active concurrent users of the Product exceed the total number of perpetual Licenses you have for the Product.

(b) The Site Location requirements in Section 1(c) do not apply.

(c) You may not collect any information about any communication transmitted on computers used to operate the Product by monitoring, interdicting or intercepting any process within the Product.

(d) You may not embed or nest the Product, or any part thereof, including any functionality, feature, or technology, in any other software or platform.

(e) Internet-Based Services Components. The Product contains components that may enable and facilitate the use of certain Internet-based services. You acknowledge and agree that, as part of that process, EFI may verify the version of the Product and/or its components that you are using and that all data collected may be sent to EFI’s servers using your internet, network connections and/or infrastructure.

(f). Unless otherwise noted on your Purchase Documentation, all Licenses to Access EFI Optitex are for designated users only and cannot be shared or used by more than one user concurrently, *provided that* you may change the named user for a License as needed by providing prior notice to EFI.

(g). If the Product is configured by or for you to employ any tracking technology, then you shall be solely responsible for: (i) complying with all applicable legal requirements relating to such use, including but not limited to providing any notice and/or obtaining any consent to the use of such technology. You also agree to indemnify and hold EFI harmless from any liability, damages, or costs relating to your use of such technology.

### 23. DEFINITIONS.

“**Access**” means the connection to and use of a Product by Customer via an Internet web browser under the terms of this Agreement.

“**Affiliate**” means any entity directly or indirectly controlling, controlled by, or under common control with a party.

“**Agreement**” means this EFI License and Purchase Agreement.

“**Confidential Information**” means any information that you have been informed or have a reasonable basis to believe is confidential to EFI, whether provided to you before, on, or after this Agreement, including, for example, ideas, programs, data, software, systems configurations, reports, projections, initiatives, customer data, or other business or technical information. Confidential Information includes any written information marked as confidential or proprietary, and any information disclosed orally or visually that is identified as confidential or proprietary at or around the time of its disclosure. All EFI Intellectual Property Rights and technical information related to the Product are Confidential Information whether or not marked as confidential or proprietary.

“**Customer Data**” means data generated by and/or through Customer’s Access to and/or use of a Product or Hosting Services.

“**Customer Marks**” means your name and logo or other trademarks, service marks, or other marks.

“**Documentation**” means user’s guides, manuals, and other information related to the Product or Professional Services.

“**EFI**” means Electronics For Imaging, Inc., Electronics For Imaging BV, Electronics For Imaging United Kingdom Limited, Metrics Sistemas De Informacao Ltda., alphagraph Team GmbH, or such other EFI subsidiary or affiliate referred to in the Purchase Documentation.

“**Excluded License**” means any license that requires as a condition of use, modification, and/or distribution of software subject to the Excluded License, that such software or other software combined and/or distributed with such software be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making derivative works, or (iii) redistributable at no charge.

“**Fees**” means the fees for the Product, Access, or Professional Services, including any fees set forth in your Purchase Documentation, license fees, hardware fees, Subscription Fees, Hosting Fees, Maintenance Fees, or other applicable fees. Unless otherwise specified in the Purchase Documentation, payments for any fees must be made within 30 days of the date of the invoice in the currency listed in the Purchase Documentation. EFI reserves the right to charge you interest of 1.5% per month or the highest legal rate, whichever is lower, on any payment that is outstanding more than 30 days after its due date.

“**Hosting Fees**” means the hosting fees described in the Purchase Documentation. Unless otherwise specified in the Purchase Documentation, Hosting Fees commence on the first day of the next month following 30 days from the date you agreed to the Purchase Documentation.

“**Initial Term**” means the one-year period of time beginning on the date you signed the Purchase Documentation or agreed to this Agreement, whichever is earlier.

“**Intellectual Property Rights**” means, individually or collectively, any patent, copyright, trademark, service mark, trade secret, trade name, or other intellectual property right.

“**IP Claim**” means a lawsuit filed against you by a third party that is not a patent assertion entity or non-practicing entity.

“**You**”, “**you**” or “**Customer**” means the person or entity that obtained the Product under this Agreement and that is agreeing to be bound by this Agreement.

“**License**” means the license granted to you for the Product you have obtained.

“**License Key**” means a programming code included in the Product that, if executed or deactivated, renders the Product or portions of it inoperable.

“**Link**” means a hypertext reference that, when activated, moves users from one website to another on the Internet.

“**Maintenance Fees**” means the support and/or maintenance fees charged by EFI and/or a third party for the Product. Maintenance Fees commence on the first day of the next month following 30 days from the date you agreed to the Purchase Documentation (unless otherwise specified in the Purchase Documentation) and continue for the period specified in the



Purchase Documentation. Any use of a virtual private network or other requirement that requires EFI to act outside of its normal processes in order to provide Maintenance to you may be subject to additional fees.

“**Maintenance**” means (i) correction of material defects so that the Product will operate materially in conformity with the warranties in this Agreement, (ii) periodic updates that incorporate corrections of material defects and fixes of minor bugs in the Product, (iii) telephone or email/electronic consultation services regarding the use of the Product during EFI’s standard support hours, and (iv) enhancements and/or revisions to software components of the Product, which shall be subject to additional charge unless they are provided at no charge to substantially all other licensees.

“**Product**” means Software or hardware, and may also include third party software and documentation, downloads, on-line materials, bug fixes, patches, releases, release notes, updates, upgrades, technical support materials, and information related to the EFI software or hardware.

“**Purchase Documentation**” means the purchase order, investment summary, statement of work, written agreement, or other documentation executed by you by which you agreed to obtain a license, product, or service from EFI or one of EFI’s partners.

“**Renewal Term**” means the one-year period following the Initial Term or another Renewal Term unless specified otherwise in your Purchase Documentation. Fees for any Renewal Term may be increased to EFI’s then-current fees.

“**Professional Service(s)**” means any training, installation, implementation, customization and/or other professional services provided by EFI to Customer.

“**Site Location**” means the printing plant or facility specified in the Purchase Documentation.

“**Software**” means the EFI software listed on the Purchase Documentation or licensed to you under this Agreement.

“**Subscription Fees**” means the subscription fees for the Product described in the Purchase Documentation. Subscription Fees commence either (i) on the first day of the next month following 30 days from the date you agreed to the Purchase Documentation or (ii) upon EFI’s configuration of the Product on EFI’s servers and delivery of a URL enabling your Access, whichever occurs first.

“**Third Party IP Rights**” means a third party’s U.S. patent rights.

“**Work Product**” means any and all ideas, concepts, and Intellectual Property Rights related in any way to the techniques, knowledge, and processes of the Product, Services, and

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