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6. Limitation of Liability. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, TO THE MAXIMUM EXTENT PERMITTED BY LAW IN NO EVENT SHALL COMPANY, ITS LICENSORS, AFFILIATES, AGENTS, SUPPLIERS, DISTRIBUTORS AND RESELLERS BE LIABLE OR OBLIGATED WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY (III) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES; OR HOWEVER INCURRED BY A PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED \$100. THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE ANY LIABILITY WHICH, UNDER APPLICABLE PRODUCTS LIABILITY LAW, CANNOT BE PRECLUDED BY CONTRACT.

7. Confidentiality. “Confidential Information” means any information which is disclosed by Company in connection with this Agreement, directly or indirectly, in writing, orally or by drawings or inspection of software, to the User or any of its employees or agents. Confidential Information shall include the Software and Documentation containing Company’s confidential trade secret information. The restrictions on disclosure set forth in this Section 7 shall not apply to Confidential Information which becomes publicly known without breach of this Agreement or the User can show by written records was rightfully in its possession prior to the disclosure by the Discloser or becomes rightfully known to the User without confidential or proprietary restriction from a source other than the Company. User may use the Company’s Confidential Information solely for the purpose of exercising its rights and performing its obligations under this Agreement. User agrees to take the same care with the Company’s Confidential Information as it does with its own information of a similar nature, but in no event with less than a reasonable degree of care. User shall limit access to the Confidential Information to those persons having a need to know such information, provided that each such employee and consultant is subject to a written agreement containing confidentiality obligations no less protective than those contained in this Agreement. User may disclose Confidential Information insofar as the disclosure is necessary to be made to the User’s independent accountants for tax or audit purposes or is required by law or legal proceedings to disclose such information, provided that in any case, the User provides the Company with prompt written notice of such requirement to enable the Company to seek a protective order.

8. Miscellaneous. Neither the Agreement or the licenses granted hereunder are assignable or transferable by User without the prior written consent of Company; any attempt to do so shall be void. However, notwithstanding the foregoing, Company may assign this Agreement in its entirety to (i) any affiliate of such Party; (ii) any successor in interest to such Party by way of merger or consolidation; or (iii) a purchaser of all or substantially all of the assets of such Party. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties. Any notice, report, approval or consent required or permitted hereunder shall be in writing. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. The Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflicts of law rules, and the parties consent to exclusive jurisdiction

and venue in the state and federal courts located in San Francisco, California, without regard to the United Nations Convention on the International Sale of Goods. Any waivers or amendments shall be effective only if made in writing and signed by both parties. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorney’s fees and costs in connection with such action.

9. U.S. Government Rights. This Section 9 applies only if User is an agency or other part of the U.S. Government. The Software and Documentation (“Licensed Products”) are “commercial items” as that term is defined at FAR 2.101. If User is the US Federal Government (Government) Executive Agency (as defined in FAR 2.101), Company provides the Licensed Products, including any related software, technical data, and/or professional services in accordance with the following: If acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD)), the Government acquires, in accordance with FAR 12.2 11 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement. If acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as defined in this Agreement. If any Federal Executive, Legislative, or Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with Company to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. If this Agreement fails to meet the Government’s needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to return the Licensed Product, unused, to Company. This U.S. Government Rights clause in this Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement. Rights are reserved under copyright laws of the United States with respect to unpublished portions of the Software.

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