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| C:\Users\DTollen\My ShareSync\Law Practice\Tech Contracts Academy\Admin\Identity\Logo\TCA_TM Logo_FINAL\PNG\Tech-Contracts-Academy-Logo_TM_Color_FINAL.png<https://TechContracts.com/> | **THE TECH CONTRACTS HANDBOOK****Cloud Computing Agreements, Software Licenses, and Other IT Contracts for Lawyers and Businesspeople**Third Edition**by David W. Tollen**(ABA Publishing - Intellectual Property Law Section of the American Bar Association; 2021) |

***Form Contract***

**Software Distribution License (VAR)**

 ***Value-Added Reseller / Distribution as Embedded Component; Provider-Friendly (not Distributor)***

*You may use the form contract below subject to the “Terms of Use” posted at* [*https://techcontracts.com/terms-of-use-and-privacy-policy/*](https://techcontracts.com/terms-of-use-and-privacy-policy/)*. In addition to the Terms of Use, PLEASE READ THE FOLLOWING DISCLAIMER BEFORE USING THE FORM CONTRACT:*

***NEITHER TECH CONTRACTS ACADEMY®, LLC NOR THE AUTHOR OR PUBLISHER, OR ANYONE AFFILIATED WITH THEM, REPRESENTS THAT THE FORM CONTRACT BELOW WILL MEET YOUR SPECIFIC GOALS, PROTECT YOUR SPECIFIC INTERESTS, OR WITHSTAND CHALLENGES TO ITS LEGAL OR FACTUAL SUFFICIENCY. The form contract below is general in nature and may not be sufficient for a specific contractual, technological, or legal problem or dispute. THE FORM IS NOT PROVIDED WITH ANY GUARANTY, WARRANTY, OR REPRESENTATION AS TO QUALITY OR SUITABILITY FOR ANY PARTICULAR PURPOSE. Publication of the form does not constitute the practice of law and is not legal counsel or advice. Neither Tech Contracts Academy®, LLC or the author or the publisher of this website or* The Tech Contracts Handbook*, or anyone affiliated with them, is rendering a legal or other professional service. The form should not be relied upon as a substitute for consultation with an attorney.***

*Note that this document uses Microsoft Word multi-level bullets/numbering for section numbers and cross-referencing features for section references.*

*Please delete all text above the following dotted line, as well as the line itself and the page-break following it, before using this form.*

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**VAR DISTRIBUTION LICENSE AGREEMENT**

This VAR Distribution License Agreement (this “Agreement”) is entered into as of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (the “Effective Date”) by and between \_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_ (“Provider”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_ (“Distributor”).

RECITALS

Provider provides a software application known as \_\_\_\_\_\_\_\_\_\_\_, and the parties have agreed that Distributor will incorporate such software into its own product and distribute the combined product, operating as a “value-added reseller.” Therefore, in consideration of the mutual covenants, terms, and conditions set forth below, including those outlined on Attachments A and B (which are incorporated into this Agreement by this reference), the adequacy of which consideration is hereby accepted and acknowledged, the parties agree as set forth below.

TERMS AND CONDITIONS

1. **DEFINITIONS.** The following capitalized terms will have the following meanings whenever used in this Agreement.
	1. “Documentation” means the Licensed Software’s standard user manual.
	2. “End-Customer” means any licensee of the Value-Added Product, excluding Sub-Distributors. End-Customers include, without limitation, licensees receiving the Value-Added Product from Sub-Distributors and licensees who do not pay for their licenses.
	3. “Licensed Software” means Provider’s \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ software, in object code format.
	4. “Sub-Distributor” means any licensee receiving distribution rights to the Value-Added Product.
	5. “Specifications” means Provider’s standard specifications for the Licensed Software set forth in its then-current Documentation and at \_\_\_\_\_\_\_\_\_\_.
	6. “Term” is defined in Section 13.1 below.
	7. “Value-Added Product” means Distributor’s \_\_\_\_\_\_\_\_\_\_\_\_\_ product, as modified to incorporate the Licensed Software.
	8. “Upgrade” means a new versions, updates, or upgrades of the Licensed Software, in object code format.
2. **LICENSES & DELIVERY.**
	1. License. Provided Distributor complies with the restrictions set forth in Sections 2.2 (*Licensed Software Restrictions*) and 2.3 (*Sub-Licenses*), Provider hereby grants Distributor a nonexclusive, worldwide license to exploit the Licensed Software as follows, solely as an embedded component of the Value-Added Product: (a) to distribute the Licensed Software; (b) to reproduce and use the Licensed Software for sales and marketing purposes and to the extent necessary to provide technical support to End-Customers; and (c) to sublicense to End-Customers the right to reproduce and use the Licensed Software. Distributor may sublicense to Sub-Distributors the rights granted in the preceding sentence. Provider grants the license in this Section 2.1 under copyright and also, solely to the extent necessary to exercise such rights, under patent and any other applicable intellectual property rights.
	2. Licensed Software Restrictions. This Agreement grants Distributor no title to or ownership of the Licensed Software, and Distributor receives no rights to the Licensed Software other than those specifically granted in Section 2.1 above. Without limiting the generality of the foregoing, Distributor shall not (a) reverse engineer, decompile, disassemble, or otherwise attempt to derive any of the Licensed Software’s source code; or (b) use the Licensed Software for service bureau, software-as-a-service, or time-sharing purposes or in any other way allow third parties to exploit the Licensed Software (other than End-Customers and Sub-Distributors to the extent specifically authorized in this Agreement). Distributor may license copies of the Licensed Software to End-Customers but may not sell such copies, and neither Distributor nor Sub-Distributors or End-Customers will receive title to or ownership of any copy or of the Licensed Software itself.
	3. Sub-Licenses.
		1. EULA’s. Distributor shall not distribute the Value-Added Product to any End-Customer that does not first execute a written end user license agreement (“EULA”) that: (i) forbids distribution of the Licensed Software, service bureau or time-sharing use of the Licensed Software, or other exploitation of the Licensed Software, except internal use and reproduction as an integrated component of the Value-Added Product, to the extent specifically authorized by such EULA; (ii) restricts use of the Licensed Software to the same extent as, or more than, Section 2.2 above (*Licensed Software Restrictions*); (iii) provides for audits, with terms no less restrictive than those of Article 9 below (*Licensed Software Audit*); (iv) requires that such End-Customer cease using and delete all copies of the Licensed Software after termination of such EULA; (v) restricts export pursuant to the provisions of Section 14.12 below (*Technology Export*); and (vi) provides that Provider may enforce the EULA as an intended third party beneficiary of the provisions listed in this sentence. The EULA may set forth the restrictions of the preceding sentence as restrictions on the Value-Added Product itself if the Licensed Software is not separately defined.
		2. Sub-Distributor License Agreements. Distributor shall not sublicense or distribute the Value-Added Product to any Sub-Distributor that does not first execute a written Sub-Distributor license agreement (“SDLA”) that: (a) restricts use of the Licensed Software to the same extent as, or more than, Section 2.2 (*Licensed Software Restrictions*) of this Agreement; (b) incorporates the requirements of Subsection 2.3(a) above with regard to such Sub-Distributor’s End-Customers; (c) restricts use of packaging and marketing material with Provider’s trademark’s, consistent with the restrictions of Article 3 below; (d) provides for audits, with terms no less restrictive than those of Article 9 (*Licensed Software Audit*); (e) provides Distributor the right to terminate such SDLA if this Agreement terminates, and requires that such Sub-Distributor cease distributing and using the Licensed Software, and delete all copies of the Licensed Software, after termination of such SDLA; (f) restricts export pursuant to the provisions of Section 14.12 below (*Technology Export*); and (g) provides that Provider may enforce the SDLA as an intended third party beneficiary of the provisions listed in this sentence. The SDLA may set forth the restrictions of the preceding sentence as restrictions on the Value-Added Product itself if the Licensed Software is not separately defined.
	4. Documentation: Distributor may reproduce the Documentation as reasonably necessary to support internal use of the Licensed Software.
	5. Delivery & Identification. Provider shall provide the Licensed Software and Documentation to Distributor, through a reasonable system of electronic download, within \_\_\_\_\_ days of the Effective Date. Distributor shall identify each Sub-Distributor and End-Customer to Provider in writing promptly after executing a license agreement with such person or entity, providing full legal name, physical address, telephone number, and e-mail address.
3. **TRADEMARKS.** Provider hereby grants Distributor a license to reproduce its trademarks listed in Part I of *Attachment A* (*Trademarks*) on marketing and advertising materials and packaging related to the Value-Added Product (collectively, “Advertisements”); provided (a) the Value-Added Product conforms to the quality requirements listed in Part II of Attachment A (*Quality Standards*) and (b) Distributor observes Provider’s standard guidelines on trademark usage, attached hereto as Part III of *Attachment A* (*Trademark Usage Policy*), including any written amendment to such policy provided by Provider in its sole discretion. All goodwill associated with the Trademarks inures solely to Provider, and Distributor shall take no action to damage the goodwill associated with the Trademarks or with Provider. In the event that Provider notifies Distributor in writing that any Value-Added Product or Advertisement (pending or published) does not conform to the requirements of this Article 3, Distributor shall promptly withdraw it or remove all Provider trademarks; provided Provider shall not unreasonably issue such notice.
4. **ROYALTIES & REPORTS.**
	1. Royalties & Reporting. Distributor shall pay Provider \_\_\_\_\_\_\_\_ for each copy of the Value-Added Product licensed to third parties, either by Distributor or Sub-Distributors (excluding distribution sublicenses granted to Sub-Distributors pursuant to the last sentence of Section 2.1 above). On the \_\_\_\_\_\_ business day of each calendar quarter, Distributor shall report all Value-Added Product transactions for the preceding calendar quarter, including End-Customer names, Sub-Distributor names (where applicable), units provided, and amounts receivable and received, as well as such additional detail as Provider reasonably requests. Distributor shall pay all amounts due within 30 days of such report.
	2. Taxes. Amounts due under this Agreement are payable to Provider without deduction and are net of any tax, tariff, duty, or assessment imposed by any government authority (national, state, provincial, or local), including without limitation any sales, use, excise, ad valorem, property, withholding, or value added tax withheld at the source. If applicable law requires withholding or deduction of such taxes or duties, Distributor shall separately pay Provider the withheld or deducted amount. However, the prior two sentences do not apply to taxes based on Provider’s net income.
5. **SUPPORT.** Provider shall provide Distributor with such support and assistance regarding use of the Licensed Software as is set forth on Attachment B (*Support*). Provider shall have no obligation to provide support directly to End-Customers.
6. **UPGRADES.** Provider shall provide Distributor with copies of all Upgrades, without additional charge, promptly after commercial release. Upon delivery to Distributor, each Upgrade will constitute an element of the Licensed Software and will thereafter be subject to this Agreement’s terms regarding Licensed Software, including without limitation license, warranty, and indemnity terms.
7. **IP & FEEDBACK.**
	1. IP Rights in the Licensed Software. Provider retains all right, title, and interest in and to the Documentation and Licensed Software, including without limitation Upgrades, except to the extent of the limited licenses specifically set forth in Sections 2.1 (*Licenses*) and 2.4 (*Documentation*). Distributor recognizes that the Licensed Software and its components are protected by copyright and other laws.
	2. Feedback. Provider has not agreed to and does not agree to treat as confidential any Feedback (as defined below) Distributor or any Sub-Distributor or End-Customers provides to Provider, and nothing in this Agreement or in the parties’ dealings arising out of or related to this Agreement will restrict Provider’s right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Distributor or any such Sub-Distributor or End-Customer. Notwithstanding the provisions of Section 8.1 below (*Confidential Information Defined*), Feedback will not constitute Confidential Information unless Provider so agrees in writing. (“Feedback” refers to any suggestion or idea for improving or otherwise modifying any of Provider’s products or services.)
8. **CONFIDENTIAL INFORMATION.**
	1. Confidential Information Defined. “Confidential Information” refers to the following one party to this Agreement (“Discloser”) discloses to the other (“Recipient”): (a) any document Discloser marks “Confidential”; (b) any information Discloser orally designates as “Confidential” at the time of disclosure, provided Discloser confirms such designation in writing within \_\_ business days; (c) the non-public features and functions of the Licensed Software, for which Provider is Discloser; and (d) any other nonpublic, sensitive information Recipient should reasonably consider a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Recipient’s possession at the time of disclosure; (ii) is independently developed by Recipient without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Recipient’s improper action or inaction; or (iv) is approved for release in writing by Discloser. Recipient is on notice that the Confidential Information may include Discloser’s valuable trade secrets.
	2. Nondisclosure*.* Recipient shall not use Confidential Information for any purpose other than to facilitate the transactions contemplated by this Agreement (the “Purpose”). Recipient: (a) shall not disclose Confidential Information to any employee or contractor of Recipient unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Recipient with terms no less restrictive than those of this Article 8; and (b) shall not disclose Confidential Information to any other third party without Discloser’s prior written consent. Without limiting the generality of the foregoing, Recipient shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Recipient shall promptly notify Discloser of any misuse or misappropriation of Confidential Information that comes to Recipient’s attention. Notwithstanding the foregoing, Recipient may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Recipient shall give Discloser prompt notice of any such legal or governmental demand and reasonably cooperate with Discloser in any effort to seek a protective order or otherwise to contest such required disclosure, at Discloser’s expense.
	3. Injunction. The parties agree that: (a) no adequate remedy exists at law if Recipient breaches this Article 8; (b) it it would be difficult to determine the damages resulting from such breach, and such breach would cause irreparable harm to Discloser; and (c) a grant of injunctive relieve provides the best remedy for any such breach. Each party waives any opposition to such injunctive relief, as well as any demand that the injured party prove actual damage or post a bond or other security. (This Section 8.3 does not limit either party’s rights to injunctive relief from breaches not listed.)
	4. Termination & Return. With respect to each item of Confidential Information, the obligations of Section 8.2 above (*Nondisclosure*) will terminate \_\_\_\_\_\_\_\_\_\_\_ after the date of disclosure; provided that such obligations related to Confidential Information constituting Discloser’s trade secrets shall continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, Recipient shall return all copies of Confidential Information to Discloser or certify, in writing, the destruction thereof.
	5. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Discloser will retain all right, title, and interest in and to all Confidential Information.
	6. Exception & Immunity. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), Recipient is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:
		1. *IMMUNITY*. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
		2. *USE OF TRADE SECRET INFORMATION IN ANTI-RETALIATION LAWSUIT*. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.
9. **LICENSED SOFTWARE AUDIT.** During the Term of this Agreement and at any time during the \_\_\_\_\_\_\_\_\_ thereafter, Provider may audit Distributor’s use and distribution of the Value-Added Product and Licensed Software, on \_\_\_ days’ advance written notice. Distributor shall cooperate with the audit, including by providing access to any books, computers, records, or other information that relate or may relate to use of the Value-Added Product and/or Licensed Software. Such audit shall not unreasonably interfere with Customer’s business activities. If Provider discovers unauthorized or undisclosed use, reproduction, distribution, or other exploitation of Licensed Software or Value-Added Product, in excess of \_\_\_% of the copies or royalties that would have applied to authorized exploitation, Distributor shall reimburse Provider for the reasonable cost of the audit, or of the next audit in case of discovery without an audit, in addition to such other rights and remedies as Provider may have. Provider may not conduct an audit more than once per \_\_\_\_\_\_\_\_.
10. **REPRESENTATIONS & WARRANTIES.**
	1. From Provider.
		1. *Re Function*. Provider represents and warrants that, during the \_\_\_\_\_\_\_\_\_ period following delivery, the Licensed Software will perform materially as described in its Specifications. In the event of breach of the warranty in the preceding sentence, Provider shall: (i) repair the Licensed Software in question; (ii) replace the Licensed Software in question with software of substantially similar functionality; or (iii) if such attempts do not succeed after \_\_\_ days, refund all amounts paid by Distributor for such Licensed Software. Provider’s obligations set forth in this Subsection 10.1(a) include, without limitation, repair or refund of Licensed Software provided to End-Customers. The preceding sentence, in conjunction with Distributor’s right to terminate this Agreement for breach where applicable, states Distributor’s sole remedy and Provider’s entire liability for breach of the warranty in this Subsection 10.1(a).
		2. *Re IP*. Provider represents and warrants that it is the owner of the Licensed System and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the intellectual property rights to the Licensed System set forth in this Agreement, without the further consent of any third party. Provider’s representations and warranties in the preceding sentence do not apply to the extent that the infringement arises out of any of the conditions listed in Subsections 11.1(a) through 11.1(e) below. In the event the of breach of the warranty in this Subsection 10.1(b), Provider shall, at its own expense, (i) secure for Distributor the right to continue exercising its rights granted in Article 2 above (*License & Delivery*) or (ii) replace or modify the Licensed Software to make it noninfringing, provided such modification or replacement does not materially degrade any functionality set forth in the Specifications; provided if neither of the foregoing is practical, Provider may (iii) terminate any or all licenses granted in this Agreement. In conjunction with Section 11.1 below (*From Provider*), the preceding sentence states Provider’s sole obligation and liability, and Distributor’s sole remedy, for potential or actual intellectual property infringement by the Software.
		3. *Re Copyleft Licensed Software*. Provider represents and warrants that the Licensed Software does not include software subject to any legal requirement that would restrict Distributor’s right to distribute or provide remote access to the Value-Added Product, or any modification thereof: (i) for a fee, (ii) with or without source code or source code rights, or (iii) with such restrictions as Distributor sees fit to place on Sub-Distributors’ or End-Customers’ modification or distribution rights.
	2. From Both Parties. Each party represents and warrants that it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.
	3. Warranty Disclaimers. Except for the express warranties in Sections 10.1 and 10.2 above, PROVIDER MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY REGARDING THE LICENSED SOFTWARE’S INTEGRATION OR OPERATION WITH THE VALUE-ADDED PRODUCT. Provider does not warrant that the Licensed Software will perform without error or that it will run without immaterial interruption. Provider provides no warranty regarding, and will have no responsibility for, any claim arising out of: (a) a modification of the Licensed Software made by anyone other than Provider, including without limitation any modification performed to create the Value-Added Product, unless Provider approves such modification in writing; or (b) use of the Licensed Software in combination with any operating system not authorized in the Specifications or Documentation or with hardware or software specifically forbidden by the Specifications or Documentation.
	4. Warranties & Sub-Distributors, End-Customers. Provider has no responsibility or liability to Sub-Distributors, to End-Customers, or to other third parties receiving Licensed Software access from or through Distributor, and Distributor shall make no representation or warranty on Provider’s behalf.
11. **INDEMNIFICATION.**
	1. From Provider. Provider shall defend and indemnify Distributor and Distributor’s Associates (as defined below in Subsection 11.3(a)) against any “Indemnified Claim,” meaning any third party claim, suit, or proceeding arising out of, related to, or alleging direct infringement of any patent, copyright, trade secret, or other intellectual property right by the Licensed Software. However, Indemnified Claims do not include, and Provider’s obligations set forth in this Section 11.1 do not apply to, any claim, suit, or proceeding arising out of: (a) Distributor’s breach of this Agreement; (b) revisions to the Licensed Software made without Provider’s written consent; (c) Distributor’s failure to incorporate Upgrades that would have avoided the alleged infringement, provided Provider offered such Upgrades without charges not otherwise required pursuant to this Agreement; (d) Provider’s modification of Licensed Software in compliance with specifications provided by Distributor; or (e) use of the Licensed Software in combination with hardware or software not provided by Provider. In case of an Indemnified Claim, Provider may exercise any of the remedies in Subsections 10.1(b)(i) through 10.1(b)(iii) above, including without limitation its right therein to terminate licenses.
	2. From Distributor. Distributor shall defend and indemnify Provider and Provider’s Associates (as defined below in Subsection 11.3(a)) against any “Indemnified Claim,” meaning any third party claim, suit, or proceeding: (a) by any Sub-Distributor or End-Customer, as well as any such entity’s employee, contractor, or other end user; (b) related to the Value-Added Product; or (c) arising out of, related to, or alleging any of the actions listed in Subsections 11.1(a) through 11.1(e) above. Notwithstanding the foregoing, no such claim, suit, or proceeding shall be considered an Indemnified Claim pursuant to this Section 11.2 to the extent that it arises out of, relates to, or alleges: (i) intellectual property infringement by the Licensed Software; or (ii) an injury caused by the Licensed Software’s failure to conform to its Documentation or Specifications. For the avoidance of doubt, Indemnified Claims do not include claims related to injuries to the extent caused by the Licensed Software’s failure to perform as represented by Distributor or a Sub-Distributor but not by the Documentation or Specifications.
	3. Litigation & Additional Terms.
		1. *Associates*. As used in this Article 11, a party’s “Associates” are its officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns. Distributor’s “Associates” also include Sub-Distributors and End-Customers, provided each such Sub-Distributor or End-Customer was rightfully licensed pursuant to this Agreement.
		2. *Indemnity Obligations*. The obligations of the indemnifying party (“Indemnitor”) pursuant to Section 11.1 or 11.2 above include, without limitation: (i) settlement at Indemnitor’s expense and payment of judgments finally awarded by a court of competent jurisdiction, as well as payment of court costs and other reasonable expenses; and (ii) reimbursement of reasonable attorneys’ fees incurred by the other party to this Agreement (“Indemnified Party”) before Indemnitor’s assumption of the defense (but not attorneys’ fees incurred thereafter).
		3. *Litigation and Additional Procedures*. Indemnified Party shall provide prompt notice of any Indemnified Claim and reasonably cooperate with Indemnitor’s defense. Indemnitor will control the defense of any Indemnified Claim, including appeals, negotiations, and any settlement or compromise thereof; provided: (i) if Indemnitor fails to assume the defense on time to avoid prejudicing the defense, Indemnified Party may defend the Indemnified Claim, without loss of rights pursuant to this Article 11 until Indemnitor assumes the defense; and (ii) Indemnified Party will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it or an Indemnified Associate admit wrongdoing or liability or subjects either of them to any ongoing affirmative obligation. Indemnitor’s obligations in Section 11.1 or 11.2 above will be excused if either of the following materially prejudices the defense: (A) Indemnified Party’s failure to provide prompt notice of the Indemnified Claim; or (B) Indemnified Party’s or an Indemnified Associate’s failure reasonably to cooperate in the defense.
12. **LIMITATION OF LIABILITY.**
	1. Dollar Cap. NEITHER PARTY’S CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED $\_\_\_\_\_\_.
	2. Exclusion of Consequential Damages. Except with respect to breaches of Section 8 (*Confidential Information*), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS OR LOST BUSINESS OR FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.
	3. Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS ARTICLE 12 APPLY: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF THE PARTY TO BE CHARGED IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF THE OTHER PARTY’S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Article 11, the parties’ liability will be limited to the maximum extent permissible. For the avoidance of doubt, each party’s liability limits and other rights set forth in this Article 11 apply likewise to its affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.
	4. Exceptions to Limitation of Liability. Sections 12.1 (*Dollar Cap*) and 12.2 (*Exclusion of Consequential Damages*) above do not apply to: (a) infringement of intellectual property; (b) breach of Section 8.2 above (*Nondisclosure*); (c) obligations and liabilities pursuant to Article 11 above (*Indemnification*); or (d) claims for attorneys’ fees and other litigation costs recoverable by the prevailing party in any action.
13. **Term & Termination.**
	1. Term. This Agreement will remain in effect for \_\_\_\_\_ from the Effective Date (the “Term”). Thereafter, the Term will renew for successive \_\_\_\_\_ periods, unless either party refuses such renewal by written notice 30 or more days before the end of the current Term
	2. *Termination for Cause*. Either party may terminate this Agreement for the other’s material breach by written notice specifying in detail the nature of the breach, effective in 30 days unless the other party first cures such breach, or effective immediately if the breach is not subject to cure.
	3. Effects of Termination. Upon termination of this Agreement, Distributor shall: (a) cease all distribution use of the Value-Added Product; and (b) cease all use and reproduction of the Licensed Software except as necessary to provide support to End-Customers. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Distributor to pay royalties incurred before termination; (b) any obligation of Distributor to pay royalties on Value-Added Products distributed before termination; (b) Articles and Sections 2.2 (*Restrictions on Licensed Software Rights*) 7 (*IP & Feedback*), 8 (*Confidential Information*), 9 (*Licensed Software Audit*), 10.2 (*Warranty Disclaimers*), 11 (*Indemnification*), and 12 (*Limitation of Liability*); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose. For the avoidance of doubt, termination of this Agreement will require prompt termination of SDLA’s but not of EULA’s (both as defined in Section 2.3 above).
14. **MISCELLANEOUS.**
	1. Independent Contractors. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other’s behalf.
	2. Notices. Notices pursuant to this Agreement shall be sent to the addresses below, or to such others as either party may provide in writing. Such notices will be deemed received at such addresses upon the earlier of (a) actual receipt or (b) delivery in person, by fax with written confirmation of receipt, or by certified mail return receipt requested. For Provider: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. For Distributor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. In addition, Customer is on notice and agrees that: (a) for claims of copyright infringement, the complaining party may contact \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; and (b) Provider will terminate the accounts of subscribers who are repeat copyright infringers.
	3. Force Majeure. No delay, failure, or default, other than a failure to pay royalties when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party’s reasonable control.
	4. Assignment & Successors. Distributor may not assign this Agreement or any of its rights or obligations hereunder without Provider’s express written consent. Except to the extent forbidden in this Section 14.4, this Agreement will be binding upon and inure to the benefit of the parties’ respective successors and assigns.
	5. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
	6. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
	7. Government Restricted Rights. The Licensed Software and Documentation are commercial items, as that term is defined in 48 CFR 2.101, consisting of commercial computer software and commercial computer software documentation, as those terms are used in 48 CFR 12.212. If the Licensed Software or Documentation is acquired by or on behalf of the U.S. government or by a U.S. government contractor (including without limitation prime contractors and subcontractors at any tier), then in accordance with 48 CFR 227.7202-4 (for Department of Defense licenses only) and 48 CFR 12.212 (for licenses with all federal government agencies), the government’s rights to the Licensed Software and Documentation are limited to the commercial rights specifically granted in this Agreement, as restricted by this Agreement. The rights limited by the preceding sentence include, without limitation, any rights to reproduce, modify, perform, display, disclose, release, or otherwise use the Software or Documentation. This Section 14.8 does not grant Customer any rights not specifically set forth in this Agreement.
	8. Bankruptcy Rights. The rights and licenses granted to Distributor in Sections 2.1 (*License*) and 2.4 (*Documentation*) above (collectively, the “License Provisions”) are licenses to “intellectual property” rights, as defined in Section 365(n) of the United States Bankruptcy Code (11 U.S.C. Sections 101, *et seq.*). If Provider is subject to any proceeding under the United States Bankruptcy Code, and Provider as debtor in possession or its trustee in bankruptcy rejects this Agreement, Distributor may, pursuant to 11 U.S.C. Section 365(n)(1) and (2), retain any and all rights granted to it under the License Provisions to the maximum extent permitted by law. This Section 14.8 will not be construed to limit or restrict any right or remedy not set forth in this Section 14.8, including without limitation the right to retain any license or authority this Agreement grants pursuant to any provision other than the License Provisions.
	9. Choice of Law & Jurisdiction: This Agreement will be governed solely by the internal laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_, including without limitation applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties’ rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of \_\_\_\_\_\_\_\_\_\_ [city or county], \_\_\_\_\_\_\_\_\_ [state]. This Section 14.9 governs all claims arising out of or related to this Agreement, including without limitation tort claims.
	10. Conflicts. In the event of any conflict between *Attachment A* or *Attachment B* and this main body of this Agreement, this main body will govern.
	11. Construction. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.
	12. Technology Export. Distributor shall not: (a) permit any third party to access or use the Licensed Software in violation of any U.S. law or regulation; or (b) export the Licensed Software or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Distributor shall not permit any third party to access or use the Licensed Software in, or export it to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria).
	13. Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.
	14. Execution in Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.
	15. Amendment. This Agreement may not be amended except through a written agreement by authorized representatives of each party.

IN WITNESS THEREOF, the parties have executed this Agreement as of the Effective Date.

|  |  |
| --- | --- |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_DISTRIBUTOR** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_PROVIDER** |
|  |  |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (signature) | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (signature) |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (print) | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (print) |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**ATTACHMENT A
Provider Trademarks**

I. Trademarks: [list Provider’s licensed trademarks]

II. Quality Standards: [list quality requirements for Value-Added Requirements]

III. Trademark Usage Policy: [list Provider’s requirements for publication and other use of trademarks]

**ATTACHMENT B
Licensed Software Support**

[insert Provider support obligations]