

## END USER LICENSE AGREEMENT FOR SDM SOFTWARE PRODUCTS

**IMPORTANT - READ CAREFULLY:** This End User License Agreement (this “Agreement”) is a legal agreement between you (an individual; a single entity; the corporation, company, association, organization, etc. that purchased the Software Product (as defined below); and/or the corporation, company, association, organization, etc. on whose computers the Software Product is used) (in each case, “User”) and SDM Software, Inc. (“SDM Software”) for the Software Product and Documentation (as defined below). By installing, copying, or otherwise using the Software Product and Documentation, User expressly acknowledges and agrees to be bound by the terms of this Agreement. ALL TERMS OF ANY PURCHASE ORDER OR OTHER ORDERING DOCUMENT SUBMITTED BY USER SHALL BE SUPERSEDED BY THIS AGREEMENT. ALL TERMS OF ALL FORMER AGREEMENTS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED AND IN WHATEVER FORM, ARE HEREBY EXPRESSLY WAIVED BY USER; PROVIDED, HOWEVER, ANY SPECIFIC PAYMENT OBLIGATIONS OF USER IN ANY FORMER OR CONTEMPORANEOUS AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

### 1. DELIVERY & INSTALLATION; MAINTENANCE AND SUPPORT SERVICES

1.1 Delivery of Software Product. SDM Software shall deliver or otherwise make available to User one copy of any software product (the “**Software Product**”) purchased by User from SDM Software and/or its authorized reseller or distributor (a “**Reseller**”), in object code form, together with (a) any associated registration key set(s) (a “**Key Set**”), and (b) copies of the standard media, printed materials, and online or electronic documentation generally made available by SDM Software to end users of the applicable Software Product (the “**Documentation**”). The Software Product is deemed accepted by User upon delivery.

1.2 Installation; Other Professional Services. User shall be solely responsible for installing the Software Product and acknowledges and agrees that it shall bear all costs and expenses related thereto. User shall provide and maintain, at its cost and expense, and shall be solely responsible for all equipment, software, and connectivity necessary to permit the installation and operation of the Software Product. In the event that User wishes to receive installation and/or other professional services from SDM Software in connection with the Software Product (collectively, the “**Professional Services**”), User may request to purchase from SDM Software such Professional Services under a separate professional services agreement.

1.3 Maintenance and Support Services. SDM Software will provide maintenance and support services to User pursuant to SDM Software’s support policy and subject to the terms and conditions set forth in Exhibit A attached hereto (the “**Maintenance and Support Services**”).

### 2. LIMITED RIGHT TO INSTALL AND USE THE SOFTWARE PRODUCT; RESTRICTIONS; SUBSCRIBER’S OBLIGATIONS

#### 2.1 Definition of Licensed Objects.

(a) “**Group Policy Objects**” or “**GPOs**” are configuration objects within a Microsoft® Active Directory environment, or as a local GPO on Windows® computers. Each GPO in Active Directory or on a Windows computer is considered one (1) GPO for the purposes of licensing. Licensing based on GPOs

requires a count of all GPOs, either within all of User’s Active Directory domains or on Windows computers in User’s network, being managed by the Software Product. “Managed” in this context refers to GPOs that will be reported by, modified, or otherwise accessed by the Software Product.

(b) “**Active Directory Computers**” are computer objects either within a Microsoft Active Directory that are active (i.e. not disabled) across all domains and forests within your environment or standalone computers that are not part of an Active Directory environment, that will be managed by the Software Product.

#### 2.2 Right to Install and Use Software Product.

(a) Perpetual License Model. For Users purchasing a perpetual license to Software Product, subject to User’s compliance with the terms and conditions of this Agreement, including but not limited to the payment in full of all associated fees and expenses when such fees and expenses are due, SDM Software grants to User a perpetual, non-exclusive, royalty-free, non-transferable, world-wide license to (i) install and use the Software Product, in object code format, for User’s internal business purposes, and (ii) use the Documentation to support such authorized use of the Software Product, all in accordance with the specific license terms and conditions set forth herein, such as, but not limited to usage and volume limitations (e.g., number of Active Directory Computers and/or GPOs).

(b) Term License Model. For Users purchasing a term license to Software Product, subject to User’s compliance with the terms and conditions of this Agreement, including but not limited to the payment in full of all associated fees and expenses when such fees and expenses are due, SDM Software grants to User a time-limited (as described in more detail in Section 2.3), non-exclusive, royalty-free, non-transferable, world-wide license to (i) install and use the Software Product, in object code format, for User’s internal business purposes, and (ii) use the Documentation to support such authorized use of the Software Product, all in accordance with the specific license terms and conditions set forth herein, such as, but not limited to

usage and volume limitations (e.g., number of Active Directory Computers and/or GPOs).

2.3 Time Limitations. If applicable for term license subscriptions, SDM Software and/or its Reseller may provide User with a time-limited Key Set for use with the Software Product. User may only use the Software Product until the date identified in the Key Set supplied to User by SDM Software and/or its Reseller at the time of purchase. If a date limitation is applicable, attempting to circumvent a date limitation in order to use a Software Product after the applicable expiration date is a violation of this Agreement. SDM Software may provide an updated Key Set to access a Software Product if a User renews a time-limited subscription for the Software Product.

2.4 Limited Rights; Ownership. The Software Product is licensed, not sold. No other rights to the Software Product are granted herein to User other than as expressly set forth above. SDM Software does not and shall not be deemed to have sold or transferred title in the Software Product to User. SDM Software retains all right, title and interest in and to the Software Product (including any Updates and New Modules, each as defined in Exhibit A), enhancements, upgrades, bug fixes and/or other error corrections) and Documentation. User shall not take any action to jeopardize, limit or interfere with SDM Software's ownership of and rights with respect to the Software Product. All materials and intellectual property created or generated by SDM Software in connection with the performance of Maintenance and Support Services and any other services hereunder shall be the sole and exclusive property of SDM Software. Without limiting any prohibition provided herein, User hereby assigns to SDM Software all right, title, and interest in and to any and all derivative works of the Software Product, Documentation and materials created or generated by SDM in connection with the performance of Maintenance and Support Services or any other services hereunder.

2.5 Restrictions. User will not, directly or indirectly (a) modify, translate or create derivative works based on the Software Product or Documentation, or copy, rent, lease, sublicense, lend, time share, distribute, pledge, assign, resell, or otherwise transfer or encumber rights to the Software Product or Documentation, (b) use or access the Software Product to build or support and/or assist a third party in building or supporting, products or services competitive to SDM Software or to create similar products, (c) unless otherwise agreed in writing by SDM Software, operate a service bureau for, provide any data, analysis or reports computed or generated by the Software Product to, or provide consulting or professional services based on the results, data or output of the Software Product to, any third party, (d) remove any proprietary notices or labels from the Software Product or Documentation, (e) use the Software Product or Documentation for any fraudulent undertaking or in any manner that could damage, disable, overburden, impair or otherwise interfere with SDM Software's provision of the Software Product, (f) attempt or knowingly permit or encourage others to attempt to reverse engineer, decompile, disassemble, or otherwise reduce to human-perceivable form the Software Product's source code, or any

part thereof (or the underlying ideas, algorithms, structure or organization), (g) violate or breach any operating procedures, Key Set parameters, requirements or guidelines regarding User's use of the Software Product or Documentation that are provided or made available to User, or (i) perform load testing or otherwise interfere with or disrupt the integrity or performance of the Software Product or the data contained therein. User shall not use the Software Product or Documentation, in whole or in part, for any purpose or in any manner other than as expressly provided for in this Agreement. In the event of a breach of the above restrictions, User's rights to use the Software Product and Documentation granted herein shall be deemed to be immediately and automatically revoked by SDM Software.

2.6 Additional User Obligations; Acknowledgments. Users shall use commercially reasonable efforts to inform all of its end users (if any) of the Software Product of the terms and conditions of this Agreement. User shall comply with all applicable federal, state, local and foreign laws, rules, and regulations in using the Software Product and Documentation, including, without limitation all applicable export compliance laws and regulations (collectively, "**Applicable Law**"), and User's use of the Software Product and Documentation will be in compliance with this Agreement and Applicable Law. User shall safeguard the Software Product and Documentation (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access. User shall not take any action to jeopardize, limit, or interfere with SDM Software's ownership of and rights with respect to the Software Product or Documentation. User acknowledges and agrees that the Software Product (a) has been reviewed and tested by User and that the Software Product meets User's business and operational needs, (b) is not a records repository, and as such, shall not use the Software Product for historical record retention purpose, and (c) may utilize third party software, tools, and utilities, use of which may be subject to additional license terms, conditions, and restrictions imposed by such vendors. User's use of the Software Product is expressly subject to User's agreement to be bound by and comply with such terms. User is responsible for ensuring that User is in possession of all necessary licenses for any third party products required for User to use the Software Product.

2.7 Version Limitation. The Software Product is identified by a version number (such as version "1.0"). This Agreement permits User to use preceding versions provided that such use is in accordance with the previous version's applicable Agreement. Notwithstanding anything to the contrary in any subsequent version license, newer versions of the Software Product shall be governed by this Agreement unless new terms and conditions are provided to User by SDM Software as applicable to any newer versions.

### 3. OWNERSHIP

3.1 SDM Property. User acknowledge that SDM Software and its licensors retain all right, title, and interest (including, without limitation, all intellectual property rights) in and to the Software Product and Documentation,

including any software, documentation, training materials and hardware used by SDM Software and its service providers to provide the Software Product, and any Updates, New Modules, enhancements, upgrades, bug fixes and/or other error corrections or other changes of any of the foregoing. User acknowledges and agrees that SDM Software shall retain all right, title, and interest in the performance data SDM Software may collect from your use of the Software Product for our use in the optimization of the Software Product and other SDM Software service offerings. Performance data does not include any User Confidential Information. In addition, SDM Software shall be entitled to use any feedback or suggestion it receives from User regarding the Software Product for the purpose of optimizing, improving, enhancing, or creating derivative products and shall have no obligation to compensate or identify a User as the source of such feedback or suggestion, provided that User intellectual property and proprietary rights are not violated.

3.2 Intellectual Property Rights. The Software Product is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. You agree that SDM Software owns all right, title and interest, including but not limited to copyright, patent, trademark, trade secret and all other intellectual property rights, in and to the Software Product and Documentation, and any Updates, New Modules, enhancements, upgrades, bug fixes and/or other error corrections or other changes of any of the foregoing.

#### 4. FEES; PAYMENT; TAXES

4.1 Fees. Fees for the Software Product and the Maintenance and Support Services (the “Fees”) shall be paid by User to SDM Software in accordance with SDM Software’s applicable payment terms, or to a Reseller (if applicable). User shall pay for all reasonable costs and expenses (including reasonable travel and out-of-pocket expenses) incurred by SDM Software related to its performance of services hereunder. All amounts are due within thirty (30) days after invoice date. Any amounts due hereunder are exclusive of, and User shall be responsible for, all sales taxes, value added taxes, duties, use taxes, withholdings and other governmental assessments, excluding taxes based on the net income of SDM Software, unless User provides to SDM Software a valid tax-exempt certificate. All Fees and charges are stated in US dollars. All Fees payable under this Agreement are fully earned, non-cancelable and the sums paid are non-refundable.

4.2 Late Payments. Failure to pay any amount in accordance with this Agreement, on the due date, for a period exceeding thirty (30) days, will be subject to a late charge of 1.5% per month (18% per year), or the maximum lawful rate, whichever is less, compounded monthly, until paid in full. User agrees to pay all costs, including reasonable attorney’s fees, incurred by SDM Software in collecting overdue amounts.

#### 5. TERMINATION; EFFECT OF TERMINATION

5.1 Termination. Either party may terminate this Agreement at any time by giving written notice to the other party if the other party is in breach or default of any material provision of this Agreement (including, but not limited to Section 2 above, Section 3 above or Section 9 below), and the breaching party fails to cure the breach or default within thirty (30) days after being given written notice specifying details of the breach or default and requiring the same to be remedied.

5.2 Automatic Termination. This Agreement shall automatically terminate upon the occurrence of an Event of Insolvency with respect to User. An “Event of Insolvency” with respect to User shall be deemed to have occurred, if User: (a) voluntarily files a petition for bankruptcy, reorganization or an arrangement with creditors, (b) makes a general assignment for the benefit of creditors, (c) is adjudged bankrupt, (d) is generally unable or is unwilling to pay its debts as they become due, (e) has a trustee, receiver or other custodian appointed on its behalf, or (f) is the subject of any other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding be commenced against it, which case or proceeding is not dismissed within sixty (60) days of filing. User agrees that it shall give SDM Software prompt written notice upon becoming aware of the occurrence of any of the events described above constituting, or which could reasonably be expected to constitute, an Event of Insolvency.

5.3 Consequences of Termination. Upon termination of this Agreement for whatever cause, this Agreement and the limited rights granted in Section 2 above shall be deemed terminated with immediate effect, and User will (i) cease all use of the Software Product, (ii) return or destroy (at SDM Software’s election) the Software Product and all copies thereof, as well as any and all Documentation and Confidential Information and any part thereof within its possession, and (iii) certify in writing to SDM Software that all copies and partial copies of the Software Product and Confidential Information and Documentation have been either returned to SDM Software or otherwise erased or destroyed and deleted from any computer libraries or storage devices and are no longer in use by User, in any case as directed by SDM Software. Without derogating from any of the foregoing, upon the termination of this Agreement all outstanding payments accrued prior to the date of termination shall accelerate and be deemed immediately due to SDM Software from User. Upon any such termination, all sections of this Agreement which by their nature should survive termination will survive.

#### 6. SDM SOFTWARE LIMITED WARRANTIES; DISCLAIMER OF WARRANTIES

6.1 Limited Warranty of Performance. SDM Software warrants that for so long as User pays all fees and charges hereunder, (i) the Software Product, in the form delivered to User by SDM Software, and when properly used for the

purpose and in the manner specifically authorized by this Agreement, will perform materially in accordance with the Documentation for a period of ninety (90) days from the date of receipt. The warranty in this Section 6.1 shall not apply to the Software Product to the extent that the Software Product has been modified by any party other than SDM Software or if the failure of the Software Product to meet the warranty can be attributable to hardware, networks, third party software, or any other causes that are not the responsibility of SDM Software. To the extent allowed by applicable law, implied warranties on the SDM Product, if any, are limited to ninety (90) days. Some states/jurisdictions do not allow limitations on duration of an implied warranty, in which case the above limitation may not apply to Users. **Outside the United States, neither these remedies nor any Maintenance and Support Services offered by SDM Software are available without proof of purchase from an authorized source.**

6.2 Exclusive Remedy. SDM Software's sole obligation and User's sole remedy for breaches of the warranty in Section 6.1 is for SDM Software, at its option, to use commercially reasonable efforts to perform error correction and bug fixes to address the failure of the Software Product to operate materially in accordance with the Documentation or to replace any component or media that causes SDM Software to be in breach of this warranty. Any replacement Software Product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. THE FOREGOING REMEDY IS EXCLUSIVE, IS SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 7, AND SHALL BE YOUR SOLE REMEDY WITH RESPECT TO ANY CLAIM OF BREACH OF WARRANTY ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER BASED IN CONTRACT, BREACH OF WARRANTY OR TORT.

6.3 Third Party Products. Notwithstanding anything to the contrary, the warranties stated in this Agreement shall not apply to third party products, including any equipment, hardware and/or software necessary to operate the Software Product.

6.4 DISCLAIMER. EXCEPT FOR THE WARRANTIES SPECIFICALLY STATED IN THIS SECTION 6, SDM SOFTWARE HEREBY EXPRESSLY EXCLUDES AND DISCLAIMS ALL WARRANTIES OF ANY KIND WHATSOEVER RELATING TO THE SOFTWARE PRODUCT AND THE MAINTENANCE AND SUPPORT SERVICES. FURTHER, SDM SOFTWARE DOES NOT WARRANT THAT THE SOFTWARE PRODUCT WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE PRODUCT WILL BE UNINTERRUPTED OR ERROR OR BUG FREE. THE WARRANTIES STATED IN THIS SECTION 6 ARE SDM SOFTWARE'S SOLE AND EXCLUSIVE WARRANTIES PERTAINING TO THE SOFTWARE PRODUCT, AND SDM SOFTWARE HEREBY DISCLAIMS ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON-

INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6.5 User Warranties. User represents, warrants and covenants to SDM Software that on a continuing basis during the Term: (a) it has the corporate power and authority to enter into, and perform its obligations under, the Agreement, and (b) it will not make any unauthorized representation or warranty, whether written or oral, to any third party relating to the Software Product.

## 7. LIMITATION OF LIABILITY

7.1 EXCLUSION OF CONSEQUENTIAL DAMAGES. NEITHER PARTY (INCLUDING SDM SOFTWARE'S THIRD PARTY VENDORS AND LICENSORS WHICH ARE NOT CONTRACTED DIRECTLY WITH USER) SHALL BE LIABLE (WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) TO THE OTHER PARTY, FOR ANY LOSS OR DAMAGE DERIVED FROM INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOSS OR DAMAGE TO BUSINESS EARNINGS, LOST PROFITS OR GOODWILL AND LOST OR DAMAGED DATA OR DOCUMENTATION, SUFFERED BY ANY PERSON, ARISING FROM AND/OR RELATED WITH AND/OR CONNECTED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, MAINTENANCE AND SUPPORT SERVICES, CUSTOMIZATION, DELIVERY, INSTALLATION, USE OR PERFORMANCE OF THE SDM PRODUCT, OR ANY PART THEREOF), EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 LIMITATION OF LIABILITY. SDM SOFTWARE'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS UNDER THE AGREEMENT SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID OR PAYABLE BY USER FOR THE SOFTWARE PRODUCT FOR THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO LIABILITY. NO CLAIM MAY BE ASSERTED BY USER AGAINST SDM SOFTWARE MORE THAN TWELVE (12) MONTHS AFTER THE DATE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM.

7.3 The allocation of liability set forth in this Agreement fairly reflects the economic circumstances and risks that the parties are willing to undertake in view of the amounts paid or payable for the rights to install and use the Software Product specified herein.

## 8. INDEMNIFICATION

8.1 By SDM Software. SDM Software will defend the User and any employees, officers and directors from and against any and all third party claims brought against User alleging that the Software Product, when used in accordance with this Agreement and the applicable Documentation,

infringes a United States patent, trademark or copyright and will pay resulting damages and reasonable costs and attorney fees finally awarded under such claims or agreed upon in settlement of such claims, provided that User notifies SDM Software promptly (but in any event within thirty (30) days of becoming aware) in writing of the claims and User provides SDM Software with all necessary assistance, information and authority to perform the above (at SDM Software's expense). SDM Software shall have sole control of the defense with respect to any such claim (including settlement of such claim); provided, however, that User shall have the option, at its sole discretion and sole expense, to participate in the defense of any such claim using attorneys selected by it. If any portion of the Software Product in the opinion of SDM Software, is likely to or does become the subject of a claim of infringement, SDM Software shall have the right at its sole option and expense to (a) modify the Software Product to be non-infringing, (b) obtain for User a license to continue using the Software Product at no additional charge to User, or (c) if neither (a) nor (b) are reasonably practicable, terminate the Agreement and refund to User the pro rata portion of the Fees paid to SDM Software for such portion of the Software Product thereof that can no longer be utilized due to such infringement. SDM Software shall have no obligation to indemnify User hereunder with respect to any claim based upon (i) any component provided by User or any third party, (ii) any modification of the Software Product by a party other than SDM Software, unless such modification was at the written direction of SDM Software, (iii) the combination, operation or use of the Software Product with a software program(s) or data not part of the Software Product if the claim would have been avoided had such combination, operation or use not occurred, or (iv) the use of other than the latest release of the Software Product, if such claim could have been avoided by use of the latest release. User agrees that the remedies set forth in this Section 8.1 provide User's sole and exclusive remedies and SDM Software's sole obligations in the event of claims of intellectual property infringement by third parties regarding the Software Product.

8.2 By User. User will indemnify, hold harmless and defend SDM Software and its employees, officers and directors from and against any and all third party proceedings, claims, losses, damages, demands, liabilities and expenses, including all reasonable legal and accounting fees and expenses and all reasonable collection costs, incurred by SDM Software or its Representatives to the extent resulting from or arising out of (a) User's use of the Software Product or Documentation, (b) any noncompliance with any Applicable Laws by User, (c) use of data provided by User as contemplated hereunder, or (d) User's breach or nonperformance of any provision of this Agreement, except to the extent directly caused from a breach by SDM Software of its obligation under this Agreement.

## 9. CONFIDENTIAL INFORMATION

9.1 Each party (the "**Receiving Party**") understands that the other party (the "**Disclosing Party**") has disclosed or may disclose information relating to the Disclosing Party's business, including but not limited to non-public

information, know-how and trade secrets in any form that are designated as "confidential," or a reasonable person knows or reasonably should understand to be confidential (hereinafter referred to as "**Confidential Information**") of the Disclosing Party). The Software Product (including any Updates, New Modules, enhancements, upgrades, bug fixes and/or other error corrections or other changes of any of the foregoing) and the Documentation constitute Confidential Information of SDM Software. The Receiving Party agrees: (a) to take reasonable precautions to protect such Confidential Information which are at least as protective as those steps the Receiving Party takes to protect its own Confidential Information and no less than a reasonable standard of care, (b) not to use or divulge to any third person any such Confidential Information, in each case except as expressly permitted under this Agreement, and (iii) only use the Disclosing Party's Confidential Information for the purpose of the business relationship between the parties. The Receiving Party agrees to notify the Disclosing Party promptly upon discovery of any unauthorized use or disclosure of Confidential Information of the Disclosing Party.

9.2 The Receiving Party shall not disclose or otherwise make available such Confidential Information to any third party without the prior written consent of the Disclosing Party; provided, however, that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its employees, contractors, consultants, legal and business advisors (collectively, "**Representatives**") who need to know such Confidential Information in connection with the performance of this Agreement and who have been informed of the confidentiality obligations hereunder and have agreed to maintain the confidentiality of such Confidential Information under terms no less restrictive than those set forth herein. The Disclosing Party shall remain responsible for the acts or omissions of its Representatives' use of the Confidential Information. SDM Software further agrees to use the User Confidential Information only as necessary for the purpose of performing the Agreement. User agrees to use the Confidential Information of SDM Software only as necessary for receipt and use of the Software Product hereunder.

9.3 Notwithstanding Section 9.1, the obligations set forth in this Section 9 (Confidential Information) herein shall not apply to Confidential Information which: (a) is or becomes a matter of public knowledge through no breach of this Agreement by the Receiving Party, (b) was lawfully in the Receiving Party's possession prior to disclosure by the Disclosing Party without an obligation of confidentiality to the Disclosing Party, (c) subsequent to disclosure, is lawfully obtained by the Receiving Party from a third party who is lawfully in possession of such Confidential Information without restriction, or (d) is independently developed by the Receiving Party without resort to the Confidential Information. In addition, nothing herein shall prevent the Receiving Party from disclosing any of the Disclosing Party's Confidential Information if, and to the extent, such disclosure was specifically approved by the Disclosing Party, in writing, prior to such disclosure by the Receiving

Party. Nothing herein shall prevent the Receiving Party from disclosing any of the Disclosing Party's Confidential Information as required by applicable law or judicial order, provided that the Receiving Party shall give the Disclosing Party prompt written notice of such required disclosure in order to afford the Disclosing Party an opportunity to seek a protective order or other legal remedy to prevent the disclosure, and shall reasonably cooperate with the Disclosing Party's efforts to secure such a protective order or other legal remedy to prevent the disclosure, at the Disclosing Party's cost and expense. Disclosure of any of the Disclosing Party's Confidential Information under the circumstances described in the foregoing sentence shall not be deemed to render such Confidential Information as non-confidential and the Receiving Party's obligations with respect to such Confidential Information shall not be changed or lessened by virtue of any such disclosure.

9.4 Upon request by the Disclosing Party, the Receiving Party agrees to return or destroy Confidential Information in its (or its affiliates' or representative's) possession. Each party acknowledges that money damages may not be sufficient compensation for a breach of this section. Each party agrees that the other may seek court orders to prevent Confidential Information from becoming public in breach of this section.

9.5 Each party acknowledges that the provisions contained in Sections 2, 3, and this Section 9 are reasonable and necessary to protect the legitimate interests of the other. Each party understands and agrees that the remedies at law for the violation of any of such covenants or provisions of this Agreement will be inadequate, that such violations will cause irreparable injury within a short period of time, and that the non-breaching party shall be entitled to preliminary injunctive relief and other injunctive relief against such violation without the necessity of proving actual damages. Such injunctive relief shall be in addition to, and in no way in limitation of, any and all other remedies that the non-breaching party shall have at law and in equity for the enforcement of those covenants and provisions.

## 10. NOTICES

SDM Software may give notice specific to User by e-mail to User's address on record in User's SDM Software account information or by written communication sent by first class mail or pre-paid post to User's address on record in User's SDM Software account information. If User has a dispute with SDM Software, wishes to provide a notice under this Agreement, or becomes subject to insolvency or other similar legal proceedings, User will promptly send written notice to SDM Software, Inc., 2100 4<sup>th</sup> Street, #132, San Rafael, California 94901.

## 11. FORCE MAJEURE

11.1 Except for payment obligations, neither party will be liable for delays in its performance hereunder due to causes beyond its reasonable control ("**Force Majeure Event**"), including but not limited to, acts of God, acts of

public enemy, acts of government or courts of law or equity, civil war, insurrection or riots, fires, floods, epidemics and pandemics, explosions, earthquakes or other casualties, strikes or other labor troubles, computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within the possession or reasonable control of the party affected by the Force Majeure Event, or network intrusions or denial of services attacks, always provided that the party so relieved of its obligations hereunder provides notice to the other party and takes all reasonable and necessary steps to resume performance of its obligations as soon as possible.

## 12. EXPORT RESTRICTIONS; GOVERNMENT USERS

12.1 Export Restrictions. User agrees to comply with all export and re-export restrictions and regulations of the Department of Commerce or other United States agency or authority ("**Export Control**"). Regardless of any disclosure made by User to SDM Software of an ultimate destination of the Software Product and, notwithstanding anything contained in this Agreement to the contrary, User will not (a) modify, export, or re-export, either directly or indirectly, any Software Product to any destination restricted or prohibited by Export Control, without first obtaining any and all necessary licenses from the government of the United States or any other country that imposes Export Control, (b) provide Software Product to any proscribed party on the United States Treasury Department's Office of Foreign Asset Control list of "specially designated nationals and blocked persons", the United States Commerce Department's "denied parties list", the United States Commerce Departments "BIS Entity List" or such other applicable lists, or (c) export or re-export any Software Product, directly or indirectly, for end uses prohibited by Export Control (including, but not limited to, nuclear, missile or chemical/biological weaponry end uses). SDM Software shall have the right to suspend performance of any of its obligations under this Agreement, or terminate this Agreement, in either case without any liability to User if User fails to comply with this Section 12 (Export Restrictions).

12.2 Government Users. The Software Product is a "commercial item", as that term is defined at 48 C.F.R. 2.101 (Oct. 1995, as amended), consisting of "commercial computer software" and "commercial computer software documentation", as such terms are used in 48 C.F.R. 12.212 (Sept. 1995, as amended). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995) (or an equivalent provision, e.g., in supplements of various U.S. government agencies, as applicable), all U.S. Government users acquire the Software Product with only those rights set forth herein. Manufacturer is SDM Software, Inc., 2100 4<sup>th</sup> Street, #132, San Rafael, California 94901.

### 13. MISCELLANEOUS PROVISIONS

13.1 SDM Software may, at its expense, conduct an audit no more often than once every calendar year, or when and if SDM Software has reason to believe that the terms of this Agreement have been or will be violated, during User's normal business hours, of User's use of the Software Product and Documentation, to verify compliance with this Agreement. User shall reimburse SDM Software for the cost of the audit in the case of non-compliance, and, failing a cure of such non-compliance within thirty (30) days, SDM Software may terminate this Agreement without any refund due to User.

13.2 SDM Software's failure to perform any obligation under this Agreement will not constitute a breach of this Agreement unless SDM Software has failed to cure such failure within thirty (30) days of written notice thereof.

13.3 Any action, claim or dispute related to this Agreement will be governed by the laws of the State of California, excluding its conflicts of law provisions and the United Nations Convention on Contracts for the International Sale of Goods and any legislation implementing such Convention, if otherwise applicable.

13.4 The failure of either party to enforce any right or provision in this Agreement will not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing. The section headings are provided merely for convenience and will not be given any legal import. No joint venture, partnership, employment or agency relationship exists between SDM Software and User as a result of this Agreement or use of the Software Product.

13.5 This Agreement, and the Exhibit hereto, encompass the entire Agreement between User and SDM Software with respect to the subject matter hereof and

supersede all prior representations, agreements and understandings, written or oral. This Agreement may not be modified except by written instrument signed by the duly authorized representatives of both parties. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) will be construed to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

13.6 No provisions of this Agreement are intended nor shall be interpreted to provide or create any third party beneficiary rights or any other rights of any kind in any other party.

13.7 User may not assign or otherwise transfer (including by merger, operation of law or change of control) this Agreement without the prior written approval of SDM Software. Any purported assignment in violation of this Section 13.7 will be void.

13.8 User and SDM Software are independent contractors. Neither party has the authority to bind or make any commitment on behalf of the other party. None of either party's employees are entitled to any employment rights or benefits of the other party. There shall be no third party beneficiaries to this Agreement.

13.9 Representatives of SDM Software are not authorized to make modifications to this Agreement, or to make any additional representations, commitments or warranties binding on SDM Software, other than in writing signed by an officer of SDM Software. Accordingly, such additional statements are not binding on SDM Software and User should not rely upon such statements.

[remainder of page intentionally blank]

## Exhibit A

### Maintenance and Support Services

1. Maintenance Term. SDM Software agrees to provide Maintenance and Support Services for the Software Product for the first 12 months after the Software Product has been received (the “Free Maintenance Period”) by User at no charge to Customer. Thereafter, Maintenance and Support Services will be provided for a fee equal to twenty percent (20%) of the net purchase price for the Software Product.
2. Support Hours: SDM Software standard support shall provide email support between the hours of 6am Pacific Time and 6pm Pacific Time, Monday through Friday, except for US National Holidays.
3. Response Times. SDM Software shall provide a response to support requests sent to support@sdmsoftware.com for Software Product issues within four (4) hours of receiving a support request during support hours stated in Section 2 above.
4. Error Correction. So long as Customer remains in the Free Maintenance Period or thereafter maintains an active support agreement for Maintenance and Support Services, SDM Software shall furnish available solutions to address verifiable and reproducible errors in the Software Product that prevent the Software Product from operating in material conformity with the Documentation (an “**Error**”). To address an Error, SDM Software may provide a workaround or, as applicable, SDM Software may also address an Error in a subsequent Update or release of the Software Product at SDM Software’s discretion (“**Error Correction**”). If erroneous or inadequate information is provided, then SDM Software cannot be held accountable for delays in, or improper performance of, the Maintenance and Support Services. Under no circumstances does SDM Software warrant or represent that all Errors can or will be corrected.
5. Updates and New Modules. So long as Customer remains in the Free Maintenance Period or thereafter maintains an active support agreement for Maintenance and Support Services, SDM Software will provide all Updates to Customer at no additional charge. An “**Update**” is any minor or major upgrade, update, revision, service pack or patch, or hot fix to the Software Product which contains Error Corrections and may also contain certain new or improved functionality. Users will be notified of Updates by e-mail and implementation of Updates will be the responsibility of User, except as agreed to by the parties pursuant to a separate professional services agreement. In addition, SDM Software will make available to Customer all new modules of the Software Product that provide substantially new and different functionality (“**New Modules**”), which are generally made available to other customers of SDM Software. SDM Software reserves the right to charge additional fees for New Modules. Users will have the option to implement any Updates and New Modules, and a User’s election not to implement an Update or New Module will not affect User’s right to continue to receive Maintenance and Support Services.
6. User Obligations. In order for User to obtain the Maintenance and Support Services described herein, User shall fulfill the following obligations, failing which SDM Software is not responsible for performing Maintenance and Support Services, or their completion or results:
  - (a) User shall promptly provide SDM Software all information, access and cooperation necessary for diagnosis of reported Errors, including the configuration of hardware and system operating the Software Product on the applicable hardware, the communication interfaces, insofar as these are significant for the Software Product, a log of components that have been changed by User since an Error has been identified by User, and a description of any specific programs which are used in conjunction with the Software Product, including software that runs on the host hardware.
  - (b) User shall operate the Software Product in accordance with the recommended minimum hardware and third party software configuration provided by SDM Software, and shall maintain a back-up of the system on which the Software Product is installed. User shall be responsible for procuring, installing and maintaining all applications, equipment, telephone lines, communications interfaces and other hardware and software necessary to operate the Software Product and to obtain from SDM Software the Maintenance and Support Services set forth in this Agreement.
  - (c) User shall appoint a representative responsible for coordinating Maintenance and Support Services, who (or whose proxy) shall be trained regarding the Software Product, and shall be available at all times during normal business hours. User shall notify SDM Software of the foregoing individuals and their respective ranks. All requests for Maintenance and Support Services shall be transmitted to SDM Software through such representatives. SDM Software shall not be obligated to honor any request for support from any person or entity other than such representatives of User.
  - (d) User must provide experienced IT professionals with training regarding the Software Product to collaborate with SDM Software on fixing Errors and implementing any Error Correction, enhancement, solution, workaround or other such fix.



- (e) User shall reimburse SDM Software at SDM Software's then current time and material rates for all work of SDM Software resolving issues that are determined not to be Errors. SDM Software shall only be obligated to provide Maintenance and Support Services with respect to the Software Product. SDM Software is not responsible for the configuration, maintenance or correction of third-party software, hardware or communications facilities. SDM Software shall have no liability to any third party.
7. Third Party Products. To the extent that the Software Product contains third party software, SDM Software shall use commercially reasonable efforts to make available to User the standard maintenance and support services provided to SDM Software by the vendors of such third party products. SDM Software does not guarantee, or make any warranty whatsoever with respect to, the delivery of such services.