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14.9. Priority. In the event of any conflict or inconsistency in the definition or interpretation of any term or provision set forth in the body of this Agreement any exhibits hereto, such conflict or inconsistency shall be resolved by giving precedence first to the body of this Agreement, and then to the exhibits, with the terms of the Proposal having the highest priority. Any contrary or additional terms and conditions attached to or part of any purchase order or similar document related to this Agreement shall be invalid and non-binding on the parties.

14.10. Severability. If any one or more provisions contained within any proposal, Statement of Work, or this Agreement is held for any reason to be invalid, or determined by a court of competent jurisdiction to be or becomes unenforceable or illegal in any respect, such provision(s) shall be interpreted to the minimum extent necessary to cure such invalidity, unenforceability or illegality and the remaining provisions of the proposal, Statement of Work, or Agreement shall remain in full force and effect.

14.11. Modifications In Writing. Subject to the terms and provisions hereof, this Agreement (including any schedule or exhibit hereto) shall not be deemed or construed to be modified, amended, rescinded, cancelled, or waived, in whole or in part, unless done so in a writing signed by the party to be charged, and/or bear the signature of the duly authorized representative of each party.

14.12. Choice of Law; Arbitration. Any proposal, Statement of Work and/or these terms shall be governed by and construed in accordance with the laws of the State of Ohio and controlling United States federal law, without regard to the choice or its conflicts-of-law provisions of any jurisdiction. To the maximum extent allowed by law, all disputes under any proposal, statement of work and/or these Terms shall be resolved by final and binding arbitration before a neutral, third-party arbitrator. Arbitration shall be conducted in accordance with the Commercial Arbitration Rules for the American Arbitration Association but the arbitration shall not be formally submitted to the American Arbitration Association for processing. If a party files a lawsuit in court to resolve claims subject to arbitration, the party agrees that the Court shall dismiss the lawsuit and require the party to arbitrate the dispute. If a party files a lawsuit in Court involving claims which are, and other claims which are not subject to arbitration, the party agrees that the court shall only hear the non-arbitrable claims and require that arbitration take place with respect to those claims subject to arbitration. The parties further agree that the arbitrator's decision on the arbitrable claims, including any determinations as to disputed factual or legal issues, shall be entitled to full force and effect in any later court lawsuit on any non-arbitrable claims. In all non-arbitrable claims, the parties waive a trial by jury.

14.13. WAIVER OF RIGHT TO A JURY TRIAL. ECG AND LICENSEE EXPRESSLY, KNOWINGLY, VOLUNTARILY, AND FULLY WAIVES ANY AND ALL RIGHTS TO A JURY TRIAL IN ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT OR ANY CLAIM OR ACTION IN CONNECTION WITH OR RELATED TO THIS AGREEMENT AND THE EVENT. The parties to this Agreement have read the Agreement, understand it, and agree that each has had the opportunity to have the Agreement reviewed by legal counsel.

14.14. Prevailing Party; Limitation of Action. In the event a dispute arising under this Agreement results in litigation, the non-prevailing party shall pay the court costs and reasonable attorneys'

fees of the prevailing party. With the exception of (1) actions to collect unpaid fees or (2) actions arising out of a breach of a party's confidential or proprietary information, any action brought under this Agreement must be brought within one (1) year following its accrual.

14.15. Licensee Authorization. As long as any Technical and Maintenance Support obligation of ECG is in effect, Licensee hereby authorizes ECG to use Licensee's corporate name and logo in ECG's marketing materials including identification on ECG's website.

14.16. Integration. This Agreement and the items referenced herein and attached hereto (including all schedules and exhibits, if applicable) set forth the entire agreement and understanding between the parties with respect to the subject matter hereof and supersede all prior discussions and all contemporaneous agreements, understandings, marketing materials, and/or communications between them with respect to such subject matter. Neither of the parties shall be bound by any conditions, definitions, representations, or warranties with respect to the subject matter of this Agreement other than as expressly provided herein or in a subsequent writing signed by a duly authorized representative of the party to be bound thereby. No representation, warranty, course of dealing, or trade usage not expressly set forth in this Agreement shall be binding on either party. If applicable, all Schedules referred to herein and/or attached hereto are incorporated into this Agreement by reference thereto.

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14.19. Independent Contractors. The parties are independent contractors. Neither party shall be deemed to be an employee, agent, partner or legal representative of the other for any purpose and neither shall have any right, power or authority to create any obligation or responsibility on behalf of the other.



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Customer will identify each such Affiliate and Contractor. Use of the Software by the Affiliates, Contractors and Licensee-Customer in the aggregate must be within the restrictions in the applicable Order Form. "Affiliate" means any entity under the control of Licensee-Customer where "control" means ownership of or the right to control greater than 50% of the voting securities of such entity. "Contractor" means any third party engaged by Licensee-Customer to perform services on behalf of Licensee-Customer.

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3.2 Procurement Agent. Licensee-Customer hereby notifies ECG that Licensee-Customer's Procurement Agent is authorized to place Order Forms, receive invoices and make payments to ECG on Licensee-Customer's behalf. ECG is entitled to rely and act upon any Order Form submitted by the Procurement Agent and Licensee-Customer shall remain liable for any invoices that remain unpaid by its Procurement Agent, or which are paid late. If any refunds are required to be provided to Licensee-Customer under this Agreement, ECG will refund amounts paid by the Procurement Agent to the Procurement Agent, and the Procurement Agent will be responsible for refunding the corresponding amount to Licensee-Customer. Licensee-Customer acknowledges and agrees that it is granted permission to use its Procurement Agent under this Agreement solely as a matter of convenience in connection with Licensee-Customer's order management process. ECG shall have no liability or obligation to the Procurement Agent and the Procurement Agent obtains no rights under or in connection with this Agreement, including, without limitation, any license or other right to use the Software.

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4.1 Term. This Agreement is effective as of the Effective Date and expires on the day that the Subscription Terms for all Software licensed hereunder have expired. Either party may terminate this Agreement (including all related Order Forms) if the other party: (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach; (b) ceases operation without a successor, or terminates or suspends its business; or (c) seeks protection under any bankruptcy, insolvency, receivership, trust deed, creditors arrangement, composition or comparable proceeding under federal or state statutes, or if any such proceeding is instituted against such party (and not dismissed within sixty (60) days thereafter). Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

4.2 Termination. Upon any expiration or termination of this Agreement for any reason: (1) all rights and licenses granted to Licensee-Customer and all duties of ECG hereunder shall immediately cease and terminate; (2) Licensee-Customer shall immediately pay to ECG all amounts due; and (3) Licensee-Customer shall return to ECG all originals and copies of the Software, any and all ECG Systems, and all ECG Confidential Information, including but not limited to, any source code.

4.3 Survival. Sections 1.7 (License Restrictions), 2 (Ownership), 3 (Payment and Delivery), 4 (Term of Agreement), 5.3 (Disclaimer), 8 (Limitation of Remedies and Damages), 10 (Confidential Information), 12 (General), and Licensee-Customer's right to Work Product and ownership of Licensee-Customer Content described in Section 7 shall survive any termination or expiration of this Agreement.

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ECG shall provide the support and maintenance services as provided herein for each Subscription Term.

6.1. Obligations of ECG. Provided that Licensee-Customer is not in material breach of any Proposal, Statement of Work and/or these Terms, and is current in its payment of all of its Service Fees, ECG agrees to respond to requests for support and maintenance services as described in any Proposal, Statement of Work and/or these Terms.

6.2. Performance. ECG shall use commercially reasonable best efforts in performing services under these Terms and Conditions, and any Proposal and/or Statement of Work. ECG shall not be responsible for failure to perform its services if (a) there is a failure or delay by Licensee-Customer or its agents in providing ECG with the necessary access to properties, documentation, information, or materials; (b) Licensee-Customer or its agents fail to approve or disapprove ECG's work; or (c) if Licensee-Customer causes delays in any way whatsoever. In any of these events, ECG's time for completion of its service shall be extended accordingly. ECG shall not be responsible for failure to perform if such failure is due to any act of God, labor trouble, fire, inclement weather, act of governmental authority, failure of transportation, accident, power failure or interruption, or any other cause, reasonably beyond ECG's control. In any of these events, ECG's time for completion of its services shall be extended accordingly.

7. PROFESSIONAL SERVICES.

7.1 Professional Services. ECG shall provide the number of person-days of professional consulting services ("Professional Services") purchased in the applicable Order Form. The parties acknowledge that the scope of the Professional Services provided hereunder consists solely of either or both of: (a) assistance with Software installation, deployment, training and usage; or (b) development or delivery of additional related ECG copyrighted software or code. ECG shall retain

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8.4 The parties agree that the limitations specified in this Section 8 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

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9.5 THE PROVISIONS OF THIS SECTION (SECTION 9) STATE THE EXCLUSIVE LIABILITY OF ECG AND THE EXCLUSIVE REMEDY OF LICENSEE-CUSTOMER WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY OR TRADE SECRET MISAPPROPRIATION OR INFRINGEMENT BY THE SOFTWARE, ANY PART THEREOF, AND ANY MATERIAL OR SERVICES PROVIDED HEREUNDER, AND ARE IN LIEU OF ALL OTHER REMEDIES, LIABILITIES, AND OBLIGATIONS.

10. CONFIDENTIAL INFORMATION.

Each party agrees that all confidential or proprietary information of any kind (including, but not limited to, any know-how, invention disclosures, proprietary materials, technologies and data, financial information, business or research strategies or information, studies, projections, programs, source code, software and systems, processes, methods, customer information and lists, pricing information, trade secrets, and all tangible and intangible embodiments thereof) it obtains ("Receiving Party") from the disclosing party ("Disclosing Party") constitutes the confidential property of the Disclosing Party ("Confidential Information"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the

circumstances surrounding the disclosure. Any software, documentation or technical information provided by ECG (or its agents), performance information relating to the Software, and the terms of this Agreement shall be deemed Confidential Information of ECG without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and will not use or disclose any Confidential Information. Without limiting the foregoing, Licensee-Customer shall ensure that its Procurement Agent is subject to written confidentiality terms that are no less protective of ECG than the terms of this Agreement. The Receiving Party's non-disclosure obligation shall not apply to information which the Receiving Party can document: (a) was rightfully in its possession or already known to it prior to receipt of the Confidential Information; (b) is or has become generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Receiving Party who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause irreparable harm for which a remedy at law would be inadequate and the extent difficult to ascertain, and therefore, in the event of the breach or threatened breach by Receiving Party of its obligations under this Section, Disclosing Party shall be entitled to seek appropriate equitable relief in the form of specific performance and/or obtain an injunction for any such actual or threatened breach, in addition to the exercise of any other remedies at law and in equity. For clarity, the above confidentiality restrictions do not apply to Licensee-Customer's use of Work Product.

11. LICENSEE-CUSTOMER ACKNOWLEDGEMENT.

Licensee-Customer agrees that ECG may publicly disclose Licensee-Customer as a customer of ECG.

12. GENERAL.

12.1 Transfer or Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. ECG may condition consent to include updating the software to the then-current version, paying the then-current license fees, and purchasing a one-year subscription at the then-current rate. For an assignment or transfer to a third party or an affiliate, ECG may require Licensee-Customer's proposed assignee to execute ECG's then-current license agreement. Except as otherwise specified in writing with ECG's prior written consent, orders submitted by any assignee shall be in accordance with ECG's then-current list price. Any attempted assignment, whether by operation of law or as a result of any change in control or otherwise without complying with this paragraph, will be null and void.

12.2 Severability. If any one or more provisions contained within this Agreement is held for any reason to be invalid, or determined by a court of competent jurisdiction to be or becomes unenforceable or illegal in any respect, such provision(s) shall be interpreted to the minimum extent necessary to cure such invalidity, unenforceability or illegality and the remainder of this Agreement shall remain in full force and effect.

12.3 Governing Law; Jurisdiction and Venue. This Agreement is made and shall be governed by and construed in accordance with the laws of the State of Ohio and controlling United States federal law, without regard to the choice or its to conflict-of-law provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. Any and all disputes regarding this Agreement shall be resolved and may be brought only in a court of competent jurisdiction in the state of New York, and expressly waive any and all rights which they may have, or which may hereafter arise, to contest the propriety of such choice of jurisdiction and venue, or to invoke the doctrine of *Forum Non Conveniens*. Notwithstanding, ECG, at its sole and exclusive option, may institute legal proceedings in any other jurisdiction necessary to enforce the terms of this Agreement. Both parties hereby submit to the personal jurisdiction of such courts.

12.4 No Sovereign Immunity. Where Licensee is an agency or instrumentality of a state foreign to the United States of America, Licensee-Customer hereby waives, with respect to actions relating to the subject matter of this agreement, (1) any immunity from the personal and subject matter jurisdiction of the courts of the United States of America or of the several states thereof; and (2) any immunity from attachment in aid of execution or from execution upon its property.

12.5 Arbitration. To the maximum extent allowed by law, all disputes under these Terms shall be resolved by final and binding arbitration before a neutral, third-party arbitrator. Arbitration shall be conducted in accordance with the Commercial Arbitration Rules for the American Arbitration Association but the arbitration shall not be formally submitted to the American Arbitration Association for processing. If a party files a lawsuit in court to resolve claims subject to arbitration, the party agrees that the Court shall dismiss the lawsuit and require the party to arbitrate the dispute. If a party files a lawsuit in Court involving claims which are, and other claims which are not subject to arbitration, the party agrees that the court shall only hear the nonarbitrable claims and require that arbitration take place with respect to those claims subject to arbitration. The parties further agree that the arbitrator's decision on the arbitrable claims, including any determinations as to disputed factual or legal issues, shall be entitled to full force and effect in any later court lawsuit on any nonarbitrable claims. In all nonarbitrable claims, the parties waive a trial by jury.

12.6 Language. This agreement is in the English language only, which language will be controlling in all respects, and all versions hereof in any other language will not be binding on the parties hereto. All communications, documentation, agreements, correspondence, and/or notices to be made or given pursuant to this Agreement must be in the English language.

12.7 Prevailing Party; Attorneys' Fees and Costs. In the event a dispute arising under this Agreement results in litigation, the non-prevailing party shall pay the court costs and reasonable attorneys' fees of the prevailing party. With the exception of (1) actions to collect unpaid fees, or (2) actions arising out of a breach of a party's confidential or proprietary information, any action brought under this Agreement must be brought within one (1) year following its accrual.

12.8 Notices and Reports. Any notice or report hereunder shall be in writing to the notice address set forth in the Order Form (for Licensee-Customer) or the address above for ECG and shall be deemed given: (a) upon receipt if by personal delivery; (b) upon receipt if sent by certified or registered U.S. mail (return receipt requested); or (c) one day after it is sent if by next day delivery by a major commercial delivery service.

12.9 Amendments; Waivers. No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Licensee-Customer will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

12.10 Entire Agreement. This Agreement and the items referenced herein set forth is the entire and complete agreement, and exclusive statement of the mutual understanding of the parties with respect to the subject matter hereof, and supersedes and cancels all previous/prior written and oral agreements and all contemporaneous agreements, understandings, marketing materials, and/or communications between them with respect to such subject matter of this Agreement. Licensee-Customer acknowledges that ECG offers subscription-based products and that, in order to provide improved customer experience, ECG may make changes to ECG software products (including the Predict-IT Software or any other Software) or Documentation. In such event, ECG will update the Documentation accordingly.

12.11 Audit Rights. Upon ECG's written request, Licensee-Customer shall certify in a signed writing that Licensee-Customer's use of the Software is in full compliance with the terms of this Agreement (including any copy and user limitations). Licensee-Customer agrees that upon ECG's request, Licensee-Customer will provide ECG with a written certification that Licensee-Customer is using the software pursuant to this agreement, and Licensee-Customer will also allow us to audit the records and facilities to confirm that the use of ECG's software is in compliance with this agreement. ECG will conduct the audit during regular business hours at Licensee-Customer's facilities and will not unreasonably interfere with regular business operations. If ECG discovers that Licensee-Customer is using the software beyond the purchased license levels, Licensee-Customer agrees they will immediately pay for over usage at ECG's then-current list price. If the unpaid or underpaid fees exceed five percent (5%) of the total license fees owed by Licensee-Customer during the twelve (12) consecutive month period preceding the audit, then Licensee-Customer agrees to reimburse ECG for the reasonable costs of conducting the audit.

12.12 Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the right, power, or authority to create any obligation or responsibility, or to bind the other on the other party's behalf without the other party's prior written consent.

12.13 Force Majeure. If the performance of this Agreement or any obligation under this Agreement, except for the making of payments, is prevented, restricted or interfered with by reason of fire, flood, earthquake, explosion or other Act of God or casualty or accident, or strikes or labor disputes affecting third-party vendors, inability to procure or obtain delivery of parts, supplies or power, war or other violence, any law, order, proclamation, regulation, ordinance, demand or requirements of any governmental agency, or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected will take all reasonable steps to avoid or remove such cause of

nonperformance and will resume performance hereunder with dispatch whenever such causes are removed.

12.14 Government End-Users. The Software is commercial computer software. If the user or Customer-Licensee of the Software is an agency, department, or other entity of the United States Government or any other third party on the U.S. Government's behalf, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Software, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 48 C.F.R 12.212 for civilian purposes, and Defense Federal Acquisition Regulation Supplement 48 C.F.R 227.7202 for military purposes. The Software was developed exclusively at private expense. All other use is prohibited.

12.15 Export Compliance. Licensee-Customer acknowledges that the Software may be subject to export restrictions by the United States government and import restrictions by certain foreign governments. Licensee-Customer shall not and shall not allow any third-party to remove or export from the United States or allow the export or re-export of any part of the Software or any direct product thereof: (a) into (or to a national or resident of) any embargoed or terrorist-supporting country; (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (c) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (d) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Licensee-Customer agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Software is further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government.

12.16 Third-Party Code. The Software may contain or be provided with components subject to the terms and conditions of third party "open source" software licenses ("Open Source Software"). Open Source Software may be identified in the Documentation, or ECG shall provide a list of the Open Source Software for a particular version of the Software to Licensee-Customer upon Licensee-Customer's written request. To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification or reverse engineering. [Licensee-Customer agrees that they have read and understood the Third-Party Open Source Software disclosures in the "Terms and Conditions" segment of ECG's website, located at <http://ecg-inc.com/ECGSoftwareLicenseTCs.pdf>].

12.17 Priority. In the event of any conflict or inconsistency in the definition or interpretation of any term or provision set forth in the body of this Agreement any exhibits hereto, such conflict or inconsistency shall be resolved by giving precedence first to the body of this Agreement, and then

to the exhibits. Any contrary or additional terms and conditions attached to or part of any purchase order or similar document related to this Agreement shall be invalid and non-binding on the parties.

12.18 Modifications In Writing. Subject to the terms and provisions hereof, this Agreement (including any schedule or exhibit hereto) shall not be deemed or construed to be modified, amended, rescinded, cancelled, or waived, in whole or in part, unless done so in a writing signed by all of the parties hereto, and/or bear the signature of the duly authorized representative of each party.

12.19 WAIVER OF RIGHT TO A JURY TRIAL. ECG AND LICENSEE-CUSTOMER EXPRESSLY, KNOWINGLY, VOLUNTARILY, AND FULLY WAIVES ANY AND ALL RIGHTS TO A JURY TRIAL IN ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT OR ANY CLAIM OR ACTION IN CONNECTION WITH OR RELATED TO THIS AGREEMENT AND THE EVENT. THE PARTIES TO THIS AGREEMENT HAVE READ THE AGREEMENT, UNDERSTAND IT AND AGREE TO IT.