



IDE Special Terms and Conditions for On-Premise Software

1. Definitions. Unless the context clearly requires otherwise, the definitions set forth in the IDE General Terms and Conditions shall apply to terms used in these IDE Special Terms and Conditions for On-Premise Software. In addition, the following terms shall have the following meanings when used in these IDE Special Terms and Conditions for On-Premise Software:

1.1. “Software” means the software application and related services provided to the IDE by the Contractor and described in the functional and technical specifications set forth in the Agreement and the software application’s documentation (the “Specifications”).

1.2. “Update” means an enhancement, repair, patch, or fix to the Software.

2. License. The Contractor hereby grants IDE a nonexclusive license to reproduce and use the Software for its access and benefit during the term of the Agreement. The IDE’s license includes the right to all Updates at no additional cost during the term of the Agreement. The Contractor shall provide notice to the IDE when an Update is offered to the Contractor’s customers.

3. Ownership of Materials and Information.

3.1. Except as specifically provided otherwise in the Agreement, the IDE shall own and retain all rights to the following: (1) any information, documents, data, or materials provided by the IDE to the Contractor for purposes of the Agreement; and (2) any deliverable provided by the Contractor to the IDE under the Agreement (collectively, with (1), “IDE Property”).

3.2. Upon written request of the IDE, the Contractor shall deliver the IDE Property to the IDE in an accessible format. As used in this section, “accessible format” shall mean an electronic format accepted in writing by the IDE capable of copying and insertion into new electronic formats without locking or “screen shots.”

4. Warranties. The Contractor warrants that:

4.1. During the term of the Agreement, the Software will perform materially as described in the Specifications;

4.2. The Contractor is the owner of the Software and of each and every component



thereof, or the recipient of a valid license thereto;

4.3. The Contractor has and will maintain the full power and authority to grant the intellectual property rights to the Software in the Agreement (a) without the further consent of any third party and (b) without conditions or requirements not set forth in the Agreement;

4.4. The Software is the Contractor's own original work, without incorporation of text, images, software, or other assets created by third parties, except to the extent that the IDE consents in writing;

4.5. The Contractor will perform professional services in a professional and workmanlike manner;

4.6. The Contractor has the full right and authority to enter into, execute, and perform its obligations under the Agreement and no pending or threatened claim or litigation known to the Contractor would have a material adverse impact on its ability to perform as required by the Agreement;

4.7. The Software and any media used to distribute it contain no viruses or other computer instructions or technological means intended to disrupt, damage, or interfere with the use of computers or related systems;

4.8. The Software will comply with all applicable laws, including without limitation federal, national, state, provincial, and local; and

4.9. The Software does not infringe, misappropriate, or otherwise violate any intellectual property right or other right of any third party.

5. **Breach of Warranty of Function.** In case of breach of the warranty in subsection 4.1, the Contractor shall: (a) repair the Software; (b) replace the Software with a software or service of substantially similar functionality; or (c) if such attempts do not succeed after thirty (30) days, refund all amounts paid by the IDE for the Software, in which case the IDE shall promptly cease all use of the Software. The preceding sentence, in conjunction with the IDE's right to terminate the Agreement where applicable, states the IDE's sole remedy and the Contractor's entire liability for breach of the warranty in subsection 4.1.

6. **Breach of Intellectual Property Warranties.** In case of breach of the warranties in subsection 4.2 or 4.3, the Contractor, at its own expense, shall promptly:



- 6.1. Secure for the IDE the right to continue using the Software;
- 6.2. Replace or modify the Software to make it non-infringing, provided such modification or replacement does not materially degrade any functionality listed in the Specifications; or
- 6.3. If such remedies are not commercially practical in the Contractor's reasonable opinion, refund the fee paid for the Software for every month remaining in the term of the Agreement following the date after which the IDE ceases operating the Software.

If the Contractor exercises its rights pursuant to subsection 6.3, the IDE shall promptly cease all reproduction and use of the Software and erase all copies in its possession or control. This section, in conjunction with the IDE's right to terminate the Agreement where applicable, states the IDE's sole remedy and the Contractor's entire liability for breach of the warranties in subsections 4.2 and 4.3.

7. Breach of Professional Services Warranty. In case of breach of the warranty in subsection 4.5, the Contractor, at its own expense, shall promptly re-perform the professional services in question. The preceding sentence, in conjunction with the IDE's right to terminate the Agreement where applicable, states the IDE's sole remedy and the Contractor's entire liability for breach of the warranty in subsection 4.5.