

## SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

**THIS SOFTWARE LICENSE AND MAINTENANCE AGREEMENT (“Agreement”)**, by and between BUSINESS & DECISION NORTH AMERICA, whose principal place of business is located at XXXXXXXXXXXX (“BDNA” or “Licensor”) and \_\_\_\_\_ whose principal place of business is located at \_\_\_\_\_ (“Licensee” or “Licensee”).

BDNA and Licensee may hereinafter be collectively referred to as the “Parties” and each a “Party”.

### PREAMBLE

**WHEREAS**, BDNA is in the business of providing software solutions;

**WHEREAS**, Licensee wishes to license said solutions from BDNA, and

**WHEREAS**, BDNA is willing to provide such licensing rights subject to the terms and conditions as defined in this Agreement;

**NOW THEREFORE**, based upon the aforementioned recitals and the promises contained herein, and for good and valuable consideration, the sufficiency of which is hereby acknowledged by each of the Parties, the Parties agree as follows:

### 1. DEFINITIONS.

As used in this Agreement (together with each Contract Document, each as amended, modified or supplemented from time to time), unless expressly indicated otherwise, the following terms shall be defined as follows:

- 1.1. **“BDNA”** shall mean the legal business entity that is owner of the Intellectual Property rights of the Licensed Products
- 1.2. **“Confidential Information”** shall mean the intellectual property belonging to or supplied by a Party in connection with either Party’s performance under this Agreement or otherwise relating to its affairs including, without limitation, any software, design tools, methodologies, algorithms, and lines of code, a Party’s business plans and procedures, the terms of this Agreement, and other information that (i) may be marked by a Party as “Confidential” “Restricted,” or “Proprietary Information” or other similar marking, (ii) is known by the Parties to be considered confidential and proprietary, or (iii) from all the relevant circumstances, should reasonably be assumed to be confidential and proprietary.
- 1.3. **“Contract Documents”** shall mean this Agreement, and any schedules, exhibits, and / or appendices related hereto.
- 1.4. **“Documentation”** shall mean the manual or manuals and other documents associated with the Licensed Software supplied by the Licensor to the Licensee.
- 1.5. **“Effective Date”** shall mean the date when the Parties have duly signed the License.
- 1.6. **“Licensed Software”** or **“Software”** means an object code version of Software(s) listed in Appendix A hereto.
- 1.7. **“Representatives”** shall mean, with regard to a Party, such Party’s directors, officers, employees, counsel and representatives.
- 1.8. **“Software Support and Maintenance”** or **“Software Services”** shall mean the annualized and auto renewing support and maintenance of the Licensed Software to be defined within a separate contract.

- 1.9. **“Term”** shall mean duration specified in Appendix A
- 1.10. **“Third Party Technology”** shall mean software or other technology which is delivered with or incorporated in the Licensed Software.

## 2. SOFTWARE LICENSE

2.1. BDNA hereby grants to Licensee a non-transferable and nonexclusive license to use each Licensed Software solely for Licensee’s internal business purposes for the duration specified in Appendix A from the Effective Date. The Licensed Software shall be applied on a Licensee’s business scope, Licensee’s business processes and used by a maximum number of users as specified in Appendix A hereto. Documentation may be copied and used as reasonably necessary in connection with Licensee’s authorized use of the respective Licensed Software.

2.2. Upon execution of this Agreement by Licensee, the Licensor shall provide the Licensee the location from which to download a copy of the Licensed Software in machine readable form or, provide remote access to an installation of the Licensed Software, or should Licensee chose, shall ship in electronic media the Licensed Software. The Documentation shall also be downloaded from the location at the same time or shipped accordingly.

2.3. Licensee may not: (a) modify, adapt, decompile, disassemble, or reverse engineer any Licensed Software; (b) create derivative works based on any Licensed Software; (c) make copies of any Licensed Software, except as may be necessary for operational use and security, such as for backup, archival or disaster recovery purposes; (d) allow any third party to use or have access to any Licensed Software or Documentation, unless otherwise authorized in writing by BDNA. Any copy of any Licensed Software or Documentation made by Licensee, including any partial copy, is the property of BDNA. Licensee will include on each such copy all copyright, trademarks, and other proprietary rights notices included by BDNA on the originals.

2.4. Acceptance of the Licensed Software shall be deemed to take place upon delivery in accordance with Section 2.2.

2.5. If the Licensee uses the Licensed Software before acceptance under this section, except for evaluation purposes, then the Licensed Software shall be deemed to have been accepted on the date of first use.

2.6. Embedded or included Third Party Technology shall be provided under the applicable terms of the respective third party. BDNA grants to Licensee a non-exclusive, non-transferable sublicense to use such Third Party Technology on the terms granted to BDNA by the respective third party.

2.7. If Open Source software (OSS) (including OSS tools, libraries, frames or any other element directly or indirectly governed by an OSS license) are embedded or included or needed to provide Software Services, the Licensee undertakes to agree to the terms of the OSS license provided by the concerned party. The Licensee shall be considered as accepting the OSS and the availability and proper functioning of such OSS shall be under Licensee’s responsibility.

## 3. USE

3.1. Except as may be specified in Appendix A, the Licensed Software shall be used only for the Licensee’s own data processing and shall not be used to provide a data processing service to any third party whether by way of trade or otherwise, without prior written approval from BDNA.

3.2. If the Licensed Software cannot be used because the Equipment or any part thereof is temporarily inoperable, then the License will be deemed to apply, without any additional payment to the Licensor but at the Licensee's risk and expense, to the use of the Licensed Software on any other compatible equipment until the Equipment becomes operable.

3.3. The Licensee will be responsible for its operating environment and for the existing systems that Licensed Software will interface with.

3.4. The Licensee may not transfer the Licensed Software permanently to another location or to other Equipment without the consent in writing of the Licensor which shall not be unreasonably withheld.

3.5. The Licensee shall follow all reasonable instructions given by the Licensor from time to time with regard to the use of the Licensed Software. The Licensee shall permit the Licensor, at all reasonable times, and at the Licensor's expense, to verify that the use of the Licensed Software is within the terms of the Agreement.

#### 4. DOCUMENTATION

4.1. The Licensee may not make copies of the Documentation without the Licensor's prior written agreement which shall not be unreasonably withheld. At the request of the Licensee the Licensor shall provide such additional copies of the Documentation as the Licensee may reasonably require for the normal operation of his business at the Licensor's then current standard scale of charges. Copies of documentation are not typically required by operators. Any reasonable requests for copying will be conducted at cost by BDNA, alternatively documentation will be issued electronically and with written permission to copy.

#### 5. LICENSE FEES AND EXPENSES

5.1. **License Fees** In consideration of the license granted pursuant to this Agreement, Licensee shall pay to BDNA the license fees (the "**License Fees**") specified on Appendix A. The License Fees shall be due in full within the payments terms of invoice. All such invoices shall be sent to the Licensee address specified "Bill To" in Appendix A hereof.

5.2. **Expenses**. Any BDNA pre-approved travel and other out-of-pocket expenses will be in conformance with Licensee's standard policies regarding travel and expense reimbursement and shall be included in BDNA's costs to Licensee. BDNA will not incur any extraordinary travel expenses without prior written authorization from Licensee and travel or other expenses incurred shall be subject to the reasonable review and approval of such Licensee.

5.3. **Sales Taxes and Other Taxes**. On all invoices BDNA shall include appropriate and required sales tax, service tax, or VAT, withholding or any other tax of any kind whatsoever imposed by a governmental authority with respect to the goods or expenses incurred hereunder (other than a tax imposed upon the income or profits of BDNA and any income tax, social security, unemployment or workers compensation to be withheld or paid with regard to BDNA's employees). Licensee shall pay all sales, use and excise taxes, and any other assessments in the nature of taxes however designated on the Licensed Software or its license or use on or resulting from this Agreement, if any, unless Licensee furnishes BDNA with a certificate of exemption from payment of such taxes in a form reasonably acceptable to BDNA.

## 6. TERMS OF PAYMENT

6.1. **Invoices and Payment.** BDNA shall deliver to Licensee an invoice at the time of purchase and annually for recurring support and maintenance. Licensee's payment of the invoiced amount shall be due and payable thirty (30) days from receipt of the invoice by Licensee.

6.2. **Payment Obligation.** Licensee's obligation to pay the invoiced charges shall be absolute and BDNA reserves the right to assert appropriate liens to ensure payment. Except as expressly provided herein, it is the intention of BDNA and Licensee that all fees payable by Licensee under this Agreement shall be, and continue to be, payable in all events throughout the Term.

6.3. **Late Payments.** Any undisputed late payment shall be subject to the costs of collection (including, but not limited to, reasonable attorneys' fees) and shall bear interest at the rate of one and one-half percent (1½%) per month or the maximum rate allowed under law, whichever is greater, or fraction thereof until paid in full. BDNA is also entitled to suspend the services until the sum due are entirely paid by the Licensee.

## 7. TERM/TERMINATION.

7.1. The license granted under this Agreement for the Licensed Software shall be effective starting from the date of signature of this Agreement (Effective Date) and it shall be active for the duration specified in Appendix A ("Term") or terminated for cause as contemplated herein.

7.2. Either party may terminate the Agreement forthwith on written notice if the other party shall become insolvent or bankrupt or make an arrangement with his creditors or go into liquidation.

7.3. Either party shall have the right to unilaterally terminate the Agreement, in each case by delivering to the other party a termination notice at least thirty (30) calendar days prior to the Termination date, in the event of a breach by the other Party of any of its contractual obligations, upon notice of breach and opportunity to cure, to the defaulting Party that shall not have been totally cured within thirty (30) calendar days from the notice of breach sent by the non-breaching Party to the other by registered letter with acknowledgement of receipt (or other secured mailing delivery process).

7.4. This Agreement may be terminated by BDNA after fifteen (15) days' written notice upon the occurrence of one or more of the following:

7.4.1. Upon Licensee's attempt to reverse engineer the Licensed Software or in any other way to use of the Licensed Software in a manner not contemplated in this Agreement;

7.4.2. in the event of an infringement of BDNA's IP rights by the Licensee or any breach of the Licensee's obligation of confidentiality

7.4.3. generally in the event of a breach not capable of being remedied

7.5. Termination of the Agreement shall not prejudice any rights of either party which has arisen on or before the date of termination.

7.6. Should this Agreement be terminated, all amounts owed by Licensee under this Agreement shall be immediately due and payable.

7.7. If the Agreement is terminated before its Term for any reason other than for a material breach of the Licensors, the Licensee shall be liable for all payments, interest, and other payments due to be paid before the termination date, but not yet paid, plus all payments that would, but for early termination, have fallen due to the end of the Term.

7.8. For the avoidance of doubt, all rights and licenses granted to the Licensee hereunder shall immediately terminate upon any termination or expiration of this Agreement, except as expressly set forth in this section.

7.9. Within seven (7) days following the date of termination for any reason, the Licensee shall at the option of the Licensors return or destroy all copies, forms and parts of the Licensed Software and Documentation which are covered by this License and shall certify to the Licensors in writing that this has been done.

## 8. LICENSEE RESPONSIBILITIES

8.1. The Licensee shall ensure adequate computing resources are provisioned for the effective functioning of the Licensed Software.

8.2. Licensee shall at all times act in a manner that enforces the Intellectual Property rights and Confidentiality obligations contained within this Agreement.

8.3. Where the Licensee is responsible for any preparatory activities required by BDNA in order to supply the Licensed Software and/or Support Services, the Licensee shall ensure that all such preparatory work, information, items or consents are completed, made available or obtained (as relevant) at its own cost in sufficient time to allow BDNA to complete its work and deliver the Licensed Software and/or Support Services.

8.4. If the Licensee delays or fails to perform its obligations under Clause 9.3, then at BDNA's option, BDNA may invoice the Licensee for any reasonable charges incurred for any work that is performed by BDNA on behalf of the Licensee and that is directly attributable to the Licensee's failure to perform or delay where such work is necessary to provide the Licensed Software and/or the Services.

8.5. The Licensee will comply with BDNA's reasonable requests that are necessary for reasons of health and safety, environment, sustainability, security or the quality and/or performance of any Software License and/or Services provided to the Licensee.

## 9. WARRANTY

9.1. BDNA warrants that, provided it is operated in accordance with the Licensors' instructions, the Licensed Software will perform substantially in accordance with the Licensors' published specification and the Documentation existing at the date of delivery. The Licensors do not guarantee that the Licensed Software is free of minor errors not materially affecting such performance.

9.2. BDNA does not warrant that the functions contained in the Licensed Software will meet Licensee's requirements or that the operation of the Licensed Software will be un-interrupted or error free.

9.3. BDNA will have no responsibility, warranty or other obligations whatsoever with respect to: (a) the use of Licensed Software in a manner inconsistent with the respective Documentation or this Agreement, (b) any Licensed Software which has been modified by anyone other than BDNA, and (c) failure of a Licensed Software as a result of accident, abuse or misapplication.

9.4. **THE EXPRESSED WARRANTIES IN THE ABOVE SECTIONS ARE IN LIEU OF ALL WARRANTIES OF BDNA ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY OR USE OF THE LICENSED SOFTWARE OR DOCUMENTATION. BDNA EXPRESSLY DISCLAIMS, TO THE FULL EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE LICENSED SOFTWARE OR DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM THE COURSE OF DEALING BETWEEN THE PARTIES.**

## 10. INTELLECTUAL PROPERTY

The following provisions shall apply with respect to intellectual property rights;

10.1. Licensee acknowledges and agrees that: (i) the Licensed Software and Documentation are owned by BDNA, and is licensed to Licensee as set forth in this agreement, and (ii) Licensee will use the Licensed Software and Documentation only under the terms and conditions described herein.

10.2. Title, copyright and all other proprietary rights in the Licensed Software and the Documentation and all parts and copies thereof shall remain vested in BDNA. In all instances the intellectual property within the existing Licensed Software solution will remain with BDNA.

10.3. The Licensee shall follow all reasonable instructions given by the Licensor from time to time with regard to the use of trademarks owned by the Licensor and other indications of the property and rights of the Licensor.

10.4. Any derivative of the Licensed Software developed as a result of enhancement, customization or configuration will remain the intellectual property of BDNA and also all works which are incorporated into the License Software, developed by BDNA under this Agreement or any contract concluded with the Licensee.

## 11. CONFIDENTIALITY

11.1. Licensee acknowledges that the Licensed Software and Documentation contain valuable proprietary information and trade secrets of BDNA. Accordingly, Licensee shall take reasonable measures to protect the secrecy of, and avoid disclosure and unauthorized use of, the Licensed Software and Documentation. Without limiting the foregoing, Licensee agrees: (a) to take with respect to the Licensed Software and Documentation at least those measures that it takes to protect its own confidential information; and (b) that the Licensed Software and Documentation may not be disclosed, reproduced, summarized, distributed or used except as necessary to exercise the license granted hereunder.

11.2. Additionally, each Party hereby acknowledges that in connection with performing its obligations under this Agreement, each Party will have access to and may be exposed to Confidential Information belonging to or supplied by the other Party or relating to its affairs. Confidential Information does not include information that (i) has entered the public domain through no action or failure to act of a Party receiving such information or any of its Representatives, (ii) prior to disclosure hereunder, was already lawfully in the receiving Party's possession without any obligation of confidentiality, as evidenced by written records of such receiving Party, (iii) subsequent to disclosure hereunder, is obtained by the receiving Party on a non-confidential basis from a third party who has the right to disclose such information to the receiving Party, (iv) is independently developed by or for the receiving Party without reference to or reliance upon the other Party's Confidential Information, as evidenced by the written records of the receiving Party; provided that the individual involved in the development had no access to the other Party's Confidential Information, or (v) is ordered to be or otherwise required to be disclosed by the receiving Party by a court of law or other governmental body; provided, however, that the other Party is notified of such order or requirement and given a reasonable opportunity to intervene, as provided in Section 12.4.

11.3. Each Party agrees to: (i) use the other Party's Confidential Information solely in connection with the performance of its obligations under this Agreement; (ii) use the same degree of care (and in no event less than reasonable care) in protecting the other Party's Confidential Information that such Party would use to protect its own Confidential Information of a similar nature; (iii) not to copy, publish, show, or disclose the other Party's Confidential Information to any third parties without such other Party's prior written consent, and (iv) to return the other Party's Confidential Information to such other Party in accordance with Section 12.5. A receiving Party may provide the Confidential Information only to its Representatives who: (A) have a substantive need to know such Confidential Information in connection with this Agreement, (B) have been advised of the confidential and proprietary nature of such Confidential Information; and (C) have personally agreed with the receiving Party in writing to protect from unauthorized disclosure all confidential and proprietary information, of whatever source, to which they have access in the course of their employment or representation. A receiving Party shall be responsible for any breach or violation of this Section 12 by any of its Representatives. A receiving Party may make tangible or electronic copies, notes, summaries or extracts of Confidential Information only as necessary for use as authorized herein. All tangible or electronic copies, notes, summaries or extracts must be marked with the same confidential and proprietary notice as appears on the original.

11.4. If a Party receiving the other Party's Confidential Information is required to provide such Confidential Information to any court or government agency pursuant to written court order, subpoena, regulation or process of law, such receiving Party must first provide the other Party with prompt written notice of such requirement and cooperate with such other Party to appropriately protect against or limit the scope of such disclosure. To the fullest extent permitted by law, the receiving Party will continue to protect as confidential and proprietary all Confidential Information of the other Party disclosed in response to a written court order, subpoena, regulation or process of law.

11.5. A Party receiving Confidential Information from the other Party shall destroy or return to such other Party, at such other Party's sole option, all such Confidential Information, regardless of whether such Confidential Information is in written, graphic or machine-readable form within five (5) business days of the request of the other Party. At the request of the disclosing Party, the receiving Party will furnish a certificate, signed by an officer of the receiving Party, certifying that the foregoing has been done.

11.6. The confidentiality provisions of this Agreement shall remain in full force and effect following the termination of this Agreement for a period of five (5) years, except with regard to trade secret

information of a disclosing Party, which shall be held in confidence by the receiving Party for so long as the information remains protected as a trade secret under applicable law.

11.7. Either Party shall seek prior written approval from the other Party in the event they wish to make public the existence or nature of the relationship covered under this agreement. However, unless explicitly requested otherwise in writing, the Licensee authorizes BDNA to include its name in BDNA's customer reference lists and to include its name and logo in publicly distributed materials, such as brochures, commercial presentations, advertising, conference proceedings, press releases, etc., and to make use of such materials for external communication purposes without any restrictions. BDNA guarantee in any circumstance not to make wrong use, abuse or cause damages to the Licensee name and reputation.

## 12. INJUNCTIVE RELIEF

12.1. The Parties acknowledge that violation by one Party of the provisions contained in Section 11, and Section 12 would cause irreparable harm to the other Party for which an adequate remedy at law does not exist. In addition to other relief, it is agreed that temporary and permanent injunctive relief or any appropriate decree of specific performance would be an appropriate remedy to prevent any actual or threatened violation of such provisions or to enforce such provisions according to their terms without the necessity of the non-violating Party showing actual damages or that monetary damages would not afford adequate remedy. Any Party substantially prevailing in an action for equitable relief under this Section 13 shall be entitled to recover its costs of enforcement, including reasonable attorneys' fees.

## 13. COPYRIGHT INDEMNIFICATION

14.1 the Licensors shall fully indemnify the Licensee against all damages (excluding consequential damages), costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of copyright in consequence of the authorized use or possession of the Licensed Software or Documentation supplied by the Licensors under the License, subject to the following:

- 14.1.1 the Licensee shall promptly notify the Licensors in writing of any alleged infringement of which it has notice and
- 14.1.2 the Licensee shall cooperate with BDNA in the defense of such claim.
- 14.1.3. the Licensee must make no admissions without the Licensors' prior written consent; and
- 14.1.4 the Licensee, at the Licensors' request and expense shall allow the Licensors to conduct any negotiations or litigation and/or settle any claim.

14.2 Notwithstanding the foregoing, BDNA shall have no liability to Licensee if the infringement results from (a) use of the Licensed Software in combination with particular software or hardware, if such infringement would not have resulted from the use of the Licensed Software with other software or hardware, whether or not such other software or hardware is capable of performing the same functions as the particular software or hardware actually used in combination with the Licensed Software, (b) modifications to the Licensed Software not made by BDNA if such infringement would have been avoided by the absence of such modification, or (c) use of other than the version of the Licensed Software most recently offered to Licensee if such infringement would have been avoided by use of such a current version. **THE FOREGOING STATES THE ENTIRE LIABILITY OF BDNA WITH**

## **RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR CONTRACTUAL RIGHTS OF THIRD PARTIES BY THE PRODUCT(S) OR ANY PARTS THEREOF**

14.3 The Licensor shall not be liable for nor be required to indemnify the Licensee against any compensation or damages for or with respect to injuries or damage to persons or property to the extent that such injuries or damage result from any act, default or negligence on the part of the Licensee its employees or contractors (not being the Licensor or employed by the Licensor).

14.4 If the Licensed Software becomes, or if BDNA believes it is likely to become, the subject of a claim of infringement of any intellectual property rights of a third party, BDNA, at its option and expense, may: (a) secure for the Licensee a right of continued use; or (b) modify or replace Licensed Software so that it is no longer infringing, provided that such modification or replacement shall not materially affect the performance of the Software.

### **14. INDEMNITY AND INSURANCE**

15.1 BDNA shall indemnify and keep indemnified the Licensee, against injury (including death) to any persons or loss of or damage to any property (including the Licensed Software) which may arise out of the act, default or negligence of the Licensor, his employees or agents in consequence of the Licensor's obligations under the License and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, provided that the Licensor shall not be liable for nor be required to indemnify the Licensee against any compensation or damages for or with respect to injuries or damage to persons or property to the extent that such injuries or damage result from any act, default or negligence on the part of the Licensee his employees or contractors (not being the Licensor or employed by the Licensor).

15.2 The Licensee shall indemnify and hold harmless BDNA from and against all losses, liabilities, judgments, awards, settlements, damages, and costs (including reasonable legal fees and expenses) to others and all claims, causes of action, and lawsuits of others arising from or attributable to (i) any tax obligation of Licensee as discussed in section 5.3, (ii) any modification to any deliverables by Licensee, or (iii) any failure by Licensee to obtain any necessary consent to use any Licensee required software or technology. The Licensee shall also indemnify and keep indemnified the Licensor, against injury (including death) to any persons or loss of or damage to any property (including the Licensed Software) which may arise out of the act, default or negligence of the Licensee, his employees or agents in consequence of the Licensee's obligations under the License and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, provided that the Licensee shall not be liable for nor be required to indemnify the Licensor against any compensation or damages for or with respect to injuries or damage to persons or property to the extent that such injuries or damage result from any act, default or negligence on the part of the Licensor his employees or contractors (not being the Licensee or employed by the Licensee).

15.3. Without thereby limiting their responsibilities under Sub-Clauses 15.1 and 15.2 each party shall insure with a reputable insurance company against all loss of or damage to property and injury to persons (including death) arising out of or in consequence of his obligations under the License and against all actions, claims, demands, costs and expenses in respect thereof, save only as is set out in the exceptions in Sub-Clause 16.

### **15. LIMITATION OF LIABILITY**

16.1 Neither Party excludes or restricts in any way its liability for death or personal injury resulting from its own negligence or the negligence of its employees or agents acting in the course of their employment or agency or for fraudulent misrepresentation.

16.2 Subject to Clause 16.1, neither Party shall be liable to the other under applicable law or otherwise howsoever arising under or in connection with this Agreement: (a) any loss of profits, business, contracts, anticipated savings, reputation, opportunity, goodwill (including pecuniary losses arising from loss of goodwill), or revenue; (b) any loss incurred as a result of business interruption, expenditure of time by personnel or wasted expenditure; (c) any loss or corruption or destruction of data; (d) any special, indirect or consequential loss or damage whatsoever; and/or (e) any loss arising from the transmission of viruses, in all cases set out in this Clause 16.2, whether or not that Party was advised in advance of the possibility of such loss or damage.

16.3 Subject to any other limitations of liability that are set out in the relevant Schedule, if a Party is in breach of any obligations hereunder, or if any other liability however arising, whether deliberate or unintentional) arises in connection with the Licensed Software, then, subject to Clauses 16.1 and 16.2 of this Agreement, such Party's liability to the other Party shall be limited to 100% of the yearly License fees paid for all events (connected or unconnected) in any period of twelve (12) consecutive months.

## 16. RETURN OF RECORDS

16.1. Upon termination of this Agreement and receipt to BDNA of final payment due hereunder, BDNA shall deliver all records, data, memoranda, Confidential Information, and equipment of any nature that are in BDNA's possession or under BDNA's control and that are Licensee's property or relate to Licensee's business.

## 17. RELATIONSHIP OF PARTIES

17.1. The Parties understand that BDNA is an independent contractor with respect to Licensee, and not an employee of Licensee. Licensee will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of BDNA. BDNA shall indemnify and hold harmless Licensee against all liability and loss in connection with, and shall assume full responsibility for, non-payment of all applicable federal, state, and local taxes or contributions imposed or required under unemployment insurance, social security, and income tax laws, with respect to BDNA or its employees engaged in performance of this Agreement.

## 18. FORCE MAJEURE

18.1. Except for a Party's payment obligations hereunder, either Party shall be excused from performance hereunder to the extent that performance is prevented, delayed, or obstructed by causes beyond that Party's reasonable control, including acts of God (fires, storms, floods, accidents, explosions, epidemics, pandemics, earthquakes, the elements, quarantine restrictions, etc.), civil or military authority, acts of public enemy, war, terrorism, insurrection, acts of the federal government or any unit of state or local government beyond a Party's control in either sovereign or contractual capacity, strikes, labor disputes, loss or interruption of electrical power or other public utility, freight embargoes or delays in transportation. In the event that performance on the part of the Party shall be delayed or suspended as a result of circumstances beyond its reasonable control, without its fault or negligence, then the period of performance and Term of this Agreement shall be extended to the

extent of any such delay and neither Party shall incur any liability to the other Party as a result of such delay or suspension.

18.2. Notwithstanding any other provision in the Agreement, BDNA shall not be liable for failing to meet any obligation in the Agreement that is caused by the current coronavirus disease that is impacting workforces and supply chains globally ("Covid 19"). BDNA shall work to minimise any impact Covid 19 has on its ability to meet any obligation and shall keep the Licensee regularly informed of both any delay and/or disruption as well as what it is doing to mitigate such delay and/or disruption. The Parties agree that any failure by BDNA to meet any of its obligations in the Agreement, due to Covid 19, shall not give rise to a right to terminate the Agreement by either Party unless the Parties agree otherwise, acting reasonably and in good faith.

## 19. DATA PROTECTION

**"Binding Corporate Rules", "Data Processing Agreement", "Data Subjects", "EU-US Privacy Shield", "Personal Data", "Process" and "Processor"** shall have the meaning as set out by the General Data Protection Regulation (Regulation (EU) 2016/679) (hereinafter the **"GDPR"**).

20.1 Each Party shall comply with the applicable data protection legislation and will fulfil all the requirements necessary in order for the Licensor to provide the Software and the Services to the Licensee. This includes, as well, providing any notifications and obtaining any sufficient consents and authorization, under any applicable laws, from any relevant data subject when sharing Personal Data and Licensee will only disclose to BDNA the Personal Data that BDNA requires to perform the Services.

20.2 Each Party shall be responsible for implementing all technical and organizational measures to ensure a level of security appropriate to the risk represented by the Processing of Personal Data and the nature of the Personal Data being Processed and involved in the Software Service provided by BDNA and used by the Licensee under this Agreement.

20.3 The Licensee acknowledges and agrees that BDNA may need to collect, Process and use Personal Data in order to provide the ordered Service to the Licensee especially to:

- (a) administer, track and fulfil for the Services;
- (b) implement the Services;
- (c) manage and protect the security and resilience of any BDNA Equipment and the Service;
- (d) manage, track and resolve incidents with the Licensed Software Service, either remotely or not;
- (e) administer access to online portals relating to the Services;
- (f) compile, dispatch and manage the payment of invoices;
- (g) manage the Agreement and resolve any disputes relating to it;
- (h) respond to general queries relating to the Services; or
- (i) comply with applicable law and any regulatory obligations.

20.4 For the aforementioned purposes, Personal Data may be used, managed, accessed, transferred or held on a variety of systems, networks and facilities (including database) worldwide in compliance with the GDPR and other data privacy laws and solely for the purpose of the Agreement.

20.5 Where it is required to transfer the Personal Data to other BDNA Affiliates and other relevant parties, within or outside the country of origin, in order to carry out the activities in this Clause 20, BDNA will ensure that the transfer and use of the Personal Data complies with applicable data protection legislation including:

- (a) BDNA Group's Binding Corporate Rules (for transfers among BDNA's Affiliates).
- (b) the relevant standard data protection clauses adopted by the European Commission .

20.6 Where BDNA acts as a Processor, the Parties undertake to conclude an agreement complying with the requirements of Article 28 GDPR for the commissioned data processing in order to specify the mutual obligations.

## 20. DISPUTES, CHOICE OF LAW AND VENUE

20.1. The laws of the State of Pennsylvania (without giving effect to its conflicts of laws principles) shall govern all matters relating to this Agreement, including torts.

20.2. Except for violations of this Agreement set forth in Section 12 (in which case a Party may submit the relevant matter to the courts set forth in Section 20.4), if any dispute or claim arises between the Parties out of or relating to this Agreement or breach hereof, then the Parties shall first endeavour to settle the matter through negotiations.

20.3. If the Parties cannot reach agreement through negotiations within 30 days after one Party first gives written notice of the dispute or claim to the other Party, the Parties shall hire a mediator from a commercial mediation service to assist in the dispute resolution. The costs of any mediation proceeding, including mediator's fees, administrative fees and fees for jointly required or obtained records or transcripts, will be borne equally by the Parties to the proceeding.

20.4. If the Parties cannot reach agreement within 60 days after one Party first gives written notice of the dispute or claim to the other Party, the dispute or claim may only be, at the aggrieved Party's discretion, submitted to a court. The Parties further agree that except for actions seeking injunctive relief (which may be brought in any appropriate jurisdiction), any legal action or proceeding arising out of or relating to this Agreement shall only be brought in a federal or state court located in Arizona sitting within Maricopa County. This choice of venue is intended by the Parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the Parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this Section 20.4. Each Party hereby submits to the exclusive jurisdiction of the federal and state courts located in Arizona sitting within Maricopa County for the purpose of all legal actions and proceedings arising out of or relating to this Agreement. Each Party waives any right it may have to assert the doctrine of forum non convenience or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section 20.4.

20.5. Except as set forth in Section 11 and Section 12 and except as otherwise provided by law, neither Party may recover from the other Party any fees, expenses, or costs incurred during any legal action or proceeding arising out of or relating to this Agreement.

## 21. ASSIGNMENT

21.1. Neither of the Parties may assign any right or benefit under this Agreement or delegate any obligations or performance under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

21.2. Any purported assignment or delegation made in violation of this Section 21 shall be void. This Agreement shall bind, benefit, and be enforceable by and against either of the Parties and their respective successors and consented-to assigns. No outside party shall be considered a beneficiary of this Agreement or entitled to any rights under this Agreement.

## 22. SURVIVAL OF PROVISION

22.1. The provisions of Section 9, Section 10, Section 11, Section 12, Section 13, Section 14, Section 15, Section 16, Section 17 and Section 18 shall survive the termination of this Agreement.

22.2. More generally, the obligations of the parties under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive termination, cancellation, or expiration of this Agreement.

## 23. GENERAL

23.1. Entire Agreement. This Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and thereof, and any and all prior discussions, negotiations, representations, commitments, agreements, and understandings related to this Agreement are hereby superseded by and merged into this Agreement. No representations, oral or otherwise, express or implied (including by omission), other than those set forth in this Agreement have been made or relied upon by any Party to this Agreement.

23.2. Compliance. This agreement is subject to all present and future regulations and restrictions of the government and agencies of all applicable government entities. Licensee agrees that it will not ship or divert the Licensed Software or the Documentation with respect thereto for use in any country or countries in contravention of the laws and regulations of such government or agencies or knowingly cause or permit such shipping or diversion without the prior written approval of such government or agencies.

23.3. Order of priority In the event of any conflict or inconstancy between this Agreement and any other document, contract, etc..., unless otherwise agreed explicitly between the parties, this Agreement will prevail.

23.4. Amendment. This Agreement may not be amended or discharged except by a writing signed by duly authorized representatives of BDNA and Licensee that identifies itself as an amendment.

23.5. Severability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. Should a court of

competent jurisdiction find that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

23.6. No Waiver. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

23.7. Notice. All notices, covenants, or requests desired under this Agreement shall be in writing and shall be delivered in person or sent by certified mail, return receipt requested, or by courier service to the address of the other Party set forth in the introduction of this Agreement or to such other address as such Party shall have designated by proper notice. Notices shall be deemed given when delivered.

23.8. Headings. Section headings are for convenience only and shall not be construed as part of the Agreement.

23.9. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original document, but all such counterparts together shall constitute only one agreement.

23.10. Authority to Sign Agreement. The individuals signing this Agreement and the Parties on whose behalf such individuals are signing hereby represent and warrant that they are empowered and authorized to sign on behalf of and to bind the Parties for whom they have signed.

23.11. References. Unless the context requires otherwise, references herein to Sections, schedules, Appendix and addenda refer to Sections of, and schedules, addenda and Appendix attached to, this Agreement.

**THE PARTIES HEREBY ACKNOWLEDGE that they have read and understand this Agreement, its Schedules, Appendix, and Addenda, if any, as attached hereto and incorporated by reference, and agree to be bound by all of the provisions, terms, and conditions as specified herein.**

**IN WITNESS WHEREOF, and intending to be legally bound, the Parties have caused this Agreement to be executed by their duly authorized representatives.**

BDNA

Licensee:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

## APPENDIX A - LICENSED SOFTWARE

### LICENSEE:

| Licensee's Business                                       | Location |
|-----------------------------------------------------------|----------|
| <list company(y) (ies) name(s), and/or business line (s)> |          |
|                                                           |          |
|                                                           |          |
|                                                           |          |

### SOFTWARES:

| Licensed Software Name & Version           | Modules             | Number of Users  | License Fee             |
|--------------------------------------------|---------------------|------------------|-------------------------|
| <list licensed products here, if relevant> | <list modules here> | <nn> Named Users | <xxx.xxx><br><Euro/USD> |
|                                            |                     |                  |                         |
|                                            |                     |                  |                         |
|                                            |                     |                  |                         |

23.12. Including any derivative of the Licensed Software developed for the specific Licensee 's needs as a result of enhancement, customization or configuration of the Licensed Software and also all works which are incorporated into the License Software, developed by BDNA under this Agreement or any contract concluded with the Licensee.

### DURATION

*XXX years or months or same duration as the principal contract (to be defined) or perpetual from the Effective Date*

### LICENSE FEES

TO BE COMPLETED

### BILLING

Bill to : XXX

Bill to:

**SIGNATURES**

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have caused this Agreement to be executed by their duly authorized representatives.

BDNA

By: \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Licensee:

By: \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_