

IdeaBlade Product License Terms and Conditions

These terms and conditions apply to your license from IdeaBlade Inc., a Delaware corporation (“*IdeaBlade*”, “*our*” or “*we*”) that will be provided to you as a licensee of IdeaBlade software products and/or services and support (“*you*” or “*Licensee*”). By accepting the Product Quotation for the IdeaBlade products described in the Product Quotation (“*IdeaBlade Products*”), Licensee agrees to be bound by and accepts these terms and conditions (together with the applicable Product Quotation, “*these Terms and Conditions*”).

THESE TERMS AND CONDITIONS APPLY UNLESS THE LICENSEE HAS SIGNED A SEPARATE LICENSE AGREEMENT WITH IDEABLADE, IN WHICH CASE THE SEPARATE AGREEMENT SHALL GOVERN. IdeaBlade will not be bound by oral discussions during the evaluation process.

Definitions. In these Terms and Conditions, unless the context otherwise requires, the following terms shall have the following meaning:

“Client Software” includes computer software that allows a single personal computer, workstation, terminal, handheld computer, pager, telephone, personal digital assistant, or other electronic device to access or use the Licensed Software.

“Confidential Information” means any non-public information written or otherwise disclosed in any medium by one party (the “Disclosing Party”) to the other party (the “Receiving Party”) under these Terms & Conditions and marked or otherwise designated as “Confidential” or the information disclosed and/or the circumstances surrounding its disclosure would lead a reasonable person to believe that such information is confidential. However, Confidential Information shall not include any information that: (a) is or becomes a part of the public domain through no act or omission of the Receiving Party or otherwise available to the public other than by breach of these Terms & Conditions; or (b) was in the Receiving Party’s lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party; or (c) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or (d) is independently developed by the Receiving Party without access to the Confidential Information of the Disclosing Party.

“Development Tool Software” means the Object Code version of IdeaBlade’s Client Software module(s) and any error corrections, modifications and updates thereto provided to Licensee in accordance with these Terms and Conditions and the Product Quotation.

“Documentation” means any and all written and electronic user manuals and installation guides for use of the Licensed Software in printed and machine readable form.

“Fees” means, collectively, License Fees, Maintenance Service Fees, and Professional Services Fees.

“Intellectual Property” or “Intellectual Property Rights,” as the context requires, means all of the following worldwide intangible legal rights, whether or not filed, perfected, registered or recorded and whether now or hereafter existing, filed, issued or acquired: (a) patents, copyrights, trademarks, trade secrets, moral rights; (b) any rights in or to any applications for any of the foregoing; and (c) any and all other intangible or proprietary rights, anywhere in the world.

“License Fees” means the license fees set forth in the Product Quotation. Unless otherwise noted, the License Fees will be set for the first twelve (12) months after the Effective Date, after which IdeaBlade may change the License Fees in its sole discretion.

“Licensed Software” includes computer software, online and electronic documentation and any associated media and printed materials

developed and owned by IdeaBlade and may include the Server Software, Development Tool Software, [Client Software] and/or Redistributable Software (as these terms are defined herein) in Object Code and any combination thereof.

“Licensee Application” means a software application owned by Licensee that Licensee developed by using the Licensed Software and/or incorporating any portion of the Redistributable Software. In order to qualify as a Licensee Application, the software must add substantial, material functionality to the Redistributable Software and must not be intended for use as a software development tool.

“Maintenance and Support Services” means the software maintenance and technical support services described in Section 11.

“Maintenance Service Fees” means the fees set forth in the Product Quotation for Maintenance and Support Services. The Maintenance Service Fees will be set for the first twelve (12) months after the Effective Date, after which IdeaBlade may change the Maintenance Service Fees in its sole discretion.

“Object Code” means the Licensed Software, in machine readable form including all computer programming code, substantially or entirely in binary form, which is directly executable by a computer after suitable processing but without the intervening steps of compilation or assembly, and all help, message and overlay files.

“Professional Services” means the training, consulting, implementation, configuration, and integration services described in the Product Quotation.

“Professional Services Fees” means the amounts charged by IdeaBlade in accordance with these Terms and Conditions for the Professional Services specified in the Product Quotation.

“Redistributable Software” means all IdeaBlade developed and owned software that the Licensee may integrate into and distribute as part of a Licensee Application, as the Parties may agree.

“Seat” means operation and use of the Development Tool Software on a single Supported Platform by a single authorized user.

“Server Software” means the Object Code version of IdeaBlade’s server software module(s), and any error corrections, modifications and updates thereto that provides services or functionality on the Licensee’s server (Licensee’s computers capable of running the Server Software are “Servers”) in accordance with these Terms and Conditions.

“Services” means any or all of the Maintenance and Support Services and/or Professional Services.

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“*Source Code*” means, without limitation, the fully commented human readable source code for the Licensed Software and internal system documentation, as well as all other materials, in both machine readable and hard-copy form which are used to develop or test the Licensed Software. .

1. “Supported Platform” means the hardware and software platforms set forth in the then-current Documentation, including specific levels of operating systems, library version and compilers, on which IdeaBlade will support the Licensed Software for Licensee in accordance with the Product Quotation LICENSE AND OWNERSHIP.

1.1. *Development and Technical Support License.* Subject to these Terms and Conditions and the Product Quotation (including without limitation the payment to IdeaBlade of any applicable Fees set forth in the Product Quotation), IdeaBlade hereby grants to Licensee a perpetual, non-transferable, non-exclusive right, without right to sublicense, to use, execute, display, perform, port, modify, develop, translate, create derivative works based on, support on behalf of customers or otherwise use, change and/or maintain the number of copies of Server Software with the Designated Server Capacity and/or the Development Tool Software and Documentation paid for by Licensee in accordance with the Product Quotation, solely (i) on Supported Platforms and in accordance with the Documentation, (ii) internally as necessary for the purpose of developing Licensee Applications, and (iii) in accordance with the restrictions set forth in Section 2. This Development and Technical Support License applies to updates, supplements, add-on components, and Internet-based services components of the Licensed Software unless IdeaBlade provides other terms with the update, supplement, add-on component, or Internet-based services component. IdeaBlade reserves the right to discontinue any Internet-based services provided or made available to Licensee through the use of the Licensed Software. This Development and Technical Support License also governs any product support services relating to the Software except as may be included in another agreement between the Licensee and IdeaBlade.

1.2. *Redistribution License.* In addition to the license granted above, IdeaBlade hereby grants to Licensee a worldwide, limited, non-transferable, non-exclusive right, to use, copy, display, perform, grant sublicenses, market and distribute the Redistributable Software, solely in Object Code form as an integrated component of Licensee Applications, and not as a standalone product.

1.3. *Ownership and Intellectual Property Rights.* Subject to these Terms & Conditions and the Product Quotation, IdeaBlade further grants you a worldwide, non-exclusive and non-transferrable license to all Intellectual Property Rights necessary to use the Licensed Software in accordance with the scope of the licenses set forth in Sections 1.1 and 1.2; such Intellectual Property Rights are included in the licenses granted to you herein.

2. RESTRICTIONS

2.1. *Server Software.* Each copy of the Server Software licensed by Licensee hereunder may only be installed on a single Licensee Supported Platform Server and be used only within the Designated Server Capacity.

2.2. *Development Tool Software.* The Development Tool Software is licensed for the perpetual term to Licensee on a per Seat basis. You don't have the right: (i) to sublicense the Development Tool Software to a sublicensee or distributor; and (ii) to sublicense the Redistributable Software for purposes of incorporating it with the third party's software application. However, should a case arise where you need to grant such right, the parties will negotiate such arrangement in good faith.

2.3. *Copies; Derivative Works.* Except for copies of the Redistributable Software made in accordance with Section 1.2, Licensee

may only make one copy of the Licensed Software for archival and/or back-up purposes, to be used only when the primary copies of the Licensed Software are not operational. All legends, trademarks, trade names, copyright marks and other proprietary notices included in the original copies of the Licensed Software must be maintained as part of any and all back-up, archival or other copies of the Licensed Software made by Licensee. Licensee shall have no right, and shall not permit any third party to modify the Licensed Software, create derivative works thereof (other than Licensee Applications), reverse engineer, disassemble, decompile, or otherwise try to determine the Source Code of any Licensed Software, create license keys not authorized by IdeaBlade or provide any third party with copies of authorized or unauthorized license keys or use any Licensed Software for the benefit of any third party, including, without limitation, by serving as a service bureau, outsourcer or other provider of computer or engineering services.

2.4. *Third Party Software.* Licensee's use of any third party software programs distributed by IdeaBlade is subject to any license terms or conditions that may be provided by such third parties.

2.5. *End User License Agreements.* Licensee will not distribute any Redistributable Software as part of a Licensee Application without requiring each recipient of such Licensee Application to be bound by an end user license agreement that protects IdeaBlade's Intellectual Property Rights in the Redistributable Software to at least the same degree as these Terms and Conditions.

3. SERVICES

In addition to the Licenses granted hereto, Licensee may order from IdeaBlade one or more Services described below. Any Services ordered by Licensee shall be subject to the applicable Product Quotation and these Terms and Conditions, including without limitation payment to IdeaBlade of the applicable Maintenance Service Fees and/or Professional Services Fee.

4. ORDERING AND DELIVERY; FEES AND PAYMENT.

Upon receipt of the executed Product Quotation, IdeaBlade will ship the specified Licensed Software and commence the specified Services, and will invoice Licensee for the amounts due pursuant to such Product Quotation. In consideration for the rights granted by IdeaBlade to Licensee under these Terms and Conditions, Licensee shall pay to IdeaBlade the License Fees for any Licensed Software ordered by Licensee, any applicable Maintenance Service Fees for Maintenance and Support Services ordered by Licensee, all in accordance with the applicable Product Quotation. Except as otherwise expressly provided in the Product Quotation, Maintenance Service Fees shall be paid annually in advance at the time such Maintenance and Support Services are ordered by Licensee. Upon payment of the applicable Maintenance Service Fees, IdeaBlade shall provide the Maintenance and Support Services during the one (1) year period commencing on the Start Date (the “*Maintenance Period*”). Thereafter, Licensee may cancel annual Maintenance and Support Services for any subsequent Maintenance Period by notifying IdeaBlade of its intent to cancel no less than thirty (30) days before the end of the then-current Maintenance Period. If IdeaBlade does not receive such notice within such period, IdeaBlade will invoice Licensee for the applicable annual Maintenance Service Fees prior to commencement of the next Maintenance Period.

Licensee shall pay to IdeaBlade any applicable Professional Services Fees for Professional Services as indicated in the Product Quotation.

The Fees for Licensed Software and Services shall be as set forth in Product Quotation. All overdue payments may be subject, at IdeaBlade's sole discretion, to daily compounded interest payable to IdeaBlade at a rate equal to the lesser of 1.5 % per month or the highest rate permitted by applicable law. Unless otherwise expressly provided herein, all Fees are nonrefundable.

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5. TAXES

The amounts payable to IdeaBlade are exclusive of any sales or use tax, deductions, withholding or other taxes or governmental charges. Licensee shall be responsible for payment of all such taxes or charges except for any taxes based solely upon IdeaBlade's net income.

6. OWNERSHIP

6.1. *Licensed Software.* Other than as licensed herein, IdeaBlade shall retain all right, title and interest (including without limitation all Intellectual Property Rights) in and to the Licensed Software and any modifications, extensions, enhancements, adaptations or derivative works and no other licenses are granted herein by implication, estoppel or otherwise. To the extent that you own or otherwise come to acquire any Intellectual Property Rights in any of the foregoing, you hereby irrevocably assign such Intellectual Property Rights to IdeaBlade. "Intellectual Property Rights" shall include all patent, copyright, trade secret, trademark, and other intellectual property rights.

6.2. *Data, Content and Applications.* Licensee shall retain all right, title and interest (including without limitation all Intellectual Property Rights) in and to any data, content and Licensee Applications created, developed or generated by or for Licensee using any Licensed Software.

7. AUDITS

During the Term, Licensee shall maintain complete and accurate books, records, policies and procedures (collectively "*Books and Records*") sufficient to confirm Licensee's compliance with these Terms and Conditions and the Product Quotation, including without limitation restrictions on number of Seats, compliance with the Designated Server Capacity and payment of Fees to IdeaBlade. During the Term and for a period of one (1) year thereafter, Licensee shall permit IdeaBlade (or an independent representative engaged by IdeaBlade), upon ten (10) days prior written notice, to audit (each an "*Audit*") Licensee's business practices to the extent reasonably necessary to verify Licensee's compliance with the terms, conditions and restrictions of these Terms and Conditions, at such times during Licensee's regular business hours as IdeaBlade may reasonably request. IdeaBlade shall exercise its right to audit no more frequently than one (1) time each calendar year. If any such audit should disclose any underpayment of Fees, the Licensee shall promptly pay IdeaBlade such underpaid amount, together with interest thereon at a rate of one and one-half percent (1.5%) per month during which each such amount was owed and unpaid, or the highest interest rate allowed by law, whichever is lower. If the amount of such underpayment exceeds five (5%) percent of amounts otherwise payable, then the Licensee shall immediately reimburse IdeaBlade for IdeaBlade's reasonable and customary audit expenses. The rights and obligations set forth in this Section 7 shall survive termination or expiration of the Term (as such term is defined in Section 13.1) for a period of two (2) years from such termination or expiration.

8. INDEMNITY

IdeaBlade will indemnify, hold harmless and defend, at its expense, any action brought against Licensee by a third party based upon a claim that Licensee's use of the Licensed Software within the scope of these Terms and Conditions and the Product Quotation, as provided to Licensee by IdeaBlade, infringes a United States patent or copyright issued as of the Effective Date, or misappropriates a trade secret of such third party; provided that Licensee notifies IdeaBlade promptly in writing of such claim, provides IdeaBlade with the sole control and authority to defend or settle such action or claim, and gives IdeaBlade the authority, information and assistance necessary to settle or defend such claim.

If the Licensed Software becomes, or in the opinion of IdeaBlade may become, the subject of a claim of infringement or misappropriation, IdeaBlade may, at its option, (a) procure for Licensee the right to use the applicable Licensed Software free of any liability; or (b) replace or

modify the applicable Licensed Software to make it non-infringing. If IdeaBlade is unable to effect either (a) or (b) within a reasonable period of time, then Licensee shall uninstall and destroy all copies of the Licensed Software in Licensee's possession.

Notwithstanding the foregoing, IdeaBlade shall have no obligation to defend Licensee or to pay any Costs or attorneys' fees for any action, claim or settlement, based upon: (a) use of a version of the Licensed Software that was not, at the time that the claim arose, the current unaltered version of the Licensed Software provided by IdeaBlade hereunder; (b) combination or operation of the Licensed Software with any software, hardware, data, or other materials or products (collectively, "*Third Party Materials*") not provided by IdeaBlade, other than Third Party Materials with which the Licensed Software was intended to operate as specified in the Documentation, if such claim would not have arisen but for such combination or operation; (c) use of any Licensed Software in a manner other than as authorized by the Documentation, the Product Quotation or these Terms and Conditions; or (d) IdeaBlade's compliance with the designs, plans or specifications furnished by or on behalf of Licensee.

THE FOREGOING STATES IDEABLADE'S SOLE AND EXCLUSIVE LIABILITY AND SOLE AND EXCLUSIVE REMEDY OF LICENSEE, ITS AFFILIATES, SUBLICENSEES, CUSTOMERS AND DISTRIBUTORS WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS OF ANY THIRD PARTY.

Licensee shall defend, indemnify and hold harmless IdeaBlade from and against any and all third party claims, actions, causes of action, liabilities, damages, costs and expenses, including reasonable attorney's fee, arising from Licensee's use of the Licensed Software and Services.

9. WARRANTIES

9.1. *Licensed Software.* IdeaBlade represents and warrants that for a period of ninety (90) days from the date of installation of the Licensed Software (the "*Warranty Period*"), the Licensed Software (excluding any third party software provided with or as part of the Licensed Software) will substantially perform in all material respects in accordance with the functional specifications set forth in the applicable Documentation, when operated on a Supported Platform. IdeaBlade's sole and exclusive obligation and Licensee's sole and exclusive remedy for a breach of the foregoing warranty shall be for IdeaBlade to exercise commercially reasonable efforts to correct any reproducible errors or defects in the Licensed Software that are identified by Licensee during the Warranty Period. If, after reasonable efforts, IdeaBlade is unable to correct any such errors or defects, Licensee shall be entitled to recover the License Fees paid to IdeaBlade for such Licensed Software, provided that Licensee returns and ceases using the defective or nonconforming Licensed Software.

9.2. *Media.* IdeaBlade represents and warrants that the CD ROMs, diskettes or other media upon which IdeaBlade delivers Licensed Software to Licensee shall be substantially free of defects in materials and workmanship under normal use for ninety (90) days from the date of the applicable invoice. IdeaBlade's sole and exclusive obligation and Licensee's sole and exclusive remedy for a breach of the foregoing warranty shall be for IdeaBlade to replace any defective media.

9.3. *Services Warranty.* IdeaBlade represents and warrants that any Services ordered by Licensee will be performed in a competent, professional and workmanlike manner substantially in accordance with any applicable Product Quotation.

10. DISCLAIMERS; LIMITATION OF LIABILITY

10.1. *DISCLAIMERS.* EXCEPT AS EXPRESSLY PROVIDED IN SECTION 9, THE LICENSED SOFTWARE AND SERVICES ARE PROVIDED "AS IS" AND "WITH ALL FAULTS." WITHOUT

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LIMITING THE GENERALITY OF THE FOREGOING, IDEABLADE MAKES NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, QUALITY, ACCURACY, FREEDOM FROM ERROR OF THE OPERATION, USE AND FUNCTION OR OTHERWISE. IDEABLADE MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY SOFTWARE OR SERVICES PROVIDED WITH OR AS PART OF THE LICENSED SOFTWARE OR SERVICES. LICENSEE SHALL BE SOLELY RESPONSIBLE, AND IDEABLADE SHALL HAVE NO OBLIGATION TO HONOR, ANY WARRANTIES THAT LICENSEE, OR ITS DISTRIBUTOR OR SUBLICONSEE, PROVIDES TO ITS CUSTOMERS WITH RESPECT TO THE LICENSEE APPLICATION THAT ARE IN ADDITION TO, OR INCONSISTENT WITH, THE WARRANTIES PROVIDED BY IDEABLADE IN SECTION 9.

10.2. *LIMITATION OF LIABILITY.* NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS AND CONDITIONS AND EXCEPT FOR A BREACH OF SECTION 1 (LICENSE), SECTION 2 (RESTRICTIONS) OR SECTION 11 (CONFIDENTIALITY), EACH PARTY'S AGGREGATE LIABILITY IN CONNECTION WITH THESE TERMS AND CONDITIONS, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY (WHETHER IN CONTRACT, TORT, OR OTHER EQUITABLE OR LEGAL THEORY, INCLUDING WITHOUT LIMITATION NEGLIGENCE, STRICT LIABILITY OR PRODUCT LIABILITY), SHALL NOT EXCEED THE AGGREGATE AMOUNT PAID BY LICENSEE TO IDEABLADE DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

10.3. THE FOREGOING DISCLAIMERS AND LIMITATIONS OF LIABILITY ALLOCATE THE RISKS BETWEEN IDEABLADE AND LICENSEE AND FORM A MATERIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. IDEABLADE'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

11. SERVICE LEVEL PROVISIONS

For the purposes of this Section, the following definitions apply: "*Update*" means a minor improvement, bug fix, patch, workaround, error correction or minor performance enhancement, to a version of the Licensed Software or which IdeaBlade identifies by a change in the digit(s) to the right of the decimal point in the version number (e.g., 1.1, 1.2, 1.2.1, etc.). For the avoidance of doubt, Updates do not include Upgrades.

"*Upgrade*" means a subsequent release of a version of the Licensed Software which includes significant additional features, functionality and/or improvements or which IdeaBlade identifies by a change in the digit(s) to the left of the decimal point in the version number (e.g., 1.0, 2.0, 3.0). For the avoidance of doubt, Upgrades do not include New Products.

11.1. *Maintenance Service.* Subject to Licensee's payment to IdeaBlade of the applicable annual Maintenance Service Fees in accordance with Product Quotation and these Terms and Conditions, IdeaBlade shall provide to Licensee, promptly upon their release for generally availability to other commercial customers, any Updates and Upgrades to the then-current release of the Licensed Software, released by IdeaBlade from time to time for general availability to its other commercial customers. The right to receive New Products, as determined and defined by IdeaBlade, is not included as part of Maintenance Services. Licensee may be entitled to license New Products from IdeaBlade upon payment to IdeaBlade of the applicable License Fee for such New Product(s).

11.2. *Technical Support Services.* Subject to Licensee's payment to IdeaBlade of the applicable annual Maintenance Service Fees in accordance with these Terms and Conditions, IdeaBlade shall provide to

Licensee the technical support services as described below, in connection with the two most current versions of the Licensed Software and Documentation provided to Licensee by IdeaBlade, provided that no alterations or modifications to the Licensed Software or Documentation have been made by anyone other than IdeaBlade or its agents or contractors.

11.3. *Licensee Responsibilities.* In connection with the performance by IdeaBlade of the Services pursuant to this Section 11, Licensee shall:

11.3.1. Notify IdeaBlade of Licensed Software problems, and provide IdeaBlade with any documentation available regarding the error sufficient to allow IdeaBlade to reproduce the error;

11.3.2. Upon reasonable advanced request and notice by IdeaBlade, allow IdeaBlade appropriate access to the applicable Supported Platforms, related computers and communication facilities consistent with Licensee's confidentiality, safety and security procedures. Any such access or information obtained from such access, if provided by Licensee shall be considered Confidential Information of Licensee and shall be treated as such by IdeaBlade;

11.3.3. Provide IdeaBlade with reasonable assistance, sufficient support and test time on Licensee's computer systems to duplicate the problem, certify that the problem is due to a Licensed Software, and when repairs are complete, if requested by IdeaBlade, certify in writing that the problem has been repaired; and

11.3.4. Return any defective Licensed Software and/or Documentation or attest in writing to the destruction of same as directed by IdeaBlade provided an adequate replacement is provided by IdeaBlade free of cost.

11.4. *Service Availability and Escalation Procedures.* IdeaBlade will provide services from 8 am to 5 pm (PST) on the following days of the week; Monday to Friday. IdeaBlade will provide reasonable advice and assistance regarding the use of the Licensed Software. An "Error" means any non-conformity that changes or impairs functionality and/or performance to the Licensed Software will be classified based upon the classes stated below and available information. Error classifications may be changed (with mutual consent) based upon new information. Errors are classified as follows:

Class 1 Error means an Error that result in a critical impact on the usability and / or performance of the Licensed Software.

Class 2 Error means a failure that prevents some commonly used or important features or functions of the Licensed Software.

Class 3 Error means other Error(s) in the Licensed Software.

IdeaBlade agrees to assign staff to address Errors as follows:

Class 1 Error Within one (1) business day from IdeaBlade's receipt from Licensee of such technical information to identify and classify the Error. IdeaBlade will assign technical resources and make continuous effort during all business days thereafter to respond.

Class 2 Error Within five (5) business days from IdeaBlade's receipt from Licensee of such technical information to identify and classify the Error, IdeaBlade will assign technical resources and make continuous efforts during all business days thereafter to respond.

Class 3 Error IdeaBlade will address the Error in a time frame that is commercially reasonable in light of the seriousness and commercial impact of the Error. Where reasonable, IdeaBlade may include a solution in its next software release.

Should IdeaBlade be unable to effect and provide to Licensee a commercially acceptable resolution to a Class 1 Error in five (5)

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business days or a Class 2 Error in ten (10) business days, then IdeaBlade shall provide Licensee with a written reasonable work plan stating the nature of IdeaBlade's efforts to cure the Error and the expected time for a proposed resolution thereto. Licensee may provide feedback as to adequacy of the plan. If the parties do not agree on the plan to resolve the Error, each party will escalate the matter to a senior technical manager for resolution. IdeaBlade and Licensee shall each notify the other of a person or persons to serve as the point of contact for maintenance issues and reports. Such persons can be changed by written notice.

12. CONFIDENTIALITY

Licensee agrees that for a period of three (3) years from receipt, to hold IdeaBlade's Confidential Information in strict confidence, not to disclose such Confidential Information to any third party nor use such information except as authorized by the Product Quotation and these Terms and Conditions. Licensee will exercise the same degree of care to protect the confidential information of IdeaBlade as Licensee uses to protect its own confidential information of like importance, but in no event less than reasonable care.

Licensee acknowledges that any material breach of these Terms & Conditions will cause irreparable injuries for which there are no adequate remedies at law. Therefore, in the event of any such breach, either actual or alleged, in addition to any other rights or remedies provided by these Terms and Conditions or otherwise available at law or in equity, IdeaBlade shall be entitled to obtain equitable or injunctive relief to stop or prevent such breach without having to prove monetary damages.

13. TERM AND TERMINATION

13.1. *Term.* The Term of these Terms & Conditions and the licenses set forth in Section 1 shall commence on the Effective Date set forth in the Product Quotation and, unless earlier terminated in accordance with Section 13.2, shall remain in effect for as long as the Licensee continues payment of the applicable License Fees, uses any of the Licensed Software or receives any of the Services or as otherwise the Parties may agree in the Product Quotation (the "*Term*"). Upon the earlier of the date of Termination of these Terms & Conditions or the date that Licensee stops paying the applicable License Fees, Licensee shall maintain and deploy only such Redistributable Software as was committed for deployment under the terms of this License as of that date (the "*Surviving Redistributable Software*"). At Licensee's option, IdeaBlade will continue to provide Technical Support and Maintenance Services for the Surviving Redistributable Software as long as Licensee continues payment of all applicable Technical Support and Service Fees.

13.2. *Termination.* These Terms and Conditions may be terminated immediately by mutual agreement between the parties, in the event of a material breach by the either Party and by IdeaBlade in the event that Licensee (i) becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; (ii) becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing; or (iii) in the event that Licensee undergoes a Change of Control. For purposes of this definition, "Control" means: (a) direct or indirect ownership of more than fifty (50%) percent of the outstanding voting or equity securities or beneficial interest of an entity, (b) the right to vote for or appoint a majority of the board of directors or other governing body of an entity, or (c) management or operational control of an entity. Upon termination or expiration of these Terms & Conditions and the licenses granted hereunder for any reason: (i) all Fees for licenses granted and Services performed as of the effective date of any such termination or expiration and all other amounts owed to IdeaBlade by Licensee shall immediately

become due and payable, and Licensee shall pay any such amounts to IdeaBlade within thirty (30) days following such expiration or termination; and (ii) within ten (10) days after such termination, the Licensee will either destroy or return to IdeaBlade the original and all copies of the Licensed Software, Documentation and other confidential information of IdeaBlade in the possession or under the control of the Licensee and certify in writing to IdeaBlade that the Licensee no longer possesses or controls any copies of the Licenses Software.

13.3. *Survival.* The following sections shall survive expiration or termination of these Terms and Conditions: Definitions, Sections 1.1, 2, 5, 6, 7, 8, 10, 12, 13 and 14 (except for Section 14.6).

14. GENERAL TERMS

14.1. *Force Majeure.* Except for the payment of money, neither Party shall be liable for any loss, damage, or penalty resulting from any failure or delay due to causes beyond its reasonable control. In any such event, the time for performance shall be extended by the length of the *force majeure*.

14.2. *Compliance with Law.* Licensee shall comply with all applicable laws and regulations. Licensee understands that IdeaBlade may be subject to regulation by agencies of the United States Government including the U.S. Department of Commerce and Defense, which prohibits export or diversion of the Licensed Software to certain countries and individuals. Regardless of any disclosure made by Licensee to IdeaBlade of an ultimate destination of the Licensed Software, Licensee warrants that Licensee will not export either directly or indirectly, any Licensed Software without first obtaining any and all necessary approvals from the U.S. Department of Commerce or any other agency or department of the United States Government as required.

14.3. *Assignment.* Subject to this Section 14.3, these Terms and Conditions shall be binding upon and inure to the benefit of both parties' successors and permitted assigns. If Licensee is acquired, these Terms & Conditions and the licenses granted hereunder may be assigned by the Licensee to acquirer with the prior written notice to IdeaBlade, provided, that the acquirer agrees to be bound by the Terms and Conditions and the applicable Product Quotation, including but not limited to, the Designated Server Capacity. Except as specifically provided in this Section 14.3, Licensee may not assign or transfer (by operation of law or otherwise) all or any portion of Licensee's rights or obligations under these Terms and Conditions without IdeaBlade's prior written consent. Any assignment or attempted assignment not in accordance with the provisions of this Section 14.3 shall be null and void and of no force or effect.

14.4. *Severability.* If for any reason a court of competent jurisdiction finds any provision or portion of these Terms and Conditions to be unenforceable, such provision shall be adjusted to the minimum extent necessary to make the resulting provision valid and enforceable. In any event, the remaining terms and provisions of these Terms & Conditions shall remain in full force and effect.

14.5. *Governing Law.* The interpretation and enforcement of these Terms and Conditions shall be governed by the internal laws of the state of California without regard to conflict of laws or choice of laws principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms and Conditions. The parties irrevocably consent to the jurisdiction of the State and Federal Courts in the Northern District of California for the settlement or resolution of any dispute arising out of or related to these Terms & Conditions. The parties waive any and all rights to a jury trial on any issue in such proceedings. The parties further waive any and all rights to appeal from any order or final judgment entered by the court in any such proceeding.

14.6. *Cooperation.* The parties will cooperate in the creation of a joint press release announcing the execution of the Product Quotation. In addition, each party will be free to issue press releases announcing the

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existence of the Product Quotation, upon written approval of the other party, such approval not to be unreasonably withheld. Each party hereby grants to the other party a limited, non-exclusive, non-sub-licensable, royalty-free, worldwide license to use the other party's trademarks and logos solely for promoting and marketing the Licensee Application and the IdeaBlade's products and services. Title and ownership of the marks and logos will remain with their original owners.

14.7. *Entire Agreement.* Each Party acknowledges that it has read, understands and agrees to be bound by these Terms and Conditions and that these Terms and Conditions and the Product Quotation is complete and exclusive statement of the agreement between the parties regarding the subject matter hereof, which supersedes all proposals, oral or written, and all other communications between the parties relating to such subject matter.