

EFI SOFTWARE END USER LICENSE AGREEMENT

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ENDBENUTZER-LIZENZVERTRAG FÜR EFI-SOFTWARE

ACUERDO DE LICENCIA DE USUARIO FINAL DE SOFTWARE DE EFI

CONTRAT DE LICENCE DE LOGICIEL EFI POUR UTILISATEUR FINAL

UMOWA LICENCYJNA DLA UŻYTKOWNIKA KOŃCOWEGO OPROGRAMOWANIA EFI

CONTRATO DE LICENÇA DE USUÁRIO FINAL DE SOFTWARE DA EFI

**ЛИЦЕНЗИОННОЕ СОГЛАШЕНИЕ С КОНЕЧНЫМ ПОЛЬЗОВАТЕЛЕМ ОБ ИСПОЛЬЗОВАНИИ
ПРОГРАММНОГО ОБЕСПЕЧЕНИЯ**

EFI 软件最终用户许可协议

LICENSE AND PURCHASE AGREEMENT

1. License.

(a). General. EFI grants you a limited, personal, non-transferable, non-exclusive license to use or Access the Software and Documentation solely for the purposes specified in the Documentation. Only you, your employees or authorized independent contractors, and your end users, as applicable, may use or Access the Product or Documentation. The Software is licensed, not sold. You have no ownership rights, express or implied, or any other rights in the Software or Documentation other than those specified in this Agreement. You shall not relicense, sublicense, copy, modify, enhance, make errors corrections to, create derivative works based on, decompile, decrypt, reverse engineer, or disassemble the Software (including any database) or Documentation, or permit any third party to do so. You shall not rent, lease, lend, or otherwise distribute or use the Software or Documentation in any time-sharing, service bureau, or similar arrangement, or in any manner that may cause the Software or Documentation in whole or in part to become subject to any Excluded License. Additional terms and conditions may be provided with new Products or with an update, release, or upgrade.

(b). Perpetual License. If you are being granted a perpetual License, your License is revocable by EFI if you discontinue Maintenance for the Software for any two (2) consecutive annual Maintenance terms. You may install only the number of copies of the Software at the Site Location(s) for which you have been granted a License for use by you, your employees or authorized independent contractors. You may make and retain one additional copy for backup purposes only and may transfer the location of any Site Location if you obtain EFI's prior written consent.

(c). Term License. If you are being granted a term License, except as otherwise specified on the Purchase Documentation, such License has an Initial Term of three (3) years from the Start Date. If you do not provide written notice of termination to EFI at least 90 days before the end of the Initial Term or any Renewal Term, the term will automatically renew at EFI's then-current Fees. Only you, your employees or authorized independent contractors, and your end users, as applicable, may Access the Product, and only for your business. You are solely responsible for ensuring that data entry is timely, accurate, and reflects your requirements. You shall indemnify and hold EFI harmless from any liability, damages, or costs arising from data entered by you or your end users or on your behalf.

(d). Third-Party Materials. Some third-party materials distributed with the Product may be subject to other terms and conditions, which are typically found in a separate license agreement or "Read Me" file provided with those third-party materials. The License does not apply to any third-party software except as specified herein.

(e). Unauthorized Use. THE PRODUCT MAY CONTAIN A LICENSE KEY TO PREVENT UNAUTHORIZED USE AND EFI MAY EXECUTE OR

DEACTIVATE THE LICENSE KEY UPON TERMINATION OF YOUR LICENSE. YOU ACKNOWLEDGE THAT THE LICENSE KEY IS NOT A VIRUS, AND THAT EXECUTION OR DEACTIVATION OF THE LICENSE KEY MAY RENDER THE PRODUCT OR A PORTION OF IT INOPERABLE. IF THE LICENSE KEY IS EXECUTED OR DEACTIVATED AS SPECIFIED IN THIS AGREEMENT, YOU MAY BE OBLIGATED TO PAY EFI'S THEN-CURRENT FEE TO REACTIVATE THE PRODUCT.

2. Installation and Professional Services.

(a). Installation. Unless specified in the Purchase Documentation, the installation and implementation of the Product is your exclusive responsibility. EFI has no responsibility to modify the Product to cause it to function or operate on any particular hardware system, configuration, or platform or with any other software.

(b). Professional Services. You may purchase Professional Services from EFI, and statement(s) of work may be created to more fully describe the scope, duration, and/or Fees for the Professional Services, which will be governed by this Agreement. All pre-paid Professional Services must be used within twenty-four (24) months of the Start Date.

(c). Compensation and Expenses. On-site Professional Services days are based on a standard 8-hour work day. Additional hours will be billed at EFI's then-current applicable rate unless a different rate is mutually agreed. Customer shall reimburse EFI for all reasonable out-of-pocket expenses (including travel, lodging and meals) incurred in connection with on-site Professional Services session(s). Professional Services scheduled and/or performed (i) during after-hours on a weekday or (ii) on a Saturday will be invoiced at 150% of EFI's then-current Professional Services Fees. Professional Services scheduled and/or performed on a Sunday or a government-recognized holiday will be invoiced at 200% of EFI's then-current Professional Services Fees.

3. Hosted Solutions.

If EFI or its designated third-party providers are hosting the Software, the following additional terms and conditions apply:

(a). Access. EFI or its designated provider will provide those services necessary to allow you Access, including a password(s).

(b). Data Entry. All data generated by and through your Access will reside on servers of EFI or its third party providers.

(c). Password Security. You are solely responsible for (i) ensuring that only authorized individuals have access to passwords to Access the Product, (ii) assigning roles and authority levels for your Access, (iii) the conduct of individuals with Access, and (iv) maintaining the confidentiality and integrity of passwords and authority levels. You shall indemnify and hold EFI harmless from

any liability, damages, or costs arising from your failure to comply with this Section.

(d). Scheduled Downtime and Upgrades. Downtime is required from time-to-time for regular maintenance of the technology that supports the Product. EFI shall use commercially reasonable efforts to perform scheduled downtime outside normal business hours. EFI may also install new or updated software from time to time, including supporting software and firmware, in addition to the Software, to aid in providing ongoing stability and security of the hosted solution. You shall facilitate commercially reasonable upgrades and operations without undue delay or objection.

(e). Unexpected Outages. EFI shall use commercially reasonable efforts to avoid unexpected outages and to restore Access as soon as possible. If you do not have Access for more than two (2) consecutive hours within any 24-hour period because of an unexpected outage caused by EFI, you may request credit for one day of the applicable Fees (based on an average of that month's invoice). THIS IS YOUR SOLE AND EXCLUSIVE REMEDY AND EFI'S ENTIRE LIABILITY FOR UNSCHEDULED DOWNTIME OR OUTAGES, AND EFI WILL NOT BE LIABLE FOR ANY DAMAGES RELATED TO ANY UNSCHEDULED DOWNTIME OR OUTAGES.

(f). Self-Hosting. You at all times retain the right to self-host the Product from another location and, if you are being granted a term license, continue to pay the Term License Fees for the Software. Any Professional Services performed by EFI in migrating a hosted solution to a self-hosted solution are billable at EFI's standard rates.

(g). Maintenance. If you are being granted a perpetual License as a hosted solution, you must remain on Maintenance for the period that EFI or its designated third-party provider is providing the hosting services to you.

4. Fees and Delivery.

(a). Fees. You shall pay all applicable Fees.

(b). Title and Risk of Loss. Title and risk of loss for any media or hardware for the Product transfers to you at EFI's designated manufacturing plant(s) or warehouse(s). If the Product is delivered electronically, risk of loss transfers to you when the Product or Access is made available to you.

(c). Hardware Delivery. Unless otherwise specified in the Purchase Documentation, where you are purchasing hardware: (i) EFI shall act as agent for you and procure insurance against risk of loss and/or procure and prepay for shipment, (ii) you shall reimburse EFI for all charges relating to the shipment of hardware upon EFI providing an invoice for such charges. EFI shall use commercially reasonable efforts to ship hardware as soon as practicable following execution of this Agreement and EFI's receipt of any required deposits. If you request a delay in delivery or otherwise cause a delay in the transportation process, EFI

reserves the right to separately charge you for any costs it incurs for paying the logistics company to store and warehouse hardware on your behalf.

5. Product Maintenance.

(a). Subject to your timely payment of all applicable Fees, EFI or its designated provider will provide you with annual Maintenance for the Product. Maintenance terms automatically renew for consecutive 12-month periods unless cancelled by either party with written notice at least 30 days before the Maintenance Renewal Date. Notwithstanding the foregoing, Maintenance for certain Products (e.g., individual Software modules that are part of the EFI Software solution) may only be cancelled in the event that you are no longer using those certain Products; please first consult with EFI in the event you desire to cancel Maintenance for any Product.

(b). You must possess a valid License to use any upgrade or update. By using an upgrade or update, your license to any previous version of the Product automatically terminates. If you (i) have an out-of-date version of the Product or (ii) are not current on Maintenance due to your failure to timely pay Maintenance Fees and wish to update your version of the Product, you must pay any unpaid Fees and may be subject to additional fees to transfer or convert any old data. EFI reserves the right to discontinue Maintenance for all out-of-date versions of the Product.

6. Warranty and Disclaimer.

(a). Limited Warranties. EFI warrants to you that (i) EFI has the right to grant the License, (ii) subject to your timely payment of all applicable Fees, the Products as delivered to you will perform materially in accordance with EFI's then-current, applicable specifications if all available updates, upgrades, and bug-fixes are properly installed, and (iii) any Professional Services you purchase will be provided in good and workmanlike manner consistent with generally accepted industry standards. This warranty does not apply to defects attributable to (A) any equipment or software not provided or approved for use by EFI, (B) any modification of the Product by you, your employees, or any third party acting on your behalf, (C) any accident, neglect, misuse, or abuse by you, your employees, or any third party acting on your behalf, or (D) exposure of the Product to conditions outside the range of environmental, power, and operating specifications provided by EFI. You shall cooperate fully and promptly with EFI's attempts to identify the cause of any claimed breach of this limited warranty.

(b). Security of Your Systems. You are solely responsible for (i) ensuring the confidentiality, security, and integrity of your network connectivity, data, and servers, (ii) preventing and bearing the risk of any loss or damage to any data on your servers, and (iii) maintaining archive and backup copies of any data.

(c). WARRANTY DISCLAIMER AND REMEDIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES AND REMEDIES IN THIS AGREEMENT ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES. EFI, ITS SUPPLIERS, AND LICENSORS SPECIFICALLY DISCLAIM ANY OTHER WARRANTIES AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT; ANY WARRANTIES RELATING TO SECURITY; AND ANY WARRANTIES THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED, OR ERROR-FREE. EFI MAKES NO WARRANTY, IMPLIED OR OTHERWISE, REGARDING THE PERFORMANCE OR RELIABILITY OF ANY OTHER THIRD PARTY PRODUCTS, OR SERVICES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOLE AND EXCLUSIVE REMEDY TO WHICH YOU ARE ENTITLED FOR BREACH OF THESE LIMITED WARRANTIES, AND THE ENTIRE LIABILITY OF EFI AND ITS SUPPLIERS RELATING TO BREACH OF THESE LIMITED WARRANTIES, IS, AT EFI'S OPTION, TO (1) REPAIR OR REPLACE THE PRODUCT OR RE-PERFORM THE SERVICE THAT DOES NOT MEET THE LIMITED WARRANTY, OR (2) PROVIDE A REFUND OF THE THEN-CURRENT REASONABLE COMMERCIAL VALUE (IF ANY) FOR THE PRODUCT OR SERVICE THAT DOES NOT MEET THE LIMITED WARRANTY. EXCEPT AS PROVIDED IN THIS AGREEMENT, THERE ARE NO REFUNDS, RETURNS, EXCHANGES, OR REPLACEMENTS.

7. Infringement Indemnification.

EFI shall indemnify you from IP Claims and reimburse you for damages paid by you to the party bringing the IP Claim pursuant to a final, non-appealable judgment that the Product directly infringes any Third Party IP Rights. If you do not notify EFI in writing within 10 business days of learning of the IP Claim, and give EFI proper and full information, assistance, and exclusive authority to defend or settle the IP Claim, EFI will be relieved of its obligations under this Section. If the Product or any part of it is in EFI's opinion likely to become the subject of a claim of infringement of Third Party IP Rights, or if it is adjudicatively determined that the Product or any part of it infringes Third Party IP Rights, EFI may at its option (i) obtain for you a license or right to use the Third Party IP Rights so you can continue to use the Product, or (ii) replace or modify the Product with other suitable and reasonably equivalent non-infringing technology or parts, or (iii) if it is not commercially reasonable to take the actions described in clauses (i) or (ii) in this sentence, terminate your License and, if you return the Product to EFI, refund a portion of the license fee paid by you equal to the then-current reasonable commercial value (if any) of the Product. EFI shall not be responsible, liable, or obligated to indemnify or reimburse you if the alleged infringement arises out of (i) compliance with your

requirements or specifications that are outside EFI's standard specifications for the Product, (ii) any addition or incorporation to or modification of the Product at your request, (iii) any combination of the Product with any product or software not provided by EFI, or (iv) use of the Product in the practice of a process or system other than that for which it was intended. In any event as described in the preceding sentence, you shall defend and/or settle any claim brought against EFI at your own expense, and shall indemnify EFI against any costs, legal fees, other expenses, and damages required for the defense or settlement of the claim.

THE RIGHTS GRANTED TO YOU IN THIS SECTION ARE YOUR SOLE AND EXCLUSIVE REMEDIES FOR ANY ALLEGED INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

8. LIMITATION OF LIABILITY.

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL EFI OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY, OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EFI IS NOT RESPONSIBLE FOR ANY LOST PROFITS OR REVENUE, LOSS OF USE OF THE PRODUCT, LOSS OF DATA, OR THE COST OF RECOVERING ANY DATA. EXCEPT FOR INSTANCES INVOLVING EFI'S WILLFUL MISCONDUCT, EFI WILL NOT BE LIABLE FOR DAMAGES ARISING FROM ANY BREACH, UNAUTHORIZED ACCESS, MISUSE, OR INTRUSION RELATED TO YOUR DATA ON EFI'S OR ITS SUPPLIERS' SERVERS OR ANY NETWORK YOU USE IN CONNECTION WITH THE PRODUCT.

IN NO EVENT WILL EFI'S TOTAL LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATED TO THE PRODUCTS, SERVICES, ACCESS, AND/OR THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, UNDER STATUTE, OR OTHERWISE) EXCEED THE TOTAL AMOUNT OF THE FEES ACTUALLY PAID BY YOU IN THE 12 MONTHS PRECEDING THE CLAIM FOR THE EFI PRODUCT, SERVICES, OR ACCESS GIVING RISE TO THE CLAIM. YOU AGREE THAT THIS AMOUNT IS SUFFICIENT TO SATISFY THE ESSENTIAL PURPOSE OF THIS AGREEMENT AND THAT THE PRICE OF THE PRODUCT, PROFESSIONAL SERVICES, OR ACCESS REFLECTS THIS ALLOCATION OF RISK.

THE FOREGOING LIMITATIONS OF LIABILITY AND DISCLAIMERS FORM AN ESSENTIAL ELEMENT OF THIS AGREEMENT, WITHOUT WHICH EFI WOULD NOT HAVE LICENSED OR SOLD THE PRODUCT TO YOU OR PROVIDED YOU WITH ACCESS.

BECAUSE SOME JURISDICTIONS DO NOT ALLOW SOME OR ALL OF THE EXCLUSIONS OR LIMITATIONS OF LIABILITY IN THIS AGREEMENT, SOME OR ALL OF THEM MAY NOT APPLY TO YOU.

9. Proprietary Rights and Confidential Information.

(a). No Implied Conveyance of Proprietary Rights. The Product, Documentation, and any Work Product are the valuable, confidential, and proprietary property of EFI, its suppliers and licensors. EFI is not conveying any of its Intellectual Property Rights, except the limited rights specified in this Agreement. You shall maintain and reproduce all copyright, trademark, patent, and other proprietary notices on the Product in the same form and manner as delivered by EFI.

(b). Protection of Information. You shall not disclose any of EFI's Confidential Information, and shall take precautions with respect to EFI's Products and Confidential Information that are at least as protective as you take to protect your own confidential information and proprietary rights of the greatest sensitivity. You shall advise your employees and authorized independent contractors of the confidential and proprietary nature of the Product and EFI's Confidential Information and of the restrictions imposed by this Agreement, and confine access to the Product and EFI's Confidential Information to those individuals who need it in the ordinary course and scope of their employment or relationship with you. Except as specified in this Agreement, you shall not directly or indirectly disclose any part of the Product, EFI's Confidential Information, or Documentation to any third party.

(c). Termination; Injunctive Relief. Your violation of the confidentiality obligations or of EFI's Intellectual Property Rights may cause irreparable damage that cannot be fully remedied by money damages. In the event of any actual or threatened violation, you agree that EFI will be entitled, in addition to any other remedy available to it, to (i) terminate this Agreement, retake possession of the Product, execute the License Key, and/or terminate Access, and/or (ii) obtain injunctive or other equitable relief from any court of competent jurisdiction to prevent any further violation.

(d). Use of Your Trademarks and Logos. Subject to any reasonable use guidelines, you grant EFI a non-exclusive, worldwide, royalty-free license to use Customer Marks in connection with this Agreement, for use with the Product, for promoting EFI's Products in marketing materials, print, or on-line advertising, and for identifying you as an EFI customer. You shall also secure for EFI any rights or sublicenses required for EFI's use of the trademarks or service marks of your Affiliates. EFI acknowledges that (i) Customer Marks are owned solely and exclusively by you or your Affiliates, (ii) EFI has no other rights, title, or interest in or to Customer Marks, and (iii) all use and goodwill of Customer Marks by EFI inures to the benefit of you and your Affiliates.

10. Termination.

(a). This Agreement may be terminated immediately upon written notice to the other party (i) by EFI, if you fail to make any required payment other than Maintenance Fees, (ii) by the non-breaching party, if you or EFI fails to cure a material breach within 30 days after written notice from the non-breaching party, or (iii) by EFI, if you cease doing business as a going concern, become the object of voluntary or involuntary bankruptcy or liquidation proceedings that are not dismissed within 60 days after the initial filing, or if a receiver is appointed with respect to a substantial portion of your assets.

(b). Upon termination, you shall promptly (i) pay EFI all unpaid fees accrued before the termination, (ii) return all EFI Confidential Information and the Product, and (iii) return any materials, programs, manuals, and other items related to or derived from the Product in your possession or control. EFI shall use commercially reasonable efforts to provide you with any proprietary data belonging to you in the format in which it is stored by EFI at the time of termination.

11. Audit Rights.

EFI may audit your use of or Access to the Product. Any audit will take place after prior notice to you, during regular business hours, and in a manner that does not unreasonably interfere with your normal business. If the audit shows that you are using or accessing the Product in a way that violates this Agreement, EFI may invoice you for such use or Access, including late fees, interest, and expenses associated with the audit. If you do not timely pay that invoice, EFI may exercise its termination rights and pursue any other rights or remedies available to it.

12. Consent to Use Data.

EFI may collect and use technical data and related information to facilitate providing and/or confirming authorized use of Products, Access, Professional Services, and/or Maintenance to and by you. Subject to EFI's then-current privacy policy (available at <https://www.efi.com/legal/privacy/>) and applicable laws and regulations, EFI may (i) use this information to improve its products, to provide customized services or technologies to you, and/or to confirm authorized use, (ii) transfer this information to EFI's affiliates, agents, and partners, and (iii) transfer this information to the United States and/or any other country where EFI or its affiliates, agents, and partners maintain facilities.

13. Compliance with Laws.

(a). Export Law Compliance. The Product and related technology, information, and materials are subject to the export laws and regulations of the United States. You shall comply with those and any other applicable export laws or regulations. You are solely responsible for obtaining any necessary export licenses and exemptions. The Product and related technology, information, and materials may not be

exported or re-exported to any U.S.-embargoed country, to any person or entity on any list of prohibited parties designated by the U.S. government, or otherwise in violation of any export law or regulation.

(b). Compliance with Laws. You may only use the Product in compliance with all applicable laws and regulations. Upon written notice to you, EFI may modify or suspend your use of or Access to the Product as necessary to comply with any law or regulation. Both parties acknowledge their responsibilities and commitments to abide by and comply with international anti-corruption laws, including but not limited to the United States Foreign Corrupt Practices Act and the United Kingdom Anti-Bribery Act, and any amendments and regulations relating to those laws, in addition to each of our own ethical guidelines (EFI's Code of Conduct is available online at <http://ir.efi.com/committee-details/code-business-conduct-and-ethics>). Specifically, for example, no employee, or any individual or entity acting on behalf of or for the benefit of either EFI or Customer, may give or receive anything of value, or anything that may be perceived as valuable, to or from a government official or any other individual for the purpose of influencing any act, securing any improper advantage, or obtaining or retaining business.

14. General Provisions.

(a). Taxes. Except with respect to income recognized by EFI, you are liable for all tariffs, duties, and taxes, however designated or levied, based on your possession, use of, or Access to the Product, this Agreement, and/or any Professional Services, including but not limited to sales, use, value added, excise, services, personal property, or other taxes.

(b). Governing Law. This Agreement is not governed by the 1980 UN Convention on Contracts for the International Sales of Goods or any other international treaty or convention. Rather, this Agreement is governed in all respects by the laws of the State of California, USA, without regard to conflicts of laws principles. For all disputes related to this Agreement, the Product, Access, or any services provided under this Agreement, each party consents to the exclusive personal jurisdiction and venue of the state and federal courts in and for Santa Clara County, California, USA.

(c). Severability; Interpretation. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by any court of competent jurisdiction, that provision will be fully severable and this Agreement will be construed and enforced as if it were not included. This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor or against either party. The captions are for convenience only and do not affect the scope, intent, or meaning of the provisions. Any failure or delay to enforce any provision of this Agreement will not be deemed a waiver of EFI's right to do so.

(d). No Assignment. Assignment or transfer of this Agreement in its entirety, including all Licenses purchased, whether

voluntarily, by operation of law, or otherwise, requires EFI's prior written consent, which may be withheld, delayed, or conditioned in EFI's sole discretion, and may require payment of a License transfer fee. Partial assignment or transfer of this Agreement, including a portion of Licenses purchased, whether voluntarily, by operation of law, or otherwise, is prohibited. Any merger, consolidation or acquisition of Customer or other transfer of all or substantially all of the shares or assets of Customer is deemed to be an assignment under this Agreement. Any attempted assignment or transfer without EFI's consent is void.

(e). Language. This Agreement is only in English, which is controlling in all respects. If EFI has provided you with a translation, the translation is for your convenience only and the English-language version, not the translation, is legally binding. If there are any conflicts or inconsistencies between the English-language version and a translation, the English-language version controls. Any notices relating to this Agreement must be in writing in English.

(f). Entire Agreement and Modification. With respect to the subject matter or any term of this Agreement: (i) this Agreement constitutes the entire understanding of the parties; (ii) this Agreement supersedes all prior and contemporaneous communications and understandings (including but not limited to discussions, representations, warranties, inducements, promises, and agreements); (iii) there are no such communications or understandings not explicitly contained herein; (iv) neither party has relied on any such communications or understandings except as explicitly contained in this Agreement; and (v) any waiver, modification, or amendment will be effective only if in a writing signed by the parties, where email does not constitute a signed writing.

(g). Orders and Acceptance. All orders for Products or Professional Services made pursuant to this Agreement are non-cancelable, non-refundable and must be submitted at least fifteen (15) days prior to the requested order delivery date. For any given order, you shall make the order and corresponding payment to EFI or its subsidiary or Affiliate depending upon which company is making the sale of Products or Professional Services for that order. Orders are not binding without written notification of acceptance from EFI. This Agreement governs all subsequent orders, and nothing contained in Customer's purchase orders or other communications will in any way modify this Agreement.

(h). Independent Contractors. You and EFI, and our respective employees and representatives, are and will be independent contractors with respect to the other party. Neither party by virtue of this Agreement has any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

(i). Survival. The provisions of this Agreement that relate to fees and payment terms, ownership of intellectual property and proprietary rights, export law compliance, termination, confidentiality, infringement indemnification, warranty disclaimers, limitation of liability, governing law,

survivability, force majeure, severability and interpretation, definitions, modification and use of software products owned or distributed by Microsoft or Oracle included in an EFI Product will survive termination of this Agreement.

(j). Force Majeure. Except for payment of monies, no party will be liable for its failure to perform any obligations on account of strikes, shortages, failure or acts of suppliers, riots, insurrection, fires, flood, storm, explosions, acts of God, war, military operations, acts of terrorism whether actual or threatened, acts of a public enemy, epidemics, quarantines, governmental action, labor conditions, earthquakes, material shortages, or any cause that is similar to those enumerated or beyond the reasonable control of the affected party.

(k). U.S. Government Restricted Rights. Use, duplication, or disclosure of the Product by the United States Government is subject to restrictions as set forth in FAR 12.212 or DFARS 227.7202-3 - 227.7202-4 and, to the extent required under U.S. federal law, the minimum restricted rights as set out in FAR 52.227-14, Restricted Rights Notice (June 1987) Alternate III(g)(3) (June 1987) or FAR 52.227-19 (June 1987). To the extent any technical data is provided pursuant to the Agreement, such data is protected per FAR 12.211 and DFARS 227.7102-2 and to the extent explicitly required by the U.S. Government, is subject to limited rights as set out in DFARS 252.227.7015 (November 1995) and DFARS 252.227-7037 (September 1999). If any of the above-referenced agency regulations are modified or superseded, the subsequent equivalent regulation shall apply. The name of the Contractor is Electronics For Imaging, Inc.

15. Product-Specific and Third Party Provisions.

If you have obtained a License for certain Products, some of the following terms and conditions might apply to you.

(a). Products that include Microsoft Software (such as Windows or SQL Server).

(i). The term "Product" as used in this Agreement includes certain Microsoft software and related documentation, associated media, "online" or electronic documentation, upgrades and updates. EFI does not own these products and the use thereof is subject to certain rights and limitations.

(ii). Microsoft is not responsible for any support services for the Product. Notwithstanding the foregoing, in the event any support issues arise related to the Microsoft software that cannot be resolved by EFI, support to you may be provided by Microsoft pursuant to the Microsoft Premier support services agreement, or a similar type agreement, between EFI and Microsoft.

(iii). The Product is not fault-tolerant. The Product is not designed or intended for use in any situation where failure or fault of any kind of the Product could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). You are not licensed

to use the Product in, or in conjunction with, High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: aircraft or other modes of human mass transportation, nuclear or chemical facilities, and Class III medical devices under the Federal Food, Drug, and Cosmetic Act. You shall not use the Product in, or in connection with, any High Risk Use. You are responsible for taking all appropriate measures to ensure the safe use of the Product if used for such purposes and EFI and its suppliers, including Microsoft, will not be liable for any claims or damages arising from such use.

(b). Products that include Software Products Owned or Distributed by Oracle.

(i). The term "Product" as used in this Agreement includes certain software products provided by EFI that are owned or distributed by Oracle USA, Inc. ("Oracle") and related program documentation (the "Oracle Programs"); EFI does not own the Oracle Programs and the use thereof is subject to certain rights and limitations. The Oracle Programs included herein are subject to a restricted use license and can only be used in conjunction with the Product. Oracle or its licensors retain all ownership of intellectual property rights to the Oracle Programs. You are hereby notified that Oracle is a supplier of EFI and a third-party beneficiary to this Agreement to the extent that this Agreement contains provisions which relate to your use of the Oracle Programs. Such provisions are made expressly for the benefit of Oracle and are enforceable by Oracle in addition to EFI.

(ii). You acknowledge and agree that you are prohibited from (a) publishing any results of benchmark tests run on the Oracle Programs, (b) using the Oracle Programs for rental, timesharing, subscription service, hosting, or outsourcing, and (c) removing or modifying any program markings or notice of Oracle's or Oracle's licensors' proprietary rights.

(iii). To the extent not prohibited by law, in no event will Oracle be liable for (a) any damages, whether direct, indirect, incidental, special, punitive or consequential, and (b) any loss of profits, revenue, data or data use, arising from the use of the Oracle Programs.

(iv). You hereby permit EFI to (a) report any audit results obtained pursuant to this Agreement to Oracle to the extent such results are related to the Oracle Programs, or (b) assign such rights to audit your use of the Oracle Programs to Oracle.

(v). You are hereby notified that some Oracle Programs may include source code that Oracle may provide as part of its standard shipment of such programs, which source code is governed by the terms of this Agreement.

(vi). The Computer Information Transactions Act does not apply to this Agreement.

(vii). You acknowledge and agree that in the event a third party technology may be appropriate or necessary for use

with some Oracle Programs, it will be specified in the Product package documentation or as otherwise noted, and such third party technology is licensed to you only for use with the Product under the terms of the third party license agreement specified in the Product package documentation or as otherwise noted, and not under the terms of this Agreement.

(c). E-commerce Applications.

(i). Use at Site Location. You may use or Access the Product only for production activity at the Site Location. If you have more than one production facility, you may not use or Access the Product for production activity at any facility other than the Site Location(s) for which you have been granted a license.

(ii). Links. If you have obtained a License for EFI e-Commerce Software, you represent and warrant that you have the right to create and maintain, or to allow EFI to create and maintain, all Links to the Product and any other websites mutually agreed upon between you and EFI. You shall incorporate EFI's "Powered by EFI" logo on any website utilizing EFI e-commerce Software.

(ii). Relationships with Third Parties. Use of or Access to the e-Commerce Product does not create a contract or other obligation between you and any of your customers or between EFI and any of your customers or vendors. EFI cannot and does not guarantee the performance of any of your customers, vendors, or other third parties. EFI will have no liability in connection with any dispute between you and any third party, and any third party dispute will not relieve you of any obligation to EFI under this Agreement.

(d). Open Source Software. Some versions of the Products contain open source software. Open source software is licensed to you under that software's own license terms, which can be found in the "Help," "About," "Read Me," or other specified portion of the Product. You are responsible for complying with any terms and conditions applicable to any open source software. To the extent that this Agreement imposes greater restrictions on you than the open source software license terms, the open source software license terms control, but solely with respect to the open source software.

16. Definitions.

"Access" means the connection to and use of a Product by Customer via an Internet web browser under the terms of this Agreement.

"Affiliate" means any entity directly or indirectly controlling, controlled by, or under common control with a party.

"Agreement" means this License and Purchase Agreement.

"Confidential Information" means any information that you have been informed or have a reasonable basis to believe is

confidential to EFI, whether provided to you before, on, or after this Agreement, including, for example, ideas, programs, data, software, systems configurations, reports, projections, initiatives, customer data, or other business or technical information. Confidential Information includes any written information marked as confidential or proprietary, and any information disclosed orally or visually that is identified as confidential or proprietary at or around the time of its disclosure. All EFI Intellectual Property Rights and technical information related to the Product are Confidential Information whether or not marked as confidential or proprietary.

"Customer Marks" means your name and logo or other trademarks, service marks, or other marks.

"Documentation" means user's guides, manuals, and other information related to the Product or Professional Services.

"EFI" means Electronics For Imaging, Inc., Electronics for Imaging BV, Electronics For Imaging United Kingdom Limited, Metrics Sistemas De Informacao Ltda., alphagraph Team GmbH, or another EFI subsidiary or Affiliate referred to in the Purchase Documentation.

"Excluded License" means any license that requires as a condition of use, modification, and/or distribution of software subject to the Excluded License, that such software or other software combined and/or distributed with such software be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making derivative works, or (iii) redistributable at no charge.

"Fees" means the fees for the Product, Access, or Professional Services, including any fees set forth in your Purchase Documentation, License fees, hardware fees, Term License Fees, Hosting Fees, Maintenance Fees, or other applicable fees. Unless otherwise specified in the Purchase Documentation, payments for any fees must be made within 30 days of the date of the invoice in the currency listed in the Purchase Documentation. Any amount not paid when due is subject to a service charge equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by law, and EFI may defer shipments of Products and/or provision of services until all overdue payments are received. Payment of the service charge will not foreclose any other right that EFI may have as a consequence of late payment. In the event that EFI is required to take legal action to collect unpaid amounts, and EFI is successful in such action, Customer shall reimburse all costs and reasonable attorneys' fees incurred by EFI in such action.

"Hosting Fees" means the hosting fees described in the Purchase Documentation. Unless otherwise specified in the Purchase Documentation, payment obligations for Hosting Fees commence on the first day of the next month following 30 days from the Start Date.

"Initial Term" means the three-year period of time beginning on the Start Date.

“Intellectual Property Rights” means, individually or collectively, any patent, copyright, trademark, service mark, trade secret, trade name, or other intellectual property right.

“IP Claim” means a lawsuit filed against you by a third party that is not a patent assertion entity or non-practicing entity.

“License” means the license granted to you for the Product you have obtained.

“License Key” means a programming code included in the Product that, if executed or deactivated, renders the Product or portions of it inoperable.

“Link” means a hypertext reference that, when activated, moves users from one website to another on the Internet.

“Maintenance” means (i) correction of material defects so that the Product will operate materially in conformity with the warranties in this Agreement, (ii) periodic updates that incorporate corrections of material defects and fixes of minor bugs in the Product, (iii) telephone or email/electronic consultation services regarding the use of the Product during EFI’s standard support hours, and (iv) enhancements and/or revisions to software components of the Product, which are subject to additional charge unless they are provided at no charge to substantially all other licensees.

“Maintenance Fees” means the support and/or maintenance fees charged by EFI and/or a third party for the Product. Unless otherwise specified in the Purchase Documentation, payment obligations for Maintenance Fees commence on the first day of the next month following 30 days from the Start Date and continue for 12 consecutive months thereafter, subject to any Maintenance renewal term(s). Any use of a virtual private network or other requirement that requires EFI to act outside of its normal processes in order to provide Maintenance to you may be subject to additional fees.

“Maintenance Renewal Date” means the anniversary of the start of the Maintenance coverage period stated on the first Software Maintenance invoice that EFI issued to you, whether issued pursuant to this Agreement or a prior agreement or Purchase Documentation.

“Product” means Software or hardware, and may also include third party software and documentation, downloads, on-line materials, bug fixes, patches, releases, release notes, updates, upgrades, technical support materials, and information related to the EFI software or hardware.

“Professional Service(s)” means any training, installation, implementation, customization and/or other professional services provided by EFI to Customer.

“Purchase Documentation” means the purchase order, investment summary, statement of work, written agreement, or other documentation executed by you by which you agreed to obtain a license, Product, or service from EFI or one of EFI’s partners.

“Renewal Term” means the three-year period following the Initial Term or another Renewal Term unless specified otherwise in your Purchase Documentation. Fees for any Renewal Term may be increased to EFI’s then-current fees.

“Site Location” means the printing plant or facility specified in the Purchase Documentation.

“Software” means the EFI software listed on the Purchase Documentation or licensed to you under this Agreement.

“Start Date” means the Effective Date of the Purchase Documentation or the date the Product is made available to you, whichever is later.

“Term License Fees” means the term license fees for the Product described in the Purchase Documentation, the payment of which entitles you to Maintenance at no additional charge. Unless otherwise specified in the Purchase Documentation, payment obligations for Term License Fees commence on the Start Date.

“Third Party IP Rights” means a third party’s U.S. patent rights.

“Work Product” means any and all ideas, concepts, and Intellectual Property Rights related in any way to the techniques, knowledge, and processes of the Product, Services, and deliverables provided by EFI, including any integration to third party products, whether or not developed for you.

“You”, “you” or “Customer” means the person or entity that obtained the Product under this Agreement and that is agreeing to be bound by this Agreement.

Oracle is a registered trademark of Oracle Corporation.

Microsoft, Windows, and SQL Server are registered trademarks of Microsoft Corporation in the United States and/or other countries.

All other marks are the property of their respective owners.

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LICENSE AND PURCHASE AGREEMENT

1. License.

(a). General. EFI grants you a limited, personal, non-transferable, non-exclusive license to use or Access the Software and Documentation solely for the purposes specified in the Documentation. Only you, your employees or authorized independent contractors, and your end users, as applicable, may use or Access the Product or Documentation. The Software is licensed, not sold. You have no ownership rights, express or implied, or any other rights in the Software or Documentation other than those specified in this Agreement. You shall not relicense, sublicense, copy, modify, enhance, make errors corrections to, create derivative works based on, decompile, decrypt, reverse engineer, or disassemble the Software (including any database) or Documentation, or permit any third party to do so. You shall not rent, lease, lend, or otherwise distribute or use the Software or Documentation in any time-sharing, service bureau, or similar arrangement, or in any manner that may cause the Software or Documentation in whole or in part to become subject to any Excluded License. Additional terms and conditions may be provided with new Products or with an update, release, or upgrade.

(b). Perpetual License. If you are being granted a perpetual License, your License is revocable by EFI if you discontinue Maintenance for the Software for any two (2) consecutive annual Maintenance terms. You may install only the number of copies of the Software at the Site Location(s) for which you have been granted a License for use by you, your employees or authorized independent contractors. You may make and retain one additional copy for backup purposes only and may transfer the location of any Site Location if you obtain EFI's prior written consent.

(c). Term License. If you are being granted a term License, except as otherwise specified on the Purchase Documentation, such License has an Initial Term of three (3) years from the Start Date. If you do not provide written notice of termination to EFI at least 90 days before the end of the Initial Term or any Renewal Term, the term will automatically renew at EFI's then-current Fees. Only you, your employees or authorized independent contractors, and your end users, as applicable, may Access the Product, and only for your business. You are solely responsible for ensuring that data entry is timely, accurate, and reflects your requirements. You shall indemnify and hold EFI harmless from any liability, damages, or costs arising from data entered by you or your end users or on your behalf.

LIZENZ- UND KAUFVEREINBARUNG

1. Lizenz.

(a). Allgemeines. EFI gewährt Ihnen eine beschränkte, persönliche, nicht übertragbare, einfache Lizenz zur Nutzung oder zum Zugriff auf die Software und Dokumentation ausschließlich für die in der Dokumentation angegebenen Zwecke. Die Nutzung oder der Zugriff auf das Produkt oder die Dokumentation sind nur Ihnen, Ihren Mitarbeitern oder autorisierten unabhängigen Auftragnehmern sowie gegebenenfalls Ihren Endbenutzern gestattet. Die Software wird lizenziert, nicht verkauft. Sie haben keine Eigentumsrechte, weder ausdrücklich noch stillschweigend, oder andere Rechte an der Software oder Dokumentation als diejenigen, die in dieser Vereinbarung angegeben werden. Sie dürfen die Software (einschließlich einer etwaigen Datenbank) oder Dokumentation nicht weiterlizenzieren, unterlizenzieren, kopieren, modifizieren, verbessern, Fehlerkorrekturen daran vornehmen, davon abgeleitete Werke erstellen, dekompile, entschlüsseln, rückentwickeln oder disassemblieren, oder Dritten gestatten, dies zu tun. Sie dürfen die Software oder Dokumentation nicht in einem Teilnehmersystem, Service-Büro oder ähnlichen Abmachung vermieten, verpachten, verleihen oder anderweitig vertreiben oder verwenden oder in irgendeiner Weise, die dazu führen kann, dass die Software oder Dokumentation ganz oder teilweise einer Ausgeschlossenen Lizenz unterliegt. Zusätzliche Geschäftsbedingungen können mit neuen Produkten oder mit einem Update, einer Version oder einem Upgrade bereitgestellt werden.

(b). Unbefristete Lizenz. Wenn Ihnen eine unbefristete Lizenz gewährt wird, kann Ihre Lizenz von EFI widerrufen werden, wenn Sie die Wartung der Software für zwei (2) aufeinanderfolgende jährliche Wartungslaufzeiten einstellen. Sie dürfen nur die Anzahl von Softwarekopien an dem Standort oder den Standorten installieren, für welche Ihnen eine Lizenz gewährt wurde zur Verwendung durch Sie, Ihre Mitarbeiter oder autorisierte unabhängige Auftragnehmer. Eine zusätzliche Kopie dürfen Sie ausschließlich zu Sicherheitszwecken erstellen und aufbewahren, und Sie dürfen die Belegung eines Standorts verlegen, wenn Sie die vorherige schriftliche Zustimmung von EFI einholen.

(c). Befristete Lizenz. Wenn Ihnen eine befristete Lizenz gewährt wird, hat diese Lizenz eine Anfängliche Laufzeit von drei (3) Jahren ab dem Startdatum, sofern in der Kaufdokumentation nichts anderes angegeben ist. Falls EFI nicht mindestens 90 Tage vor dem Ende der Anfänglichen Laufzeit oder einer Verlängerungslaufzeit eine schriftliche Kündigung von Ihnen erhält, verlängert sich die Laufzeit automatisch zu den jeweils aktuellen Gebühren von EFI. Die Nutzung oder der Zugriff auf das Produkt sind nur Ihnen, Ihren Mitarbeitern oder autorisierten unabhängigen Auftragnehmern sowie gegebenenfalls Ihren Endbenutzern gestattet, und zwar nur für Geschäftszwecke. Sie tragen die alleinige Verantwortung dafür, dass die Dateneingabe rechtzeitig und genau erfolgt und Ihren Anforderungen entspricht. Sie stellen EFI von jeglicher Haftung, Schadenersatz oder Kosten frei, die sich aus von Ihnen oder Ihren Endbenutzern oder in Ihrem Namen eingegebenen Daten ergeben.

(d). Third-Party Materials. Some third-party materials distributed with the Product may be subject to other terms and conditions, which are typically found in a separate license agreement or "Read Me" file provided with those third-party materials. The License does not apply to any third-party software except as specified herein.

(e). Unauthorized Use. THE PRODUCT MAY CONTAIN A LICENSE KEY TO PREVENT UNAUTHORIZED USE AND EFI MAY EXECUTE OR DEACTIVATE THE LICENSE KEY UPON TERMINATION OF YOUR LICENSE. YOU ACKNOWLEDGE THAT THE LICENSE KEY IS NOT A VIRUS, AND THAT EXECUTION OR DEACTIVATION OF THE LICENSE KEY MAY RENDER THE PRODUCT OR A PORTION OF IT INOPERABLE. IF THE LICENSE KEY IS EXECUTED OR DEACTIVATED AS SPECIFIED IN THIS AGREEMENT, YOU MAY BE OBLIGATED TO PAY EFI'S THEN-CURRENT FEE TO REACTIVATE THE PRODUCT.

2. Installation and Professional Services.

(a). Installation. Unless specified in the Purchase Documentation, the installation and implementation of the Product is your exclusive responsibility. EFI has no responsibility to modify the Product to cause it to function or operate on any particular hardware system, configuration, or platform or with any other software.

(b). Professional Services. You may purchase Professional Services from EFI, and statement(s) of work may be created to more fully describe the scope, duration, and/or Fees for the Professional Services, which will be governed by this Agreement. All pre-paid Professional Services must be used within twenty-four (24) months of the Start Date.

(c). Compensation and Expenses. On-site Professional Services days are based on a standard 8-hour work day. Additional hours will be billed at EFI's then-current applicable rate unless a different rate is mutually agreed. Customer shall reimburse EFI for all reasonable out-of-pocket expenses (including travel, lodging and meals) incurred in connection with on-site Professional Services session(s). Professional Services scheduled and/or performed (i) during after-hours on a weekday or (ii) on a Saturday will be invoiced at 150% of EFI's then-current Professional Services Fees. Professional Services scheduled and/or performed on a Sunday or a government-recognized holiday will be invoiced at 200% of EFI's then-current Professional Services Fees.

3. Hosted Solutions.

(d). Materialien von Dritten. Einige Materialien von Dritten, die mit dem Produkt vertrieben werden, unterliegen möglicherweise anderen Geschäftsbedingungen, welche typischerweise in einer separaten Lizenzvereinbarung oder in einer „Readme“-Datei zu finden sind, die mit solchen Materialien von Dritten bereitgestellt wird. Die Lizenz gilt nicht für Software von Dritten, außer wie hierin angegeben.

(e). Unautorisierte Verwendung. DAS PRODUKT KANN EINEN LIZENZSCHLÜSSEL ENTHALTEN, UM UNAUTORISIERTE VERWENDUNG ZU VERHINDERN, UND EFI KANN DEN LIZENZSCHLÜSSEL AUSFÜHREN ODER DEAKTIVIEREN BEI KÜNDIGUNG IHRER LIZENZ. SIE NEHMEN ZUR KENNTNIS, DASS DER LIZENZSCHLÜSSEL KEIN VIRUS DARSTELLT, UND DASS DIE AUSFÜHRUNG ODER DEAKTIVIERUNG DES LIZENZSCHLÜSSELS ZUR UNAUSFÜHRBARKEIT DES PRODUKTS ODER EINES TEILS DAVON FÜHREN KANN. WENN DER LIZENZSCHLÜSSEL NACH DIESER VEREINBARUNG AUSGEFÜHRT ODER DEAKTIVIERT WIRD, KÖNNEN SIE UNTER UMSTÄNDEN VERPFLICHTET SEIN, DIE JEWELNS AKTUELLE GEBÜHR VON EFI FÜR DIE REAKTIVIERUNG DES PRODUKTS ZU BEZAHLEN.

2. Installation und Professionelle Dienstleistungen.

(a). Installation. Sofern in der Kaufdokumentation nicht anders angegeben, tragen Sie die alleinige Verantwortung für die Installation und Implementierung des Produkts. EFI trägt keine Verantwortung dafür, das Produkt so zu modifizieren, dass es auf einem bestimmten Hardwaresystem, einer bestimmten Konfiguration oder Plattform oder mit irgendeiner anderen Software funktioniert oder arbeitet.

(b). Professionelle Dienstleistungen. Sie können Professionelle Dienstleistungen von EFI erwerben, und es können eine oder mehrere Leistungsbeschreibungen erstellt werden, um den Umfang, die Dauer und/oder die Gebühren für die Professionelle Dienstleistungen, die in dieser Vereinbarung geregelt sind, genauer zu beschreiben. Alle im Voraus bezahlten Professionelle Dienstleistungen müssen innerhalb von vierundzwanzig (24) Monaten nach dem Startdatum in Anspruch genommen werden.

(c). Vergütung und Aufwendungen. Tage, an dem Professionelle Dienstleistungen vor Ort erbracht werden, basieren auf einem Standardarbeitstag von 8 Stunden. Zusätzliche Stunden werden zum jeweils gültigen EFI-Tarif abgerechnet, es sei denn ein anderer Tarif wird einvernehmlich vereinbart. Der Kunde erstattet EFI alle angemessenen Auslagen (einschließlich Reisekosten, Unterkunft und Verpflegung), die im Zusammenhang mit den Professionelle Dienstleistungszeiten vor Ort anfallen. Professionelle Dienstleistungen, die (i) außerhalb der Geschäftszeiten an einem Wochentag oder (ii) an einem Samstag geplant und/oder durchgeführt werden, werden mit 150% der jeweils aktuellen Gebühren von EFI für Professionelle Dienstleistungen in Rechnung gestellt. Professionelle Dienstleistungen, die an einem Sonntag oder einem staatlich anerkannten Feiertag geplant und/oder durchgeführt werden, werden mit 200% der jeweils aktuellen Gebühren von EFI für Professionelle Dienstleistungen in Rechnung gestellt.

3. Gehostete Lösungen.

If EFI or its designated third-party providers are hosting the Software, the following additional terms and conditions apply:

(a). Access. EFI or its designated provider will provide those services necessary to allow you Access, including a password(s).

(b). Data Entry. All data generated by and through your Access will reside on servers of EFI or its third party providers.

(c). Password Security. You are solely responsible for (i) ensuring that only authorized individuals have access to passwords to Access the Product, (ii) assigning roles and authority levels for your Access, (iii) the conduct of individuals with Access, and (iv) maintaining the confidentiality and integrity of passwords and authority levels. You shall indemnify and hold EFI harmless from any liability, damages, or costs arising from your failure to comply with this Section.

(d). Scheduled Downtime and Upgrades. Downtime is required from time-to-time for regular maintenance of the technology that supports the Product. EFI shall use commercially reasonable efforts to perform scheduled downtime outside normal business hours. EFI may also install new or updated software from time to time, including supporting software and firmware, in addition to the Software, to aid in providing ongoing stability and security of the hosted solution. You shall facilitate commercially reasonable upgrades and operations without undue delay or objection.

(e). Unexpected Outages. EFI shall use commercially reasonable efforts to avoid unexpected outages and to restore Access as soon as possible. If you do not have Access for more than two (2) consecutive hours within any 24-hour period because of an unexpected outage caused by EFI, you may request credit for one day of the applicable Fees (based on an average of that month's invoice). THIS IS YOUR SOLE AND EXCLUSIVE REMEDY AND EFI'S ENTIRE LIABILITY FOR UNSCHEDULED DOWNTIME OR OUTAGES, AND EFI WILL NOT BE LIABLE FOR ANY DAMAGES RELATED TO ANY UNSCHEDULED DOWNTIME OR OUTAGES.

(f). Self-Hosting. You at all times retain the right to self-host the Product from another location and, if you are being granted a term license, continue to pay the Term License Fees for the Software. Any Professional Services performed by EFI in migrating a hosted solution to a self-hosted solution are billable at EFI's standard rates.

Wenn EFI oder die von ihm benannten Drittanbieter die Software hosten, gelten die folgenden zusätzlichen Geschäftsbedingungen:

(a). Zugriff. EFI oder sein benannter Anbieter wird solche Dienste bereitstellen, die für den Zugriff erforderlich sind, einschließlich eines oder mehrerer Kennwörter.

(b). Dateneingabe. Alle von und über Ihren Zugriff generierten Daten befinden sich auf Servern von EFI oder seinen Drittanbietern.

(c). Passwortsicherheit. Sie tragen die alleinige Verantwortung für (i) die Sicherstellung, dass nur autorisierte Personen Zugang zu Kennwörtern für den Zugriff auf das Produkt erhalten, (ii) die Zuweisung von Rollen und Berechtigungsstufen für Ihren Zugriff, (iii) das Verhalten von Personen mit Zugriff und (iv) die Wahrung der Vertraulichkeit und Integrität von Passwörtern und Berechtigungsstufen. Sie stellen EFI von jeglicher Haftung, Schadenersatz oder Kosten frei, die sich aus Ihrer Nichteinhaltung dieser Ziffer ergeben.

(d). Geplante Ausfallzeiten und Upgrades. Von Zeit zu Zeit sind Ausfallzeiten erforderlich, um die zugrunde liegende Technologie des Produkts regelmäßig zu warten. EFI wird wirtschaftlich angemessene Anstrengungen unternehmen, um geplante Ausfallzeiten außerhalb der normalen Geschäftszeiten durchzuführen. EFI kann von Zeit zu Zeit auch neue oder aktualisierte Software installieren, einschließlich unterstützender Software und Firmware zusätzlich zur Software, um zur fortlaufenden Stabilität und Sicherheit der gehosteten Lösung beizutragen. Sie sind verpflichtet, wirtschaftlich angemessene Upgrades und Vorgänge ohne unangemessene Verzögerung oder Einwände zu ermöglichen.

(e). Unerwartete Ausfälle. EFI wird wirtschaftlich angemessene Anstrengungen unternehmen, um unerwartete Ausfälle zu vermeiden und den Zugriff so schnell wie möglich wiederherzustellen. Wenn Sie aufgrund eines unerwarteten, durch EFI verschuldeten Ausfalls länger als zwei (2) aufeinanderfolgende Stunden innerhalb eines Zeitraums von 24 Stunden keinen Zugriff haben, können Sie eine Gutschrift für einen Tag der geltenden Gebühren verlangen (basierend auf dem Durchschnitt der Rechnung dieses Monats). DIES STELLT IHRE EINZIGE UND AUSSCHLIESSLICHE ABHILFE DAR, SOWIE DIE GESAMTE HAFTUNG VON EFI FÜR UNGEPLANTE AUSFALLZEITEN ODER AUSFÄLLE. EFI HAFTET NICHT FÜR SCHÄDEN, DIE MIT UNGEPLANTEN AUSFALLZEITEN ODER AUSFÄLLEN ZUSAMMENHÄNGEN.

(f). Selbsthosting. Sie bleiben zu jeder Zeit berechtigt, das Produkt von einem anderen Standort aus selbst zu hosten und, falls Ihnen eine befristete Lizenz gewährt wird, weiterhin die Befristete Lizenzgebühren für die Software zu zahlen. Alle von EFI bei der Migration von einer gehosteten Lösung zu einer selbst gehosteten Lösung erbrachten Professionelle Dienstleistungen werden zu den Standardtarifen von EFI abgerechnet.

(g). Maintenance. If you are being granted a perpetual License as a hosted solution, you must remain on Maintenance for the period that EFI or its designated third-party provider is providing the hosting services to you.

4. Fees and Delivery.

(a). Fees. You shall pay all applicable Fees.

(b). Title and Risk of Loss. Title and risk of loss for any media or hardware for the Product transfers to you at EFI's designated manufacturing plant(s) or warehouse(s). If the Product is delivered electronically, risk of loss transfers to you when the Product or Access is made available to you.

(c). Hardware Delivery. Unless otherwise specified in the Purchase Documentation, where you are purchasing hardware: (i) EFI shall act as agent for you and procure insurance against risk of loss and/or procure and prepay for shipment, (ii) you shall reimburse EFI for all charges relating to the shipment of hardware upon EFI providing an invoice for such charges. EFI shall use commercially reasonable efforts to ship hardware as soon as practicable following execution of this Agreement and EFI's receipt of any required deposits. If you request a delay in delivery or otherwise cause a delay in the transportation process, EFI reserves the right to separately charge you for any costs it incurs for paying the logistics company to store and warehouse hardware on your behalf.

5. Product Maintenance.

(a). Subject to your timely payment of all applicable Fees, EFI or its designated provider will provide you with annual Maintenance for the Product. Maintenance terms automatically renew for consecutive 12-month periods unless cancelled by either party with written notice at least 30 days before the Maintenance Renewal Date. Notwithstanding the foregoing, Maintenance for certain Products (e.g., individual Software modules that are part of the EFI Software solution) may only be cancelled in the event that you are no longer using those certain Products; please first consult with EFI in the event you desire to cancel Maintenance for any Product.

(b). You must possess a valid License to use any upgrade or update. By using an upgrade or update, your license to any previous version of the Product automatically terminates. If you (i) have an out-of-date version of the Product or (ii) are not current on Maintenance due to your failure to timely pay Maintenance Fees and wish to update your version of the Product, you must pay any unpaid Fees and may be subject to additional fees to transfer or convert any old data. EFI reserves the right to discontinue Maintenance for all out-of-date versions of the Product.

6. Warranty and Disclaimer.

(g). Wartung. Wenn Ihnen eine unbefristete Lizenz als gehostete Lösung gewährt wird, müssen Sie die Wartung aufrechterhalten für den Zeitraum, in dem EFI oder der von ihm benannte Drittanbieter die Hosting-Dienstleistungen für Sie bereitstellt.

4. Gebühren und Lieferung.

(a). Gebühren. Sie zahlen alle anfallenden Gebühren.

(b). Besitz und Verlustrisiko. Der Besitz und das Verlustrisiko für Medien oder Hardware für das Produkt gehen auf Sie über an den von EFI benannten Produktionsstätte(n) oder Lager(n). Wenn das Produkt elektronisch geliefert wird, geht das Verlustrisiko auf Sie über, wenn Ihnen das Produkt oder der Zugriff zur Verfügung gestellt wird.

(c). Hardware-Lieferung. Sofern in der Kaufdokumentation nicht anders angegeben, falls Sie Hardware kaufen: (i) tritt EFI als Vermittler für Sie auf und schließt eine Versicherung gegen Verlustrisiko ab, und/oder beschafft und bezahlt den Versand im Voraus, (ii) erstatten Sie EFI alle Gebühren für den Versand von Hardware nach Vorlage einer Rechnung für diese Gebühren durch EFI. EFI wird wirtschaftlich angemessene Anstrengungen unternehmen, um Hardware so bald wie möglich nach Unterzeichnung dieser Vereinbarung und nach Eingang der erforderlichen Anzahlungen bei EFI zu versenden. Wenn Sie eine Verzögerung der Lieferung beantragen oder eine anderweitige Verzögerung des Transportprozesses verursachen, behält sich EFI das Recht vor, Ihnen alle Kosten gesondert in Rechnung zu stellen, die ihm durch die Bezahlung des Logistikunternehmens für die Aufbewahrung und Lagerung von Hardware in Ihrem Namen entstehen.

5. Produktwartung.

(a). Vorbehaltlich Ihrer fristgerechten Zahlung aller anfallenden Gebühren, wird EFI oder sein benannter Anbieter jährliche Wartung für das Produkt bereitstellen. Wartungslaufzeiten verlängern sich automatisch für aufeinanderfolgende 12-Monats-Zeiträume, sofern sie nicht von einer Partei durch schriftliche Mitteilung mindestens 30 Tage vor dem Verlängerungsdatum der Wartung gekündigt werden. Ungeachtet des Vorstehenden kann die Wartung für bestimmte Produkte (z.B. einzelne Softwaremodule, die Teil der EFI-Softwarelösung sind) nur gekündigt werden, wenn Sie diese bestimmten Produkte nicht mehr verwenden. Bitte wenden Sie sich zuerst an EFI, falls Sie die Wartung eines Produkts kündigen möchten.

(b). Sie müssen über eine gültige Lizenz verfügen, um Upgrades oder Updates verwenden zu können. Durch die Verwendung eines Upgrades oder Updates wird Ihre Lizenz für jede frühere Version des Produkts automatisch beendet. Wenn Sie (i) eine veraltete Version des Produkts haben oder (ii) aufgrund Ihrer nicht fristgerechten Zahlung der Wartungsgebühren nicht auf dem neuesten Stand der Wartung sind und Ihre Version des Produkts aktualisieren möchten, müssen Sie alle ausstehende Gebühren bezahlen. Für die Übertragung oder Konvertierung alter Daten können zusätzliche Gebühren anfallen. EFI behält sich das Recht vor, die Wartung aller veralteten Versionen des Produktes einzustellen.

6. Garantie und Haftungsausschluss.

(a). Limited Warranties. EFI warrants to you that (i) EFI has the right to grant the License, (ii) subject to your timely payment of all applicable Fees, the Products as delivered to you will perform materially in accordance with EFI's then-current, applicable specifications if all available updates, upgrades, and bug-fixes are properly installed, and (iii) any Professional Services you purchase will be provided in good and workmanlike manner consistent with generally accepted industry standards. This warranty does not apply to defects attributable to (A) any equipment or software not provided or approved for use by EFI, (B) any modification of the Product by you, your employees, or any third party acting on your behalf, (C) any accident, neglect, misuse, or abuse by you, your employees, or any third party acting on your behalf, or (D) exposure of the Product to conditions outside the range of environmental, power, and operating specifications provided by EFI. You shall cooperate fully and promptly with EFI's attempts to identify the cause of any claimed breach of this limited warranty.

(b). Security of Your Systems. You are solely responsible for (i) ensuring the confidentiality, security, and integrity of your network connectivity, data, and servers, (ii) preventing and bearing the risk of any loss or damage to any data on your servers, and (iii) maintaining archive and backup copies of any data.

(c). WARRANTY DISCLAIMER AND REMEDIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES AND REMEDIES IN THIS AGREEMENT ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES. EFI, ITS SUPPLIERS, AND LICENSORS SPECIFICALLY DISCLAIM ANY OTHER WARRANTIES AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT; ANY WARRANTIES RELATING TO SECURITY; AND ANY WARRANTIES THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED, OR ERROR-FREE. EFI MAKES NO WARRANTY, IMPLIED OR OTHERWISE, REGARDING THE PERFORMANCE OR RELIABILITY OF ANY OTHER THIRD PARTY PRODUCTS, OR SERVICES.

(a). Beschränkte Garantien. EFI garantiert Ihnen, dass (i) EFI das Recht hat, die Lizenz zu gewähren, (ii) vorbehaltlich Ihrer fristgerechten Zahlung aller anfallenden Gebühren, die an Sie gelieferten Produkte im Wesentlichen gemäß den jeweils geltenden, anwendbaren Spezifikationen von EFI funktionieren werden, unter der Voraussetzung dass alle verfügbaren Updates, Upgrades und Fehlerbehebungen ordnungsgemäß installiert werden, (iii) alle von Ihnen erworbenen Professionelle Dienstleistungen auf gute und fachmännische Weise bereitgestellt werden, im Einklang mit den allgemein anerkannten Industriestandards. Diese Garantie gilt nicht für Mängel, welche entstehen durch (A) Geräte oder Software, die nicht von EFI zur Verwendung bereitgestellt oder genehmigt wurden, (B) Änderungen des Produkts durch Sie, Ihre Mitarbeiter oder Dritte, die in Ihrem Namen handeln, (C) Unfälle, Vernachlässigungen, Missbrauch oder Misshandlung durch Sie, Ihre Mitarbeiter oder Dritte, die in Ihrem Namen handeln, oder (D) die Einwirkung von Bedingungen auf das Produkt, die außerhalb des von EFI vorgesehenen Bereichs von Umwelt-, Strom- und Betriebsspezifikationen liegen. Sie verpflichten sich, uneingeschränkt und unverzüglich mit den Versuchen von EFI zusammenarbeiten, die Ursache für einen geltend gemachten Verstoß gegen diese beschränkte Garantie zu ermitteln.

(b). Sicherheit Ihrer Systeme. Sie tragen die alleinige Verantwortung für (i) die Gewährleistung der Vertraulichkeit, Sicherheit und Integrität Ihrer Netzwerkkonnektivität, Daten und Server, (ii) die Verhinderung und das Risiko des Verlusts oder der Beschädigung von Daten auf Ihren Servern und (iii) die Pflege von Archiv- und Sicherungskopien aller Daten.

(c). HAFTUNGSAUSSCHLUSS UND RECHTSMITTEL. SOWEIT NACH GELTENDEM RECHT ZULÄSSIG, SIND DIE GARANTIE UND RECHTSMITTEL IN DIESER VEREINBARUNG AUSSCHLIESSLICH UND ERSETZEN ALLE ANDEREN GARANTIE UND RECHTSMITTEL. EFI, SEINE LIEFERANTEN UND LIZENZGEBER SCHLIESSEN AUSDRÜCKLICH JEDLICHE WEITEREN GEWÄHRLEISTUNGEN UND RECHTSMITTEL AUS, INSBESONDERE OHNE EINSCHRÄNKUNG KONKLUDENTE GEWÄHRLEISTUNGEN FÜR MARKTGÄNGIGKEIT, EIGNUNG FÜR EINEN BESTIMMTEN ZWECK UND NICHTVERLETZUNG; JEDLICHE GEWÄHRLEISTUNGEN IN BEZUG AUF SICHERHEIT; UND JEDLICHE GARANTIE, DASS DER BETRIEB DES PRODUKTS UNTERBROCHEN ODER FEHLERFREI SEIN WIRD. EFI ÜBERNIMMT KEINE KONKLUDENTE ODER ANDERE GEWÄHRLEISTUNG IN BEZUG AUF DIE LEISTUNGSFÄHIGKEIT ODER ZUVERLÄSSIGKEIT VON PRODUKTEN ODER DIENSTLEISTUNGEN ANDERER DRITTANBIETER.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOLE AND EXCLUSIVE REMEDY TO WHICH YOU ARE ENTITLED FOR BREACH OF THESE LIMITED WARRANTIES, AND THE ENTIRE LIABILITY OF EFI AND ITS SUPPLIERS RELATING TO BREACH OF THESE LIMITED WARRANTIES, IS, AT EFI'S OPTION, TO (1) REPAIR OR REPLACE THE PRODUCT OR RE-PERFORM THE SERVICE THAT DOES NOT MEET THE LIMITED WARRANTY, OR (2) PROVIDE A REFUND OF THE THEN-CURRENT REASONABLE COMMERCIAL VALUE (IF ANY) FOR THE PRODUCT OR SERVICE THAT DOES NOT MEET THE LIMITED WARRANTY. EXCEPT AS PROVIDED IN THIS AGREEMENT, THERE ARE NO REFUNDS, RETURNS, EXCHANGES, OR REPLACEMENTS.

7. Infringement Indemnification.

EFI shall indemnify you from IP Claims and reimburse you for damages paid by you to the party bringing the IP Claim pursuant to a final, non-appealable judgment that the Product directly infringes any Third Party IP Rights. If you do not notify EFI in writing within 10 business days of learning of the IP Claim, and give EFI proper and full information, assistance, and exclusive authority to defend or settle the IP Claim, EFI will be relieved of its obligations under this Section. If the Product or any part of it is in EFI's opinion likely to become the subject of a claim of infringement of Third Party IP Rights, or if it is adjudicatively determined that the Product or any part of it infringes Third Party IP Rights, EFI may at its option (i) obtain for you a license or right to use the Third Party IP Rights so you can continue to use the Product, or (ii) replace or modify the Product with other suitable and reasonably equivalent non-infringing technology or parts, or (iii) if it is not commercially reasonable to take the actions described in clauses (i) or (ii) in this sentence, terminate your License and, if you return the Product to EFI, refund a portion of the license fee paid by you equal to the then-current reasonable commercial value (if any) of the Product. EFI shall not be responsible, liable, or obligated to indemnify or reimburse you if the alleged infringement arises out of (i) compliance with your requirements or specifications that are outside EFI's standard specifications for the Product, (ii) any addition or incorporation to or modification of the Product at your request, (iii) any combination of the Product with any product or software not provided by EFI, or (iv) use of the Product in the practice of a process or system other than that for which it was intended. In any event as described in the preceding sentence, you shall defend and/or settle any claim brought against EFI at your own expense, and shall indemnify EFI against any costs, legal fees, other expenses, and damages required for the defense or settlement of the claim.

SOWEIT NACH GELTENDEM RECHT ZULÄSSIG, IST DAS EINZIGE UND AUSSCHLIESSLICHE RECHTSMITTEL, ZU DEM SIE AUFGRUND EINER VERLETZUNG DIESER BESCHRÄNKTEN GARANTIEEN BERECHTIGT SIND, SOWIE DIE GESAMTE HAFTUNG VON EFI UND SEINEN LIEFERANTEN IM ZUSAMMENHANG MIT DIESEM ANSPRUCH, IM ERMESSEN VON EFI (1) DIE REPARATUR ODER DER ERSATZ DES PRODUKTES ODER DIE NACHERFÜLLUNG DER LEISTUNG, DIE DIE BESCHRÄNKTE GARANTIE NICHT ERFÜLLT, ODER (2) DIE ERSTATTUNG DES JEWEILIG AKTUELLEN ANGEMESSENEN MARKTWERTES (FALLS VORHANDEN) FÜR DAS PRODUKT ODER DIENSTLEISTUNG, DAS ODER DIE DIE BESCHRÄNKTE GARANTIE NICHT ERFÜLLT. SOFERN IN DIESER VEREINBARUNG NICHTS ANDERES BESTIMMT IST, GIBT ES KEINE RÜCKERSTATTUNG, RÜCKGABE, UMTAUSCH ODER ERSATZ.

7. Schadensersatz wegen Verletzung.

EFI stellt Sie von IP-Klagen frei und erstattet Ihnen den Schadensersatz, den Sie aufgrund eines endgültigen, nicht anfechtbaren Urteils, dass das Produkt unmittelbar IP-Rechte Dritter verletzt, an die Partei zahlen, welche die IP-Klage anstrengt. Wenn Sie EFI nicht innerhalb von 10 Werktagen nach Kenntnisnahme der IP-Klage schriftlich benachrichtigen und EFI angemessene und vollständige Informationen, Unterstützung und ausschließliche Befugnisse zur Verteidigung oder Beilegung der IP-Klage erteilen, wird EFI von seinen Verpflichtungen unter dieser Ziffer befreit. Wenn das Produkt oder ein Teil davon nach Ansicht von EFI voraussichtlich Gegenstand einer behaupteten Verletzung von IP-Rechten Dritter wird oder wenn rechtlich entschieden wird, dass das Produkt oder ein Teil davon IP-Rechte Dritter verletzt, kann EFI nach seiner Wahl (i) eine Lizenz oder ein Nutzungsrecht für IP-Rechte Dritter für Sie erwerben, damit Sie das Produkt weiterhin nutzen können, oder (ii) das Produkt durch andere geeignete und angemessen gleichwertige nicht verletzende Technologien oder Teile ersetzen oder modifizieren oder (iii) wenn es wirtschaftlich nicht vertretbar ist, die in Halbsätzen (i) oder (ii) dieses Satzes beschriebenen Maßnahmen zu ergreifen, Ihre Lizenz kündigen und, wenn Sie das Produkt an EFI zurücksenden, Ihnen einen Teil der von Ihnen gezahlten Lizenzgebühr erstatten in Höhe des jeweils aktuellen angemessenen Marktwertes (falls vorhanden) des Produkts. EFI ist nicht verantwortlich, haftbar oder verpflichtet, Sie zu entschädigen oder Ihnen Kosten zu erstatten, falls die angebliche Verletzung sich aus (i) der Einhaltung Ihrer Anforderungen oder Spezifikationen ergibt, die außerhalb der Standardspezifikationen von EFI für das Produkt liegen, (ii) einer Hinzufügung oder Einbeziehung von oder Änderung des Produkts auf Ihre Anfrage ergibt, (iii) jeder Kombination des Produkts mit einem Produkt oder einer Software, die nicht von EFI bereitgestellt wird ergibt, oder (iv) einer Verwendung des Produkts in der Ausübung eines anderen Prozesses oder Systems als dem, für das es bestimmt war ergibt. In jedem in dem vorhergehenden Satz beschriebenen Fall sind Sie verpflichtet, sich gegen alle gegen EFI angestregten Klagen auf eigene Kosten zu verteidigen und/oder diese beizulegen, und EFI von allen Kosten, Rechtskosten, sonstigen Ausgaben und Schäden freizustellen, die für die Verteidigung oder Beilegung der Klage erforderlich sind.

THE RIGHTS GRANTED TO YOU IN THIS SECTION ARE YOUR SOLE AND EXCLUSIVE REMEDIES FOR ANY ALLEGED INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

8. LIMITATION OF LIABILITY.

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL EFI OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY, OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EFI IS NOT RESPONSIBLE FOR ANY LOST PROFITS OR REVENUE, LOSS OF USE OF THE PRODUCT, LOSS OF DATA, OR THE COST OF RECOVERING ANY DATA. EXCEPT FOR INSTANCES INVOLVING EFF'S WILLFUL MISCONDUCT, EFI WILL NOT BE LIABLE FOR DAMAGES ARISING FROM ANY BREACH, UNAUTHORIZED ACCESS, MISUSE, OR INTRUSION RELATED TO YOUR DATA ON EFF'S OR ITS SUPPLIERS' SERVERS OR ANY NETWORK YOU USE IN CONNECTION WITH THE PRODUCT.

IN NO EVENT WILL EFF'S TOTAL LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATED TO THE PRODUCTS, SERVICES, ACCESS, AND/OR THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, UNDER STATUTE, OR OTHERWISE) EXCEED THE TOTAL AMOUNT OF THE FEES ACTUALLY PAID BY YOU IN THE 12 MONTHS PRECEDING THE CLAIM FOR THE EFI PRODUCT, SERVICES, OR ACCESS GIVING RISE TO THE CLAIM. YOU AGREE THAT THIS AMOUNT IS SUFFICIENT TO SATISFY THE ESSENTIAL PURPOSE OF THIS AGREEMENT AND THAT THE PRICE OF THE PRODUCT, PROFESSIONAL SERVICES, OR ACCESS REFLECTS THIS ALLOCATION OF RISK.

THE FOREGOING LIMITATIONS OF LIABILITY AND DISCLAIMERS FORM AN ESSENTIAL ELEMENT OF THIS AGREEMENT, WITHOUT WHICH EFI WOULD NOT HAVE LICENSED OR SOLD THE PRODUCT TO YOU OR PROVIDED YOU WITH ACCESS.

BECAUSE SOME JURISDICTIONS DO NOT ALLOW SOME OR ALL OF THE EXCLUSIONS OR LIMITATIONS OF LIABILITY IN THIS AGREEMENT, SOME OR ALL OF THEM MAY NOT APPLY TO YOU.

DIE RECHTE, DIE IHNEN IN DIESER ZIFFER GEWÄHRT WERDEN, SIND IHRE EINZIGEN UND AUSSCHLIESSLICHEN RECHTSMITTEL FÜR ANGEBLICHE VERLETZUNGEN DER GEISTIGEN EIGENTUMSRECHTE VON DRITTEN.

8. HAFTUNGSBESCHRÄNKUNG.

SOWEIT GESETZLICH ZULÄSSIG, HAFTEN EFI ODER SEINE ZULIEFERER ODER LIZENZGEBER IN KEINEM FALL FÜR INDIREKTE, SONDER-, NEBEN-, FOLGE-, VERTRAUENS-, EXEMPLARISCHE ODER STRAFSCHÄDEN, WIE AUCH IMMER SIE VERURSACHT WURDEN UND AUF WELCHER HAFTUNGSBASIS AUCH IMMER, AUCH WENN AUF DIE MÖGLICHKEIT SOLCHER SCHÄDEN HINGEWIESEN WURDE. EFI ÜBERNIMMT KEINE VERANTWORTUNG FÜR ENTGANGENE GEWINNE ODER EINNAHMEN, VERLUST DER NUTZUNG DES PRODUKTS, VERLUST DER DATEN ODER KOSTEN FÜR DIE WIEDERHERSTELLUNG VON DATEN. AUSSER IN FÄLLEN VON EFIS VORSÄTZLICHEM FEHLVERHALTEN, HAFTET EFI NICHT FÜR SCHÄDEN, DIE DURCH SICHERHEITSBROCH, UNBEFUGTEN ZUGRIFF, MISSBRAUCH ODER EINDRINGEN IM ZUSAMMENHANG MIT IHREN DATEN AUF DEN SERVERN VON EFI ODER SEINEN LIEFERANTEN ODER JEDEM NETZWERK, DAS SIE IN VERBINDUNG MIT DEM PRODUKT VERWENDEN.

IN KEINEM FALL WIRD DIE GESAMTHAFTUNG VON EFI FÜR ALLE ANSPRÜCHE, DIE SICH AUS DEN PRODUKTEN, DIENSTLEISTUNGEN, DEM ZUGANG UND/ODER DIESER VEREINBARUNG ERGEBEN ODER DAMIT IN ZUSAMMENHANG STEHEN, UNABHÄNGIG VON DER FORM DER HANDLUNG (OB VERTRAGLICH, DELIKTISCH, GESETZLICH ODER ANDERWEITIG), DEN GESAMTBETRAG DER GEBÜHREN ÜBERSTEIGEN, DIE SIE IN DEN 12 MONATEN VOR DEM ANSPRUCH FÜR DAS EFI-PRODUKT, DIENSTLEISTUNGEN ODER ZUGRIFF TATSÄCHLICH GEZAHLT HABEN DIE ZU DEM ANSPRUCH GEFÜHRT HABEN. SIE ERKLÄREN IHR EINVERSTÄNDNIS, DASS DIESER BETRAG AUSREICHEND IST, UM DEN WESENTLICHEN ZWECK DIESER VEREINBARUNG ZU ERFÜLLEN, UND DASS DER PREIS DES PRODUKTS, DER PROFESSIONELLEN DIENSTLEISTUNGEN ODER DES ZUGRIFFS DIESE RISIKOVERTEILUNG ENTSPRICHT.

DIE VORSTEHENDEN HAFTUNGSBESCHRÄNKUNGEN UND HAFTUNGS AUSSCHLÜSSE BILDEN EIN WESENTLICHES ELEMENT DIESER VEREINBARUNG, OHNE DAS EFI DAS PRODUKT NICHT AN SIE LIZENZIERT ODER VERKAUFT ODER IHNEN ZUGANG GEWÄHRT HÄTTE.

DA EINIGE GERICHTSBARKEITEN EINIGE ODER ALLE HAFTUNGSBESCHRÄNKUNGEN UND HAFTUNGS AUSSCHLÜSSE IN DIESER VEREINBARUNG NICHT ERLAUBEN, KÖNNEN EINIGE ODER ALLE NICHT AUF SIE ZUTREFFEN.

9. Proprietary Rights and Confidential Information.

(a). No Implied Conveyance of Proprietary Rights. The Product, Documentation, and any Work Product are the valuable, confidential, and proprietary property of EFI, its suppliers and licensors. EFI is not conveying any of its Intellectual Property Rights, except the limited rights specified in this Agreement. You shall maintain and reproduce all copyright, trademark, patent, and other proprietary notices on the Product in the same form and manner as delivered by EFI.

(b). Protection of Information. You shall not disclose any of EFI's Confidential Information, and shall take precautions with respect to EFI's Products and Confidential Information that are at least as protective as you take to protect your own confidential information and proprietary rights of the greatest sensitivity. You shall advise your employees and authorized independent contractors of the confidential and proprietary nature of the Product and EFI's Confidential Information and of the restrictions imposed by this Agreement, and confine access to the Product and EFI's Confidential Information to those individuals who need it in the ordinary course and scope of their employment or relationship with you. Except as specified in this Agreement, you shall not directly or indirectly disclose any part of the Product, EFI's Confidential Information, or Documentation to any third party.

(c). Termination; Injunctive Relief. Your violation of the confidentiality obligations or of EFI's Intellectual Property Rights may cause irreparable damage that cannot be fully remedied by money damages. In the event of any actual or threatened violation, you agree that EFI will be entitled, in addition to any other remedy available to it, to (i) terminate this Agreement, retake possession of the Product, execute the License Key, and/or terminate Access, and/or (ii) obtain injunctive or other equitable relief from any court of competent jurisdiction to prevent any further violation.

(d). Use of Your Trademarks and Logos. Subject to any reasonable use guidelines, you grant EFI a non-exclusive, worldwide, royalty-free license to use Customer Marks in connection with this Agreement, for use with the Product, for promoting EFI's Products in marketing materials, print, or on-line advertising, and for identifying you as an EFI customer. You shall also secure for EFI any rights or sublicenses required for EFI's use of the trademarks or service marks of your Affiliates. EFI acknowledges that (i) Customer Marks are owned solely and exclusively by you or your Affiliates, (ii) EFI has no other rights, title, or interest in or to Customer Marks, and (iii) all use and goodwill of Customer Marks by EFI inures to the benefit of you and your Affiliates.

9. Eigentumsrechte und Vertrauliche Informationen.

(a). Keine konkludente Übertragung von Eigentumsrechten. Das Produkt, die Dokumentation und jedes Arbeitsprodukt sind das wertvolle, vertrauliche und geschützte Eigentum von EFI, seinen Lieferanten und Lizenzgebern. EFI überträgt keine seiner Rechte an Geistigem Eigentum, mit Ausnahme der in dieser Vereinbarung festgelegten beschränkten Rechte. Sie müssen alle Urheberrechts-, Marken-, Patent- und andere Eigentumsvermerke auf dem Produkt beibehalten und reproduzieren, in derselben Form und Weise wie von EFI geliefert.

(b). Schutz von Informationen. Sie dürfen keine Vertraulichen Informationen von EFI weitergeben, und Sie sind verpflichtet, Vorsichtsmaßnahmen in Bezug auf die Produkte und die Vertraulichen Informationen von EFI zu treffen, die mindestens denen entsprechen, die Sie zum Schutz Ihrer eigenen vertraulichen Informationen und Eigentumsrechte von größter Sensibilität treffen. Sie müssen Ihre Mitarbeiter und autorisierten unabhängigen Auftragnehmer über den vertraulichen und geschützten Charakter des Produkts und der Vertraulichen Informationen von EFI sowie über die durch diese Vereinbarung auferlegten Einschränkungen informieren, sowie den Zugriff auf das Produkt und die Vertraulichen Informationen von EFI auf diejenigen Personen beschränken, die diese im gewöhnlichen Verlauf und Umfang ihrer Beschäftigung oder Beziehung zu Ihnen benötigen. Sofern in dieser Vereinbarung nicht anders angegeben, dürfen Sie keinen Teil des Produkts, der Vertraulichen Informationen oder der Dokumentation von EFI direkt oder indirekt an Dritte weitergeben.

(c). Kündigung; Unterlassungsanspruch. Ihre Verletzung der Vertraulichkeitsverpflichtungen oder der Rechte an Geistigem Eigentum von EFI kann zu irreparablen Schäden führen, die nicht vollständig durch Schadenersatz in Geld ausgeglichen werden können. Im Falle eines tatsächlichen oder drohenden Verstoßes erklären Sie sich damit einverstanden, dass EFI zusätzlich zu allen anderen verfügbaren Mitteln berechtigt ist, (i) diese Vereinbarung zu kündigen, das Produkt wieder in Besitz zu nehmen, den Lizenzschlüssel auszuführen und/oder den Zugriff zu beenden und/oder (ii) eine einstweilige Verfügung oder eine andere angemessene Abhilfe von einem zuständigen Gericht zu erwirken, um weitere Verstöße zu verhindern.

(d). Verwendung Ihrer Marken und Logos. Vorbehaltlich angemessener Verwendungsrichtlinien gewähren Sie EFI eine einfache, weltweite, lizenzgebührenfreie Lizenz zur Verwendung von Kundenmarken im Zusammenhang mit dieser Vereinbarung zur Nutzung mit dem Produkt, zur Werbung für die Produkte von EFI in Marketingmaterialien, Drucksachen oder Internet-Werbung und zur Identifizierung von Ihnen als EFI-Kunde. Sie werden außerdem alle Rechte oder Unterlizenzen für EFI sicherstellen, die für die Nutzung der Marken oder Dienstleistungsmarken Ihrer Verbundenen Unternehmen durch EFI erforderlich sind. EFI erkennt an, dass (i) Kundenmarken ausschließlich Ihnen oder Ihren Verbundenen Unternehmen gehören, (ii) EFI keine anderen Rechte, Eigentum oder Interessen in oder an Kundenmarken hat und (iii) jegliche Verwendung und jeder Geschäftswert von Kundenmarken durch EFI Ihnen und Ihren Verbundenen Unternehmen zugute kommt.

10. Termination.

(a). This Agreement may be terminated immediately upon written notice to the other party (i) by EFI, if you fail to make any required payment other than Maintenance Fees, (ii) by the non-breaching party, if you or EFI fails to cure a material breach within 30 days after written notice from the non-breaching party, or (iii) by EFI, if you cease doing business as a going concern, become the object of voluntary or involuntary bankruptcy or liquidation proceedings that are not dismissed within 60 days after the initial filing, or if a receiver is appointed with respect to a substantial portion of your assets.

(b). Upon termination, you shall promptly (i) pay EFI all unpaid fees accrued before the termination, (ii) return all EFI Confidential Information and the Product, and (iii) return any materials, programs, manuals, and other items related to or derived from the Product in your possession or control. EFI shall use commercially reasonable efforts to provide you with any proprietary data belonging to you in the format in which it is stored by EFI at the time of termination.

11. Audit Rights.

EFI may audit your use of or Access to the Product. Any audit will take place after prior notice to you, during regular business hours, and in a manner that does not unreasonably interfere with your normal business. If the audit shows that you are using or accessing the Product in a way that violates this Agreement, EFI may invoice you for such use or Access, including late fees, interest, and expenses associated with the audit. If you do not timely pay that invoice, EFI may exercise its termination rights and pursue any other rights or remedies available to it.

12. Consent to Use Data.

EFI may collect and use technical data and related information to facilitate providing and/or confirming authorized use of Products, Access, Professional Services, and/or Maintenance to and by you. Subject to EFI's then-current privacy policy (available at <https://www.efi.com/legal/privacy/>) and applicable laws and regulations, EFI may (i) use this information to improve its products, to provide customized services or technologies to you, and/or to confirm authorized use, (ii) transfer this information to EFI's affiliates, agents, and partners, and (iii) transfer this information to the United States and/or any other country where EFI or its affiliates, agents, and partners maintain facilities.

10. Kündigung.

(a). Diese Vereinbarung kann mit sofortiger Wirkung nach schriftlicher Mitteilung an die jeweils andere Partei (i) durch EFI gekündigt werden, wenn Sie eine erforderliche Zahlung anders als die Wartungsgebühren nicht leisten, (ii) durch die nicht verletzende Partei gekündigt werden, wenn Sie oder EFI eine wesentliche Verletzung nicht innerhalb von 30 Tagen nach schriftlicher Mitteilung der nicht verletzenden Partei abstellen oder (iii) durch EFI gekündigt werden, wenn Sie die Geschäftstätigkeit einstellen, Gegenstand eines freiwilligen oder unfreiwilligen Insolvenz- oder Liquidationsverfahrens werden, das nicht innerhalb von 60 Tagen nach der erstmaligen Anmeldung aufgehoben wird, oder wenn ein Zwangsverwalter für einen wesentlichen Teil Ihres Vermögens ernannt wird.

(b). Nach der Kündigung müssen Sie unverzüglich (i) alle vor der Kündigung angefallenen nicht bezahlten Gebühren an EFI zahlen, (ii) alle Vertraulichen Informationen von EFI und das Produkt zurückgeben und (iii) alle mit dem Produkt zusammenhängenden oder aus dem Produkt abgeleiteten Materialien, Programme, Anleitungen und sonstigen Gegenstände im zurückgeben, die sich in Ihrem Besitz oder unter Ihrer Kontrolle befinden. EFI wird wirtschaftlich angemessene Anstrengungen unternehmen, um geschützte Daten, die Ihnen gehören, Ihnen in dem Format zur Verfügung zu stellen, in dem sie zum Zeitpunkt der Kündigung von EFI gespeichert wurden.

11. Prüfungsrechte.

EFI kann Ihre Nutzung oder Ihren Zugriff auf das Produkt prüfen. Jede Prüfung findet nach vorheriger Mitteilung an Sie statt, während der regulären Geschäftszeiten und auf eine Weise, die Ihre normale Geschäftstätigkeit nicht unangemessen beeinträchtigt. Falls die Prüfung ergibt, dass Sie das Produkt verwenden oder darauf zugreifen in einer Weise, die gegen diese Vereinbarung verstößt, kann EFI Ihnen eine solche Nutzung oder einen solchen Zugriff in Rechnung stellen, einschließlich Verzugsgebühren, Zinsen und Kosten im Zusammenhang mit der Prüfung. Wenn Sie diese Rechnung nicht fristgerecht bezahlen, kann EFI seine Kündigungsrechte ausüben sowie andere ihm zur Verfügung stehende Rechte oder Rechtsmittel verfolgen.

12. Zustimmung zur Verwendung von Daten.

EFI kann technische Daten und zugehörige Informationen erheben und verwenden, um die Bereitstellung und/oder Bestätigung der autorisierten Verwendung von Produkten, Zugriff, Professionellen Dienstleistungen und/oder Wartung für und durch Sie zu erleichtern. Vorbehaltlich der jeweils aktuellen Datenschutzrichtlinie von EFI (verfügbar unter <https://www.efi.com/legal/privacy/>) und der geltenden Gesetze und Vorschriften kann EFI (i) diese Informationen verwenden, um seine Produkte zu verbessern, maßgeschneiderte Dienstleistungen oder Technologien an Sie bereitzustellen und/oder um die autorisierte Verwendung zu bestätigen, (ii) diese Informationen an die verbundenen Unternehmen, Beauftragten und Partner von EFI übertragen und (iii) diese Informationen in die USA und/oder jedes andere Land übertragen, in dem EFI oder seine verbundenen Unternehmen, Beauftragten und Partner betriebsfähig sind.

13. Compliance with Laws.

(a). Export Law Compliance. The Product and related technology, information, and materials are subject to the export laws and regulations of the United States. You shall comply with those and any other applicable export laws or regulations. You are solely responsible for obtaining any necessary export licenses and exemptions. The Product and related technology, information, and materials may not be exported or re-exported to any U.S.-embargoed country, to any person or entity on any list of prohibited parties designated by the U.S. government, or otherwise in violation of any export law or regulation.

(b). Compliance with Laws. You may only use the Product in compliance with all applicable laws and regulations. Upon written notice to you, EFI may modify or suspend your use of or Access to the Product as necessary to comply with any law or regulation. Both parties acknowledge their responsibilities and commitments to abide by and comply with international anti-corruption laws, including but not limited to the United States Foreign Corrupt Practices Act and the United Kingdom Anti-Bribery Act, and any amendments and regulations relating to those laws, in addition to each of our own ethical guidelines (EFI's Code of Conduct is available online at <http://ir.efi.com/committee-details/code-business-conduct-and-ethics>). Specifically, for example, no employee, or any individual or entity acting on behalf of or for the benefit of either EFI or Customer, may give or receive anything of value, or anything that may be perceived as valuable, to or from a government official or any other individual for the purpose of influencing any act, securing any improper advantage, or obtaining or retaining business.

14. General Provisions.

(a). Taxes. Except with respect to income recognized by EFI, you are liable for all tariffs, duties, and taxes, however designated or levied, based on your possession, use of, or Access to the Product, this Agreement, and/or any Professional Services, including but not limited to sales, use, value added, excise, services, personal property, or other taxes.

13. Einhaltung von Gesetzen.

(a). Einhaltung von Exportgesetzen. Das Produkt und die zugehörigen Technologien, Informationen und Materialien unterliegen den Exportgesetzen und -bestimmungen der USA. Sie müssen diese und alle anderen geltenden Exportgesetze oder -bestimmungen einhalten. Sie tragen die alleinige Verantwortung für die Erwirkung aller erforderlichen Exportlizenzen und Ausnahmen. Das Produkt und verwandte Technologien, Informationen und Materialien dürfen nicht in ein Land exportiert oder re-exportiert werden, das eine US-Handelssperre unterliegt, an eine Person oder Organisation auf einer Liste verbotener Parteien, die von der US-Regierung benannt wurden, oder auf andere Weise unter Verstoß gegen irgendein Exportgesetz oder -bestimmung.

(b). Einhaltung von Gesetzen. Sie dürfen das Produkt nur in Übereinstimmung mit allen geltenden Gesetzen und Vorschriften verwenden. Nach schriftlicher Mitteilung an Sie kann EFI Ihre Nutzung oder Ihren Zugriff zum Produkt ändern oder aussetzen, um nach Bedarf Gesetze oder Vorschriften einzuhalten. Beide Parteien erkennen ihre Verantwortung und Verpflichtung an, die internationalen Antikorruptionsgesetze zu befolgen und einzuhalten, insbesondere ohne Einschränkung das United States Foreign Corrupt Practices Act und das United Kingdom Anti-Bribery Act sowie alle Änderungen und Vorschriften in Bezug auf diese Gesetze, zusätzlich zu jeder unserer eigenen ethischen Richtlinien (der Verhaltenskodex von EFI ist online verfügbar unter <http://ir.efi.com/committee-details/code-business-conduct-and-ethics>). Insbesondere darf beispielsweise kein Mitarbeiter oder eine Einzelperson oder Organisation, die im Namen oder zum Nutzen von EFI oder des Kunden handelt, etwas Wertvolles oder etwas, das als wertvoll angesehen werden kann, an oder von einem Regierungsbeamten zuwenden oder erhalten oder irgendeiner anderen Person, um eine Handlung zu beeinflussen, einen unzulässigen Vorteil zu sichern oder Geschäfte zu erhalten oder zu behalten.

14. Allgemeine Bestimmungen.

(a). Steuern. Mit Ausnahme der von EFI erfassten Einkünfte, haften Sie für alle Zölle, Abgaben und Steuern, egal wie sie festgelegt oder erhoben werden, aufgrund Ihres Besitzes, Ihrer Nutzung oder Ihres Zugangs zum Produkt, dieser Vereinbarung und/oder etwaiger Professioneller Dienstleistungen, insbesondere ohne Einschränkung Erwerbs-, Nutzungs-, Mehrwert-, Verbrauchs-, Dienstleistungs-, Vermögens- oder andere Steuern.

(b). Governing Law. This Agreement is not governed by the 1980 UN Convention on Contracts for the International Sales of Goods or any other international treaty or convention. Rather, this Agreement is governed in all respects by the laws of the State of California, USA, without regard to conflicts of laws principles. For all disputes related to this Agreement, the Product, Access, or any services provided under this Agreement, each party consents to the exclusive personal jurisdiction and venue of the state and federal courts in and for Santa Clara County, California, USA.

(c). Severability; Interpretation. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by any court of competent jurisdiction, that provision will be fully severable and this Agreement will be construed and enforced as if it were not included. This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor or against either party. The captions are for convenience only and do not affect the scope, intent, or meaning of the provisions. Any failure or delay to enforce any provision of this Agreement will not be deemed a waiver of EFI's right to do so.

(d). No Assignment. Assignment or transfer of this Agreement in its entirety, including all Licenses purchased, whether voluntarily, by operation of law, or otherwise, requires EFI's prior written consent, which may be withheld, delayed, or conditioned in EFI's sole discretion, and may require payment of a License transfer fee. Partial assignment or transfer of this Agreement, including a portion of Licenses purchased, whether voluntarily, by operation of law, or otherwise, is prohibited. Any merger, consolidation or acquisition of Customer or other transfer of all or substantially all of the shares or assets of Customer is deemed to be an assignment under this Agreement. Any attempted assignment or transfer without EFI's consent is void.

(e). Language. This Agreement is only in English, which is controlling in all respects. If EFI has provided you with a translation, the translation is for your convenience only and the English-language version, not the translation, is legally binding. If there are any conflicts or inconsistencies between the English-language version and a translation, the English-language version controls. Any notices relating to this Agreement must be in writing in English.

(b). Geltendes Recht. Diese Vereinbarung unterliegt nicht dem UN-Übereinkommen von 1980 über Verträge über den internationalen Warenkauf oder irgendeinem anderen internationalen Abkommen oder Übereinkommen. Vielmehr unterliegt diese Vereinbarung in jeder Hinsicht den Gesetzen des US-Bundesstaates Kalifornien, ohne Berücksichtigung von Kollisionsnormen. Bei allen Streitigkeiten im Zusammenhang mit dieser Vereinbarung, dem Produkt, dem Zugriff oder den im Rahmen dieser Vereinbarung bereitgestellten Dienstleistungen, stimmt jede Partei der ausschließlichen persönlichen Zuständigkeit und dem Gerichtsstand der staatlichen und bundesstaatlichen Gerichte in und für Santa Clara County, Kalifornien, USA, zu.

(c). Salvatorische Klausel; Interpretation. Wenn eine Bestimmung dieser Vereinbarung von einem zuständigen Gericht als rechtswidrig, unwirksam oder nicht durchsetzbar angesehen wird, bleibt diese Bestimmung vollständig ohne Wirkung auf diese Vereinbarung im Übrigen, und diese Vereinbarung wird so ausgelegt und durchgesetzt, als ob diese Bestimmung nicht enthalten wäre. Diese Vereinbarung wird angemessen ausgelegt in Übereinstimmung mit ihren Bestimmungen, und ohne strenge Deutung zugunsten oder zulasten einer Partei. Die Beschriftungen dienen nur der Übersichtlichkeit und haben keinen Einfluss auf den Umfang, die Absicht oder die Bedeutung der Bestimmungen. Ein Versäumnis oder eine Verzögerung bei der Durchsetzung einer Bestimmung dieser Vereinbarung gilt nicht als Verzicht auf EFIs Recht dies zu tun.

(d). Keine Übertragung. Die Abtretung oder Übertragung dieser Vereinbarung in ihrer Gesamtheit, einschließlich aller erworbenen Lizenzen, ob freiwillig, kraft Gesetzes oder anderweitig, erfordert die vorherige schriftliche Zustimmung von EFI, die nach alleinigem Ermessen von EFI zurückgehalten, verzögert oder unter Vorbehalt gestellt werden kann, und möglicherweise die Zahlung einer Lizenzübertragungsgebühr erfordern kann. Eine teilweise Abtretung oder Übertragung dieser Vereinbarung, einschließlich eines Teils der erworbenen Lizenzen, ob freiwillig, kraft Gesetzes oder anderweitig, ist untersagt. Jede Fusion, Konsolidierung oder Übernahme des Kunden oder jede andere Übertragung aller oder im Wesentlichen aller Aktien oder Vermögenswerte des Kunden gilt als Abtretung im Rahmen dieser Vereinbarung. Jeder Versuch einer Abtretung oder Übertragung ohne die Zustimmung von EFI ist nichtig.

(e). Sprache. Diese Vereinbarung wird nur in englischer Sprache geschlossen, welche in jeder Hinsicht maßgeblich ist. Falls EFI Ihnen eine Übersetzung zur Verfügung gestellt hat, dient die Übersetzung nur der Übersichtlichkeit, und die englischsprachige Version ist rechtsverbindlich, nicht die Übersetzung. Wenn es Widersprüche oder Unstimmigkeiten zwischen der englischsprachigen Version und einer Übersetzung gibt, ist die englischsprachige Version maßgeblich. Alle Mitteilungen in Bezug auf diese Vereinbarung müssen schriftlich in englischer Sprache erfolgen.

(f). Entire Agreement and Modification. With respect to the subject matter or any term of this Agreement: (i) this Agreement constitutes the entire understanding of the parties; (ii) this Agreement supersedes all prior and contemporaneous communications and understandings (including but not limited to discussions, representations, warranties, inducements, promises, and agreements); (iii) there are no such communications or understandings not explicitly contained herein; (iv) neither party has relied on any such communications or understandings except as explicitly contained in this Agreement; and (v) any waiver, modification, or amendment will be effective only if in a writing signed by the parties, where email does not constitute a signed writing.

(g). Orders and Acceptance. All orders for Products or Professional Services made pursuant to this Agreement are non-cancelable, non-refundable and must be submitted at least fifteen (15) days prior to the requested order delivery date. For any given order, you shall make the order and corresponding payment to EFI or its subsidiary or Affiliate depending upon which company is making the sale of Products or Professional Services for that order. Orders are not binding without written notification of acceptance from EFI. This Agreement governs all subsequent orders, and nothing contained in Customer's purchase orders or other communications will in any way modify this Agreement.

(h). Independent Contractors. You and EFI, and our respective employees and representatives, are and will be independent contractors with respect to the other party. Neither party by virtue of this Agreement has any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

(i). Survival. The provisions of this Agreement that relate to fees and payment terms, ownership of intellectual property and proprietary rights, export law compliance, termination, confidentiality, infringement indemnification, warranty disclaimers, limitation of liability, governing law, survivability, force majeure, severability and interpretation, definitions, modification and use of software products owned or distributed by Microsoft or Oracle included in an EFI Product will survive termination of this Agreement.

(f). Gesamte Vereinbarung und Änderungen. In Bezug auf den Gegenstand oder irgendeine Bestimmung dieser Vereinbarung: (i) stellt diese Vereinbarung das gesamte Verständnis der Parteien dar; (ii) ersetzt diese Vereinbarung alle vorherigen und gleichzeitigen Mitteilungen und Absprachen (insbesondere ohne Einschränkung Diskussionen, Zusicherungen, Gewährleistungen, Anreize, Versprechen und Vereinbarungen); (iii) gibt es keine derartigen Mitteilungen oder Absprachen, die nicht ausdrücklich hierin enthalten sind; (iv) hat keine Partei sich auf solche Mitteilungen oder Absprachen verlassen, es sei denn, diese sind ausdrücklich in dieser Vereinbarung enthalten, und (v) ein Verzicht, eine Änderung oder Ergänzung nur wirksam ist, wenn diese schriftlich von den Parteien unterzeichnet festgehalten wurde, wobei E-Mail keine unterzeichnete Schriftform darstellt.

(g). Bestellungen und Annahme. Alle Bestellungen für Produkte oder Professionelle Dienstleistungen, die gemäß dieser Vereinbarung getätigt werden, sind nicht stornierbar, nicht erstattbar und müssen mindestens fünfzehn (15) Tage vor dem gewünschten Liefertermin der Bestellung eingereicht werden. Für eine bestimmte Bestellung müssen Sie die Bestellung und die entsprechende Zahlung an EFI oder deren Tochtergesellschaft oder Verbundenes Unternehmen leisten, je nachdem, welches Unternehmen den Verkauf von Produkten oder Professionellen Dienstleistungen für diese Bestellung durchführt. Bestellungen sind ohne schriftliche Mitteilung über die Annahme durch EFI nicht bindend. Diese Vereinbarung regelt alle nachfolgenden Bestellungen, und nichts, was in Aufträgen oder anderen Mitteilungen des Kunden enthalten ist, wird diese Vereinbarung in irgendeiner Weise ändern

(h). Unabhängige Auftragnehmer. Sie und EFI sowie unsere jeweiligen Mitarbeiter und Vertreter sind und bleiben unabhängige Auftragnehmer in Bezug auf die andere Partei. Keine Partei hat aufgrund dieser Vereinbarung das Recht, die Befugnis oder die Ermächtigung, im Namen der anderen Partei zu handeln oder eine ausdrückliche oder stillschweigende Verpflichtung zu begründen.

(i). Fortbestehen. Die Bestimmungen dieser Vereinbarung, die sich auf Gebühren und Zahlungsbedingungen, Eigentum an geistigem Eigentum und Eigentumsrechten, Einhaltung des Exportrechts, Kündigung, Vertraulichkeit, Schadensersatz wegen Verletzung, Gewährleistungsausschluss, Haftungsbeschränkung, geltendes Recht, Fortbestehen, höhere Gewalt, Salvatorische Klausel und Auslegung, Definitionen, Änderungen und Verwendung von Softwareprodukten beziehen, die Microsoft oder Oracle gehören oder von Microsoft oder Oracle vertrieben werden und in einem EFI-Produkt enthalten sind, bestehen auch nach Beendigung dieser Vereinbarung fort.

(j). Force Majeure. Except for payment of monies, no party will be liable for its failure to perform any obligations on account of strikes, shortages, failure or acts of suppliers, riots, insurrection, fires, flood, storm, explosions, acts of God, war, military operations, acts of terrorism whether actual or threatened, acts of a public enemy, epidemics, quarantines, governmental action, labor conditions, earthquakes, material shortages, or any cause that is similar to those enumerated or beyond the reasonable control of the affected party.

(k). U.S. Government Restricted Rights. Use, duplication, or disclosure of the Product by the United States Government is subject to restrictions as set forth in FAR 12.212 or DFARS 227.7202-3 - 227.7202-4 and, to the extent required under U.S. federal law, the minimum restricted rights as set out in FAR 52.227-14, Restricted Rights Notice (June 1987) Alternate III(g)(3) (June 1987) or FAR 52.227-19 (June 1987). To the extent any technical data is provided pursuant to the Agreement, such data is protected per FAR 12.211 and DFARS 227.7102-2 and to the extent explicitly required by the U.S. Government, is subject to limited rights as set out in DFARS 252.227.7015 (November 1995) and DFARS 252.227-7037 (September 1999). If any of the above-referenced agency regulations are modified or superseded, the subsequent equivalent regulation shall apply. The name of the Contractor is Electronics For Imaging, Inc.

15. Product-Specific and Third Party Provisions.

If you have obtained a License for certain Products, some of the following terms and conditions might apply to you.

(a). Products that include Microsoft Software (such as Windows or SQL Server).

(i). The term "Product" as used in this Agreement includes certain Microsoft software and related documentation, associated media, "online" or electronic documentation, upgrades and updates. EFI does not own these products and the use thereof is subject to certain rights and limitations.

(ii). Microsoft is not responsible for any support services for the Product. Notwithstanding the foregoing, in the event any support issues arise related to the Microsoft software that cannot be resolved by EFI, support to you may be provided by Microsoft pursuant to the Microsoft Premier support services agreement, or a similar type agreement, between EFI and Microsoft.

(j). Höhere Gewalt. Mit Ausnahme der Zahlung von Geldern haftet keine Partei für die Nichterfüllung von Verpflichtungen aufgrund von Streiks, Fehlbeständen, Versäumnissen oder Handlungen von Lieferanten, Unruhen, Aufständen, Bränden, Überschwemmungen, Stürmen, Explosionen, höhere Gewalt, Krieg und militärische Operationen, tatsächliche oder bedrohte Terrorakte, Handlungen eines Staatsfeindes, Epidemien, Quarantänen, staatliche Maßnahmen, Arbeitsbedingungen, Erdbeben, materielle Engpässe oder andere Ursachen, die den aufgezählten ähnlich sind oder außerhalb der angemessenen Kontrolle der betroffenen Partei liegen.

(k). Eingeschränkte Rechte durch die US-Regierung. Die Verwendung, Vervielfältigung oder Offenlegung des Produkts durch die Regierung der Vereinigten Staaten unterliegt den in FAR 12.212 oder DFARS 227.7202-3 - 227.7202-4 festgelegten Beschränkungen und, soweit dies nach US-Bundesrecht erforderlich ist, den in FAR 52.227-14, Restricted Rights Notice (Juni 1987) Alternative III(g)(3) (Juni 1987) oder FAR 52.227-19 (Juni 1987) festgelegten Mindestbeschränkungsrechten. Soweit technische Daten gemäß der Vereinbarung bereitgestellt werden, sind diese Daten gemäß FAR 12.211 und DFARS 227.7102-2 geschützt und unterliegen, soweit dies ausdrücklich von der US-Regierung verlangt wird, eingeschränkten Rechten gemäß DFARS 252.227.7015 (November 1995) und DFARS 252.227-7037 (September 1999). Falls eine der oben genannten behördlichen Vorschriften geändert oder ersetzt wird, gilt die nachfolgende gleichwertige Regelung. Der Name des Auftragnehmers lautet Electronics For Imaging, Inc.

15. Produktspezifische Bestimmungen und Bestimmungen Dritter.

Wenn Sie eine Lizenz für bestimmte Produkte erhalten haben, gelten möglicherweise einige der folgenden Bedingungen für Sie.

(a). Produkte, die Microsoft-Software enthalten (z. B. Windows oder SQL-Server).

(i). Der in dieser Vereinbarung verwendete Begriff „Produkt“ umfasst bestimmte Microsoft-Software und zugehörige Dokumentation, zugehörige Medien, „Online“- oder elektronische Dokumentation, Upgrades und Updates. EFI besitzt diese Produkte nicht, und ihre Verwendung unterliegt bestimmten Rechten und Einschränkungen.

(ii). Microsoft ist nicht verantwortlich für Supportleistungen für das Produkt. Ungeachtet des Vorstehenden kann Microsoft für den Fall, dass Supportprobleme im Zusammenhang mit der Microsoft-Software auftreten, die nicht von EFI gelöst werden können, Ihnen Supportleistungen bereitstellen gemäß der Microsoft Premier-Support-Servicevereinbarung oder einer ähnlichen Vereinbarung zwischen EFI und Microsoft.

(iii). The Product is not fault-tolerant. The Product is not designed or intended for use in any situation where failure or fault of any kind of the Product could lead to death or serious bodily injury of any person, or to severe physical or environmental damage (“High Risk Use”). You are not licensed to use the Product in, or in conjunction with, High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: aircraft or other modes of human mass transportation, nuclear or chemical facilities, and Class III medical devices under the Federal Food, Drug, and Cosmetic Act. You shall not use the Product in, or in connection with, any High Risk Use. You are responsible for taking all appropriate measures to ensure the safe use of the Product if used for such purposes and EFI and its suppliers, including Microsoft, will not be liable for any claims or damages arising from such use.

(b). Products that include Software Products Owned or Distributed by Oracle.

(i). The term “Product” as used in this Agreement includes certain software products provided by EFI that are owned or distributed by Oracle USA, Inc. (“Oracle”) and related program documentation (the “Oracle Programs”); EFI does not own the Oracle Programs and the use thereof is subject to certain rights and limitations. The Oracle Programs included herein are subject to a restricted use license and can only be used in conjunction with the Product. Oracle or its licensors retain all ownership of intellectual property rights to the Oracle Programs. You are hereby notified that Oracle is a supplier of EFI and a third-party beneficiary to this Agreement to the extent that this Agreement contains provisions which relate to your use of the Oracle Programs. Such provisions are made expressly for the benefit of Oracle and are enforceable by Oracle in addition to EFI.

(ii). You acknowledge and agree that you are prohibited from (a) publishing any results of benchmark tests run on the Oracle Programs, (b) using the Oracle Programs for rental, timesharing, subscription service, hosting, or outsourcing, and (c) removing or modifying any program markings or notice of Oracle’s or Oracle’s licensors’ proprietary rights.

(iii). To the extent not prohibited by law, in no event will Oracle be liable for (a) any damages, whether direct, indirect, incidental, special, punitive or consequential, and (b) any loss of profits, revenue, data or data use, arising from the use of the Oracle Programs.

(iii). Das Produkt ist nicht fehlertolerant. Das Produkt ist nicht für die Verwendung in Situationen ausgelegt oder vorgesehen, in denen ein Versagen oder Verschulden jeglicher Art des Produkts zum Tod oder zu schweren Körperverletzungen einer Person oder zu schweren physischen oder Umweltschäden führen kann („Verwendung mit Hohem Risiko“). Sie sind nicht berechtigt, das Produkt in oder in Verbindung mit einer Verwendung mit Hohem Risiko zu verwenden. Die Verwendung mit Hohem Risiko ist STRENGSTENS UNTERSAGT. Die Verwendung mit Hohem Risiko umfasst beispielsweise Folgendes: Flugzeuge oder andere Arten des menschlichen Massentransports, nukleare oder chemische Einrichtungen sowie Medizinprodukte der Klasse III gemäß dem US-Bundesgesetz über Lebensmittel, Arzneimittel und Kosmetika. Sie dürfen das Produkt nicht in oder in Verbindung mit einer Verwendung mit Hohem Risiko verwenden. Sie sind dafür verantwortlich, alle geeigneten Maßnahmen zu ergreifen, um die sichere Verwendung des Produkts zu gewährleisten, wenn es für solche Zwecke verwendet wird. EFI und seine Lieferanten, einschließlich Microsoft, haften nicht für Ansprüche oder Schäden, die sich aus einer solchen Verwendung ergeben.

(b). Produkte, die Softwareprodukte enthalten, die Oracle gehören oder von Oracle vertrieben werden.

(i). Der in dieser Vereinbarung verwendete Begriff „Produkt“ umfasst bestimmte von EFI bereitgestellte Softwareprodukte, die Eigentum von Oracle USA, Inc. („Oracle“) sind und von Oracle USA, Inc. vertrieben werden, sowie die zugehörige Programmdokumentation (die „Oracle-Programme“). EFI besitzt die Oracle-Programme nicht und ihre Verwendung unterliegt bestimmten Rechten und Einschränkungen. Die hierin enthaltenen Oracle-Programme unterliegen einer eingeschränkten Nutzungslizenz und können nur in Verbindung mit dem Produkt verwendet werden. Oracle oder seine Lizenzgeber behalten sich alle Eigentumsrechte an geistigen Eigentumsrechten an den Oracle-Programmen vor. Sie werden hiermit darüber informiert, dass Oracle ein Lieferant von EFI und ein Drittbegünstigter dieser Vereinbarung ist, sofern diese Vereinbarung Bestimmungen enthält, die sich auf Ihre Nutzung der Oracle-Programme beziehen. Solche Bestimmungen werden ausdrücklich zugunsten von Oracle getroffen und können von Oracle zusätzlich zu EFI durchgesetzt werden.

(ii). Sie erkennen an und stimmen zu, dass es Ihnen untersagt ist, (a) Ergebnisse von Benchmark-Tests zu veröffentlichen, die mit den Oracle-Programmen durchgeführt wurden, (b) die Oracle-Programme zur Vermietung, einem Teilnehmersystem, Abonnementdienst, Hosting oder Outsourcing zu verwenden und (c) Programmmarkierungen oder den Hinweis auf die Eigentumsrechte von Oracle oder Oracle-Lizenzgebern zu entfernen oder zu ändern.

(iii). Soweit gesetzlich zulässig, haftet Oracle in keinem Fall für (a) Schäden, egal ob direkte, indirekte, Neben-, Sonder-, Straf- oder Folgeschäden sowie (b) entgangene Gewinne, Umsatz, verlorene Daten oder Datennutzung, die sich aus der Verwendung der Oracle-Programme ergeben.

(iv). You hereby permit EFI to (a) report any audit results obtained pursuant to this Agreement to Oracle to the extent such results are related to the Oracle Programs, or (b) assign such rights to audit your use of the Oracle Programs to Oracle.

(v). You are hereby notified that some Oracle Programs may include source code that Oracle may provide as part of its standard shipment of such programs, which source code is governed by the terms of this Agreement.

(vi). The Computer Information Transactions Act does not apply to this Agreement.

(vii). You acknowledge and agree that in the event a third party technology may be appropriate or necessary for use with some Oracle Programs, it will be specified in the Product package documentation or as otherwise noted, and such third party technology is licensed to you only for use with the Product under the terms of the third party license agreement specified in the Product package documentation or as otherwise noted, and not under the terms of this Agreement.

(c). E-commerce Applications.

(i). Use at Site Location. You may use or Access the Product only for production activity at the Site Location. If you have more than one production facility, you may not use or Access the Product for production activity at any facility other than the Site Location(s) for which you have been granted a license.

(ii). Links. If you have obtained a License for EFI e-Commerce Software, you represent and warrant that you have the right to create and maintain, or to allow EFI to create and maintain, all Links to the Product and any other websites mutually agreed upon between you and EFI. You shall incorporate EFI's "Powered by EFI" logo on any website utilizing EFI e-commerce Software.

(ii). Relationships with Third Parties. Use of or Access to the e-Commerce Product does not create a contract or other obligation between you and any of your customers or between EFI and any of your customers or vendors. EFI cannot and does not guarantee the performance of any of your customers, vendors, or other third parties. EFI will have no liability in connection with any dispute between you and any third party, and any third party dispute will not relieve you of any obligation to EFI under this Agreement.

(iv). Sie gestatten EFI hiermit, (a) alle gemäß dieser Vereinbarung erzielten Prüfungsergebnisse an Oracle zu berichten, sofern diese Ergebnisse mit den Oracle-Programmen zusammenhängen, oder (b) diese Rechte zur Prüfung Ihrer Nutzung der Oracle-Programme an Oracle zu übertragen.

(v). Sie werden hiermit darüber informiert, dass einige Oracle-Programme möglicherweise Quellcode enthalten, den Oracle im Rahmen seiner Standardlieferung solcher Programme bereitstellt. Dieser Quellcode unterliegt den Bestimmungen dieser Vereinbarung.

(vi). Das US-Gesetz über Computerinformationstransaktionen gilt nicht für diese Vereinbarung.

(vii). Sie erkennen an und stimmen zu, dass für den Fall, dass eine Technologie eines Drittanbieters für die Verwendung mit einigen Oracle-Programmen geeignet oder erforderlich ist, diese in der Dokumentation des Produktpakets oder wie anderweitig angegeben aufgeführt werden wird, sowie dass diese Technologie von Drittanbietern an Sie lizenziert wird nur zur Verwendung mit dem Produkt gemäß den Bestimmungen der Lizenzvereinbarung mit Dritten, die in der Dokumentation des Produktpakets oder wie anderweitig angegeben aufgeführt sind, und nicht gemäß den Bestimmungen dieser Vereinbarung.

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“**Agreement**” means this License and Purchase Agreement.

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(d). Materiales de terceros. Algunos materiales de terceros distribuidos con el Producto pueden estar sujetos a otros términos y condiciones, que se encuentran normalmente en un contrato de licencia independiente o archivo "Léame" que se facilita con dichos materiales de terceros. La Licencia no se aplica a ningún software de terceros, salvo que se indique en este documento.

(e). Uso no autorizado. EL PRODUCTO PUEDE CONTENER UNA CLAVE DE LICENCIA PARA EVITAR EL USO NO AUTORIZADO, Y EFI PUEDE EJECUTAR O DESACTIVAR DICHA CLAVE DE LICENCIA AL EXPIRAR SU LICENCIA. RECONOCE USTED QUE LA CLAVE DE LICENCIA NO ES UN VIRUS, Y QUE LA EJECUCIÓN O DESACTIVACIÓN DE LA CLAVE DE LICENCIA PUEDE DEJAR EL PRODUCTO O UNA PARTE DE ÉL INUTILIZABLE. SI LA CLAVE DE LICENCIA SE EJECUTA O SE DESACTIVA TAL COMO SE INDICA EN ESTE CONTRATO, ES POSIBLE QUE SE VEA USTED OBLIGADO A PAGAR LOS HONORARIOS ENTONCES VIGENTES DE EFI PARA REACTIVAR EL PRODUCTO.

2. Instalación y Servicios Profesionales.

(a). Instalación. Salvo que se indique otra cosa en la Documentación de Compra, la instalación y puesta en marcha del Producto es de su exclusiva responsabilidad. EFI no asume responsabilidad alguna de modificar el Producto o conseguir que funcione o resulte utilizable en ningún sistema o equipo, configuración o plataforma determinados, o juntamente con cualquier otro software.

(b). Servicios Profesionales. Puede usted contratar los Servicios Profesionales de EFI, y se podrán generar una o más hojas de trabajos que describan en mayor detalle el alcance, duración o Honorarios por los Servicios Profesionales, que se registrarán por este Contrato. Todos los Servicios Profesionales pagados por anticipado deben utilizarse en el plazo de veinticuatro (24) meses desde la Fecha de Comienzo.

(c). Retribución y gastos. Los Servicios Profesionales in situ están basados en una jornada estándar de 8 horas. Se facturarán las horas adicionales a la tarifa que EFI tenga entonces en vigor, a menos que se haya acordado una tarifa distinta. El cliente deberá reembolsar a EFI todos los gastos y suplidos (incluyendo los de viaje, alojamiento y comidas) en que incurra con ocasión de la prestación de los Servicios Profesionales in situ. Los Servicios Profesionales programados o prestados (i) fuera del horario habitual entre semana o (ii) en sábado se facturarán al 150% de los Honorarios de EFI entonces vigentes. Los Servicios Profesionales programados o prestados en domingo o en festivo oficial se facturarán al 200% de los Honorarios de EFI entonces vigentes por Servicios Profesionales.

3. Soluciones de alojamiento

Si EFI o sus terceros proveedores designados alojan el Software, se aplicarán las siguientes condiciones:

(a). Access. EFI or its designated provider will provide those services necessary to allow you Access, including a password(s).

(b). Data Entry. All data generated by and through your Access will reside on servers of EFI or its third party providers.

(c). Password Security. You are solely responsible for (i) ensuring that only authorized individuals have access to passwords to Access the Product, (ii) assigning roles and authority levels for your Access, (iii) the conduct of individuals with Access, and (iv) maintaining the confidentiality and integrity of passwords and authority levels. You shall indemnify and hold EFI harmless from any liability, damages, or costs arising from your failure to comply with this Section.

(d). Scheduled Downtime and Upgrades. Downtime is required from time-to-time for regular maintenance of the technology that supports the Product. EFI shall use commercially reasonable efforts to perform scheduled downtime outside normal business hours. EFI may also install new or updated software from time to time, including supporting software and firmware, in addition to the Software, to aid in providing ongoing stability and security of the hosted solution. You shall facilitate commercially reasonable upgrades and operations without undue delay or objection.

(e). Unexpected Outages. EFI shall use commercially reasonable efforts to avoid unexpected outages and to restore Access as soon as possible. If you do not have Access for more than two (2) consecutive hours within any 24-hour period because of an unexpected outage caused by EFI, you may request credit for one day of the applicable Fees (based on an average of that month's invoice). THIS IS YOUR SOLE AND EXCLUSIVE REMEDY AND EFI'S ENTIRE LIABILITY FOR UNSCHEDULED DOWNTIME OR OUTAGES, AND EFI WILL NOT BE LIABLE FOR ANY DAMAGES RELATED TO ANY UNSCHEDULED DOWNTIME OR OUTAGES.

(f). Self-Hosting. You at all times retain the right to self-host the Product from another location and, if you are being granted a term license, continue to pay the Term License Fees for the Software. Any Professional Services performed by EFI in migrating a hosted solution to a self-hosted solution are billable at EFI's standard rates.

(g). Maintenance. If you are being granted a perpetual License as a hosted solution, you must remain on Maintenance for the period that EFI or its designated third-party provider is providing the hosting services to you.

4. Fees and Delivery.

(a). Acceso. EFI o su proveedor designado prestará los servicios necesarios para permitirle el Acceso, lo que incluye una contraseña.

(b). Introducción de datos. Todos los datos generados por y mediante el Acceso residirán en los servidores de EFI o de sus terceros proveedores.

(c). Seguridad por contraseña. Es usted el único responsable de (i) garantizar que solo las personas autorizadas tengan acceso a las contraseñas de Acceso al Producto, (ii) asignar funciones y niveles de autoridad para su Acceso, (iii) la conducta de las personas con Acceso y (iv) mantener la confidencialidad y la integridad de las contraseñas y de los niveles de autoridad. Deberá usted indemnizar y exonerar a EFI de toda responsabilidad, daños y perjuicios o costes derivados del incumplimiento de esta Cláusula.

(d). Inactividad programada y nuevas versiones Cada cierto tiempo es necesario parar los equipos para realizar un mantenimiento de la tecnología que sirve de base al Producto. EFI hará lo razonablemente posible desde un punto de vista mercantil por realizar las tareas de mantenimiento programado fuera del horario habitual de trabajo. EFI podrá también instalar nuevas versiones o actualizaciones del software cada cierto tiempo, lo que incluye tanto software de apoyo como firmware, además del Software, para ayudar a proporcionar estabilidad y seguridad para la solución alojada. Deberá usted facilitar las operaciones de actualización mercantilmente razonables sin demora u oposición indebida.

(e). Cortes imprevistos. EFI hará lo razonablemente posible desde un punto de vista mercantil por evitar cortes imprevistos y restablecer el acceso lo antes posible. Si no dispone usted de acceso durante más de dos (2) horas consecutivas, en un período de 24 horas debido a un corte imprevisto causado por EFI, puede usted solicitar un abono equivalente a un día de los Honorarios correspondientes (sobre la base de la media de la factura del mes). ESTE ES SU ÚNICO Y EXCLUSIVO RECURSO Y LA RESPONSABILIDAD INTEGRAL DE EFI POR CUALQUIER PERÍODO DE INACTIVIDAD NO PROGRAMADA O CORTE, Y EFI NO RESPONDERÁ POR LOS DAÑOS Y PERJUICIOS QUE SE PUEDAN DERIVAR DE TALES PERÍODOS DE INACTIVIDAD O CORTES.

(f). Autoalojamiento. Conserva usted en todo momento el derecho a autoalojar el Producto desde cualquier otra ubicación y, si se le hubiera concedido una licencia temporal, seguirá pagando los Honorarios de la Licencia Temporal por el Software. Los Servicios Profesionales que preste EFI para la migración de una solución desde su alojamiento a un autoalojamiento son facturables a las tarifas estándar de EFI.

(g). Mantenimiento. Si se le concede una Licencia perpetua como solución con alojamiento, deberá conservarla en Mantenimiento durante el período en el que EFI o su tercero proveedor designado le preste el servicio de alojamiento.

4. Honorarios y entrega.

(a). Fees. You shall pay all applicable Fees.

(b). Title and Risk of Loss. Title and risk of loss for any media or hardware for the Product transfers to you at EFI's designated manufacturing plant(s) or warehouse(s). If the Product is delivered electronically, risk of loss transfers to you when the Product or Access is made available to you.

(c). Hardware Delivery. Unless otherwise specified in the Purchase Documentation, where you are purchasing hardware: (i) EFI shall act as agent for you and procure insurance against risk of loss and/or procure and prepay for shipment, (ii) you shall reimburse EFI for all charges relating to the shipment of hardware upon EFI providing an invoice for such charges. EFI shall use commercially reasonable efforts to ship hardware as soon as practicable following execution of this Agreement and EFI's receipt of any required deposits. If you request a delay in delivery or otherwise cause a delay in the transportation process, EFI reserves the right to separately charge you for any costs it incurs for paying the logistics company to store and warehouse hardware on your behalf.

5. Product Maintenance.

(a). Subject to your timely payment of all applicable Fees, EFI or its designated provider will provide you with annual Maintenance for the Product. Maintenance terms automatically renew for consecutive 12-month periods unless cancelled by either party with written notice at least 30 days before the Maintenance Renewal Date. Notwithstanding the foregoing, Maintenance for certain Products (e.g., individual Software modules that are part of the EFI Software solution) may only be cancelled in the event that you are no longer using those certain Products; please first consult with EFI in the event you desire to cancel Maintenance for any Product.

(b). You must possess a valid License to use any upgrade or update. By using an upgrade or update, your license to any previous version of the Product automatically terminates. If you (i) have an out-of-date version of the Product or (ii) are not current on Maintenance due to your failure to timely pay Maintenance Fees and wish to update your version of the Product, you must pay any unpaid Fees and may be subject to additional fees to transfer or convert any old data. EFI reserves the right to discontinue Maintenance for all out-of-date versions of the Product.

6. Warranty and Disclaimer.

(a). Honorarios. Deberá usted pagar todos los Honorarios que corresponda.

(b). Titularidad y riesgo de pérdida. El título y el riesgo de pérdida de los medios o equipos para el Producto se transfiere a usted en la planta o almacén de fabricación designado por EFI. Si el Producto se entrega por medios electrónicos, el riesgo de pérdida se transfiere a usted en el momento en que acceda al Producto o se ponga el Producto a su disposición.

(c). Entrega del hardware. Salvo que se indique otra cosa en la Documentación de Compra, cuando esté usted comprando hardware: (i) EFI actuará como agente suyo, dispondrá de un seguro contra el riesgo de pérdida o y organizará el envío pagándolo por anticipado, (ii) deberá reembolsar a EFI todos los gastos relativos al envío de los equipos contra la entrega por EFI de una factura por dichos cargos. EFI hará lo razonablemente posible desde el punto de vista mercantil para enviar el hardware tan pronto como sea posible desde la firma de este Contrato y la recepción por EFI de los depósitos que se exijan. Si solicita un retraso en la entrega o provoca de cualquier otro modo un retraso en el proceso de transporte, EFI se reserva el derecho a cobrarle por separado los costes en que incurra para pagar a la empresa de logística por el almacenamiento de los equipos logísticos en su nombre.

5. Mantenimiento del Producto.

(a). Siempre que usted efectúe oportunamente el pago de todos los Honorarios que corresponda, EFI o su proveedor designado le proporcionarán el mantenimiento anual del Producto. Las condiciones de mantenimiento se renuevan automáticamente por períodos consecutivos de 12 meses, salvo que cualquiera de las partes lo cancele dando un preaviso por escrito de al menos 30 días antes de la Fecha de Renovación del mantenimiento. No obstante lo anterior, el Mantenimiento de ciertos Productos (por ejemplo, los módulos de Software Individual que forman parte de la solución del Software EFI) solo podrá cancelarse en el caso de que ya no utilice los Productos en cuestión; consulte primero con EFI en el caso de que desee cancelar el Mantenimiento de algún Producto.

(b). Debe usted poseer una Licencia válida para usar cualquier nueva versión o actualización. Al usar una nueva versión o actualización, su licencia para cualquier versión anterior del Producto se extingue automáticamente. Si (i) tiene usted una versión obsoleta del Producto o (ii) no está al día en el Mantenimiento por no haber pagado oportunamente los Honorarios de Mantenimiento y desea actualizar su versión del Producto, deberá pagar los Honorarios pendientes de pago y puede verse sujeto a honorarios adicionales por transferir o convertir los datos antiguos. EFI se reserva el derecho a interrumpir el Mantenimiento para toda versión desactualizada del Producto.

6. Garantía y exención de responsabilidad

(a). Limited Warranties. EFI warrants to you that (i) EFI has the right to grant the License, (ii) subject to your timely payment of all applicable Fees, the Products as delivered to you will perform materially in accordance with EFI's then-current, applicable specifications if all available updates, upgrades, and bug-fixes are properly installed, and (iii) any Professional Services you purchase will be provided in good and workmanlike manner consistent with generally accepted industry standards. This warranty does not apply to defects attributable to (A) any equipment or software not provided or approved for use by EFI, (B) any modification of the Product by you, your employees, or any third party acting on your behalf, (C) any accident, neglect, misuse, or abuse by you, your employees, or any third party acting on your behalf, or (D) exposure of the Product to conditions outside the range of environmental, power, and operating specifications provided by EFI. You shall cooperate fully and promptly with EFI's attempts to identify the cause of any claimed breach of this limited warranty.

(b). Security of Your Systems. You are solely responsible for (i) ensuring the confidentiality, security, and integrity of your network connectivity, data, and servers, (ii) preventing and bearing the risk of any loss or damage to any data on your servers, and (iii) maintaining archive and backup copies of any data.

(c). WARRANTY DISCLAIMER AND REMEDIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES AND REMEDIES IN THIS AGREEMENT ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES. EFI, ITS SUPPLIERS, AND LICENSORS SPECIFICALLY DISCLAIM ANY OTHER WARRANTIES AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT; ANY WARRANTIES RELATING TO SECURITY; AND ANY WARRANTIES THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED, OR ERROR-FREE. EFI MAKES NO WARRANTY, IMPLIED OR OTHERWISE, REGARDING THE PERFORMANCE OR RELIABILITY OF ANY OTHER THIRD PARTY PRODUCTS, OR SERVICES.

(a). Garantías limitadas. EFI garantiza que (i) EFI tiene derecho a conceder la Licencia, (ii) con sujeción al pago oportuno de todos los Honorarios que correspondan, los Productos que se le han entregado funcionarán básicamente de conformidad con las especificaciones de EFI entonces en vigor, asumiendo que se hubieran instalado debidamente todas las actualizaciones, nuevas versiones y parches de corrección de fallos, y (iii) los Servicios Profesionales que adquiera se le prestarán con profesionalidad y eficiencia, conforme a los estándares de general aceptación en el sector. La presente garantía no es de aplicación a los defectos atribuibles a (A) cualquier equipo o software que haya sido facilitado o aprobado para su uso por EFI, (B) cualquier modificación del Producto realizada por usted, sus empleados o terceros actuando en su nombre, (C) cualquier accidente, negligencia, uso indebido o abuso por parte de usted, de sus empleados, o de un tercero que actúe en su nombre, o (D) la exposición del Producto a condiciones que excedan de las especificaciones ambientales, de voltaje o potencia eléctrica y de manejo que EFI le haya facilitado. Deberá usted cooperar plenamente y sin demora con EFI para identificar la causa de cualquier incumplimiento que se alegue de esta garantía limitada.

(b). Seguridad de sus Sistemas. Es usted el único responsable de (i) garantizar la confidencialidad, la seguridad y la integridad de la conectividad de su red, datos y servidores, (ii) evitar y soportar el riesgo de pérdida o daño a los datos alojados en sus servidores, y (iii) mantener copias de archivo y de respaldo de todos los datos.

(c). GARANTÍA, EXENCIÓN DE RESPONSABILIDAD Y RECURSOS EN LA MÁXIMA MEDIDA QUE PERMITA LA LEY APLICABLE, LAS GARANTÍAS Y LOS RECURSOS PREVISTOS EN ESTE CONTRATO SON EXCLUSIVOS Y SUSTITUYEN A CUALESQUIERA OTRAS GARANTÍAS Y RECURSOS. EFI, SUS PROVEEDORES Y LICENCIANTES SE EXIMEN ESPECÍFICAMENTE DE CUALESQUIERA OTRAS GARANTÍAS Y RECURSOS, INCLUIDAS, A TÍTULO MERAMENTE ENUNCIATIVO Y SIN ÁNIMO LIMITATIVO, LAS GARANTÍAS IMPLÍCITAS DE APTITUD PARA EL COMERCIO, APTITUD PARA UN FIN DETERMINADO Y NO INFRACCIÓN DE DERECHOS DE TERCEROS; TODAS LAS GARANTÍAS RELATIVAS A LA SEGURIDAD; Y TODAS LAS GARANTÍAS DE QUE EL FUNCIONAMIENTO DEL PRODUCTO NO SUFRIRÁ INTERRUPCIONES O NO TENDRÁ ERRORES. EFI NO OFRECE GARANTÍA ALGUNA, SEA IMPLÍCITA O NO, RESPECTO DEL RENDIMIENTO O LA FIABILIDAD DE LOS PRODUCTOS O SERVICIOS DE NINGÚN TERCERO.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOLE AND EXCLUSIVE REMEDY TO WHICH YOU ARE ENTITLED FOR BREACH OF THESE LIMITED WARRANTIES, AND THE ENTIRE LIABILITY OF EFI AND ITS SUPPLIERS RELATING TO BREACH OF THESE LIMITED WARRANTIES, IS, AT EFI'S OPTION, TO (1) REPAIR OR REPLACE THE PRODUCT OR RE-PERFORM THE SERVICE THAT DOES NOT MEET THE LIMITED WARRANTY, OR (2) PROVIDE A REFUND OF THE THEN-CURRENT REASONABLE COMMERCIAL VALUE (IF ANY) FOR THE PRODUCT OR SERVICE THAT DOES NOT MEET THE LIMITED WARRANTY. EXCEPT AS PROVIDED IN THIS AGREEMENT, THERE ARE NO REFUNDS, RETURNS, EXCHANGES, OR REPLACEMENTS.

7. Infringement Indemnification.

EFI shall indemnify you from IP Claims and reimburse you for damages paid by you to the party bringing the IP Claim pursuant to a final, non-appealable judgment that the Product directly infringes any Third Party IP Rights. If you do not notify EFI in writing within 10 business days of learning of the IP Claim, and give EFI proper and full information, assistance, and exclusive authority to defend or settle the IP Claim, EFI will be relieved of its obligations under this Section. If the Product or any part of it is in EFI's opinion likely to become the subject of a claim of infringement of Third Party IP Rights, or if it is adjudicatively determined that the Product or any part of it infringes Third Party IP Rights, EFI may at its option (i) obtain for you a license or right to use the Third Party IP Rights so you can continue to use the Product, or (ii) replace or modify the Product with other suitable and reasonably equivalent non-infringing technology or parts, or (iii) if it is not commercially reasonable to take the actions described in clauses (i) or (ii) in this sentence, terminate your License and, if you return the Product to EFI, refund a portion of the license fee paid by you equal to the then-current reasonable commercial value (if any) of the Product. EFI shall not be responsible, liable, or obligated to indemnify or reimburse you if the alleged infringement arises out of (i) compliance with your requirements or specifications that are outside EFI's standard specifications for the Product, (ii) any addition or incorporation to or modification of the Product at your request, (iii) any combination of the Product with any product or software not provided by EFI, or (iv) use of the Product in the practice of a process or system other than that for which it was intended. In any event as described in the preceding sentence, you shall defend and/or settle any claim brought against EFI at your own expense, and shall indemnify EFI against any costs, legal fees, other expenses, and damages required for the defense or settlement of the claim.

EN LA MÁXIMA MEDIDA QUE PERMITA LA LEY APLICABLE, EL ÚNICO Y EXCLUSIVO RECURSO QUE LE ASISTE A USTED EN CASO DE INCUMPLIMIENTO DE ESTAS GARANTÍAS LIMITADAS, Y LA RESPONSABILIDAD TOTAL ASUMIDA POR EFI Y SUS PROVEEDORES RESPECTO EL INCUMPLIMIENTO DE ESTAS GARANTÍAS LIMITADAS ES, A OPCIÓN DE EFI, BIEN (1) REPARAR O SUSTITUIR EL PRODUCTO O VOLVER A PRESTAR EL SERVICIO QUE NO CUMPLA LA GARANTÍA LIMITADA, O (2) OFRECERLE UN REEMBOLSO DEL VALOR MERCANTIL ENTONCES VIGENTE (SI LO TUVIERA) DEL PRODUCTO O SERVICIO QUE NO CUMPLA LA GARANTÍA LIMITADA. SALVO LO PREVISTO EN ESTE CONTRATO, NO HABRÁ REEMBOLSOS, DEVOLUCIONES, CANJES O SUSTITUCIONES.

7. Indemnización por infracción de derechos de terceros.

EFI le indemnizará de las Demandas por infracción de PI y le reembolsará los daños y perjuicios que haya pagado a la parte que interpuso la Demanda por infracción de PI con arreglo a una sentencia firme que resuelva que el Producto infringe directamente los Derechos de PI de un Tercero. Si no notifica a EFI por escrito en el plazo de 10 días hábiles desde que tenga conocimiento de la Demanda por infracción de IP, y facilita a EFI información adecuada y completa, asistencia y poderes exclusivos para presentar defensa frente a la Demanda por infracción de IP o para alcanzar un acuerdo transaccional, EFI quedará exonerada de las obligaciones que le incumben con arreglo a esta Cláusula. Si el Producto o parte de él es probable a juicio de EFI que sea objeto de una demanda por infracción de los Derechos de PI de Terceros, o si se decide por sentencia que el Producto o parte de él infringe los Derechos de PI de un Tercero, EFI podrá, a su elección (i) obtener para usted una licencia o derecho de uso de los Derechos de PI del Tercero para que pueda seguir utilizando el Producto, o (ii) sustituir o modificar el Producto por otro con tecnología o piezas aptas y razonablemente equivalentes que no infrinjan los derechos del Tercero, o (iii) si no resultara mercantilmente razonable adoptar las medidas descritas en los apartados (i) o (ii) de esta cláusula, resolver su Licencia y, si devuelve el Producto a EFI, reembolsarle la parte de los honorarios por la licencia que hubiese pagado equivalente al valor mercantil razonable que entonces tuviera (en su caso) el Producto. EFI no será responsable ni tendrá obligación alguna de indemnizarle o reembolsarle si la infracción que se alegue se deriva de (i) el cumplimiento de sus instrucciones o requisitos más allá de las especificaciones estándar de EFI para el Producto, (ii) cualquier adición, incorporación o modificación del Producto realizada a instancia de usted, (iii) cualquier combinación del Producto con otro producto o software no proporcionado por EFI, o (iv) el uso del Producto en la práctica de un proceso o sistema distinto de aquel para el que estaba destinado. En todo caso, y como se indica en el apartado anterior, llevará usted la defensa o negociará el acuerdo transaccional de cualquier demanda contra EFI a su exclusiva costa, e indemnizará a EFI por todos los gastos, honorarios de abogados y costas y demás daños y perjuicios necesarios para dicha defensa o acuerdo transaccional de la demanda.

THE RIGHTS GRANTED TO YOU IN THIS SECTION ARE YOUR SOLE AND EXCLUSIVE REMEDIES FOR ANY ALLEGED INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

8. LIMITATION OF LIABILITY.

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL EFI OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY, OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EFI IS NOT RESPONSIBLE FOR ANY LOST PROFITS OR REVENUE, LOSS OF USE OF THE PRODUCT, LOSS OF DATA, OR THE COST OF RECOVERING ANY DATA. EXCEPT FOR INSTANCES INVOLVING EFI'S WILLFUL MISCONDUCT, EFI WILL NOT BE LIABLE FOR DAMAGES ARISING FROM ANY BREACH, UNAUTHORIZED ACCESS, MISUSE, OR INTRUSION RELATED TO YOUR DATA ON EFI'S OR ITS SUPPLIERS' SERVERS OR ANY NETWORK YOU USE IN CONNECTION WITH THE PRODUCT.

IN NO EVENT WILL EFI'S TOTAL LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATED TO THE PRODUCTS, SERVICES, ACCESS, AND/OR THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, UNDER STATUTE, OR OTHERWISE) EXCEED THE TOTAL AMOUNT OF THE FEES ACTUALLY PAID BY YOU IN THE 12 MONTHS PRECEDING THE CLAIM FOR THE EFI PRODUCT, SERVICES, OR ACCESS GIVING RISE TO THE CLAIM. YOU AGREE THAT THIS AMOUNT IS SUFFICIENT TO SATISFY THE ESSENTIAL PURPOSE OF THIS AGREEMENT AND THAT THE PRICE OF THE PRODUCT, PROFESSIONAL SERVICES, OR ACCESS REFLECTS THIS ALLOCATION OF RISK.

THE FOREGOING LIMITATIONS OF LIABILITY AND DISCLAIMERS FORM AN ESSENTIAL ELEMENT OF THIS AGREEMENT, WITHOUT WHICH EFI WOULD NOT HAVE LICENSED OR SOLD THE PRODUCT TO YOU OR PROVIDED YOU WITH ACCESS.

LOS DERECHOS QUE SE LE OTORGAN EN ESTA CLÁUSULA CONSTITUYEN SU ÚNICO Y EXCLUSIVO RECURSO EN CASO DE ALEGACIÓN DE INFRACCIÓN DE LOS DERECHOS DE PROPIEDAD INDUSTRIAL O INTELLECTUAL DE CUALQUIER TERCERO.

8. LIMITACIÓN DE RESPONSABILIDAD.

EN LA MEDIDA EN QUE NO LO PROHÍBA LA LEY, EN NINGÚN CASO RESPONDERÁN EFI NI SUS PROVEEDORES POR DAÑOS INDIRECTOS, ESPECIALES, INCIDENTALES, CONSIGUIENTES, FIDUCIARIOS, EJEMPLARIZANTES O PUNITIVOS, CON INDEPENDENCIA DE CUÁL SEA SU CAUSA O LA TEORÍA DE RESPONSABILIDAD EN QUE SE FUNDAMENTEN, AUN CUANDO ESTUVIERAN ADVERTIDOS DE LA POSIBILIDAD DE TALES DAÑOS. EFI NO RESPONDERÁ DEL LUCRO CESANTE O PÉRDIDA DE INGRESOS, PÉRDIDA DE USO DEL PRODUCTO, PÉRDIDA DE DATOS, O DEL COSTE DE RECUPERACIÓN DE LOS DATOS. SALVO EN LOS CASOS EN QUE INTERVENGA DOLO DE EFI, EFI NO RESPONDERÁ POR LOS DAÑOS QUE SE DERIVEN DE CUALQUIER INCUMPLIMIENTO, ACCESO NO AUTORIZADO, USO INDEBIDO O INTRUSIÓN RELATIVA A LOS DATOS DE SU PROPIEDAD ALOJADOS EN LOS SERVIDORES DE EFI O DE SUS PROVEEDORES, O EN CUALQUIER RED QUE USTED UTILICE EN RELACIÓN CON EL PRODUCTO.

EN NINGÚN CASO LA RESPONSABILIDAD TOTAL DE EFI POR TODAS LAS DEMANDAS DERIVADAS DE, O RELATIVAS A LOS PRODUCTOS, SERVICIOS, ACCESO O A ESTE CONTRATO, CON INDEPENDENCIA DE LA FORMA QUE TOMA LA ACCIÓN (YA SEA POR RESPONSABILIDAD CONTRACTUAL, EXTRA CONTRACTUAL, OBJETIVA POR LEY O DE OTRO TIPO), EXCEDERÁ DEL IMPORTE TOTAL DE LOS HONORARIOS QUE USTED HAYA PAGADO EFECTIVAMENTE DURANTE LOS 12 MESES ANTERIORES A LA DEMANDA POR EL PRODUCTO, SERVICIOS O ACCESO QUE DIO LUGAR LA DEMANDA. ACEPTA USTED QUE ESTE IMPORTE ES SUFICIENTE PARA SATISFACER LA FINALIDAD ESENCIAL DE ESTE CONTRATO, Y QUE EL PRECIO DEL PRODUCTO, LOS SERVICIOS PROFESIONALES O EL ACCESO REFLEJAN ESTA ASIGNACIÓN DE RIESGOS.

LAS ANTEDICHAS LIMITACIONES Y EXENCIÓN DE RESPONSABILIDAD CONSTITUYEN UN ELEMENTO ESENCIAL DE ESTE CONTRATO, SIN EL CUAL EFI NO HUBIERA LE OTORGADO LA LICENCIA, VENDIDO EL PRODUCTO O FACILITADO EL ACCESO.

BECAUSE SOME JURISDICTIONS DO NOT ALLOW SOME OR ALL OF THE EXCLUSIONS OR LIMITATIONS OF LIABILITY IN THIS AGREEMENT, SOME OR ALL OF THEM MAY NOT APPLY TO YOU.

9. Proprietary Rights and Confidential Information.

(a). No Implied Conveyance of Proprietary Rights. The Product, Documentation, and any Work Product are the valuable, confidential, and proprietary property of EFI, its suppliers and licensors. EFI is not conveying any of its Intellectual Property Rights, except the limited rights specified in this Agreement. You shall maintain and reproduce all copyright, trademark, patent, and other proprietary notices on the Product in the same form and manner as delivered by EFI.

(b). Protection of Information. You shall not disclose any of EFI's Confidential Information, and shall take precautions with respect to EFI's Products and Confidential Information that are at least as protective as you take to protect your own confidential information and proprietary rights of the greatest sensitivity. You shall advise your employees and authorized independent contractors of the confidential and proprietary nature of the Product and EFI's Confidential Information and of the restrictions imposed by this Agreement, and confine access to the Product and EFI's Confidential Information to those individuals who need it in the ordinary course and scope of their employment or relationship with you. Except as specified in this Agreement, you shall not directly or indirectly disclose any part of the Product, EFI's Confidential Information, or Documentation to any third party.

(c). Termination; Injunctive Relief. Your violation of the confidentiality obligations or of EFI's Intellectual Property Rights may cause irreparable damage that cannot be fully remedied by money damages. In the event of any actual or threatened violation, you agree that EFI will be entitled, in addition to any other remedy available to it, to (i) terminate this Agreement, retake possession of the Product, execute the License Key, and/or terminate Access, and/or (ii) obtain injunctive or other equitable relief from any court of competent jurisdiction to prevent any further violation.

PUESTO QUE EN CIERTOS PAÍSES NO SE PERMITEN TODAS O ALGUNAS DE LAS EXCLUSIONES O LIMITACIONES DE RESPONSABILIDAD RECOGIDAS EN ESTE CONTRATO, ES POSIBLE QUE ALGUNAS O TODAS ELLAS NO LE SEAN APLICABLES.

9. Derechos de propiedad e Información Confidencial.

(a). No se transmite implícitamente ningún derecho de propiedad. El Producto, la Documentación y todo Producto del Trabajo constituyen bienes valiosos y confidenciales propiedad de EFI, sus proveedores y licenciantes. EFI no transfiere ningún tipo de Derechos de Propiedad Industrial e Intelectual, fuera de los derechos limitados que se especifican en este Contrato. Deberá usted mantener y reproducir todos los avisos de derechos de autor, marcas, patentes y demás derechos de propiedad que figuren en el Producto en la misma forma y manera en que EFI los haya entregado.

(b). Protección de la Información. No podrá revelar usted Información Confidencial de EFI, y tomará precauciones con respecto a los Productos y la Información Confidencial de EFI que ofrezcan al menos la misma protección que aplique a su propia información confidencial y derechos de propiedad de la mayor sensibilidad. Deberá usted advertir a sus empleados y contratistas independientes autorizados del carácter confidencial y sujeto a derechos de propiedad del Producto y de la Información Confidencial de EFI, así como de las restricciones que les impone este Contrato, y restringir el acceso al Producto y a la Información Confidencial de EFI a aquellas personas que los necesiten en el curso ordinario y dentro del ámbito de su relación laboral o de otro tipo con usted. Salvo que se indica en este Contrato, no deberá usted revelar directa o indirectamente parte alguna del Producto, la Información Confidencial de EFI, o la Documentación a ningún tercero.

(c). Resolución; Medidas cautelares. La infracción de las obligaciones de confidencialidad que le incumben o de los Derechos de Propiedad Industrial e Intelectual de EFI puede provocar daños irreparables que no se pueden subsanar adecuadamente con una indemnización monetaria. En caso de infracción efectiva o inminente, acepta usted que EFI tendrá derecho, además de cualquier otro recurso que le asista, a (i) resolver este Contrato, recuperar la posesión del Producto, ejecutar la Clave de Licencia, o cancelar el Acceso, y a (ii) obtener mandato judicial u otras medidas cautelares de un tribunal competente para evitar cualquier nueva infracción.

(d). Use of Your Trademarks and Logos. Subject to any reasonable use guidelines, you grant EFI a non-exclusive, worldwide, royalty-free license to use Customer Marks in connection with this Agreement, for use with the Product, for promoting EFI's Products in marketing materials, print, or on-line advertising, and for identifying you as an EFI customer. You shall also secure for EFI any rights or sublicenses required for EFI's use of the trademarks or service marks of your Affiliates. EFI acknowledges that (i) Customer Marks are owned solely and exclusively by you or your Affiliates, (ii) EFI has no other rights, title, or interest in or to Customer Marks, and (iii) all use and goodwill of Customer Marks by EFI inures to the benefit of you and your Affiliates.

10. Termination.

(a). This Agreement may be terminated immediately upon written notice to the other party (i) by EFI, if you fail to make any required payment other than Maintenance Fees, (ii) by the non-breaching party, if you or EFI fails to cure a material breach within 30 days after written notice from the non-breaching party, or (iii) by EFI, if you cease doing business as a going concern, become the object of voluntary or involuntary bankruptcy or liquidation proceedings that are not dismissed within 60 days after the initial filing, or if a receiver is appointed with respect to a substantial portion of your assets.

(b). Upon termination, you shall promptly (i) pay EFI all unpaid fees accrued before the termination, (ii) return all EFI Confidential Information and the Product, and (iii) return any materials, programs, manuals, and other items related to or derived from the Product in your possession or control. EFI shall use commercially reasonable efforts to provide you with any proprietary data belonging to you in the format in which it is stored by EFI at the time of termination.

11. Audit Rights.

EFI may audit your use of or Access to the Product. Any audit will take place after prior notice to you, during regular business hours, and in a manner that does not unreasonably interfere with your normal business. If the audit shows that you are using or accessing the Product in a way that violates this Agreement, EFI may invoice you for such use or Access, including late fees, interest, and expenses associated with the audit. If you do not timely pay that invoice, EFI may exercise its termination rights and pursue any other rights or remedies available to it.

12. Consent to Use Data.

(d). Uso de sus marcas y logotipos. Con sujeción a las directrices de uso razonable, concede usted a EFI una licencia no exclusiva, válida en todo el mundo, libre de regalías para usar las Marcas del Cliente en relación con este Contrato, para su uso con el Producto, para la promoción de los Productos de EFI en el material publicitario impreso o por internet, y para identificarle como cliente de EFI. Asimismo, garantiza a EFI los derechos o sublicencias que necesite para el uso de las marcas o marcas de servicio de sus Entidades Vinculadas. EFI reconoce que (i) las Marcas del Cliente son propiedad exclusiva de usted o de sus Entidades Vinculadas, (ii) EFI no tiene ningún derecho o título sobre dichas Marcas del Cliente, y (iii) cualquier fondo de comercio que genere el uso por EFI de las Marcas del Cliente redundará en beneficio de usted y a sus Entidades Vinculadas.

10. Resolución anticipada.

(a). El presente Contrato se podrá resolver inmediatamente mediante notificación por escrito a la otra parte (i) por EFI, en el caso de que deje usted de efectuar cualquier pago que corresponda, a excepción de los Honorarios de Mantenimiento, (ii) por la parte no incumplidora, si usted o EFI no subsanan un incumplimiento grave en el plazo de 30 días desde que reciban un requerimiento de la parte no incumplidora a tal efecto, o (iii) por EFI, si deja usted de actuar como empresa en funcionamiento, es objeto de declaración de concurso voluntario o forzoso o entra en proceso de liquidación, y dicho procedimiento no se suspende o desestima en un plazo de 60 días desde la solicitud, o si se nombra un administrador judicial o síndico respecto de una parte significativa de sus activos.

(b). En caso de resolución anticipada, deberá usted sin demora (i) pagar a EFI todos los honorarios devengados hasta la resolución y pendientes de pago, (ii) devolver toda la Información Confidencial de EFI y el Producto, y (iii) devolver todos los materiales, programas, manuales y demás artículos relacionados con o derivados del Producto que tuviera en su posesión o en su poder. EFI hará lo razonablemente posible desde un punto de vista mercantil para facilitarle los datos personales que le pertenezcan en el formato en el que EFI los tenga almacenados en el momento de la resolución.

11. Derechos de auditoría.

EFI puede comprobar el uso o el Acceso pro su parte al Producto La comprobación tendrá lugar mediante preaviso, durante el horario laboral normal, y de manera que no interfiera innecesariamente con su actividad habitual. Si de la comprobación resulta que está usted usando el Producto o accediendo a él de una forma que incumpla el Contrato, EFI podrá facturarle por dicho uso o Acceso, incluyendo honorarios atrasados, intereses y los gastos relativos a la comprobación. Si no paga dicha factura a su tiempo, EFI podrá ejercer su derecho de resolución y acogerse a cuantos otros derechos o recursos le asistan.

12. Consentimiento para el uso de datos.

EFI may collect and use technical data and related information to facilitate providing and/or confirming authorized use of Products, Access, Professional Services, and/or Maintenance to and by you. Subject to EFI's then-current privacy policy (available at <https://www.efi.com/legal/privacy/>) and applicable laws and regulations, EFI may (i) use this information to improve its products, to provide customized services or technologies to you, and/or to confirm authorized use, (ii) transfer this information to EFI's affiliates, agents, and partners, and (iii) transfer this information to the United States and/or any other country where EFI or its affiliates, agents, and partners maintain facilities.

13. Compliance with Laws.

(a). Export Law Compliance. The Product and related technology, information, and materials are subject to the export laws and regulations of the United States. You shall comply with those and any other applicable export laws or regulations. You are solely responsible for obtaining any necessary export licenses and exemptions. The Product and related technology, information, and materials may not be exported or re-exported to any U.S.-embargoed country, to any person or entity on any list of prohibited parties designated by the U.S. government, or otherwise in violation of any export law or regulation.

(b). Compliance with Laws. You may only use the Product in compliance with all applicable laws and regulations. Upon written notice to you, EFI may modify or suspend your use of or Access to the Product as necessary to comply with any law or regulation. Both parties acknowledge their responsibilities and commitments to abide by and comply with international anti-corruption laws, including but not limited to the United States Foreign Corrupt Practices Act and the United Kingdom Anti-Bribery Act, and any amendments and regulations relating to those laws, in addition to each of our own ethical guidelines (EFI's Code of Conduct is available online at <http://ir.efi.com/committee-details/code-business-conduct-and-ethics>). Specifically, for example, no employee, or any individual or entity acting on behalf of or for the benefit of either EFI or Customer, may give or receive anything of value, or anything that may be perceived as valuable, to or from a government official or any other individual for the purpose of influencing any act, securing any improper advantage, or obtaining or retaining business.

14. General Provisions.

EFI puede recopilar y usar datos técnicos e información conexa para facilitar el suministro, o confirmar el uso autorizado de los Productos, el Acceso, los Servicios Profesionales y/o el Mantenimiento a y por usted. Con sujeción a la política de privacidad de EFI entonces vigente (disponible en <https://www.efi.com/legal/privacy/>) y la legislación aplicable, EFI podrá (i) usar esta información para mejorar sus productos, prestarle servicios o tecnologías adaptados a su negocio o para confirmar el uso autorizado, (ii) transferir esta información a los socios, agentes y socios de EFI, y (iii) transferir esta información a Estados Unidos o a cualquier otro país en el que EFI o sus entidades vinculadas, agentes y socios mantengan instalaciones.

13. Cumplimiento de la legislación

(a). Cumplimiento de la legislación en materia de exportaciones El Producto y las tecnologías, información y materiales conexos, están sujetos a la legislación y normativa de exportación de Estados Unidos. Deberá usted cumplir con estas y cualesquiera otras leyes o reglamentos de exportación que resulten aplicables. Es usted el único responsable de obtener las licencias y exenciones en materia de exportación que resulten necesarias. El Producto y las tecnologías, información y materiales conexos no se podrán exportar ni reexportar a ningún país que sufra embargo impuesto por EE.UU., a persona o entidad que figure en la lista de partes prohibidas designadas por el Gobierno de EE.UU., o de cualquier otro modo que contravenga la legislación o normativa en materia de exportación.

(b). Cumplimiento de la legislación Solo puede usted usar el Producto de conformidad con todas las leyes y reglamentos que resulten aplicables. Mediante notificación por escrito, EFI podrá modificar o suspender el uso o el Acceso por su parte al Producto, según sea necesario para cumplir con la legislación o normativa vigente. Ambas partes reconocen sus responsabilidades y compromisos de cumplir con la legislación internacional de lucha contra la corrupción, que incluye, a título meramente enunciativo y sin ánimo limitativo, la Ley de Prácticas Corruptas en el Extranjero de EE.UU. y la Ley británica de Soborno, así como las modificaciones y reglamentos de desarrollo de dichas leyes, además de nuestras propias directrices éticas (el Código de Conducta de EFI se encuentra disponible en internet en la dirección <http://ir.efi.com/committee-details/code-business-conduct-and-ethics>). Concretamente, por ejemplo, ningún empleado o entidad que actúe en nombre o representación de EFI o del Cliente, podrá dar o recibir cosa alguna de valor, o cualquier cosa que se pueda percibir como valiosa, a o de un funcionario público o a cualquier otra persona con el fin de influir en cualquier acto, obtener una ventaja indebida u obtener o conservar negocio.

14. Disposiciones generales.

(a). Taxes. Except with respect to income recognized by EFI, you are liable for all tariffs, duties, and taxes, however designated or levied, based on your possession, use of, or Access to the Product, this Agreement, and/or any Professional Services, including but not limited to sales, use, value added, excise, services, personal property, or other taxes.

(b). Governing Law. This Agreement is not governed by the 1980 UN Convention on Contracts for the International Sales of Goods or any other international treaty or convention. Rather, this Agreement is governed in all respects by the laws of the State of California, USA, without regard to conflicts of laws principles. For all disputes related to this Agreement, the Product, Access, or any services provided under this Agreement, each party consents to the exclusive personal jurisdiction and venue of the state and federal courts in and for Santa Clara County, California, USA.

(c). Severability; Interpretation. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by any court of competent jurisdiction, that provision will be fully severable and this Agreement will be construed and enforced as if it were not included. This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor or against either party. The captions are for convenience only and do not affect the scope, intent, or meaning of the provisions. Any failure or delay to enforce any provision of this Agreement will not be deemed a waiver of EFI's right to do so.

(d). No Assignment. Assignment or transfer of this Agreement in its entirety, including all Licenses purchased, whether voluntarily, by operation of law, or otherwise, requires EFI's prior written consent, which may be withheld, delayed, or conditioned in EFI's sole discretion, and may require payment of a License transfer fee. Partial assignment or transfer of this Agreement, including a portion of Licenses purchased, whether voluntarily, by operation of law, or otherwise, is prohibited. Any merger, consolidation or acquisition of Customer or other transfer of all or substantially all of the shares or assets of Customer is deemed to be an assignment under this Agreement. Any attempted assignment or transfer without EFI's consent is void.

(e). Language. This Agreement is only in English, which is controlling in all respects. If EFI has provided you with a translation, the translation is for your convenience only and the English-language version, not the translation, is legally binding. If there are any conflicts or inconsistencies between the English-language version and a translation, the English-language version controls. Any notices relating to this Agreement must be in writing in English.

(a). Impuestos. Salvo con respecto a los ingresos reconocidos por EFI, es usted responsable de todos los aranceles, derechos, tasas o impuestos de cualquier naturaleza o designación, que se recauden con ocasión de la posesión, uso o Acceso por usted al Producto, este Contrato o los Servicios Profesionales, incluyendo, a título meramente enunciativo y sin ánimo limitativo, los impuestos sobre ventas, uso, valor añadido, impuestos especiales, servicios, bienes muebles y demás impuestos.

(b). Ley Aplicable. El presente Contrato no se rige por el Convenio de las Naciones Unidas de 1980 sobre la Compraventa Internacional de Mercaderías, ni por ningún otro tratado o convenio internacional. En su lugar, este Contrato se rige en todos los aspectos por la legislación del Estado de California, EE.UU., sin tomar en consideración sus principios en materia de conflicto de leyes. Para todos los conflictos relativos a este Contrato, el Producto, el Acceso o los servicios que se prestan con arreglo a este Contrato, cada una de las partes consiente en la jurisdicción personal exclusiva y en el foro de los tribunales estatales y federales del condado de Santa Clara, California, EE.UU.

(c). Invalidez parcial; Interpretación. Si cualquier disposición de este Contrato fuera declarada ilegal, inválida o no exigible por un tribunal jurisdiccional competente, dicha disposición se tendrá por no puesta y este Contrato se interpretará y hará valer como si no la incluyera. El presente Contrato se interpretará de manera justa conforme con sus términos y sin una interpretación estricta a favor o en contra de cualquiera de las partes. Los encabezamientos se incluyen a meros efectos de conveniencia y no afectan al alcance, intención o significado de las disposiciones. La falta de ejercicio o el retraso en el ejercicio de un derecho o en hacer valer una disposición cualquiera de este Contrato nos se entenderá como una renuncia por EFI a dicho derecho o disposición.

(d). Prohibición de cesiones. La cesión o transmisión de este Contrato en su integridad, incluidas todas las Licencias adquiridas, ya sea voluntariamente, por imperio de la ley o por otro título, exige el previo consentimiento por escrito de EFI, que podrá denegarse, retrasarse o someterse a condición a la exclusiva discreción de EFI, que puede exigir el pago de un cargo por la cesión de la Licencia. La cesión o transmisión parcial de este Contrato, incluso de una parte de los Licencias adquiridas, sea voluntariamente, por imperio de la ley o por otro título, está prohibida. Toda fusión, consolidación o adquisición del Cliente o cualquier otra transmisión de la totalidad o la práctica totalidad de las acciones o los activos del Cliente se considerará una cesión a los efectos de este Contrato. Todo intento de cesión o transmisión sin el consentimiento de EFI es nulo.

(e). Idioma. El presente Contrato se redacta en inglés, que es el idioma que rige en todos los aspectos. Si EFI le hubiera facilitado una traducción, es a efectos exclusivos de su conveniencia, y será la versión en inglés y no la traducción, la jurídicamente vinculante. En caso de conflicto o discrepancia entre la versión en inglés y cualquier traducción, prevalecerá la versión en inglés. Todas las notificaciones relativas a este Contrato serán por escrito en lengua inglesa.

(f). Entire Agreement and Modification. With respect to the subject matter or any term of this Agreement: (i) this Agreement constitutes the entire understanding of the parties; (ii) this Agreement supersedes all prior and contemporaneous communications and understandings (including but not limited to discussions, representations, warranties, inducements, promises, and agreements); (iii) there are no such communications or understandings not explicitly contained herein; (iv) neither party has relied on any such communications or understandings except as explicitly contained in this Agreement; and (v) any waiver, modification, or amendment will be effective only if in a writing signed by the parties, where email does not constitute a signed writing.

(g). Orders and Acceptance. All orders for Products or Professional Services made pursuant to this Agreement are non-cancelable, non-refundable and must be submitted at least fifteen (15) days prior to the requested order delivery date. For any given order, you shall make the order and corresponding payment to EFI or its subsidiary or Affiliate depending upon which company is making the sale of Products or Professional Services for that order. Orders are not binding without written notification of acceptance from EFI. This Agreement governs all subsequent orders, and nothing contained in Customer's purchase orders or other communications will in any way modify this Agreement.

(h). Independent Contractors. You and EFI, and our respective employees and representatives, are and will be independent contractors with respect to the other party. Neither party by virtue of this Agreement has any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

(i). Survival. The provisions of this Agreement that relate to fees and payment terms, ownership of intellectual property and proprietary rights, export law compliance, termination, confidentiality, infringement indemnification, warranty disclaimers, limitation of liability, governing law, survivability, force majeure, severability and interpretation, definitions, modification and use of software products owned or distributed by Microsoft or Oracle included in an EFI Product will survive termination of this Agreement.

(f). Acuerdo íntegro y modificaciones Con respecto al asunto que constituye su objeto y a cualquier disposición de este Contrato: (i) este Contrato constituye el entendimiento íntegro de las partes; (ii) este Contrato sustituye a todas las comunicaciones y entendimientos anteriores y contemporáneos (incluyendo, a título meramente enunciativo y sin ánimo limitativo, cualesquiera conversaciones, manifestaciones, garantías, incentivos, promesas y acuerdos); (iii) no existe comunicaciones o entendimientos que no se recojan en este documento; (iv) ninguna de las partes se ha amparado en tales comunicaciones o entendimientos, fuera de lo que se recoge expresamente en este Contrato; y (v) la renuncia, modificación o enmienda surtirá efectos solo si figura en un escrito firmado por las partes, teniendo en cuenta que el correo electrónico no constituye un escrito firmado.

(g). Pedidos y aceptación Todos los pedidos de Productos o de Servicios Profesionales que se realicen con arreglo a este Contrato son no cancelables, no reembolsables y deben presentarse con una antelación de al menos quince (15) días sobre la fecha de entrega solicitada. Para cualquier pedido determinado, deberá hacer el pedido y el correspondiente pago a EFI o a su filial o Entidad Vinculada, dependiendo de qué sociedad realice la venta de los Productos o los Servicios Profesionales para dicho pedido. Los pedidos no son vinculantes sin una notificación de aceptación por escrito de EFI. El presente Contrato rige todos los pedidos posteriores, y nada de lo contenido en las órdenes de compra del Cliente o en cualquier otra comunicación podrá modificar lo dispuesto en este Contrato.

(h). Contratistas independientes. Tanto usted como EFI, y nuestros respectivos empleados y representantes, son y serán contratistas independientes con respecto a la otra parte. Ninguna de las partes en virtud de este Contrato tiene derecho, facultad o autoridad alguna para actuar o crear obligaciones, expresas o implícitas, en nombre o por cuenta de la otra parte.

(i). Disposiciones que se mantienen vigentes a pesar de la extinción del Contrato. Las disposiciones de este Contrato relativas a honorarios y condiciones de pago, la titularidad de los derechos propiedad industrial e intelectual, la observancia de la legislación de exportación, la resolución anticipada, confidencialidad, indemnización por infracción de derechos de terceros, exoneración de garantías, limitación de responsabilidad, ley aplicable, disposiciones que se mantienen vigentes tras la extinción, fuerza mayor, invalidez parcial e interpretación, definiciones, modificación y uso de los productos o el software propiedad de o distribuido por Microsoft u Oracle incluido en un Producto de EFI se mantendrán vigentes tras la extinción de este Contrato.

(j). Force Majeure. Except for payment of monies, no party will be liable for its failure to perform any obligations on account of strikes, shortages, failure or acts of suppliers, riots, insurrection, fires, flood, storm, explosions, acts of God, war, military operations, acts of terrorism whether actual or threatened, acts of a public enemy, epidemics, quarantines, governmental action, labor conditions, earthquakes, material shortages, or any cause that is similar to those enumerated or beyond the reasonable control of the affected party.

(k). U.S. Government Restricted Rights. Use, duplication, or disclosure of the Product by the United States Government is subject to restrictions as set forth in FAR 12.212 or DFARS 227.7202-3 - 227.7202-4 and, to the extent required under U.S. federal law, the minimum restricted rights as set out in FAR 52.227-14, Restricted Rights Notice (June 1987) Alternate III(g)(3) (June 1987) or FAR 52.227-19 (June 1987). To the extent any technical data is provided pursuant to the Agreement, such data is protected per FAR 12.211 and DFARS 227.7102-2 and to the extent explicitly required by the U.S. Government, is subject to limited rights as set out in DFARS 252.227.7015 (November 1995) and DFARS 252.227-7037 (September 1999). If any of the above-referenced agency regulations are modified or superseded, the subsequent equivalent regulation shall apply. The name of the Contractor is Electronics For Imaging, Inc.

15. Product-Specific and Third Party Provisions.

If you have obtained a License for certain Products, some of the following terms and conditions might apply to you.

(a). Products that include Microsoft Software (such as Windows or SQL Server).

(i). The term "Product" as used in this Agreement includes certain Microsoft software and related documentation, associated media, "online" or electronic documentation, upgrades and updates. EFI does not own these products and the use thereof is subject to certain rights and limitations.

(ii). Microsoft is not responsible for any support services for the Product. Notwithstanding the foregoing, in the event any support issues arise related to the Microsoft software that cannot be resolved by EFI, support to you may be provided by Microsoft pursuant to the Microsoft Premier support services agreement, or a similar type agreement, between EFI and Microsoft.

(j). Fuerza mayor Salvo las obligaciones de pago, ninguna de las partes responderá por no cumplir las obligaciones que le incumben como consecuencia de huelgas, escasez, fallos o actos de proveedores, disturbios, insurrección, incendios, inundaciones, tormentas, explosiones, desastres naturales, guerra, operaciones militares, actos de terrorismo efectivos o amenaza de los mismos, actos de enemigo público, epidemias, cuarentenas, actos gubernamentales, condiciones laborales, terremotos, escasez de materiales u otra causa similar a las enumeradas o que esté más allá del control razonable de la parte afectada.

(k). Restricción de derechos por el Gobierno de EE. UU. El uso, duplicación o revelación del Producto por el Gobierno de Estados Unidos está sujeto a restricciones, según se recoge en las FAR 12.212 o DFARS 227.7202-3 227.7202-4 y, en la medida en que lo exige la legislación federal de EE.UU., los derechos mínimos restringidos, según lo establecido en la Notificación de Derechos Restringidos FAR 52.227-14 (de junio de 1987) Alternativa III(g)(3) (de junio de 1987) o FAR 52.227-19 (de junio de 1987). En la medida en que se faciliten datos técnicos con arreglo al Contrato, dichos datos están protegidos por la FAR 12.211 y DFARS 227.7102-2 y en la medida que lo exija explícitamente el Gobierno de EE.UU., están sujetos a derechos limitados, según se recoge en DFARS 252.227.7015 (de noviembre de 1995) y DFARS 252.227-7037 (de septiembre de 1999) Si se modifica o se sustituye cualquiera de los reglamentos citados, se aplicará el reglamento posterior equivalente. El nombre del Contratista es Electronics For Imaging, Inc.

15. Disposiciones para Productos específicos y sobre Terceros

Si ha obtenido una Licencia para ciertos Productos, es posible que le sean de aplicación algunas de las siguientes condiciones:

(a). Productos que incluyen software de Microsoft (como Windows o el Servidor SQL).

(i). El término "Producto", tal como se utiliza en este Contrato, incluye ciertos programas informáticos de Microsoft y documentación conexa, medios "en línea" o documentación electrónica, nuevas versiones y actualizaciones. EFI no es propietaria de estos productos y su uso está sujeto a ciertos derechos y limitaciones.

(ii). Microsoft no es responsable de dar servicio técnico al Producto. No obstante lo anterior, en el caso de que se planteen cuestiones de servicio técnico relativas al software de Microsoft que EFI no pueda resolver, Microsoft podrá prestarle el servicio técnico con arreglo al contrato de servicio de Microsoft Premier, o un contrato similar entre EFI y Microsoft.

(iii). The Product is not fault-tolerant. The Product is not designed or intended for use in any situation where failure or fault of any kind of the Product could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). You are not licensed to use the Product in, or in conjunction with, High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: aircraft or other modes of human mass transportation, nuclear or chemical facilities, and Class III medical devices under the Federal Food, Drug, and Cosmetic Act. You shall not use the Product in, or in connection with, any High Risk Use. You are responsible for taking all appropriate measures to ensure the safe use of the Product if used for such purposes and EFI and its suppliers, including Microsoft, will not be liable for any claims or damages arising from such use.

(b). Products that include Software Products Owned or Distributed by Oracle.

(i). The term "Product" as used in this Agreement includes certain software products provided by EFI that are owned or distributed by Oracle USA, Inc. ("Oracle") and related program documentation (the "Oracle Programs"); EFI does not own the Oracle Programs and the use thereof is subject to certain rights and limitations. The Oracle Programs included herein are subject to a restricted use license and can only be used in conjunction with the Product. Oracle or its licensors retain all ownership of intellectual property rights to the Oracle Programs. You are hereby notified that Oracle is a supplier of EFI and a third-party beneficiary to this Agreement to the extent that this Agreement contains provisions which relate to your use of the Oracle Programs. Such provisions are made expressly for the benefit of Oracle and are enforceable by Oracle in addition to EFI.

(ii). You acknowledge and agree that you are prohibited from (a) publishing any results of benchmark tests run on the Oracle Programs, (b) using the Oracle Programs for rental, timesharing, subscription service, hosting, or outsourcing, and (c) removing or modifying any program markings or notice of Oracle's or Oracle's licensors' proprietary rights.

(iii). To the extent not prohibited by law, in no event will Oracle be liable for (a) any damages, whether direct, indirect, incidental, special, punitive or consequential, and (b) any loss of profits, revenue, data or data use, arising from the use of the Oracle Programs.

(iv). You hereby permit EFI to (a) report any audit results obtained pursuant to this Agreement to Oracle to the extent such results are related to the Oracle Programs, or (b) assign such rights to audit your use of the Oracle Programs to Oracle.

(v). You are hereby notified that some Oracle Programs may include source code that Oracle may provide as part of its standard shipment of such programs, which source code is governed by the terms of this Agreement.

(iii). El Producto no es tolerante a fallos. El Producto no está diseñado ni previsto para su uso en situaciones en las que un fallo de cualquier tipo del Producto pueda dar lugar a la muerte o lesiones corporales graves de una persona, o a graves daños físicos o ambientales (el "Uso de Alto Riesgo"). No se le concede licencia para usar el Producto en o juntamente con un Uso de Alto Riesgo. El Uso de Alto Riesgo está ESTRICTAMENTE PROHIBIDO. El Uso de Alto Riesgo incluye, por ejemplo, los siguientes: aviones u otros modos de transporte masivo de pasajeros, instalaciones nucleares o químicas, y dispositivos médicos de Clase III con arreglo a la Ley Federal sobre Alimentos, Medicamentos y Cosméticos. No podrá usar el Producto en, ni en relación con, ningún Uso de Alto Riesgo. Es usted responsable de tomar todas las medidas adecuadas para garantizar un uso seguro del Producto si se utiliza para dichos fines y ni EFI ni sus proveedores, incluido Microsoft, responderán de reclamaciones por daños que se deriven de dicho uso.

(b). Productos que incluyen productos de software propiedad de o distribuidos por Oracle.

(i). El término "Producto", tal como se utiliza en este Contrato, incluye ciertos productos informáticos proporcionados por EFI que son propiedad o son distribuidos por Oracle USA, Inc. ("Oracle") y la documentación relativa al programa (los "Programas de Oracle"); EFI no es propietaria de los Programas de Oracle y su uso está sujeto a ciertos derechos y limitaciones. Los Programas de Oracle incluidos en este documento están sujetos a una licencia de uso restringido y solo se pueden usar juntamente con el Producto. Oracle o sus licenciantes conservan la titularidad de los derechos de propiedad intelectual sobre los Programas de Oracle. Se le notifica en este acto que Oracle es un proveedor de EFI y un tercero beneficiario de este Contrato, en la medida en que este Contrato contiene disposiciones relativas al uso por usted de los Programas de Oracle. Estas disposiciones se incluyen expresamente en beneficio de Oracle y son exigibles por Oracle, además de por EFI.

(ii). Reconoce usted y acepta que tiene prohibido: (a) publicar los resultados de las pruebas de referencia de los Programas de Oracle, (b) usar los Programas de Oracle con fines de alquiler, uso compartido por tiempo, alojamiento o externalización, y (c) eliminar del programa o modificar cualquier marca o aviso de los derechos de propiedad de Oracle o sus licenciantes.

(iii). En la medida en que no esté prohibido por ley, en ningún caso Oracle será responsable de (a) los daños, ya sea directos, indirectos, especiales, punitivos o consiguientes, y (b) cualquier lucro cesante, pérdida de ingresos, datos o uso de los datos, que se derive del uso de los Programas de Oracle.

(iv). En este acto permite usted a EFI que (a) informe de los resultados de cualquier comprobación realizada con arreglo a este Contrato a Oracle, en la medida en que dichos resultados se refieran a los Programas de Oracle, o (b) ceder dichos derechos a comprobar el uso de los Programas de Oracle a Oracle.

(v). Se le notifica en este acto que algunos de los Programas de Oracle pueden incluir código fuente que Oracle facilite como parte de su envío estándar de dichos programas, código fuente que se rige por los términos de este Contrato.

(vi). The Computer Information Transactions Act does not apply to this Agreement.

(vii). You acknowledge and agree that in the event a third party technology may be appropriate or necessary for use with some Oracle Programs, it will be specified in the Product package documentation or as otherwise noted, and such third party technology is licensed to you only for use with the Product under the terms of the third party license agreement specified in the Product package documentation or as otherwise noted, and not under the terms of this Agreement.

(c). E-commerce Applications.

(i). Use at Site Location. You may use or Access the Product only for production activity at the Site Location. If you have more than one production facility, you may not use or Access the Product for production activity at any facility other than the Site Location(s) for which you have been granted a license.

(ii). Links. If you have obtained a License for EFI e-Commerce Software, you represent and warrant that you have the right to create and maintain, or to allow EFI to create and maintain, all Links to the Product and any other websites mutually agreed upon between you and EFI. You shall incorporate EFI's "Powered by EFI" logo on any website utilizing EFI e-commerce Software.

(ii). Relationships with Third Parties. Use of or Access to the e-Commerce Product does not create a contract or other obligation between you and any of your customers or between EFI and any of your customers or vendors. EFI cannot and does not guarantee the performance of any of your customers, vendors, or other third parties. EFI will have no liability in connection with any dispute between you and any third party, and any third party dispute will not relieve you of any obligation to EFI under this Agreement.

(d). Open Source Software. Some versions of the Products contain open source software. Open source software is licensed to you under that software's own license terms, which can be found in the "Help," "About," "Read Me," or other specified portion of the Product. You are responsible for complying with any terms and conditions applicable to any open source software. To the extent that this Agreement imposes greater restrictions on you than the open source software license terms, the open source software license terms control, but solely with respect to the open source software.

16. Definitions.

"Access" means the connection to and use of a Product by Customer via an Internet web browser under the terms of this Agreement.

(vi). La Ley de Operaciones Informáticas no es de aplicación a este Contrato.

(vii). Reconoce usted y acepta que, en el caso de que resulte adecuado o necesario el uso de una tecnología de terceros con algunos Programas de Oracle, se especificará en la documentación del embalaje del Producto o, como se haya indicado en otro caso, y dicha tecnología de terceros se le licencia a usted solo para su uso con el Producto, con arreglo a los términos del contrato de licencia del tercero especificado en la documentación del embalaje del Producto o como se haya indicado en otro caso, y no con arreglo a los términos de este Contrato.

(c). Aplicaciones de comercio electrónico.

(i). Uso en la Ubicación del Emplazamiento. Puede usted usar o Acceder al Producto solo para la actividad de producción en la Ubicación del Emplazamiento. Si tiene más de una instalación de producción, no podrá usted usar ni Acceder al Producto para la actividad de producción en ninguna otra instalación distinta de la Ubicación o Ubicaciones del Emplazamiento para las que se le ha concedido una licencia.

(ii). Enlaces. Si ha obtenido una Licencia para el Software de comercio electrónico de EFI, manifiesta usted y garantiza que tiene derecho a crear y mantener, o a permitir a EFI crear y mantener todos los Enlaces al Producto y a cualesquiera otros sitios web que se acuerden entre usted y EFI. Deberá incorporar el logotipo de "Powered by EFI" en cualquier sitio web que utilice el Software de comercio electrónico de EFI.

(ii). Relaciones con Terceros. El uso o el Acceso al Producto de Comercio Electrónico no crea un contrato u otra obligación entre usted y sus clientes, ni entre EFI y sus clientes o proveedores. EFI no garantiza ni puede garantizar el desempeño de ninguno de sus clientes, proveedores u otros terceros. EFI no asume responsabilidad alguna en relación con ninguna controversia entre usted y cualquier tercero, y una controversia con terceros no le exonerará a usted de sus obligaciones para con EFI con arreglo a este Contrato.

(d). Software de fuente abierta. Algunas versiones de los Productos contienen software de fuente abierta. El software de fuente abierta se le licencia con arreglo a las condiciones de licencia propios del software, que se pueden consultar en la sección "Ayuda", "Acerca de", "Léame", u otra parte especificada del Producto. Es usted responsable de cumplir con los términos y condiciones que resulten aplicables al software de fuente abierta. En la medida en que este Contrato le imponga más restricciones que las condiciones de licencia del software de fuente abierta, prevalecerán las condiciones de licencia del software de fuente abierta, pero solo con respecto al software de fuente abierta.

16. Definiciones.

"Acceso" significa la conexión y el uso de un Producto por el Cliente a través de un navegador web con arreglo a lo dispuesto en este Contrato.

“**Affiliate**” means any entity directly or indirectly controlling, controlled by, or under common control with a party.

“**Agreement**” means this License and Purchase Agreement.

“**Confidential Information**” means any information that you have been informed or have a reasonable basis to believe is confidential to EFI, whether provided to you before, on, or after this Agreement, including, for example, ideas, programs, data, software, systems configurations, reports, projections, initiatives, customer data, or other business or technical information. Confidential Information includes any written information marked as confidential or proprietary, and any information disclosed orally or visually that is identified as confidential or proprietary at or around the time of its disclosure. All EFI Intellectual Property Rights and technical information related to the Product are Confidential Information whether or not marked as confidential or proprietary.

“**Customer Marks**” means your name and logo or other trademarks, service marks, or other marks.

“**Documentation**” means user’s guides, manuals, and other information related to the Product or Professional Services.

“**EFI**” means Electronics For Imaging, Inc., Electronics for Imaging BV, Electronics For Imaging United Kingdom Limited, Metrics Sistemas De Informacao Ltda., alphagraph Team GmbH, or another EFI subsidiary or Affiliate referred to in the Purchase Documentation.

“**Excluded License**” means any license that requires as a condition of use, modification, and/or distribution of software subject to the Excluded License, that such software or other software combined and/or distributed with such software be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making derivative works, or (iii) redistributable at no charge.

“**Fees**” means the fees for the Product, Access, or Professional Services, including any fees set forth in your Purchase Documentation, License fees, hardware fees, Term License Fees, Hosting Fees, Maintenance Fees, or other applicable fees. Unless otherwise specified in the Purchase Documentation, payments for any fees must be made within 30 days of the date of the invoice in the currency listed in the Purchase Documentation. Any amount not paid when due is subject to a service charge equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by law, and EFI may defer shipments of Products and/or provision of services until all overdue payments are received. Payment of the service charge will not foreclose any other right that EFI may have as a consequence of late payment. In the event that EFI is required to take legal action to collect unpaid amounts, and EFI is successful in such action, Customer shall reimburse all costs and reasonable attorneys’ fees incurred by EFI in such action.

“**Entidad Vinculada**” significa una entidad directa o indirectamente controlada por, que controle o esté bajo control común con, una parte.

“**Contrato**” significa el presente Contrato de Compraventa y Licencia

“**Información Confidencial**” significa cualquier información que se le haya comunicado o tenga una base razonable para creer que es confidencial de EFI, ya se le facilite antes, con o después de este Contrato, incluyendo, por ejemplo, ideas, programas, datos, configuraciones de sistemas informáticos, informes, proyecciones, iniciativas, datos de clientes u otra información empresarial o técnica. La Información Confidencial incluye toda información escrita marcada como confidencial o amparada por derechos de propiedad, y cualquier información que se divulgue verbal o visualmente y esté identificada como confidencial o amparada por derechos de propiedad en el momento de su revelación. Todos los Derechos de Propiedad Industrial e Intelectual de EFI y la información técnica relativa al Producto son Información Confidencial, estén o no marcados como confidenciales o amparados por derechos de propiedad.

“**Marcas de Cliente**” significa su nombre y logotipo u otras marcas comerciales, marcas de servicio u otras marcas.

“**Documentación**” significa las guías de usuario, manuales y demás información relativa al Producto o a los Servicios Profesionales.

“**EFI**” significa Electronics For Imaging, Inc., Electronics For Imaging, BV, Electronics For Imaging United Kingdom Limited, Metrics Sistemas de Informaçao Ltda., alphagraph Team GmbH, u otra filial de EFI o Entidad Vinculada a ella citada en la Documentación de Compra.

“**Licencia Excluida**” significa cualquier licencia que exija como condición de uso, modificación o distribución del software sujeto a la Licencia Excluida, que dicho software u otro software combinado y o distribuido con dicho software se (i) revele o distribuya en forma de código fuente, (ii) licencie con el fin de hacer obras derivadas, o (iii) redistribuya sin cargo alguno.

“**Honorarios**” significa los honorarios por el Producto, el Acceso o los Servicios Profesionales, incluyendo los honorarios que se recogen en la Documentación de Compra, los honorarios por la Licencia, los honorarios de hardware, los Honorarios de Licencia Temporal, los Honorarios de Alojamiento, los Honorarios de Mantenimiento u otros honorarios que correspondan. Salvo que se indique otra cosa en la Documentación de Compra, los pagos de honorarios se deberán efectuar en el plazo de 30 días desde la fecha de factura en la moneda indicada en la Documentación de Compra. Todo importe impagado a su vencimiento está sujeto a un cargo administrativo igual al menor de entre un uno y medio por ciento (1,5%) mensual o el máximo importe que permita la ley, y EFI podrá aplazar los envíos de Productos y la prestación de servicios hasta haber recibido todos los pagos atrasados. El pago de este cargo administrativo no obstará para el ejercicio de cualquier otro derecho que asista a EFI como consecuencia de un pago tardío. En el caso de que EFI deba acudir a los tribunales para cobrar importes impagados, y EFI tenga éxito en dicha acción, el Cliente deberá reembolsar todas las costas y los honorarios razonables de abogados en que incurra EFI en dicha acción.

“**Hosting Fees**” means the hosting fees described in the Purchase Documentation. Unless otherwise specified in the Purchase Documentation, payment obligations for Hosting Fees commence on the first day of the next month following 30 days from the Start Date.

“**Initial Term**” means the three-year period of time beginning on the Start Date.

“**Intellectual Property Rights**” means, individually or collectively, any patent, copyright, trademark, service mark, trade secret, trade name, or other intellectual property right.

“**IP Claim**” means a lawsuit filed against you by a third party that is not a patent assertion entity or non-practicing entity.

“**License**” means the license granted to you for the Product you have obtained.

“**License Key**” means a programming code included in the Product that, if executed or deactivated, renders the Product or portions of it inoperable.

“**Link**” means a hypertext reference that, when activated, moves users from one website to another on the Internet.

“**Maintenance**” means (i) correction of material defects so that the Product will operate materially in conformity with the warranties in this Agreement, (ii) periodic updates that incorporate corrections of material defects and fixes of minor bugs in the Product, (iii) telephone or email/electronic consultation services regarding the use of the Product during EFI’s standard support hours, and (iv) enhancements and/or revisions to software components of the Product, which are subject to additional charge unless they are provided at no charge to substantially all other licensees.

“**Maintenance Fees**” means the support and/or maintenance fees charged by EFI and/or a third party for the Product. Unless otherwise specified in the Purchase Documentation, payment obligations for Maintenance Fees commence on the first day of the next month following 30 days from the Start Date and continue for 12 consecutive months thereafter, subject to any Maintenance renewal term(s). Any use of a virtual private network or other requirement that requires EFI to act outside of its normal processes in order to provide Maintenance to you may be subject to additional fees.

“**Maintenance Renewal Date**” means the anniversary of the start of the Maintenance coverage period stated on the first Software Maintenance invoice that EFI issued to you, whether issued pursuant to this Agreement or a prior agreement or Purchase Documentation.

“**Product**” means Software or hardware, and may also include third party software and documentation, downloads, on-line materials, bug fixes, patches, releases, release notes, updates, upgrades, technical support materials, and information related to the EFI software or hardware.

“**Honorarios de Alojamiento**” significa los honorarios de alojamiento descritos en la Documentación de Compra. Salvo que se indique otra cosa en la Documentación de Compra, la obligación de pagar los Honorarios de Alojamiento comienza el primer día del mes siguiente a aquel en que se cumplan 30 días desde la Fecha de Comienzo.

“**Plazo Inicial**” significa el período de tres años que comienza en la Fecha de Comienzo.

“**Derechos de Propiedad Industrial e Intelectual**” significa, individual o colectivamente, toda patente, derecho de autor, marca comercial, marca de servicio, secreto comercial, nombre comercial u otros derechos de propiedad industrial e intelectual.

“**Demanda por infracción de PI**” significa un procedimiento judicial contra usted incoado por un tercero que no sea una entidad de confirmación de patentes o entidad no ejerciente.

“**Licencia**” significa la licencia que se le otorga para el Producto que ha obtenido.

“**Clave de Licencia**” significa un código de programación incluido en el Producto que, si se ejecuta o se desactiva, deja el Producto o partes de él inutilizables.

“**Enlace**” significa una referencia de hipertexto que, cuando se activa, desplaza al usuario de un sitio web a otro en Internet.

“**Mantenimiento**” significa: (i) corrección de defectos significativos de manera que el Producto funcione básicamente con arreglo a las garantías de este Contrato, (ii) actualizaciones periódicas que incorporen correcciones de defectos graves y parches de corrección de fallos y correcciones de fallos leves en el Producto, (iii) servicios de consulta por teléfono o por correo electrónico relativos al uso del Producto durante las horas de habituales de servicio técnico de EFI, y (iv) mejoras y/o revisiones de los componentes de software del Producto, que están sujetos a cargo adicional, a menos que se le faciliten gratuitamente a prácticamente todos los demás licenciarios.

“**Honorarios de Mantenimiento**” significa los honorarios de servicio técnico y/o de mantenimiento que cobra EFI y/o un tercero para el Producto. Salvo que se indique otra cosa en la Documentación de Compra, la obligación de pagar los Honorarios de Mantenimiento comienza el primer día del mes siguiente a aquel en que se cumplan 30 días desde la Fecha de Comienzo y continúa durante 12 meses consecutivos a partir de entonces, con sujeción a las condiciones de prórroga del Mantenimiento. Todo uso de una red privada virtual u otro requisito que exija que EFI actúe fuera de sus procesos normales para prestarle el Mantenimiento puede estar sujeto a honorarios adicionales.

“**Fecha de Renovación del Mantenimiento**” significa el aniversario del inicio del período de cobertura del Mantenimiento que se recoge en la primera factura de Mantenimiento del Software que EFI le haya emitido, ya se emita con arreglo a este Contrato o a un contrato previo o a la Documentación de Compra.

“**Producto**” significa Software o hardware, y puede también incluir el software y la documentación de terceros, las descargas, materiales en línea, correcciones de errores, parches, nuevas versiones, notas a las nuevas versiones, actualizaciones, materiales de soporte técnico e información relativa al software o el hardware de EFI.

“Professional Service(s)” means any training, installation, implementation, customization and/or other professional services provided by EFI to Customer.

“Purchase Documentation” means the purchase order, investment summary, statement of work, written agreement, or other documentation executed by you by which you agreed to obtain a license, Product, or service from EFI or one of EFI’s partners.

“Renewal Term” means the three-year period following the Initial Term or another Renewal Term unless specified otherwise in your Purchase Documentation. Fees for any Renewal Term may be increased to EFI’s then-current fees.

“Site Location” means the printing plant or facility specified in the Purchase Documentation.

“Software” means the EFI software listed on the Purchase Documentation or licensed to you under this Agreement.

“Start Date” means the Effective Date of the Purchase Documentation or the date the Product is made available to you, whichever is later.

“Term License Fees” means the term license fees for the Product described in the Purchase Documentation, the payment of which entitles you to Maintenance at no additional charge. Unless otherwise specified in the Purchase Documentation, payment obligations for Term License Fees commence on the Start Date.

“Third Party IP Rights” means a third party’s U.S. patent rights.

“Work Product” means any and all ideas, concepts, and Intellectual Property Rights related in any way to the techniques, knowledge, and processes of the Product, Services, and deliverables provided by EFI, including any integration to third party products, whether or not developed for you.

“You”, “you” or “Customer” means the person or entity that obtained the Product under this Agreement and that is agreeing to be bound by this Agreement.

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"Servicios Profesionales" significa cualquier servicio de formación, instalación, aplicación, adaptación u otros servicios profesionales que EFI preste al Cliente.

"Documentación de Compra" significa pedido, el resumen de inversión, la hoja de trabajo, el contrato por escrito u otra documentación firmada por usted, por la que acepta obtener una licencia, Producto o servicio de EFI o de uno de los socios de EFI.

"Prórroga" significa el período de tres años que se sigue al Plazo Inicial o a otra Prórroga, a menos que se indique otra cosa en la Documentación de Compra. La Honorarios de cualquier Prórroga se pueden incrementar hasta los honorarios entonces en vigor de EFI.

"Localización de Emplazamiento" significa la planta de impresión o la instalación especificada en la Documentación de Compra.

"Equipo" significa el software de EFI que se recoge en la Documentación de Compra o para el que se le concede la licencia con arreglo a este Contrato.

"Fecha de Comienzo" significa la Fecha de Entrada en Vigor de la Documentación de Compra o la fecha en que se ponga a su disposición el Producto, si fuera posterior.

"Honorarios de Licencia Temporal" significa los honorarios de la licencia temporal para el Producto descritos en la Documentación de Compra, cuyo pago le da derecho al Mantenimiento sin cargo adicional. Salvo que se indique otra cosa en la Documentación de Compra, la obligación de pagar los Honorarios de la Licencia Temporal se inicia en la Fecha de Comienzo.

"Derechos de PI de Terceros" significa los derechos de un tercero a una patente de EE.UU.

"Producto del Trabajo" significa cualquiera de las ideas, conceptos y Derechos de Propiedad Industrial e Intelectual relacionados de cualquier modo con las técnicas, conocimientos y procesos del Producto, los Servicios y los entregables que EFI le facilite, incluyendo la integración con productos de terceros, se desarrollen o no para usted.

"Usted", o el "Cliente" significa la persona o entidad que ha obtenido el Producto con arreglo al presente Contrato y que acepta quedar vinculada por él.

Oracle es una marca registrada de Oracle Corporation.

Microsoft, Windows y SQL Server son marcas comerciales registradas de Microsoft Corporation en Estados Unidos y otros países.

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Si tiene usted alguna pregunta, consulte el sitio web de EFI en www.efi.com.

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(b). Perpetual License. If you are being granted a perpetual License, your License is revocable by EFI if you discontinue Maintenance for the Software for any two (2) consecutive annual Maintenance terms. You may install only the number of copies of the Software at the Site Location(s) for which you have been granted a License for use by you, your employees or authorized independent contractors. You may make and retain one additional copy for backup purposes only and may transfer the location of any Site Location if you obtain EFI's prior written consent.

(c). Term License. If you are being granted a term License, except as otherwise specified on the Purchase Documentation, such License has an Initial Term of three (3) years from the Start Date. If you do not provide written notice of termination to EFI at least 90 days before the end of the Initial Term or any Renewal Term, the term will automatically renew at EFI's then-current Fees. Only you, your employees or authorized independent contractors, and your end users, as applicable, may Access the Product, and only for your business. You are solely responsible for ensuring that data entry is timely, accurate, and reflects your requirements. You shall indemnify and hold EFI harmless from any liability, damages, or costs arising from data entered by you or your end users or on your behalf.

CONTRAT DE LICENCE ET D'ACHAT

1. Licence.

(a). Dispositions générales. EFI vous accorde une licence limitée, personnelle, incessible et non exclusive, qui permet uniquement d'utiliser le Logiciel et la Documentation ou d'y avoir Accès dans les buts indiqués par cette Documentation. Vous, vos salariés ou entrepreneurs indépendants autorisés et, selon le cas, vos utilisateurs êtes les seules personnes qui peuvent utiliser le Produit ou la Documentation ou y avoir Accès. Le Logiciel est concédé sous licence et n'est pas vendu. Outre les droits stipulés par le présent Contrat, vous n'est pas titulaire de droits de propriété exprès ou tacites ou d'autres droits sur le Logiciel ou la Documentation. Il vous est interdit de concéder une nouvelle licence sur le Logiciel (qui inclut toute banque de données) ou la Documentation, de les concéder dans le cadre d'une sous-licence, d'en faire des copies, de les modifier, de les améliorer, d'en corriger les erreurs, de les utiliser pour créer des œuvres dérivées ou de procéder à leur décompilation, décryptage, rétro-ingénierie ou désassemblage ou encore d'autoriser un tiers à prendre de telles mesures. Il vous est interdit de mettre le Logiciel ou la Documentation en location, de les accorder par un bail, de les prêter ou d'avoir recours à d'autres moyens pour les distribuer ou les utiliser dans le cadre d'arrangements en temps partagé, axés sur un bureau de services ou similaires ou d'une manière susceptible de soumettre l'ensemble ou une partie du Logiciel ou de la Documentation à une Licence exclue. Des modalités et des conditions supplémentaires peuvent être stipulées pour accompagner de nouveaux Produits ou une mise à jour, un lancement ou une mise à niveau.

(b). Licence perpétuelle. S'il vous est accordé une Licence perpétuelle, votre Licence peut être révoquée par EFI si vous ne veillez pas à ce que le Logiciel s'accompagne d'une Maintenance pendant deux (2) périodes consécutives de Maintenance annuelle. Vous ne pouvez installer, sur l'Emplacement ou les Emplacements d'un Site, que le nombre de copies du Logiciel pour lequel il vous a été accordé une Licence afin que vous, vos salariés ou vos entrepreneurs indépendants autorisés puissiez l'utiliser. Vous ne pouvez faire et conserver une copie supplémentaire qu'à des fins de sauvegarde et vous ne pouvez changer l'Emplacement d'un Site que si vous obtenez le consentement préalable et écrit d'EFI.

(c). Licence à durée déterminée. S'il vous est accordé une Licence à durée déterminée et sauf si la Documentation d'Achat le prévoit autrement, cette Licence est d'une Durée initiale de trois (3) ans et court dès la Date de Départ. Si vous ne remettez pas à EFI une notification écrite de résiliation au moins 90 jours avant le terme de la Durée initiale ou d'une Durée de Reconduction, la durée sera automatiquement reconduite moyennant les Redevances alors demandées par EFI. Vous, vos salariés ou entrepreneurs indépendants autorisés et, selon le cas, vos utilisateurs êtes les seules personnes à même d'avoir Accès au Produit, et ce dans l'unique cadre de vos activités commerciales. Il vous appartient exclusivement de veiller à ce que la saisie de données ait lieu en temps utile, soit précise et réponde à vos exigences. Vous devez dédommager et garantir EFI par rapport à toute responsabilité, aux dommages ou aux frais ayant pour cause les données saisies par vos soins ou vos utilisateurs ou en votre nom.

(d). Third-Party Materials. Some third-party materials distributed with the Product may be subject to other terms and conditions, which are typically found in a separate license agreement or “Read Me” file provided with those third-party materials. The License does not apply to any third-party software except as specified herein.

(e). Unauthorized Use. THE PRODUCT MAY CONTAIN A LICENSE KEY TO PREVENT UNAUTHORIZED USE AND EFI MAY EXECUTE OR DEACTIVATE THE LICENSE KEY UPON TERMINATION OF YOUR LICENSE. YOU ACKNOWLEDGE THAT THE LICENSE KEY IS NOT A VIRUS, AND THAT EXECUTION OR DEACTIVATION OF THE LICENSE KEY MAY RENDER THE PRODUCT OR A PORTION OF IT INOPERABLE. IF THE LICENSE KEY IS EXECUTED OR DEACTIVATED AS SPECIFIED IN THIS AGREEMENT, YOU MAY BE OBLIGATED TO PAY EFI'S THEN-CURRENT FEE TO REACTIVATE THE PRODUCT.

2. Installation and Professional Services.

(a). Installation. Unless specified in the Purchase Documentation, the installation and implementation of the Product is your exclusive responsibility. EFI has no responsibility to modify the Product to cause it to function or operate on any particular hardware system, configuration, or platform or with any other software.

(b). Professional Services. You may purchase Professional Services from EFI, and statement(s) of work may be created to more fully describe the scope, duration, and/or Fees for the Professional Services, which will be governed by this Agreement. All pre-paid Professional Services must be used within twenty-four (24) months of the Start Date.

(c). Compensation and Expenses. On-site Professional Services days are based on a standard 8-hour work day. Additional hours will be billed at EFI's then-current applicable rate unless a different rate is mutually agreed. Customer shall reimburse EFI for all reasonable out-of-pocket expenses (including travel, lodging and meals) incurred in connection with on-site Professional Services session(s). Professional Services scheduled and/or performed (i) during after-hours on a weekday or (ii) on a Saturday will be invoiced at 150% of EFI's then-current Professional Services Fees. Professional Services scheduled and/or performed on a Sunday or a government-recognized holiday will be invoiced at 200% of EFI's then-current Professional Services Fees.

3. Hosted Solutions.

If EFI or its designated third-party providers are hosting the Software, the following additional terms and conditions apply:

(a). Access. EFI or its designated provider will provide those services necessary to allow you Access, including a password(s).

(d). Données tiers. Certaines données tiers, qui sont communiquées avec le Produit, peuvent être soumises à d'autres modalités et conditions figurant généralement dans un contrat de licence distinct ou un fichier «Lisez-moi» fourni avec ces données tiers. À moins que les présentes ne stipulent le contraire, la Licence n'est pas applicable à un logiciel tiers.

(e). Utilisation non autorisée. AFIN DE PRÉVENIR TOUTE UTILISATION NON AUTORISÉE, LE PRODUIT PEUT CONTENIR UNE CLÉ DE LICENCE POUVANT ÊTRE ANNULÉE OU DÉSACTIVÉE PAR EFI AU MOMENT DE LA RÉSILIATION DE VOTRE LICENCE. VOUS RECONNAISSEZ QUE LA CLÉ DE LICENCE N'EST PAS UN VIRUS ET QUE SON ANNULATION OU SA DÉSACTIVATION RISQUE DE RENDRE L'INTÉGRALITÉ OU UNE PARTIE DU PRODUIT INUTILISABLE. SI LA CLÉ DE LICENCE EST ANNULÉE OU DÉSACTIVÉE D'UNE MANIÈRE STIPULÉE PAR LE PRÉSENT CONTRAT, IL SE PEUT QUE VOUS SOYEZ TENU DE PAYER LES REDEVANCES ALORS DEMANDÉES PAR EFI POUR POUVOIR RÉACTIVER LE PRODUIT.

2. Installation et Services professionnels

(a). Installation. À moins que la Documentation d'Achat ne le prévoit autrement, l'installation et l'implémentation du Produit constitue une responsabilité vous incombant exclusivement. EFI n'est pas tenue de modifier le Produit pour qu'il fonctionne ou puisse être utilisé sur un système matériel, une configuration ou une plate-forme spécifique ou avec un autre logiciel.

(b). Services professionnels. Vous pouvez acheter des Services professionnels auprès d'EFI ; un ou plusieurs énoncés des travaux peuvent être établis pour décrire de manière plus complète le champ d'application, la durée et/ou les Redevances des Services professionnels, qui seront régis par le présent Contrat. Tous les Services professionnels payés en avance doivent être utilisés dans les vingt-quatre (24) mois suivant la Date de Départ.

(c). Rémunération et dépenses. Les Services professionnels fournis sur place interviennent dans le cadre d'une journée de travail standard de 8 heures. Les heures supplémentaires seront facturées au prix alors en vigueur et applicable d'EFI, sauf si un autre prix est mutuellement convenu. Le Client doit rembourser à EFI l'ensemble des menues dépenses (incluant le déplacement, l'hébergement et les repas) engagées pour la ou les sessions de Services professionnels fournis sur place. Les Services professionnels prévus et/ou fournis (i) en semaine et après les heures de bureau ou (ii) le samedi seront facturés à 150 % des Redevances alors demandées par EFI au titre des Services professionnels. Les Services professionnels prévus et/ou fournis le dimanche ou pendant un jour férié reconnu par le gouvernement seront facturés à 200 % des Redevances alors demandées par EFI au titre des Services professionnels.

3. Solutions hébergées.

Si EFI ou les fournisseurs tiers qu'elle a désignés hébergent le Logiciel, il convient alors d'appliquer les modalités et les conditions suivantes :

(a). Accès. EFI ou le fournisseur qu'elle a désigné fournira les services nécessaires pour vous accorder un Accès, qui inclut un ou plusieurs mots de passe.

(b). Data Entry. All data generated by and through your Access will reside on servers of EFI or its third party providers.

(c). Password Security. You are solely responsible for (i) ensuring that only authorized individuals have access to passwords to Access the Product, (ii) assigning roles and authority levels for your Access, (iii) the conduct of individuals with Access, and (iv) maintaining the confidentiality and integrity of passwords and authority levels. You shall indemnify and hold EFI harmless from any liability, damages, or costs arising from your failure to comply with this Section.

(d). Scheduled Downtime and Upgrades. Downtime is required from time-to-time for regular maintenance of the technology that supports the Product. EFI shall use commercially reasonable efforts to perform scheduled downtime outside normal business hours. EFI may also install new or updated software from time to time, including supporting software and firmware, in addition to the Software, to aid in providing ongoing stability and security of the hosted solution. You shall facilitate commercially reasonable upgrades and operations without undue delay or objection.

(e). Unexpected Outages. EFI shall use commercially reasonable efforts to avoid unexpected outages and to restore Access as soon as possible. If you do not have Access for more than two (2) consecutive hours within any 24-hour period because of an unexpected outage caused by EFI, you may request credit for one day of the applicable Fees (based on an average of that month's invoice). THIS IS YOUR SOLE AND EXCLUSIVE REMEDY AND EFI'S ENTIRE LIABILITY FOR UNSCHEDULED DOWNTIME OR OUTAGES, AND EFI WILL NOT BE LIABLE FOR ANY DAMAGES RELATED TO ANY UNSCHEDULED DOWNTIME OR OUTAGES.

(f). Self-Hosting. You at all times retain the right to self-host the Product from another location and, if you are being granted a term license, continue to pay the Term License Fees for the Software. Any Professional Services performed by EFI in migrating a hosted solution to a self-hosted solution are billable at EFI's standard rates.

(g). Maintenance. If you are being granted a perpetual License as a hosted solution, you must remain on Maintenance for the period that EFI or its designated third-party provider is providing the hosting services to you.

4. Fees and Delivery.

(a). Fees. You shall pay all applicable Fees.

(b). Saisie de données. Toutes les données générées par et du fait de votre Accès seront conservées sur des serveurs appartenant à EFI ou aux fournisseurs tiers qu'elle a désignés.

(c). Sécurité des mots de passe. Vous êtes exclusivement tenu (i) de veiller à ce que seules des personnes autorisées aient accès aux mots de passe permettant d'avoir Accès au Produit, (ii) d'affecter des fonctions et des niveaux de capacité à l'Accès vous étant accordé, (iii) de répondre du comportement des personnes auxquelles un Accès est accordé et (iv) d'assurer la confidentialité et l'intégrité des mots de passe et des niveaux de capacité. Vous devez dédommager et garantir EFI par rapport à toute responsabilité, aux dommages ou aux frais dus à votre manquement à la présente Section.

(d). Mise hors service planifiée et mises à niveau. Une mise hors service s'impose occasionnellement pour assurer la maintenance routinière de la technologie servant de base au Produit. EFI doit réaliser des efforts commercialement raisonnables pour qu'une mise hors service planifiée soit réalisée en dehors des heures normales de bureau. EFI peut également procéder à l'installation occasionnelle d'un nouveau logiciel ou d'un logiciel mis à jour, qui inclut un logiciel et un micrologiciel d'accompagnement et qui s'ajoute au Logiciel afin de faciliter la prise des mesures courantes assurant la stabilité et la sécurité de la solution hébergée. Vous devez faciliter les mises à niveau et les opérations commercialement raisonnables sans retard inutile ou objection.

(e). Pannes imprévues. EFI doit réaliser des efforts commercialement raisonnables pour éviter les pannes imprévues et rétablir l'Accès dès que possible. Si, au cours d'une période de 24 heures, vous ne disposez plus, pendant plus de deux (2) heures consécutives, de l'Accès qui vous a été accordé en raison d'une panne imprévue et causée par EFI, vous pouvez demander un avoir correspondant aux Redevances applicables (et basées sur le montant moyen de la facture relative au mois en cause) à une journée. CETTE MESURE CONSTITUE LA SEULE ET UNIQUE RÉPARATION QUI VOUS EST ACCORDÉE ET TOUTE LA RESPONSABILITÉ ASSUMÉE PAR EFI AU TITRE D'UNE MISE HORS SERVICE OU DE PANNES IMPRÉVUES ; EFI NE SERA PAS RESPONSABLE DES DOMMAGES EN LIEN AVEC UNE MISE HORS SERVICE OU DES PANNES IMPRÉVUES.

(f). Auto-hébergement. À tout moment, vous conservez le droit d'auto-héberger le Produit à partir d'un autre emplacement et, s'il vous est accordé une licence à durée déterminée, vous continuerez à payer les Redevances de la Licence à Durée déterminée du Logiciel. Les Services professionnels fournis par EFI lors de la migration d'une solution hébergée vers une solution auto-hébergée peuvent être facturés aux prix standards pratiqués par EFI.

(g). Maintenance. S'il vous est accordé une Licence perpétuelle dans le cadre d'une solution hébergée, vous devez continuer à bénéficier de la Maintenance pendant la période de la fourniture, par EFI ou le fournisseur tiers qu'elle désigné, de services d'hébergement.

4. Redevances et livraison.

(a). Redevances. Vous êtes tenu au paiement de toutes les Redevances applicables.

(b). Title and Risk of Loss. Title and risk of loss for any media or hardware for the Product transfers to you at EFI's designated manufacturing plant(s) or warehouse(s). If the Product is delivered electronically, risk of loss transfers to you when the Product or Access is made available to you.

(c). Hardware Delivery. Unless otherwise specified in the Purchase Documentation, where you are purchasing hardware: (i) EFI shall act as agent for you and procure insurance against risk of loss and/or procure and prepay for shipment, (ii) you shall reimburse EFI for all charges relating to the shipment of hardware upon EFI providing an invoice for such charges. EFI shall use commercially reasonable efforts to ship hardware as soon as practicable following execution of this Agreement and EFI's receipt of any required deposits. If you request a delay in delivery or otherwise cause a delay in the transportation process, EFI reserves the right to separately charge you for any costs it incurs for paying the logistics company to store and warehouse hardware on your behalf.

5. Product Maintenance.

(a). Subject to your timely payment of all applicable Fees, EFI or its designated provider will provide you with annual Maintenance for the Product. Maintenance terms automatically renew for consecutive 12-month periods unless cancelled by either party with written notice at least 30 days before the Maintenance Renewal Date. Notwithstanding the foregoing, Maintenance for certain Products (e.g., individual Software modules that are part of the EFI Software solution) may only be cancelled in the event that you are no longer using those certain Products; please first consult with EFI in the event you desire to cancel Maintenance for any Product.

(b). You must possess a valid License to use any upgrade or update. By using an upgrade or update, your license to any previous version of the Product automatically terminates. If you (i) have an out-of-date version of the Product or (ii) are not current on Maintenance due to your failure to timely pay Maintenance Fees and wish to update your version of the Product, you must pay any unpaid Fees and may be subject to additional fees to transfer or convert any old data. EFI reserves the right to discontinue Maintenance for all out-of-date versions of the Product.

6. Warranty and Disclaimer.

(b). Propriété et risque de perte. La propriété et le risque de perte de tout support ou matériel du Produit vous sont transférés sur le ou les sites de fabrication ou l'entrepôt ou les entrepôts désignés par EFI. Si le Produit est livré par des moyens électroniques, le risque de perte vous est transféré au moment où le Produit ou l'Accès est placé à votre disposition.

(c). Livraison du matériel. À moins que la Documentation de Commande ne le prévoit autrement, lorsque vous achetez du matériel : (i) EFI doit intervenir comme votre préposé, souscrire une assurance contre le risque de perte et/ou veiller à la réalisation et au paiement en avance de son envoi, tandis que (ii) vous devez rembourser EFI de tous les frais d'envoi du matériel dès qu'EFI vous présente une facture en demandant le paiement. EFI doit réaliser des efforts commercialement raisonnables pour envoyer le matériel, dès que possible après le moment où le présent Contrat est signé et où EFI reçoit les acomptes s'imposant. Si vous formez une demande pour qu'une livraison soit retardée ou causez, par un autre moyen, le ralentissement du processus de transport, EFI se réserve le droit de vous facturer séparément les frais qu'elle engage pour payer la société de logistique chargée de stocker et d'entreposer le matériel en votre nom.

5. Maintenance du Produit.

(a). Lorsque vous payez toutes les Redevances applicables en temps utile, EFI ou le fournisseur qu'elle a désigné vous fournira un service de Maintenance annuelle du Produit. Les modalités de la Maintenance sont automatiquement reconduites de périodes de 12 mois consécutifs, sauf si l'une des parties présente une notification écrite d'annulation au moins 30 jours avant la Date de Reconduction de la Maintenance. Indépendamment de ce qui précède, la Maintenance de certains Produits (par exemple, les modules individuels du Logiciel qui font partie de la solution EFI du Logiciel) ne peut être annulée que si vous ne les utilisez plus ; au cas où vous souhaiteriez annuler la Maintenance d'un Produit, commencez par consulter EFI.

(b). Afin de pouvoir utiliser une mise à niveau ou une mise à jour, vous devez être titulaire d'une Licence en cours de validité. Lorsque vous utilisez une mise à niveau ou une mise à jour, la licence dont vous disposez par rapport à une version antérieure du Produit prend fin automatiquement. Si vous (i) avez une version obsolète du Produit ou (ii) si n'avez pas récemment bénéficié d'une Maintenance car vous n'avez pas payé les Redevances de la Maintenance dans les délais et si vous souhaitez mettre à jour votre version du Produit, vous devrez payer les Redevances impayées et vous risquerez également d'avoir à payer des frais supplémentaires de transfert ou de conversion d'anciennes données. EFI se réserve le droit de mettre un terme à la Maintenance de toutes les versions obsolètes du Produit.

6. Garantie et avis de non-responsabilité.

(a). Limited Warranties. EFI warrants to you that (i) EFI has the right to grant the License, (ii) subject to your timely payment of all applicable Fees, the Products as delivered to you will perform materially in accordance with EFI's then-current, applicable specifications if all available updates, upgrades, and bug-fixes are properly installed, and (iii) any Professional Services you purchase will be provided in good and workmanlike manner consistent with generally accepted industry standards. This warranty does not apply to defects attributable to (A) any equipment or software not provided or approved for use by EFI, (B) any modification of the Product by you, your employees, or any third party acting on your behalf, (C) any accident, neglect, misuse, or abuse by you, your employees, or any third party acting on your behalf, or (D) exposure of the Product to conditions outside the range of environmental, power, and operating specifications provided by EFI. You shall cooperate fully and promptly with EFI's attempts to identify the cause of any claimed breach of this limited warranty.

(b). Security of Your Systems. You are solely responsible for (i) ensuring the confidentiality, security, and integrity of your network connectivity, data, and servers, (ii) preventing and bearing the risk of any loss or damage to any data on your servers, and (iii) maintaining archive and backup copies of any data.

(c). WARRANTY DISCLAIMER AND REMEDIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES AND REMEDIES IN THIS AGREEMENT ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES. EFI, ITS SUPPLIERS, AND LICENSORS SPECIFICALLY DISCLAIM ANY OTHER WARRANTIES AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT; ANY WARRANTIES RELATING TO SECURITY; AND ANY WARRANTIES THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED, OR ERROR-FREE. EFI MAKES NO WARRANTY, IMPLIED OR OTHERWISE, REGARDING THE PERFORMANCE OR RELIABILITY OF ANY OTHER THIRD PARTY PRODUCTS, OR SERVICES.

(a). Garanties limitées. EFI vous accorde les garanties suivantes : (i) EFI a le droit d'accorder la Licence, (ii) à la condition que vous payiez tous les Redevances applicables dans les délais, les Produits qui vous sont livrés fonctionneront d'une manière globalement conforme aux spécifications applicables et alors en vigueur d'EFI, si toutes les mises à jour, les mises à niveau et les corrections de bogues sont convenablement installées et (iii) les Services professionnels que vous achetez seront fournis dans les règles de l'art et conformément aux normes industrielles généralement acceptées. Cette garantie n'est pas applicable aux vices imputables (A) à un équipement ou logiciel qui n'a pas été fourni par EFI ou dont EFI n'a pas approuvé l'utilisation, (B) à la modification du Produit que vous, vos salariés ou un tiers agissant en votre nom avez apportée, (C) à un accident, une imprudence, un usage inapproprié ou un usage abusif dont vous, vos salariés ou un tiers agissant en votre nom êtes les auteurs, ou (D) à l'exposition du Produit à des conditions externes au cadre des spécifications fournies par EFI sur l'environnement, l'alimentation électrique et le fonctionnement. Lorsqu'EFI tente d'identifier la cause d'un manquement invoqué à la présente garantie, vous devez lui accorder une collaboration rapide et complète.

(b). Sécurité de vos systèmes. Vous êtes exclusivement tenu (i) d'assurer la confidentialité, la sécurité et l'intégrité de la connectivité, des données et des serveurs de votre réseau, (ii) de prévenir et d'assumer le risque de perte ou d'endommagement des données sauvegardées sur vos serveurs, et (iii) de veiller à ce que toute donnée donne lieu à la tenue d'archives et fasse l'objet de copies de sauvegarde.

(c). LIMITATION DES GARANTIES ET RECOURS. DANS LA MESURE LA PLUS LARGE AUTORISÉE PAR LE DROIT APPLICABLE, LES GARANTIES ET LES RECOURS STIPULÉS PAR LE PRÉSENT CONTRAT SONT EXCLUSIFS ET VIENNENT EN LIEU ET PLACE DE L'ENSEMBLE DES AUTRES GARANTIES ET RECOURS. EFI, SES FOURNISSEURS ET SES CONCÉDANTS DE LICENCE ÉCARTENT EXPLICITEMENT LES AUTRES GARANTIES ET RECOURS QUI INCLUENT, DE MANIÈRE NON LIMITATIVE, LES GARANTIES TACITES SUR LA QUALITÉ MARCHANDE, L'ADÉQUATION À UN BUT PARTICULIER ET L'ABSENCE DE CONTREFAÇON, LES GARANTIES SUR LA SÉCURITÉ ET LES GARANTIES SELON LESQUELLES LE FONCTIONNEMENT DU PRODUIT SERA ININTERROMPU OU DÉNUE D'ERREURS. EFI N'ACCORDE AUCUNE GARANTIE TACITE OU D'UNE AUTRE NATURE SUR LES PERFORMANCES OU LA FIABILITÉ D'AUTRES PRODUITS OU SERVICES TIERS.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOLE AND EXCLUSIVE REMEDY TO WHICH YOU ARE ENTITLED FOR BREACH OF THESE LIMITED WARRANTIES, AND THE ENTIRE LIABILITY OF EFI AND ITS SUPPLIERS RELATING TO BREACH OF THESE LIMITED WARRANTIES, IS, AT EFI'S OPTION, TO (1) REPAIR OR REPLACE THE PRODUCT OR RE-PERFORM THE SERVICE THAT DOES NOT MEET THE LIMITED WARRANTY, OR (2) PROVIDE A REFUND OF THE THEN-CURRENT REASONABLE COMMERCIAL VALUE (IF ANY) FOR THE PRODUCT OR SERVICE THAT DOES NOT MEET THE LIMITED WARRANTY. EXCEPT AS PROVIDED IN THIS AGREEMENT, THERE ARE NO REFUNDS, RETURNS, EXCHANGES, OR REPLACEMENTS.

7. Infringement Indemnification.

EFI shall indemnify you from IP Claims and reimburse you for damages paid by you to the party bringing the IP Claim pursuant to a final, non-appealable judgment that the Product directly infringes any Third Party IP Rights. If you do not notify EFI in writing within 10 business days of learning of the IP Claim, and give EFI proper and full information, assistance, and exclusive authority to defend or settle the IP Claim, EFI will be relieved of its obligations under this Section. If the Product or any part of it is in EFI's opinion likely to become the subject of a claim of infringement of Third Party IP Rights, or if it is adjudicatively determined that the Product or any part of it infringes Third Party IP Rights, EFI may at its option (i) obtain for you a license or right to use the Third Party IP Rights so you can continue to use the Product, or (ii) replace or modify the Product with other suitable and reasonably equivalent non-infringing technology or parts, or (iii) if it is not commercially reasonable to take the actions described in clauses (i) or (ii) in this sentence, terminate your License and, if you return the Product to EFI, refund a portion of the license fee paid by you equal to the then-current reasonable commercial value (if any) of the Product. EFI shall not be responsible, liable, or obligated to indemnify or reimburse you if the alleged infringement arises out of (i) compliance with your requirements or specifications that are outside EFI's standard specifications for the Product, (ii) any addition or incorporation to or modification of the Product at your request, (iii) any combination of the Product with any product or software not provided by EFI, or (iv) use of the Product in the practice of a process or system other than that for which it was intended. In any event as described in the preceding sentence, you shall defend and/or settle any claim brought against EFI at your own expense, and shall indemnify EFI against any costs, legal fees, other expenses, and damages required for the defense or settlement of the claim.

DANS LA MESURE LA PLUS LARGE AUTORISÉE PAR LE DROIT APPLICABLE, LE SEUL ET UNIQUE RECOURS QUE VOUS ÊTES EN DROIT D'UTILISER EN CAS DE VIOLATION DES PRÉSENTES GARANTIES LIMITÉES ET L'ENTIÈRE RESPONSABILITÉ PESANT SUR EFI ET SES FOURNISSEURS AU TITRE D'UNE VIOLATION DES PRÉSENTES GARANTIES LIMITÉES CORRESPONDENT, EN FONCTION DU CHOIX EFFECTUÉ PAR EFI, À CE QUI SUIT : (1) LA RÉPARATION OU LE REMPLACEMENT DU PRODUIT OU LA NOUVELLE FOURNITURE DU SERVICE NON CONFORME À LA GARANTIE LIMITÉE OU (2) LE REMBOURSEMENT DE LA VALEUR COMMERCIALE RAISONNABLE ALORS ATTRIBUÉE (S'IL Y A LIEU) AU PRODUIT OU SERVICE NON CONFORME À LA GARANTIE LIMITÉE. À MOINS QUE LE PRÉSENT CONTRAT NE STIPULE LE CONTRAIRE, LES REMBOURSEMENTS, LES RETOURS, LES ÉCHANGES OU LES REMPLACEMENTS NE SONT PAS AUTORISÉS.

7. Dédommagement en cas de contrefaçon.

EFI doit vous dédommager des Demandes relevant de la PI et vous rembourser les dédommagements que vous avez versés à la partie ayant formé une Demande relevant de la PI, après le prononcé d'un jugement définitif et sans appel selon lequel le Produit contreferait directement des Droits de PI d'un Tiers. Si, dans les 10 jours ouvrables suivant le moment où vous découvrez une Demande relevant de la PI, vous n'en informez pas EFI et si vous ne lui accordez pas les informations appropriées et complètes, l'assistance et la capacité exclusive l'habilitant à contester la Demande relevant de la PI ou à convenir de son règlement, EFI sera alors libérée des obligations lui incombant aux termes de la présente Section. Si, de l'avis d'EFI, tout ou partie du Produit risque de faire l'objet d'une demande en contrefaçon de Droits de la PI d'un Tiers ou s'il a été estimé par une décision que tout ou partie du Produit contrefait les Droits de la PI d'un Tiers, EFI peut alors, à sa convenance, (i) vous procurer une licence ou un droit d'utilisation des Droits de la PI d'un Tiers afin que vous puissiez continuer à utiliser le Produit, (ii) remplacer le Produit ou le modifier avec une autre technologie ou d'autres pièces adéquates, constituant un équivalent raisonnable et ne donnant pas lieu à une contrefaçon ou (iii), si la prise des mesures décrites par le point (i) ou (ii) de cette phrase n'est pas commercialement raisonnable, résilier votre Licence et, si vous retournez le Produit à EFI, rembourser une partie de la redevance de licence que vous avez payée et égale à la valeur commerciale et raisonnable alors attribuée (s'il y a lieu) au Produit. EFI n'est ni tenue de vous dédommager ou rembourser ni liée par une responsabilité ou obligation l'y contraignant si la contrefaçon qui aurait eu lieu a pour cause (i) le respect des exigences ou spécifications dont vous êtes l'auteur et qui vont au-delà des spécifications standards d'EFI sur le Produit, (ii) les éléments ajoutés au Produit ou y étant intégrés à votre demande ou la modification du Produit que vous avez demandée, (iii) l'association du Produit à un produit ou logiciel non fourni par EFI ou (iv) l'utilisation du Produit dans la mise en œuvre d'un procédé ou système étranger à celui pour lequel il a été prévu. En cas de survenance d'un événement décrit par la phrase précédente, vous devez prendre, à vos frais, des mesures pour contester toute demande formée contre EFI et/ou convenir de son règlement, et vous devez également dédommager EFI des frais, des honoraires juridiques, des autres dépenses et des dédommagements s'imposant pour contester ou régler la demande.

THE RIGHTS GRANTED TO YOU IN THIS SECTION ARE YOUR SOLE AND EXCLUSIVE REMEDIES FOR ANY ALLEGED INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

8. LIMITATION OF LIABILITY.

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL EFI OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY, OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EFI IS NOT RESPONSIBLE FOR ANY LOST PROFITS OR REVENUE, LOSS OF USE OF THE PRODUCT, LOSS OF DATA, OR THE COST OF RECOVERING ANY DATA. EXCEPT FOR INSTANCES INVOLVING EFI'S WILLFUL MISCONDUCT, EFI WILL NOT BE LIABLE FOR DAMAGES ARISING FROM ANY BREACH, UNAUTHORIZED ACCESS, MISUSE, OR INTRUSION RELATED TO YOUR DATA ON EFI'S OR ITS SUPPLIERS' SERVERS OR ANY NETWORK YOU USE IN CONNECTION WITH THE PRODUCT.

IN NO EVENT WILL EFI'S TOTAL LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATED TO THE PRODUCTS, SERVICES, ACCESS, AND/OR THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, UNDER STATUTE, OR OTHERWISE) EXCEED THE TOTAL AMOUNT OF THE FEES ACTUALLY PAID BY YOU IN THE 12 MONTHS PRECEDING THE CLAIM FOR THE EFI PRODUCT, SERVICES, OR ACCESS GIVING RISE TO THE CLAIM. YOU AGREE THAT THIS AMOUNT IS SUFFICIENT TO SATISFY THE ESSENTIAL PURPOSE OF THIS AGREEMENT AND THAT THE PRICE OF THE PRODUCT, PROFESSIONAL SERVICES, OR ACCESS REFLECTS THIS ALLOCATION OF RISK.

LES DROITS QUE VOUS CONFÈRE LA PRÉSENTE SECTION CONSTITUENT LES SEULS ET UNIQUES RECOURS DONT VOUS DISEPOSEZ À L'ÉGARD DE LA CONTREFAÇON DONT LES DROITS DE PROPRIÉTÉ INTELLECTUELLE D'UN TIERS AURAIENT FAIT L'OBJET.

8. LIMITE DE RESPONSABILITÉ

LORSQUE LE DROIT NE L'INTERDIT PAS, EFI OU SES FOURNISSEURS OU CONCÉDANTS DE LICENCE NE SERONT, EN AUCUN CAS, TENUS AU PAIEMENT DE DOMMAGES-INTÉRÊTS INDIRECTS, PARTICULIERS, ACCESSOIRES, CONSÉCUTIFS, DE REMISE EN L'ÉTAT, EXEMPLAIRES OU PUNITIFS QUELLE QU'EN SOIT LA CAUSE, FONDÉS SUR UNE QUELCONQUE THÉORIE DE RESPONSABILITÉ ET MÊME S'ILS ONT ÉTÉ INFORMÉS DU RISQUE POSÉ PAR CES DOMMAGES-INTÉRÊTS. EFI N'EST PAS TENUE RESPONSABLE D'UNE PERTE DE BÉNÉFICES OU DE REVENUS, D'UNE PERTE D'USAGE DU PRODUIT, D'UNE PERTE DE DONNÉES OU DES FRAIS DE RÉCUPÉRATION DE DONNÉES. À L'EXCEPTION DES SITUATIONS DANS LESQUELLES EFI A COMMIS UNE FAUTE INTENTIONNELLE, EFI NE SERA PAS TENUE AU PAIEMENT DES DOMMAGES-INTÉRÊTS DUS EN RAISON D'UNE ATTEINTE, D'UN ACCÈS NON AUTORISÉ, D'UN USAGE INAPPROPRIÉ OU D'UNE INTRUSION CONCERNANT VOS DONNÉES, LORSQUE CES DERNIÈRES SE TROUVENT SUR LES SERVEURS D'EFI OU DE SES FOURNISSEURS OU SUR LE RÉSEAU QUE VOUS UTILISEZ POUR LE PRODUIT.

LA RESPONSABILITÉ GLOBALE, QUI PÈSE SUR EFI AU TITRE DE TOUTES LES DEMANDES FORMÉES EN RAISON OU DANS LE CADRE DES PRODUITS, DES SERVICES, DE L'ACCÈS ET/OU DU PRÉSENT CONTRAT, NE DOIT EN AUCUN CAS, ET INDÉPENDAMMENT DU TYPE D'ACTION (QU'ELLE S'APPUIE SUR UN CONTRAT, UN FAIT DOMMAGEABLE, UN TEXTE LÉGISLATIF OU UN AUTRE FONDEMENT), DÉPASSER LE MONTANT TOTAL DES REDEVANCES QUE VOUS AVEZ RÉELLEMENT PAYÉES AU COURS DES 12 MOIS PRÉCÉDANT L'ENGAGEMENT DE LA DEMANDE SUR LES PRODUITS, LES SERVICES OU L'ACCÈS D'EFI LUI SERVANT DE BASE. VOUS RECONNAISSEZ QUE CE MONTANT SUFFIT À LA RÉALISATION DE L'OBJET ESSENTIEL DU PRÉSENT CONTRAT ET QUE LE PRIX DU PRODUIT, DES SERVICES PROFESSIONNELS OU DE L'ACCÈS TIENT COMPTE DE CETTE AFFECTATION DE RISQUE.

THE FOREGOING LIMITATIONS OF LIABILITY AND DISCLAIMERS FORM AN ESSENTIAL ELEMENT OF THIS AGREEMENT, WITHOUT WHICH EFI WOULD NOT HAVE LICENSED OR SOLD THE PRODUCT TO YOU OR PROVIDED YOU WITH ACCESS.

BECAUSE SOME JURISDICTIONS DO NOT ALLOW SOME OR ALL OF THE EXCLUSIONS OR LIMITATIONS OF LIABILITY IN THIS AGREEMENT, SOME OR ALL OF THEM MAY NOT APPLY TO YOU.

9. Proprietary Rights and Confidential Information.

(a). No Implied Conveyance of Proprietary Rights. The Product, Documentation, and any Work Product are the valuable, confidential, and proprietary property of EFI, its suppliers and licensors. EFI is not conveying any of its Intellectual Property Rights, except the limited rights specified in this Agreement. You shall maintain and reproduce all copyright, trademark, patent, and other proprietary notices on the Product in the same form and manner as delivered by EFI.

(b). Protection of Information. You shall not disclose any of EFI's Confidential Information, and shall take precautions with respect to EFI's Products and Confidential Information that are at least as protective as you take to protect your own confidential information and proprietary rights of the greatest sensitivity. You shall advise your employees and authorized independent contractors of the confidential and proprietary nature of the Product and EFI's Confidential Information and of the restrictions imposed by this Agreement, and confine access to the Product and EFI's Confidential Information to those individuals who need it in the ordinary course and scope of their employment or relationship with you. Except as specified in this Agreement, you shall not directly or indirectly disclose any part of the Product, EFI's Confidential Information, or Documentation to any third party.

(c). Termination; Injunctive Relief. Your violation of the confidentiality obligations or of EFI's Intellectual Property Rights may cause irreparable damage that cannot be fully remedied by money damages. In the event of any actual or threatened violation, you agree that EFI will be entitled, in addition to any other remedy available to it, to (i) terminate this Agreement, retake possession of the Product, execute the License Key, and/or terminate Access, and/or (ii) obtain injunctive or other equitable relief from any court of competent jurisdiction to prevent any further violation.

LES LIMITES DE RESPONSABILITÉ ET LES AVIS DE NON-RESPONSABILITÉ QUI PRÉCÉDENT CONSTITUENT UN ÉLÉMENT ESSENTIEL DU PRÉSENT CONTRAT SANS LEQUEL EFI NE VOUS AURAIT PAS VENDU LE PRODUIT, NE VOUS L'AURAIT PAS CONCÉDÉ SOUS LICENCE OU NE VOUS AURAIT PAS ACCORDÉ UN ACCÈS.

DANS LA MESURE OÙ CERTAINS TERRITOIRES N'AUTORISENT PAS UNE PARTIE OU L'ENSEMBLE DES EXCLUSIONS OU LIMITES DE RESPONSABILITÉ POSÉES PAR LE PRÉSENT CONTRAT, IL SE PEUT QUE CERTAINES OU L'ENSEMBLE DE CES DERNIÈRES NE VOUS SOIENT PAS APPLICABLES.

9. Droits exclusifs et informations confidentielles.

(a). Non-transfert tacite de Droits exclusifs. Le Produit, la Documentation et tout Ouvrage constituent des biens de valeur, confidentiels et exclusifs appartenant à EFI, ses fournisseurs et ses concédants de licence. EFI ne transfère aucun de ses Droits de Propriété intellectuelle, à l'exception des droits limités qui sont stipulés par le présent Contrat. Vous devez conserver l'ensemble des avis de copyright, de marque de fabrique, de brevet et d'autres droits exclusifs et les reproduire sur le Produit en ayant recours à un format et une méthode similaires à ceux qui ont été utilisés pour les livraisons d'EFI.

(b). Protection des informations. Vous devez vous abstenir de divulguer des Informations confidentielles d'EFI et prendre, par rapport aux Produits et Informations confidentielles d'EFI, des précautions étant aussi protectrices que celles que vous prenez pour assurer la protection des informations confidentielles et droits exclusifs que vous détenez et dont la nature est la plus sensible. Vous devez informer vos salariés et entrepreneurs indépendants autorisés sur la nature exclusive et secrète du Produit et des Informations confidentielles d'EFI et sur les restrictions posées par le présent Contrat et ne réserver l'accès au Produit et aux Informations confidentielles d'EFI qu'aux personnes en ayant besoin dans le cadre normal et le champ d'application de leur emploi ou de la relation entretenue avec vous. À moins que le présent Contrat ne stipule le contraire, vous devez vous abstenir de divulguer directement ou indirectement à un tiers une partie du Produit, des Informations confidentielles d'EFI ou de la Documentation.

(c). Résiliation; Injonction. La violation des obligations de confidentialité ou des Droits de Propriété intellectuelle d'EFI vous étant imputée risque de causer un dommage irréparable et ne pouvant être intégralement réparé par un dédommagement pécuniaire. Au cas où une telle violation serait commise ou risquerait d'être commise, vous reconnaissez qu'EFI disposera, en plus de tout autre recours placé à sa disposition, du droit (i) de résilier le présent Contrat, de reprendre possession du Produit, d'annuler la Clé de Licence et/ou de bloquer l'Accès et/ou (ii) d'obtenir, auprès d'une juridiction compétente, le prononcé d'une injonction ou d'une autre mesure équitable visant à interdire toute autre violation.

(d). Use of Your Trademarks and Logos. Subject to any reasonable use guidelines, you grant EFI a non-exclusive, worldwide, royalty-free license to use Customer Marks in connection with this Agreement, for use with the Product, for promoting EFI's Products in marketing materials, print, or on-line advertising, and for identifying you as an EFI customer. You shall also secure for EFI any rights or sublicenses required for EFI's use of the trademarks or service marks of your Affiliates. EFI acknowledges that (i) Customer Marks are owned solely and exclusively by you or your Affiliates, (ii) EFI has no other rights, title, or interest in or to Customer Marks, and (iii) all use and goodwill of Customer Marks by EFI inures to the benefit of you and your Affiliates.

10. Termination.

(a). This Agreement may be terminated immediately upon written notice to the other party (i) by EFI, if you fail to make any required payment other than Maintenance Fees, (ii) by the non-breaching party, if you or EFI fails to cure a material breach within 30 days after written notice from the non-breaching party, or (iii) by EFI, if you cease doing business as a going concern, become the object of voluntary or involuntary bankruptcy or liquidation proceedings that are not dismissed within 60 days after the initial filing, or if a receiver is appointed with respect to a substantial portion of your assets.

(b). Upon termination, you shall promptly (i) pay EFI all unpaid fees accrued before the termination, (ii) return all EFI Confidential Information and the Product, and (iii) return any materials, programs, manuals, and other items related to or derived from the Product in your possession or control. EFI shall use commercially reasonable efforts to provide you with any proprietary data belonging to you in the format in which it is stored by EFI at the time of termination.

11. Audit Rights.

EFI may audit your use of or Access to the Product. Any audit will take place after prior notice to you, during regular business hours, and in a manner that does not unreasonably interfere with your normal business. If the audit shows that you are using or accessing the Product in a way that violates this Agreement, EFI may invoice you for such use or Access, including late fees, interest, and expenses associated with the audit. If you do not timely pay that invoice, EFI may exercise its termination rights and pursue any other rights or remedies available to it.

12. Consent to Use Data.

(d). Utilisation de vos marques de fabrique et logos. Sous réserve des consignes raisonnables d'utilisation, vous accordez à EFI une licence non exclusive, mondiale et sans royalties permettant d'utiliser les Marques du Client dans le cadre du présent Contrat, pour pouvoir les utiliser avec le Produit, pour promouvoir les Produits d'EFI sur des supports de marketing, des imprimés ou des publicités en ligne et pour vous identifier comme un client d'EFI. Vous devez également veiller à l'attribution, en faveur d'EFI, des droits ou sous-licences lui étant nécessaires pour pouvoir utiliser les marques de fabrique ou marques de services de vos Sociétés affiliées. EFI reconnaît (i) que vous ou vos Sociétés affiliées êtes les seuls et uniques titulaires des Marques du Client, (ii) qu'EFI n'est pas titulaire des autres droits, du titre ou des intérêts accompagnant les Marques du Client ou y étant attachés et (iii) que tout l'usage fait par EFI des Marques de Fabrique et tout le goodwill développé par EFI à leur égard prennent effet en votre faveur et en faveur de vos Sociétés affiliées.

10. Résiliation.

(a). La résiliation immédiate du présent Contrat peut être opérée dès la réception, par l'autre partie, d'une notification écrite lui étant remise (i) par EFI, si vous n'effectuez pas un paiement obligatoire n'incluant pas les Redevances de Maintenance, (ii) par la partie n'étant pas en situation de manquement, si vous ou EFI ne remédiez pas à une violation grave dans les 30 jours suivant la réception d'une notification écrite remise par la partie n'étant pas en situation de manquement, ou (iii) par EFI, si vous n'assurez plus la conduite d'une activité commerciale en pleine exploitation, faites l'objet d'une procédure volontaire ou involontaire de dépôt de bilan ou de liquidation qui n'est pas interrompue dans les 60 jours suivant le dépôt initial s'y rapportant, ou si un administrateur judiciaire est désigné par rapport à la quasi-totalité de vos actifs.

(b). Au moment de la résiliation, vous devez rapidement (i) verser à EFI toutes les redevances impayées et devenues exigibles avant la résiliation, (ii) lui renvoyer toutes les Informations confidentielles et le Produit et (iii) renvoyer les documents, programmes, manuels et autres articles en lien avec le Produit ou en découlant et que vous avez en votre possession ou sous votre contrôle. EFI doit réaliser des efforts commercialement raisonnables pour vous fournir les données exclusives vous appartenant dans le format qu'EFI utilisait pour les stocker au moment de la résiliation.

11. Droits d'audit.

EFI peut soumettre votre utilisation du Produit ou votre Accès au Produit à un audit. Un audit sera réalisé après le moment où une notification préalable vous est remise, pendant les heures normales de bureau et d'une manière ne causant pas à vos activités normales un dérangement dépassant les limites du raisonnable. Si l'audit révèle que vous utilisez le Produit ou y accédez d'une manière violant le présent Contrat, EFI peut vous facturer cet usage ou Accès avec les frais de retard, intérêts et dépenses associés à cet audit. Si vous ne réglez pas cette facture en temps utile, EFI peut alors exercer ses droits de résiliation et utiliser les autres droits ou recours placés à sa disposition.

12. Consentement à l'utilisation des données.

EFI may collect and use technical data and related information to facilitate providing and/or confirming authorized use of Products, Access, Professional Services, and/or Maintenance to and by you. Subject to EFI's then-current privacy policy (available at <https://www.efi.com/legal/privacy/>) and applicable laws and regulations, EFI may (i) use this information to improve its products, to provide customized services or technologies to you, and/or to confirm authorized use, (ii) transfer this information to EFI's affiliates, agents, and partners, and (iii) transfer this information to the United States and/or any other country where EFI or its affiliates, agents, and partners maintain facilities.

13. Compliance with Laws.

(a). Export Law Compliance. The Product and related technology, information, and materials are subject to the export laws and regulations of the United States. You shall comply with those and any other applicable export laws or regulations. You are solely responsible for obtaining any necessary export licenses and exemptions. The Product and related technology, information, and materials may not be exported or re-exported to any U.S.-embargoed country, to any person or entity on any list of prohibited parties designated by the U.S. government, or otherwise in violation of any export law or regulation.

(b). Compliance with Laws. You may only use the Product in compliance with all applicable laws and regulations. Upon written notice to you, EFI may modify or suspend your use of or Access to the Product as necessary to comply with any law or regulation. Both parties acknowledge their responsibilities and commitments to abide by and comply with international anti-corruption laws, including but not limited to the United States Foreign Corrupt Practices Act and the United Kingdom Anti-Bribery Act, and any amendments and regulations relating to those laws, in addition to each of our own ethical guidelines (EFI's Code of Conduct is available online at <http://ir.efi.com/committee-details/code-business-conduct-and-ethics>). Specifically, for example, no employee, or any individual or entity acting on behalf of or for the benefit of either EFI or Customer, may give or receive anything of value, or anything that may be perceived as valuable, to or from a government official or any other individual for the purpose of influencing any act, securing any improper advantage, or obtaining or retaining business.

14. General Provisions.

EFI peut regrouper et utiliser des données techniques et des informations s'y rapportant pour faciliter la fourniture des Produits, de l'Accès, des Services professionnels et/ou de la Maintenance vous étant accordés et/ou confirmez que vous êtes autorisé à les utiliser. Sous réserve de la politique sur la vie privée alors en vigueur d'EFI (disponible sur <https://www.efi.com/legal/privacy/>) ainsi que des lois et règlements applicables, EFI peut (i) utiliser ces informations pour améliorer ses produits, vous faire bénéficier de services ou technologies personnalisés et/ou confirmer que leur usage est autorisé, (ii) communiquer ces informations aux sociétés affiliées, préposés et associés d'EFI, et (iii) transférer ces informations aux États-Unis et/ou à tout autre pays où EFI ou ses sociétés affiliées, préposés et associés disposent d'installations.

13. Respect des Lois.

(a). Respect du droit en matière d'exportation. Le Produit ainsi que la technologie, les informations et les éléments s'y rapportant sont soumis aux lois et règlements des États-Unis. Vous devez les respecter et également vous plier aux autres lois ou règlements applicables en matière d'exportation. L'obtention des licences d'exportation et des exemptions nécessaires constitue une responsabilité vous incombant exclusivement. Le Produit ainsi que la technologie, les informations et les éléments s'y rapportant ne peuvent pas être exportés ou réexportés vers un pays sous embargo américain, en faveur d'une personne ou entité figurant sur une liste indiquée par le gouvernement américain et énumérant les parties frappées d'une interdiction, ou par d'autres moyens violant une loi ou réglementation sur l'exportation.

(b). Respect des Lois. Vous ne pouvez utiliser le Produit que dans le respect de l'ensemble des lois et règlements applicables. EFI peut modifier ou interrompre l'usage que vous faites du Produit ou l'Accès vous y étant accordé, après vous avoir adressé une notification écrite à cet égard et dans une mesure nécessaire au respect de toute loi ou tout règlement. Les deux parties prennent acte des responsabilités et engagements auxquels elles sont tenues et en vertu desquels elles doivent respecter et observer les lois à portée internationale contre la corruption qui incluent, de manière non limitative, la loi américaine contre les malversations étrangères [NdT : United States Foreign Corrupt Practices Act], la loi britannique contre la corruption [NdT : United Kingdom Anti-Bribery Act] ainsi que les amendements et les règlements concernant ces lois, et qui complètent chacune de nos propres consignes sur l'éthique (le Code de Conduite d'EFI peut être consulté en ligne sur <http://ir.efi.com/committee-details/code-business-conduct-and-ethics>). Plus particulièrement et par exemple, aucun employé ou aucune personne physique ou entité intervenant au nom ou en faveur d'EFI ou d'un Client ne peut accorder à un représentant gouvernemental ou une autre personne physique une chose de valeur ou une chose pouvant être perçue comme telle, ou recevoir de ce dernier ou cette dernière une chose de cette nature, afin d'influencer un acte, de bénéficier d'un avantage inapproprié ou alors de conclure ou conserver un contrat.

14. Dispositions générales.

(a). Taxes. Except with respect to income recognized by EFI, you are liable for all tariffs, duties, and taxes, however designated or levied, based on your possession, use of, or Access to the Product, this Agreement, and/or any Professional Services, including but not limited to sales, use, value added, excise, services, personal property, or other taxes.

(b). Governing Law. This Agreement is not governed by the 1980 UN Convention on Contracts for the International Sales of Goods or any other international treaty or convention. Rather, this Agreement is governed in all respects by the laws of the State of California, USA, without regard to conflicts of laws principles. For all disputes related to this Agreement, the Product, Access, or any services provided under this Agreement, each party consents to the exclusive personal jurisdiction and venue of the state and federal courts in and for Santa Clara County, California, USA.

(c). Severability; Interpretation. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by any court of competent jurisdiction, that provision will be fully severable and this Agreement will be construed and enforced as if it were not included. This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor or against either party. The captions are for convenience only and do not affect the scope, intent, or meaning of the provisions. Any failure or delay to enforce any provision of this Agreement will not be deemed a waiver of EFI's right to do so.

(d). No Assignment. Assignment or transfer of this Agreement in its entirety, including all Licenses purchased, whether voluntarily, by operation of law, or otherwise, requires EFI's prior written consent, which may be withheld, delayed, or conditioned in EFI's sole discretion, and may require payment of a License transfer fee. Partial assignment or transfer of this Agreement, including a portion of Licenses purchased, whether voluntarily, by operation of law, or otherwise, is prohibited. Any merger, consolidation or acquisition of Customer or other transfer of all or substantially all of the shares or assets of Customer is deemed to be an assignment under this Agreement. Any attempted assignment or transfer without EFI's consent is void.

(a). Taxes. Dans une mesure ne concernant pas les revenus reconnus par EFI, vous êtes tenu au paiement de l'ensemble des tarifs douaniers, droits et taxes, quels qu'en soient l'intitulé ou le mode de prélèvement, basés sur votre possession du Produit, l'usage que vous en faites ou l'Accès vous y étant accordé, sur le présent Contrat et/ou sur des Services professionnels et incluant, de manière non limitative, les taxes sur les ventes, d'utilisation, sur la valeur ajoutée, d'accises, de fourniture de services, sur les biens immobiliers ou d'une autre nature.

(b). Droit applicable. Le présent Contrat n'est pas régi par la Convention des Nations unies de 1980 sur les contrats de vente internationale de marchandises ou par tout autre traité ou toute autre convention à portée internationale. En revanche, le présent Contrat est, à tous les égards, régi par le droit de l'État de la Californie, États-Unis d'Amérique, d'une manière n'incluant pas ses principes sur les conflits de lois. Par rapport à tous les litiges relatifs au présent Contrat, au Produit, à l'Accès ou aux services fournis en vertu du présent Contrat, chaque partie accepte non seulement la saisine des juridictions étatiques et fédérales intervenant pour et dans le Comté de Santa Clara, en Californie, aux États-Unis d'Amérique, mais également leur compétence personnelle et exclusive.

(c). Autonomie des clauses ; Interprétation. Si une disposition du présent Contrat est déclarée illégale, nulle ou inopposable par une juridiction compétente, cette disposition peut être entièrement supprimée et le présent Contrat sera interprété et mis en œuvre comme si elle n'y avait pas été incluse. Le présent sera interprété avec justesse, dans le respect de ses modalités et sans faire l'objet d'une lecture stricte et favorable ou défavorable à l'une des parties. Les légendes ne sont indiquées que pour faciliter la lecture et n'ont pas d'incidence sur le champ d'application, l'intention ou le sens des dispositions. Tout défaut ou retard d'exécution d'une disposition du présent Contrat ne sera pas considéré comme une renonciation, par EFI, au droit lui permettant de l'exécuter.

(d). Incessibilité. L'opération de cession ou de transfert du présent Contrat, qui est envisagée volontairement, de plein droit ou autrement et d'une manière incluant toutes les Licences achetées, nécessite l'octroi par EFI d'un consentement préalable et écrit, qu'EFI peut refuser, retarder ou assortir de conditions à sa libre appréciation et peut nécessiter le paiement de frais de transfert de la Licence. Toute opération de cession ou de transfert partiel du présent Contrat, incluant une partie des Licences achetées et envisagée volontairement, de plein droit ou autrement, est interdite. Toute fusion, concentration ou acquisition dont le Client fait l'objet ou tout autre transfert de la totalité ou quasi-totalité des actions ou actifs du Client sont, en vertu du présent Contrat, considérés comme une cession. Toute tentative de cession ou transfert faite sans le consentement d'EFI est frappée de nullité.

(e). Language. This Agreement is only in English, which is controlling in all respects. If EFI has provided you with a translation, the translation is for your convenience only and the English-language version, not the translation, is legally binding. If there are any conflicts or inconsistencies between the English-language version and a translation, the English-language version controls. Any notices relating to this Agreement must be in writing in English.

(f). Entire Agreement and Modification. With respect to the subject matter or any term of this Agreement: (i) this Agreement constitutes the entire understanding of the parties; (ii) this Agreement supersedes all prior and contemporaneous communications and understandings (including but not limited to discussions, representations, warranties, inducements, promises, and agreements); (iii) there are no such communications or understandings not explicitly contained herein; (iv) neither party has relied on any such communications or understandings except as explicitly contained in this Agreement; and (v) any waiver, modification, or amendment will be effective only if in a writing signed by the parties, where email does not constitute a signed writing.

(g). Orders and Acceptance. All orders for Products or Professional Services made pursuant to this Agreement are non-cancelable, non-refundable and must be submitted at least fifteen (15) days prior to the requested order delivery date. For any given order, you shall make the order and corresponding payment to EFI or its subsidiary or Affiliate depending upon which company is making the sale of Products or Professional Services for that order. Orders are not binding without written notification of acceptance from EFI. This Agreement governs all subsequent orders, and nothing contained in Customer's purchase orders or other communications will in any way modify this Agreement.

(h). Independent Contractors. You and EFI, and our respective employees and representatives, are and will be independent contractors with respect to the other party. Neither party by virtue of this Agreement has any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

(i). Survival. The provisions of this Agreement that relate to fees and payment terms, ownership of intellectual property and proprietary rights, export law compliance, termination, confidentiality, infringement indemnification, warranty disclaimers, limitation of liability, governing law, survivability, force majeure, severability and interpretation, definitions, modification and use of software products owned or distributed by Microsoft or Oracle included in an EFI Product will survive termination of this Agreement.

(e). Langue. Le texte, exclusivement rédigé en anglais, du présent Contrat, doit faire foi à tous les égards. Si EFI vous a fourni une traduction, elle ne vous est présentée qu'à des fins pratiques et la force obligatoire est attachée à la version anglaise et non pas à la traduction. En cas de conflits ou de divergences entre la version anglaise et une traduction, la version anglaise prévaudra. Les notifications relatives au présent Contrat doivent être rédigées en anglais.

(f). Intégralité du contrat et modification. Pour ce qui concerne l'objet ou une modalité quelconque du présent Contrat : (i) le présent Contrat représente l'intégralité de la convention unissant les parties ; (ii) le présent Contrat l'emporte sur l'ensemble des conventions et communications antérieures et actuelles (incluant, de manière non limitative, les entretiens, les déclarations, les garanties, les incitations, les promesses et les accords) ; (iii) il n'existe pas de communications ou conventions de cette nature qui ne sont pas expressément stipulées dans les présentes ; (iv) aucune des parties ne s'est appuyée sur de telles communications ou conventions, à moins qu'elle ne l'ait fait d'une manière expressément stipulée par le présent Contrat ; et (v) une renonciation, une modification ou un avenant ne prennent effet que s'ils sont rapportés par écrit et signés par les parties, étant précisé qu'un e-mail n'est pas constitutif d'un écrit signé.

(g). Commandes et acceptation. Toutes les commandes de Produits ou de Services professionnels passées en vertu du présent Contrat ne sont ni annulables ni remboursables et doivent être présentées au moins quinze (15) jours avant la date de livraison demandée au titre de la commande. Vous devez, par rapport à toute commande, la présenter, avec le paiement s'y rapportant, à EFI, à sa filiale ou à sa Société affiliée, en fonction la société assurant la vente des Produits ou Services professionnels visés par cette commande. EFI n'est pas liée par les commandes, tant qu'elle n'a pas indiqué par écrit qu'elles les accepte. Le présent Contrat régit toutes les commandes ultérieures et ne sera en aucune manière modifié par le contenu des bons de commande ou autres communications du Client.

(h). Entrepreneurs indépendants. À l'égard de toute autre partie, vous et EFI, ainsi que nos salariés et représentants respectifs, êtes et serez des entrepreneurs indépendants. En vertu du présent Contrat, aucune partie n'est titulaire d'un droit, d'un pouvoir ou d'une capacité permettant d'agir ou de créer une obligation expresse ou tacite au nom de l'autre partie.

(i). Survie. Les dispositions du présent Contrat relatives aux redevances et modalités de paiement, au titulaire des droits exclusifs et de propriété intellectuelle, au respect du droit en matière d'exportation, à la résiliation, à la confidentialité, au dédommagement en cas de contrefaçon, à la limitation des garanties, à la limite de responsabilité, au droit applicable, à la capacité de survie, à la force majeure, à l'autonomie des clauses et à l'interprétation et aux définitions et portant également sur la modification et l'utilisation des produits logiciels détenus ou distribués par Microsoft ou Oracle et faisant partie d'un Produit EFI survivront à la résiliation du présent Contrat.

(j). Force Majeure. Except for payment of monies, no party will be liable for its failure to perform any obligations on account of strikes, shortages, failure or acts of suppliers, riots, insurrection, fires, flood, storm, explosions, acts of God, war, military operations, acts of terrorism whether actual or threatened, acts of a public enemy, epidemics, quarantines, governmental action, labor conditions, earthquakes, material shortages, or any cause that is similar to those enumerated or beyond the reasonable control of the affected party.

(k). U.S. Government Restricted Rights. Use, duplication, or disclosure of the Product by the United States Government is subject to restrictions as set forth in FAR 12.212 or DFARS 227.7202-3 - 227.7202-4 and, to the extent required under U.S. federal law, the minimum restricted rights as set out in FAR 52.227-14, Restricted Rights Notice (June 1987) Alternate III(g)(3) (June 1987) or FAR 52.227-19 (June 1987). To the extent any technical data is provided pursuant to the Agreement, such data is protected per FAR 12.211 and DFARS 227.7102-2 and to the extent explicitly required by the U.S. Government, is subject to limited rights as set out in DFARS 252.227.7015 (November 1995) and DFARS 252.227-7037 (September 1999). If any of the above-referenced agency regulations are modified or superseded, the subsequent equivalent regulation shall apply. The name of the Contractor is Electronics For Imaging, Inc.

15. Product-Specific and Third Party Provisions.

If you have obtained a License for certain Products, some of the following terms and conditions might apply to you.

(a). Products that include Microsoft Software (such as Windows or SQL Server).

(i). The term "Product" as used in this Agreement includes certain Microsoft software and related documentation, associated media, "online" or electronic documentation, upgrades and updates. EFI does not own these products and the use thereof is subject to certain rights and limitations.

(ii). Microsoft is not responsible for any support services for the Product. Notwithstanding the foregoing, in the event any support issues arise related to the Microsoft software that cannot be resolved by EFI, support to you may be provided by Microsoft pursuant to the Microsoft Premier support services agreement, or a similar type agreement, between EFI and Microsoft.

(j). Force majeure. Sauf pour ce qui concerne le versement de sommes d'argent, aucune partie n'engagera sa responsabilité lorsqu'elle manque à des obligations en raison de grèves, de pénuries, de manquements ou d'agissements de fournisseurs, d'émeutes, d'une insurrection, d'incendies, d'une inondation, d'une tempête, d'explosions, de catastrophes naturelles, d'une guerre, d'opérations militaires, d'actes terroristes perpétrés ou de menaces d'actes terroristes, d'actes d'un ennemi public, d'épidémies, de quarantaines, d'une action gouvernementale, de conditions de travail, de tremblements de terre, de pénuries de matériaux ou d'une cause similaire à celles étant énumérées ou échappant au contrôle raisonnable de la partie concernée.

(k). Droits limités du gouvernement américain. L'utilisation, la copie ou la divulgation du Produit par le gouvernement des États-Unis d'Amérique sont soumises à des restrictions énoncées par la FAR [NdT : *Federal Acquisition Regulation*] 12.212 ou le DFARS [NdT : *Defense Federal Acquisition Regulation Supplement*] 227.7202-3 - 227.7202-4 et, lorsqu'une loi fédérale américaine l'exige, aux droits limités minimums posés par la FAR 52.227-14, le *Restricted Rights Notice* (juin 1987) *Alternate III(g)(3)* (juin 1987) ou la FAR 52.227-19 (juin 1987). Lorsque des données techniques sont communiquées en vertu du Contrat, ces données sont protégées par la FAR 12.211 et le DFARS 227.7102-2 et, quand le gouvernement américain l'exige expressément, sont soumises aux droits limités qu'énoncent le DFARS 252.227.7015 (novembre 1995) et le DFARS 252.227-7037 (septembre 1999). Si l'un des règlements relatifs aux agences et visés ci-dessus est modifié ou remplacé, le règlement équivalent et y faisant suite doit être applicable. Le nom de l'Entrepreneur est Electronics For Imaging, Inc.

15. Dispositions particulières au Produit et sur les tiers.

Si vous avez obtenu une Licence par rapport à certains Produits, il se peut alors qu'une partie des modalités et conditions figurant ci-dessous vous soit applicable.

(a). Produits incluant un Logiciel Microsoft (comme Windows ou SQL Server).

(i). Lorsque la notion de « Produit » est utilisée dans le présent Contrat, elle englobe certains logiciels Microsoft et leur documentation, les supports s'y rapportant, la documentation en ligne ou électronique, les mises à niveau et les mises à jour. EFI n'est pas propriétaire de ces produits ; leur utilisation est soumise à certains droits et certaines limites.

(ii). Microsoft n'est pas responsable des services d'assistance du Produit. Indépendamment de ce qui précède, au cas où le logiciel Microsoft donnerait lieu à des problèmes d'assistance ne pouvant pas être résolus par EFI, Microsoft peut alors vous accorder une assistance en vertu de l'accord Microsoft Premier de services d'assistance ou d'un accord d'un type similaire conclu entre EFI et Microsoft.

(iii). The Product is not fault-tolerant. The Product is not designed or intended for use in any situation where failure or fault of any kind of the Product could lead to death or serious bodily injury of any person, or to severe physical or environmental damage (“High Risk Use”). You are not licensed to use the Product in, or in conjunction with, High Risk Use. High Risk Use is **STRICTLY PROHIBITED**. High Risk Use includes, for example, the following: aircraft or other modes of human mass transportation, nuclear or chemical facilities, and Class III medical devices under the Federal Food, Drug, and Cosmetic Act. You shall not use the Product in, or in connection with, any High Risk Use. You are responsible for taking all appropriate measures to ensure the safe use of the Product if used for such purposes and EFI and its suppliers, including Microsoft, will not be liable for any claims or damages arising from such use.

(b). Products that include Software Products Owned or Distributed by Oracle.

(i). The term “Product” as used in this Agreement includes certain software products provided by EFI that are owned or distributed by Oracle USA, Inc. (“Oracle”) and related program documentation (the “Oracle Programs”); EFI does not own the Oracle Programs and the use thereof is subject to certain rights and limitations. The Oracle Programs included herein are subject to a restricted use license and can only be used in conjunction with the Product. Oracle or its licensors retain all ownership of intellectual property rights to the Oracle Programs. You are hereby notified that Oracle is a supplier of EFI and a third-party beneficiary to this Agreement to the extent that this Agreement contains provisions which relate to your use of the Oracle Programs. Such provisions are made expressly for the benefit of Oracle and are enforceable by Oracle in addition to EFI.

(ii). You acknowledge and agree that you are prohibited from (a) publishing any results of benchmark tests run on the Oracle Programs, (b) using the Oracle Programs for rental, timesharing, subscription service, hosting, or outsourcing, and (c) removing or modifying any program markings or notice of Oracle’s or Oracle’s licensors’ proprietary rights.

(iii). To the extent not prohibited by law, in no event will Oracle be liable for (a) any damages, whether direct, indirect, incidental, special, punitive or consequential, and (b) any loss of profits, revenue, data or data use, arising from the use of the Oracle Programs.

(iii). Le Produit n’est pas tolérant aux pannes. Le Produit n’est pas conçu ou prévu pour être utilisé lorsque, en cas de défaillance ou panne en tout genre, il risque d’entraîner le décès d’une personne ou de lui faire subir un grave préjudice corporel ou encore de causer un dommage matériel ou environnemental à caractère sérieux (« Usage à Haut Risque »). Vous n’êtes pas autorisé à faire un Usage à Haut Risque du Produit ou à y avoir recours dans le cadre d’un Usage à Haut Risque. Tout Usage à Haut Risque est **STRICTEMENT INTERDIT**. Par exemple, un Usage à Haut Risque inclut ce qui suit : un aéronef ou les autres moyens de transport collectif de personnes, les centrales nucléaires ou chimiques ainsi que les appareils médicaux de Catégorie III relevant de la loi sur les produits alimentaires, les médicaments et les produits cosmétiques [NdT : *Federal Food, Drug and Cosmetic Act*] Il vous est interdit de faire un Usage à Haut Risque du Produit ou d’y avoir recours dans le cadre d’un Usage à Haut Risque. Si vous avez recours au Produit dans un but de cette nature, vous êtes tenu de prendre toutes les mesures appropriées pour veiller à ce qu’il soit utilisé sans danger ; EFI et ses fournisseurs, qui incluent Microsoft, n’engageront pas leur responsabilité en raison des demandes ou dommages causés par un tel usage.

(b). Produits incluant des Produits logiciels détenus ou distribués par Oracle.

(i). Lorsque la notion de « Produit » est utilisée dans le présent Contrat, elle inclut certains produits logiciels fournis par EFI et détenus ou distribués par Oracle USA, Inc. (« Oracle ») ainsi que la documentation sur le programme les accompagnant (les « Programmes Oracle »); EFI n’est pas propriétaire des Programmes Oracle et l’usage en étant fait est soumis à certains droits et certaines limites. Les Programmes Oracle incluent dans les présentes sont soumis à une licence d’utilisation limitée et ne peuvent être utilisés que par rapport au Produit. Oracle ou ses concédants conservent la pleine propriété des droits de propriété intellectuelle sur les Programmes Oracle. Il vous est, par les présentes, précisé que quand le présent Contrat contient des dispositions sur l’usage que vous faites des Programmes Oracle, Oracle est alors un fournisseur d’EFI et un tiers bénéficiaire du présent Contrat. Ces dispositions sont expressément stipulées en faveur d’Oracle, qui peut les faire exécuter tout comme EFI.

(ii). Vous reconnaissez et acceptez qu’il vous est interdit (a) de publier les résultats des tests d’évaluation effectués sur les Programmes Oracle, (b) d’utiliser les Programmes Oracle pour une location, des arrangements en temps partagé, un service d’abonnement, un hébergement ou une sous-traitance et (c) d’enlever ou modifier les mentions sur le programme ou tout avis sur les droits exclusifs d’Oracle ou de concédants d’Oracle.

(iii). Lorsque la loi ne l’interdit pas, Oracle ne sera en aucune manière (a) tenue au paiement de dommages-intérêts directs, indirects, accessoires, particuliers, punitifs ou consécutifs et (b) responsable d’une perte de bénéfices, de revenus, de données ou d’usage de données causés par l’utilisation des Programmes Oracle.

(iv). You hereby permit EFI to (a) report any audit results obtained pursuant to this Agreement to Oracle to the extent such results are related to the Oracle Programs, or (b) assign such rights to audit your use of the Oracle Programs to Oracle.

(v). You are hereby notified that some Oracle Programs may include source code that Oracle may provide as part of its standard shipment of such programs, which source code is governed by the terms of this Agreement.

(vi). The Computer Information Transactions Act does not apply to this Agreement.

(vii). You acknowledge and agree that in the event a third party technology may be appropriate or necessary for use with some Oracle Programs, it will be specified in the Product package documentation or as otherwise noted, and such third party technology is licensed to you only for use with the Product under the terms of the third party license agreement specified in the Product package documentation or as otherwise noted, and not under the terms of this Agreement.

(c). E-commerce Applications.

(i). Use at Site Location. You may use or Access the Product only for production activity at the Site Location. If you have more than one production facility, you may not use or Access the Product for production activity at any facility other than the Site Location(s) for which you have been granted a license.

(ii). Links. If you have obtained a License for EFI e-Commerce Software, you represent and warrant that you have the right to create and maintain, or to allow EFI to create and maintain, all Links to the Product and any other websites mutually agreed upon between you and EFI. You shall incorporate EFI's "Powered by EFI" logo on any website utilizing EFI e-commerce Software.

(ii). Relationships with Third Parties. Use of or Access to the e-Commerce Product does not create a contract or other obligation between you and any of your customers or between EFI and any of your customers or vendors. EFI cannot and does not guarantee the performance of any of your customers, vendors, or other third parties. EFI will have no liability in connection with any dispute between you and any third party, and any third party dispute will not relieve you of any obligation to EFI under this Agreement.

(iv). En vertu des présentes, vous autorisez EFI (a) à communiquer à Oracle les résultats d'un audit obtenus dans le cadre du présent Contrat, lorsque ces résultats sont liés aux Programmes Oracle, ou (b) à céder à Oracle ces droits d'audit sur l'usage que vous faites des Programmes Oracle.

(v). Il vous est indiqué, par les présentes, que certains Programmes Oracle peuvent inclure un code source pouvant être fourni par la société Oracle quand elle procède à l'envoi standard de ces programmes, étant précisé que le code source est régi par les modalités du présent Contrat.

(vi). La loi sur les transactions informatiques [NdT : *Computer Information Transactions Act*] n'est pas applicable au présent Contrat.

(vii). Vous reconnaissez et acceptez qu'au cas où il pourrait être approprié ou nécessaire d'utiliser une technologie tiers avec certains Programmes Oracle, celle-ci sera indiquée par la documentation sur la formule du Produit ou par un autre moyen précisé ; cette technologie tiers vous est uniquement concédée sous licence pour que vous puissiez l'utiliser avec le Produit en vertu des modalités de l'accord de licence tiers indiqué par la documentation sur la formule du Produit ou par un autre moyen précisé, et non pas en vertu des modalités du présent Contrat.

(c). Utilisations dans le Commerce électronique.

(i). Utilisation sur un Emplacement du Site. Vous ne pouvez utiliser le Produit ou y avoir Accès que pour conduire une activité de production sur l'Emplacement du Site. Si vous disposez de plusieurs locaux de production, vous ne pouvez pas, dans le cadre d'une activité de production, utiliser le Produit ou y avoir Accès dans des locaux ne correspondant pas à l'Emplacement ou aux Emplacements du Site pour lesquels une licence vous a été accordée.

(ii). Liens. Si vous avez obtenu une Licence pour un Logiciel EFI de Commerce électronique, vous déclarez et garanzissez avoir le droit de créer tous les Liens conduisant au Produit et aux autres sites Internet dont vous et EFI avez mutuellement convenu et d'en assurer la maintenance ou avoir le droit de permettre à EFI de les créer et d'en assurer la maintenance. Vous devez ajouter le logo d'EFI « Powered by EFI » sur tout site Internet utilisant un Logiciel EFI de commerce électronique.

(ii). Relations avec les tiers. L'utilisation du Produit de Commerce électronique ou l'Accès y étant accordé ne crée pas un contrat ou une autre obligation entre vous et l'un de vos clients ou entre EFI et l'un de vos clients ou prestataires. EFI ne peut et ne souhaite pas accorder de garanties par rapport aux performances de l'un quelconque de vos clients ou prestataires ou des autres tiers. EFI n'engagera pas sa responsabilité par rapport à un litige vous opposant à un tiers et le litige d'un tiers ne vous affranchira pas d'une obligation que le présent Contrat vous attribue à l'égard d'EFI.

(d). Open Source Software. Some versions of the Products contain open source software. Open source software is licensed to you under that software's own license terms, which can be found in the "Help," "About," "Read Me," or other specified portion of the Product. You are responsible for complying with any terms and conditions applicable to any open source software. To the extent that this Agreement imposes greater restrictions on you than the open source software license terms, the open source software license terms control, but solely with respect to the open source software.

16. Definitions.

“**Access**” means the connection to and use of a Product by Customer via an Internet web browser under the terms of this Agreement.

“**Affiliate**” means any entity directly or indirectly controlling, controlled by, or under common control with a party.

“**Agreement**” means this License and Purchase Agreement.

“**Confidential Information**” means any information that you have been informed or have a reasonable basis to believe is confidential to EFI, whether provided to you before, on, or after this Agreement, including, for example, ideas, programs, data, software, systems configurations, reports, projections, initiatives, customer data, or other business or technical information. Confidential Information includes any written information marked as confidential or proprietary, and any information disclosed orally or visually that is identified as confidential or proprietary at or around the time of its disclosure. All EFI Intellectual Property Rights and technical information related to the Product are Confidential Information whether or not marked as confidential or proprietary.

“**Customer Marks**” means your name and logo or other trademarks, service marks, or other marks.

“**Documentation**” means user's guides, manuals, and other information related to the Product or Professional Services.

“**EFI**” means Electronics For Imaging, Inc., Electronics for Imaging BV, Electronics For Imaging United Kingdom Limited, Metrics Sistemas De Informacao Ltda., Alphagraph Team GmbH, or another EFI subsidiary or Affiliate referred to in the Purchase Documentation.

“**Excluded License**” means any license that requires as a condition of use, modification, and/or distribution of software subject to the Excluded License, that such software or other software combined and/or distributed with such software be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making derivative works, or (iii) redistributable at no charge.

(d). Logiciel open source. Certaines versions des Produits contiennent un logiciel open source. Un logiciel open source vous est concédé en vertu des propres modalités de licence de ce logiciel, qui figurent dans la partie « Aide », « Objet » ou « Lisez-moi » ou dans une autre partie indiquée du Produit. Vous êtes tenu de respecter les modalités et les conditions applicables à tout logiciel open source. Lorsque le présent Contrat vous impose des restrictions plus limitatives que celles des modalités de licence du logiciel open source, ces modalités de licence du logiciel open source devront alors prévaloir, mais uniquement par rapport au logiciel open source.

16. Définitions.

« **Accès** » désigne la connexion au Produit, que le Client fournit par un navigateur Internet et sur le fondement des modalités du présent Contrat, et l'utilisation de ce Produit.

« **Société affiliée** » désigne une entité qui, de manière directe ou indirecte, contrôle une partie, est contrôlée par une partie, ou est placée avec une partie sous un contrôle commun.

« **Contrat** » désigne le présent Contrat de Licence et d'Achat.

« **Informations confidentielles** » désigne les informations qui, d'après les éléments vous ayant été communiqués ou qui, d'après ce que vous pouvez estimer raisonnablement, ont pour EFI une nature confidentielle, qu'elles vous aient été fournies avant la conclusion du présent Contrat, lors de sa conclusion ou après sa conclusion et incluant, par exemple, des idées, des programmes, des données, des logiciels, des configurations de systèmes, des rapports, des projections, des initiatives, des données sur les clients ou d'autres informations commerciales ou techniques. Les Informations confidentielles englobent les informations écrites et revêtues d'une mention indiquant leur nature confidentielle ou exclusive, ainsi que les informations divulguées verbalement ou visuellement et qui, au moment ou vers le moment de leur divulgation, sont déclarées confidentielles. L'ensemble des Droits de Propriété intellectuelle et des informations techniques d'EFI concernant le Produit sont des Informations confidentielles, indépendamment du point de savoir si une mention indique ou non leur nature confidentielle ou exclusive.

« **Marques du Client** » désigne vos nom et logo ou vos autres marques de fabrique, marques de service ou autres marques.

« **Documentation** » désigne les guides pour utilisateurs, les manuels et les autres informations sur le Produit ou les Services professionnels.

« **EFI** » désigne Electronics For Imaging, Inc., Electronics for Imaging BV, Electronics For Imaging United Kingdom Limited, Metrics Sistemas De Informacao Ltda., Alphagraph Team GmbH ou une autre filiale ou Société affiliée d'EFI mentionnée par la Documentation d'Achat.

« **Licence exclue** » désigne toute licence exigeant comme une condition à l'utilisation, à la modification et/ou à la distribution du logiciel soumis à une Licence exclue, que ce logiciel ou tout autre logiciel y étant associé et/ou avec lequel il est distribué (i) soit divulgué ou distribué dans un format code source, (ii) soit concédé sous licence afin de créer des œuvres dérivées ou (iii) puisse être redistribué à titre gratuit.

“**Fees**” means the fees for the Product, Access, or Professional Services, including any fees set forth in your Purchase Documentation, License fees, hardware fees, Term License Fees, Hosting Fees, Maintenance Fees, or other applicable fees. Unless otherwise specified in the Purchase Documentation, payments for any fees must be made within 30 days of the date of the invoice in the currency listed in the Purchase Documentation. Any amount not paid when due is subject to a service charge equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by law, and EFI may defer shipments of Products and/or provision of services until all overdue payments are received. Payment of the service charge will not foreclose any other right that EFI may have as a consequence of late payment. In the event that EFI is required to take legal action to collect unpaid amounts, and EFI is successful in such action, Customer shall reimburse all costs and reasonable attorneys’ fees incurred by EFI in such action.

“**Hosting Fees**” means the hosting fees described in the Purchase Documentation. Unless otherwise specified in the Purchase Documentation, payment obligations for Hosting Fees commence on the first day of the next month following 30 days from the Start Date.

“**Initial Term**” means the three-year period of time beginning on the Start Date.

“**Intellectual Property Rights**” means, individually or collectively, any patent, copyright, trademark, service mark, trade secret, trade name, or other intellectual property right.

“**IP Claim**” means a lawsuit filed against you by a third party that is not a patent assertion entity or non-practicing entity.

“**License**” means the license granted to you for the Product you have obtained.

“**License Key**” means a programming code included in the Product that, if executed or deactivated, renders the Product or portions of it inoperable.

“**Link**” means a hypertext reference that, when activated, moves users from one website to another on the Internet.

« **Redevances** » désigne les frais relatifs au Produit, à l’Accès ou aux Services professionnels et incluant les frais indiqués par votre Documentation d’Achat, les redevances de Licence, les frais associés au matériel, les Redevances de la Licence à Durée déterminée, les Redevances d’Hébergement, les Redevances de Maintenance ou les autres frais applicables. À moins que la Documentation d’Achat n’indique le contraire, le paiement des frais doit être effectué dans les 30 jours suivant la date de la facture et dans la devise indiquée par la Documentation d’Achat. Tout montant impayé à l’échéance est alourdi de frais de service correspondant à un et demi pour cent (1,5 %) par mois ou au montant maximum autorisé par la loi, étant précisé que le montant le plus faible l’emportera et qu’EFI peut reporter les envois de Produits et/ou la fourniture de services au moment où tous les montants impayés sont reçus. Le paiement des frais de service n’entraînera pas l’extinction de tout autre droit dont EFI pourrait être titulaire en raison d’un paiement tardif. Au cas où EFI serait tenue d’engager une action en justice pour recouvrer les montants impayés et si EFI obtient gain de cause dans le cadre de cette action, le Client doit rembourser à EFI tous les frais et les honoraires raisonnables d’avocat qu’elle a engagés dans l’engagement de cette action.

« **Redevances d’Hébergement** » désigne les redevances d’hébergement décrites par la Documentation d’Achat. À moins que la Documentation d’Achat n’indique le contraire, les obligations de paiement des Redevances d’Hébergement prennent effet le premier jour du mois tombant après l’écoulement du délai de 30 jours qui court après la Date de Départ

« **Durée initiale** » désigne la période de trois ans courant dès la Date de Départ.

« **Droits de Propriété intellectuelle** » désigne, tant individuellement que collectivement, un brevet, un copyright, une marque de fabrique, une marque de service, un secret d’affaires, un nom commercial ou tout autre droit de propriété intellectuelle.

« **Demande relevant de la PI** » désigne l’action en justice qu’engage contre vous un tiers n’étant pas une entité de mise en œuvre de brevets ou une entité ne souhaitant pas exploiter son brevet.

« **License** » désigne la licence qui vous est accordée au titre du Produit que vous avez obtenu.

« **Clé de License** » désigne le code de programmation qui fait partie du Produit et qui, s’il est annulé ou désactivé, rend le Produit ou certaines de ses parties inutilisables.

« **Lien** » désigne la référence hypertexte qui, une fois activée, permet aux utilisateurs d’Internet de passer d’un site web à l’autre.

“**Maintenance**” means (i) correction of material defects so that the Product will operate materially in conformity with the warranties in this Agreement, (ii) periodic updates that incorporate corrections of material defects and fixes of minor bugs in the Product, (iii) telephone or email/electronic consultation services regarding the use of the Product during EFI’s standard support hours, and (iv) enhancements and/or revisions to software components of the Product, which are subject to additional charge unless they are provided at no charge to substantially all other licensees.

“**Maintenance Fees**” means the support and/or maintenance fees charged by EFI and/or a third party for the Product. Unless otherwise specified in the Purchase Documentation, payment obligations for Maintenance Fees commence on the first day of the next month following 30 days from the Start Date and continue for 12 consecutive months thereafter, subject to any Maintenance renewal term(s). Any use of a virtual private network or other requirement that requires EFI to act outside of its normal processes in order to provide Maintenance to you may be subject to additional fees.

“**Maintenance Renewal Date**” means the anniversary of the start of the Maintenance coverage period stated on the first Software Maintenance invoice that EFI issued to you, whether issued pursuant to this Agreement or a prior agreement or Purchase Documentation.

“**Product**” means Software or hardware, and may also include third party software and documentation, downloads, on-line materials, bug fixes, patches, releases, release notes, updates, upgrades, technical support materials, and information related to the EFI software or hardware.

“**Professional Service(s)**” means any training, installation, implementation, customization and/or other professional services provided by EFI to Customer.

“**Purchase Documentation**” means the purchase order, investment summary, statement of work, written agreement, or other documentation executed by you by which you agreed to obtain a license, Product, or service from EFI or one of EFI’s partners.

“**Renewal Term**” means the three-year period following the Initial Term or another Renewal Term unless specified otherwise in your Purchase Documentation. Fees for any Renewal Term may be increased to EFI’s then-current fees.

“**Site Location**” means the printing plant or facility specified in the Purchase Documentation.

« **Maintenance** » désigne (i) la correction des graves défauts afin que le Produit fonctionne d’une manière globalement conforme aux garanties stipulées par le présent Contrat, (ii) les mises à jour régulières incluant la correction des graves défauts et des anomalies mineures du Produit, (iii) les services de consultation par e-mail/électronique ou par téléphone portant sur l’utilisation du Produit et fournis pendant les heures d’ouverture de l’assistance standard d’EFI et (iv) les améliorations et/ou révisions dont les composants logiciels du Produit font l’objet et donnant lieu à des frais supplémentaires, sauf si elles sont accordées gratuitement à la quasi-totalité des autres licenciés.

« **Redevances de la Maintenance** » désigne les frais d’assistance et/ou de maintenance facturés par EFI et/ou un tiers au titre du Produit. À moins que la Documentation d’Achat n’indique le contraire, les obligations de paiement des Redevances de Maintenance prennent effet le premier jour du mois tombant après l’écoulement du délai de 30 jours qui court après la Date de Départ et sont maintenues pendant la période de 12 mois courant par la suite, sous réserve d’une ou plusieurs durées de reconduction de la Maintenance. Toute utilisation d’un réseau privé virtuel ou toute autre exigence obligeant EFI à intervenir en dehors du cadre de ses procédés normaux pour vous faire bénéficier d’une Maintenance peut donner lieu à des frais supplémentaires.

« **Date de Reconduction de la Maintenance** » désigne l’anniversaire du jour où a débuté la période de couverture de la Maintenance indiquée par la première facture de Maintenance du Logiciel vous étant adressée par EFI, qu’elle ait été présentée en vertu du présent Contrat ou d’un accord antérieur ou encore de la Documentation d’Achat.

« **Produit** » désigne le Logiciel ou le matériel et peut également englober les logiciels et la documentation d’un tiers, des téléchargements, des données en ligne, les corrections d’anomalies, des rustines, des versions, les renseignements accompagnant une version, des mises à jour, des mises à niveau, des données d’assistance technique et des informations sur le logiciel ou le matériel d’EFI.

« **Service(s) professionnel(s)** » désigne les services de formation, d’installation, d’implémentation, de personnalisation et/ou les autres services professionnels qu’EFI fournit au Client.

« **Documentation d’Achat** » désigne le bon de commande, le résumé sur l’investissement, l’énoncé des travaux, l’accord écrit ou toute autre documentation que vous avez signés et en vertu desquels vous acceptez de recevoir une licence, un Produit ou un service fournis par EFI ou l’un des partenaires d’EFI.

« **Durée de Reconduction** » désigne la période de trois ans courant après la Durée initiale ou toute autre Durée de Reconduction, sauf si votre Documentation d’Achat le prévoit autrement. Les Redevances prévues au titre d’une Durée de Reconduction peuvent être augmentées à la lumière des redevances alors en vigueur d’EFI.

« **Emplacement du Site** » désigne l’installation ou les locaux d’impression indiqués par la Documentation d’Achat.

“**Software**” means the EFI software listed on the Purchase Documentation or licensed to you under this Agreement.

“**Start Date**” means the Effective Date of the Purchase Documentation or the date the Product is made available to you, whichever is later.

“**Term License Fees**” means the term license fees for the Product described in the Purchase Documentation, the payment of which entitles you to Maintenance at no additional charge. Unless otherwise specified in the Purchase Documentation, payment obligations for Term License Fees commence on the Start Date.

“**Third Party IP Rights**” means a third party’s U.S. patent rights.

“**Work Product**” means any and all ideas, concepts, and Intellectual Property Rights related in any way to the techniques, knowledge, and processes of the Product, Services, and deliverables provided by EFI, including any integration to third party products, whether or not developed for you.

“**You**”, “**you**” or “**Customer**” means the person or entity that obtained the Product under this Agreement and that is agreeing to be bound by this Agreement.

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« **Redevances de la Licence à Durée déterminée** » désigne les redevances de la licence à durée déterminée du Produit décrites par la Documentation d’Achat et dont le paiement vous ouvre droit à une Maintenance sans frais supplémentaires. Sauf si la Documentation d’Achat le prévoit autrement, les obligations de paiement des Redevances de la Licence à Durée déterminée prennent effet à la Date de Départ.

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« **Ouvrage** » désigne une partie quelconque et l’ensemble des idées, des concepts et des Droits de Propriété intellectuelle ayant un lien quelconque avec les techniques, les connaissances et les procédés accompagnant le Produit, les Services et les livrables fournis par EFI et incluant l’intégration de produits tiers ayant ou non été élaborés pour vous.

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(c). Term License. If you are being granted a term License, except as otherwise specified on the Purchase Documentation, such License has an Initial Term of three (3) years from the Start Date. If you do not provide written notice of termination to EFI at least 90 days before the end of the Initial Term or any Renewal Term, the term will automatically renew at EFI's then-current Fees. Only you, your employees or authorized independent contractors, and your end users, as applicable, may Access the Product, and only for your business. You are solely responsible for ensuring that data entry is timely, accurate, and reflects your requirements. You shall indemnify and hold EFI harmless from any liability, damages, or costs arising from data entered by you or your end users or on your behalf.

(d). Third-Party Materials. Some third-party materials distributed with the Product may be subject to other terms and conditions, which are typically found in a separate license agreement or "Read Me" file provided with those third-party materials. The License does not apply to any third-party software except as specified herein.

(e). Unauthorized Use. THE PRODUCT MAY CONTAIN A LICENSE KEY TO PREVENT UNAUTHORIZED USE AND EFI MAY EXECUTE OR DEACTIVATE THE LICENSE KEY UPON TERMINATION OF YOUR LICENSE. YOU ACKNOWLEDGE THAT THE LICENSE KEY IS NOT A VIRUS, AND THAT EXECUTION OR DEACTIVATION OF THE LICENSE KEY MAY RENDER THE PRODUCT OR A PORTION OF IT INOPERABLE. IF THE LICENSE KEY IS EXECUTED OR DEACTIVATED AS SPECIFIED IN THIS AGREEMENT, YOU MAY BE OBLIGATED TO PAY EFI'S THEN-CURRENT FEE TO REACTIVATE THE PRODUCT.

2. Installation and Professional Services.

(a). Installation. Unless specified in the Purchase Documentation, the installation and implementation of the Product is your exclusive responsibility. EFI has no responsibility to modify the Product to cause it to function or operate on any particular hardware system, configuration, or platform or with any other software.

(c). Licencja terminowa. Każdą Licencję terminową przyznaje się na Okres wyjściowy trzech (3) lat, licząc od Daty rozpoczęcia, chyba że Dokumentacja zakupu stanowi inaczej. W przypadku niedostarczenia EFI pisemnego wypowiedzenia co najmniej na 90 dni przed końcem Wyjściowego okresu lub jakiegokolwiek Okresu odnowienia, okres obowiązywania zostanie automatycznie odnowiony według obowiązujących w EFI w danym czasie Oplat. Wyłącznie Użytkownik, jego pracownicy lub upoważnieni niezależni wykonawcy oraz użytkownicy końcowi Użytkownika, w stosownych przypadkach, mogą uzyskać Dostęp do Produktu wyłącznie na potrzeby biznesowe Użytkownika. Użytkownik ponosi wyłączną odpowiedzialność za wprowadzanie danych w sposób terminowy, poprawny i zgodny z jego wymaganiami. Użytkownik zwolni EFI z odpowiedzialności z tytułu wszelkich szkód, strat lub kosztów wynikających z danych wprowadzonych przez Użytkownika albo jego użytkowników końcowych w jego imieniu.

(d). Materiały podmiotów zewnętrznych. Niektóre rozprowadzane wraz z Produktem materiały podmiotów zewnętrznych mogą podlegać innym warunkom użytkowania, które zwykle można znaleźć w oddzielnej umowie licencyjnej lub pliku „Read me” dostarczonym wraz z tymi materiałami podmiotu zewnętrznego. Licencja nie dotyczy żadnego oprogramowania podmiotów zewnętrznych z wyjątkiem przypadków określonych w niniejszej Umowie.

(e). Nieupoważniony dostęp. PRODUKT MOŻE ZAWIERAĆ KLUCZ LICENCYJNY ZAPOBIEGAJĄCY NIEUPOWAŻNIONEMU DOSTĘPOWI, A EFI MOŻE ZREALIZOWAĆ LUB DEZAKTYWOWAĆ KLUCZ LICENCYJNY PO WYGAŚNIĘCIU LICENCJI UŻYTKOWNIKA. UŻYTKOWNIK PRZYJMUJE DO WIADOMOŚCI, ŻE KLUCZ LICENCYJNY NIE JEST WIRUSEM, A JEGO REALIZACJA LUB DEZAKTYWACJA MOŻE POWODOWAĆ, ŻE PRODUKT LUB JEGO CZĘŚĆ BĘDZIE NIESPRAWNA. W PRZYPADKU OKREŚLONYCH W NINIEJSZEJ UMOWIE REALIZACJI ALBO DEZAKTYWACJI KLUCZA LICENCYJNEGO UŻYTKOWNIK MOŻE BYĆ ZOBOWIĄZANY DO UISZCZENIA NA RZECZ EFI OBOWIĄZUJĄCEJ W DANYM CZASIE OPŁATY ZA PONOWNĄ AKTYWACJĘ PRODUKTU.

2. Instalacja i Usługi specjalistyczne.

(a). Instalacja. Z wyjątkiem przypadków, gdy w Dokumentacji zakupu określono inaczej, za instalację i wdrożenie Produktu odpowiedzialny jest wyłącznie Użytkownik. EFI nie jest zobowiązana do wprowadzania zmian w Produkcie w celu umożliwienia jego działania na żadnym konkretnym systemie sprzętowym, konfiguracji, platformie ani w połączeniu z żadnym innym oprogramowaniem.

(b). Professional Services. You may purchase Professional Services from EFI, and statement(s) of work may be created to more fully describe the scope, duration, and/or Fees for the Professional Services, which will be governed by this Agreement. All pre-paid Professional Services must be used within twenty-four (24) months of the Start Date.

(c). Compensation and Expenses. On-site Professional Services days are based on a standard 8-hour work day. Additional hours will be billed at EFI's then-current applicable rate unless a different rate is mutually agreed. Customer shall reimburse EFI for all reasonable out-of-pocket expenses (including travel, lodging and meals) incurred in connection with on-site Professional Services session(s). Professional Services scheduled and/or performed (i) during after-hours on a weekday or (ii) on a Saturday will be invoiced at 150% of EFI's then-current Professional Services Fees. Professional Services scheduled and/or performed on a Sunday or a government-recognized holiday will be invoiced at 200% of EFI's then-current Professional Services Fees.

3. Hosted Solutions.

If EFI or its designated third-party providers are hosting the Software, the following additional terms and conditions apply:

(a). Access. EFI or its designated provider will provide those services necessary to allow you Access, including a password(s).

(b). Data Entry. All data generated by and through your Access will reside on servers of EFI or its third party providers.

(c). Password Security. You are solely responsible for (i) ensuring that only authorized individuals have access to passwords to Access the Product, (ii) assigning roles and authority levels for your Access, (iii) the conduct of individuals with Access, and (iv) maintaining the confidentiality and integrity of passwords and authority levels. You shall indemnify and hold EFI harmless from any liability, damages, or costs arising from your failure to comply with this Section.

(d). Scheduled Downtime and Upgrades. Downtime is required from time-to-time for regular maintenance of the technology that supports the Product. EFI shall use commercially reasonable efforts to perform scheduled downtime outside normal business hours. EFI may also install new or updated software from time to time, including supporting software and firmware, in addition to the Software, to aid in providing ongoing stability and security of the hosted solution. You shall facilitate commercially reasonable upgrades and operations without undue delay or objection.

(b). Usługi specjalistyczne. Użytkownik może nabyć od EFI Usługi specjalistyczne, co do których mogą być sporządzane wykazy zakresu prac podlegających niniejszej Umowie w celu pełniejszego określenia zakresu, czasu trwania albo opłat za Usługi specjalistyczne. Z wszelkich opłaconych z góry Usług specjalistycznych należy skorzystać w ciągu 24 (dwudziestu czterech) miesięcy od Daty rozpoczęcia.

(c). Wynagrodzenie i koszty. Świadczenie Usług specjalistycznych na miejscu odbywa się według standardowego 8-godzinnego dnia pracy. Dodatkowe godziny będą rozliczane według obowiązującej w danym czasie stawki EFI, chyba że wspólnie ustalono inną stawkę. Klient zwróci EFI wszelkie uzasadnione wydatki bieżące (w tym na podróż, zakwaterowanie i posiłki) poniesione w związku ze świadczeniem Usług specjalistycznych na miejscu. Usługi specjalistyczne zaplanowane i/lub świadczone i) po godzinach pracy w dzień powszedni lub ii) w sobotę będą rozliczane jako 150% stawki obowiązujących w danym czasie Opłat za Usługi specjalistyczne. Usługi specjalistyczne zaplanowane i/lub świadczone w niedzielę lub święto państwowe będą rozliczane jako 200% stawki obowiązujących w danym czasie Opłat za Usługi specjalistyczne.

3. Rozwiązania hostowane.

W przypadku świadczenia usług hostingowych Oprogramowania przez EFI albo wyznaczonych przez nią zewnętrznych usługodawców, obowiązują poniższe dodatkowe warunki użytkowania:

(a). Dostęp. EFI albo wyznaczeni przez nią usługodawcy będą świadczyć usługi niezbędne do uzyskania Dostępu przez Użytkownika, w tym dostarczą hasła.

(b). Wprowadzanie danych. Wszelkie dane wygenerowane przez i na skutek Dostępu Użytkownika będą przechowywane na serwerach EFI albo jej zewnętrznych usługodawców.

(c). Bezpieczeństwo haseł. Użytkownik ponosi wyłączną odpowiedzialność z tytułu: i) udostępniania haseł Dostępu do Produktu jedynie osobom upoważnionym; ii) przypisywania ról i poziomów uprawnień Dostępu; iii) postępowania osób posiadających Dostęp oraz iv) zachowania poufności i integralności haseł i poziomów uprawnień. Użytkownik zwolni EFI z odpowiedzialności z tytułu wszelkich szkód, strat lub kosztów wynikających z niezastosowania się do postanowień niniejszego ustępu.

(d). Planowany przestój i aktualizacje. W celu przeprowadzenia standardowej konserwacji technologii obsługującej Produkt konieczne są okresowe przestoje. EFI będzie dokładać uzasadnionych handlowo starań w celu wykonania zaplanowanego przestoju poza normalnymi godzinami pracy. Poza Oprogramowaniem EFI może również instalować nowe lub zaktualizowane oprogramowanie, w tym oprogramowanie wspierające i oprogramowanie układowe, aby zapewnić ciągłość stabilności i bezpieczeństwa hostowanego rozwiązania. Użytkownik umożliwi uzasadnione handlowo aktualizacje i operacje bez zbędnej zwłoki lub sprzeciwu.

(e). Unexpected Outages. EFI shall use commercially reasonable efforts to avoid unexpected outages and to restore Access as soon as possible. If you do not have Access for more than two (2) consecutive hours within any 24-hour period because of an unexpected outage caused by EFI, you may request credit for one day of the applicable Fees (based on an average of that month's invoice). THIS IS YOUR SOLE AND EXCLUSIVE REMEDY AND EFI'S ENTIRE LIABILITY FOR UNSCHEDULED DOWNTIME OR OUTAGES, AND EFI WILL NOT BE LIABLE FOR ANY DAMAGES RELATED TO ANY UNSCHEDULED DOWNTIME OR OUTAGES.

(f). Self-Hosting. You at all times retain the right to self-host the Product from another location and, if you are being granted a term license, continue to pay the Term License Fees for the Software. Any Professional Services performed by EFI in migrating a hosted solution to a self-hosted solution are billable at EFI's standard rates.

(g). Maintenance. If you are being granted a perpetual License as a hosted solution, you must remain on Maintenance for the period that EFI or its designated third-party provider is providing the hosting services to you.

4. Fees and Delivery.

(a). Fees. You shall pay all applicable Fees.

(b). Title and Risk of Loss. Title and risk of loss for any media or hardware for the Product transfers to you at EFI's designated manufacturing plant(s) or warehouse(s). If the Product is delivered electronically, risk of loss transfers to you when the Product or Access is made available to you.

(c). Hardware Delivery. Unless otherwise specified in the Purchase Documentation, where you are purchasing hardware: (i) EFI shall act as agent for you and procure insurance against risk of loss and/or procure and prepay for shipment, (ii) you shall reimburse EFI for all charges relating to the shipment of hardware upon EFI providing an invoice for such charges. EFI shall use commercially reasonable efforts to ship hardware as soon as practicable following execution of this Agreement and EFI's receipt of any required deposits. If you request a delay in delivery or otherwise cause a delay in the transportation process, EFI reserves the right to separately charge you for any costs it incurs for paying the logistics company to store and warehouse hardware on your behalf.

(e). Niespodziewana przerwa w Dostępie. EFI będzie dokładać uzasadnionych handlowo starań w celu uniknięcia niespodziewanej przerwy w Dostępie i możliwie najszybszego wznowienia Dostępu. W przypadku braku Dostępu przez ponad 2 (dwie) kolejne godziny w ciągu 24 godzin z powodu niespodziewanej przerwy w Dostępie spowodowanej przez EFI, Użytkownik ma prawo żądać zwrotu obowiązującej Oplaty za jeden dzień (obliczonej na podstawie średniej kwoty faktury za dany miesiąc). POWYŻSZE STANOWI JEDYNY I WYŁĄCZNY ŚRODEK PRAWNY PRZYSŁUGUJĄCY UŻYTKOWNIKOWI I CAŁOŚĆ ODPOWIEDZIALNOŚCI EFI ZA WSZELKIE NIEZAPLANOWANE PRZESTOJE LUB PRZERWY W DOSTĘPIE; EFI NIE PONOSI ODPOWIEDZIALNOŚCI Z TYTUŁU WSZELKICH SZKÓD ZWIĄZANYCH Z JAKIMKOLWIEK NIEPLANOWANYM PRZESTOJEM LUB PRZERWĄ W DOSTĘPIE.

(f). Samodzielne hostowanie. Użytkownik zachowuje prawo do samodzielnego hostowania Produktu z innej lokalizacji, a jeżeli korzysta z licencji terminowej, jest zobowiązany do dalszego uiszczania Oplat za Licencję terminową Oprogramowania. Wszelkie Usługi specjalistyczne świadczone przez EFI w celu dokonania migracji rozwiązania hostowanego do rozwiązania hostowanego samodzielnie są rozliczane według standardowych stawek EFI.

(g). Utrzymanie. Jeżeli Użytkownik korzysta z bezterminowej Licencji w ramach rozwiązania hostowanego, jest on zobowiązany do korzystania z usług Utrzymania w okresie, w którym EFI albo wyznaczony przez nią zewnętrzny usługodawca świadczy usługi hostingowe na rzecz Użytkownika.

4. Opłaty i dostawa.

(a). Opłaty. Użytkownik uiszcza wszelkie obowiązujące Opłaty.

(b). Prawo własności i ryzyko utraty. Tytuł do jakichkolwiek nośników lub sprzętu z Produktem oraz ryzyko ich utraty przechodzi na Użytkownika w wyznaczonych przez EFI zakładach produkcyjnych albo magazynach. W przypadku dostarczenia Produktu w formie elektronicznej, ryzyko utraty przechodzi na Użytkownika w chwili udostępnienia Użytkownikowi Produktu lub Dostępu.

(c). Dostawa sprzętu. Jeżeli nie określono inaczej w Dokumentacji zakupu, w przypadku zakupu sprzętu przez Użytkownika obowiązują następujące warunki: i) EFI działa jako przedstawiciel Użytkownika i nabywa ubezpieczenie od ryzyka utraty i/lub zamawia i płaci z góry za wysyłkę, ii) Użytkownik zwróci EFI wszystkie koszty związane z wysyłką sprzętu po przesłaniu przez EFI stosownej faktury. EFI będzie dokładać uzasadnionych handlowo starań w celu przesłania sprzętu najszybciej, jak to możliwe po podpisaniu niniejszej Umowy i otrzymaniu wszelkich wymaganych zaliczek. W sytuacji, gdy Użytkownik poprosi o opóźnienie dostawy lub w inny sposób spowoduje opóźnienie w procesie transportu, EFI zastrzega sobie prawo do obciążenia Użytkownika osobno kosztami poniesionymi z tytułu opłacenia przechowywania i magazynowania sprzętu w firmie logistycznej w imieniu Użytkownika.

5. Product Maintenance.

(a). Subject to your timely payment of all applicable Fees, EFI or its designated provider will provide you with annual Maintenance for the Product. Maintenance terms automatically renew for consecutive 12-month periods unless cancelled by either party with written notice at least 30 days before the Maintenance Renewal Date. Notwithstanding the foregoing, Maintenance for certain Products (e.g., individual Software modules that are part of the EFI Software solution) may only be cancelled in the event that you are no longer using those certain Products; please first consult with EFI in the event you desire to cancel Maintenance for any Product.

(b). You must possess a valid License to use any upgrade or update. By using an upgrade or update, your license to any previous version of the Product automatically terminates. If you (i) have an out-of-date version of the Product or (ii) are not current on Maintenance due to your failure to timely pay Maintenance Fees and wish to update your version of the Product, you must pay any unpaid Fees and may be subject to additional fees to transfer or convert any old data. EFI reserves the right to discontinue Maintenance for all out-of-date versions of the Product.

6. Warranty and Disclaimer.

(a). Limited Warranties. EFI warrants to you that (i) EFI has the right to grant the License, (ii) subject to your timely payment of all applicable Fees, the Products as delivered to you will perform materially in accordance with EFI's then-current, applicable specifications if all available updates, upgrades, and bug-fixes are properly installed, and (iii) any Professional Services you purchase will be provided in good and workmanlike manner consistent with generally accepted industry standards. This warranty does not apply to defects attributable to (A) any equipment or software not provided or approved for use by EFI, (B) any modification of the Product by you, your employees, or any third party acting on your behalf, (C) any accident, neglect, misuse, or abuse by you, your employees, or any third party acting on your behalf, or (D) exposure of the Product to conditions outside the range of environmental, power, and operating specifications provided by EFI. You shall cooperate fully and promptly with EFI's attempts to identify the cause of any claimed breach of this limited warranty.

5. Utrzymanie produktu.

(a). Z zastrzeżeniem terminowego uiszczania przez Użytkownika wszelkich obowiązujących Oplat, EFI lub wyznaczony przez nią usługodawca zapewni Użytkownikowi coroczne usługi Utrzymania produktu. Okres obowiązywania usług Utrzymania produktu odnawia się automatycznie na 12 kolejnych miesięcy, chyba że jedna ze stron anuluje odnowienie na piśmie przynajmniej 30 dni przed Dniem odnowienia. Niezależnie od powyższego Utrzymanie niektórych Produktów (np. pojedynczych modułów Oprogramowania stanowiących część rozwiązania Oprogramowania EFI) może zostać anulowane wyłącznie pod warunkiem, że Użytkownik nie korzysta już z tych Produktów; przed anulowaniem Utrzymania dla dowolnego Produktu zaleca się konsultację z EFI.

(b). W celu skorzystania z jakiegokolwiek uaktualnienia lub aktualizacji, Użytkownik musi posiadać ważną Licencję. W przypadku skorzystania z uaktualnienia albo aktualizacji, licencja Użytkownika dotycząca jakiegokolwiek poprzedniej wersji Produktu wygasa automatycznie. Jeżeli Użytkownik (i) posiada nieaktualną wersję Produktu albo (ii) nie może korzystać z usług Utrzymania produktu z powodu braku terminowego uiszczania Oplat za utrzymanie i chce zaktualizować posiadaną wersję Produktu, musi uiścić wszelkie zaległe Oplaty i mogą zostać mu naliczone dodatkowe opłaty za przeniesienie albo konwersję wszelkich starych danych. EFI zastrzega sobie prawo do przerwania świadczenia usług Utrzymania produktu dla wszystkich nieaktualnych wersji Produktu.

6. Gwarancja i wyłączenie odpowiedzialności.

(a). Ograniczona gwarancja. EFI gwarantuje Użytkownikowi, że (i) EFI ma prawo do udzielenia Licencji; (ii) z zastrzeżeniem terminowej płatności wszystkich obowiązujących Oplat przez Użytkownika, dostarczone Użytkownikowi Produkty będą w znaczącym stopniu działać zgodnie z obowiązującymi w danym momencie specyfikacjami EFI, pod warunkiem, że wszystkie dostępne aktualizacje i poprawki błędów zostaną poprawnie zainstalowane; oraz (iii) wszelkie Usługi specjalistyczne zakupione przez Użytkownika będą świadczone w sposób profesjonalny zgodnie z ogólnie przyjętymi standardami branżowymi. Niniejsza gwarancja nie dotyczy wad wynikających z A) jakiegokolwiek wyposażenia albo oprogramowania, które nie zostały dostarczone albo zatwierdzone do stosowania przez EFI; B) jakichkolwiek zmian wprowadzonych do Produktu przez Użytkownika, jego pracowników albo jakiegokolwiek podmioty zewnętrzne działające w jego imieniu, C) jakiegokolwiek wypadku, zaniedbania, niewłaściwego użytkowania albo nadużycia przez Użytkownika, jego pracowników lub jakiegokolwiek podmioty zewnętrzne działające w jego imieniu albo D) użytkowania Produktu w warunkach otoczenia, zasilania i parametrów operacyjnych niezgodnych z określonymi przez EFI w specyfikacji eksploatacyjnej. Użytkownik ma obowiązek w pełni i bezzwłocznie współpracować z EFI podczas prób określenia przyczyny domniemanego naruszenia tej ograniczonej gwarancji.

(b). Security of Your Systems. You are solely responsible for (i) ensuring the confidentiality, security, and integrity of your network connectivity, data, and servers, (ii) preventing and bearing the risk of any loss or damage to any data on your servers, and (iii) maintaining archive and backup copies of any data.

(c). WARRANTY DISCLAIMER AND REMEDIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES AND REMEDIES IN THIS AGREEMENT ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES. EFI, ITS SUPPLIERS, AND LICENSORS SPECIFICALLY DISCLAIM ANY OTHER WARRANTIES AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT; ANY WARRANTIES RELATING TO SECURITY; AND ANY WARRANTIES THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED, OR ERROR-FREE. EFI MAKES NO WARRANTY, IMPLIED OR OTHERWISE, REGARDING THE PERFORMANCE OR RELIABILITY OF ANY OTHER THIRD PARTY PRODUCTS, OR SERVICES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOLE AND EXCLUSIVE REMEDY TO WHICH YOU ARE ENTITLED FOR BREACH OF THESE LIMITED WARRANTIES, AND THE ENTIRE LIABILITY OF EFI AND ITS SUPPLIERS RELATING TO BREACH OF THESE LIMITED WARRANTIES, IS, AT EFI'S OPTION, TO (1) REPAIR OR REPLACE THE PRODUCT OR RE-PERFORM THE SERVICE THAT DOES NOT MEET THE LIMITED WARRANTY, OR (2) PROVIDE A REFUND OF THE THEN-CURRENT REASONABLE COMMERCIAL VALUE (IF ANY) FOR THE PRODUCT OR SERVICE THAT DOES NOT MEET THE LIMITED WARRANTY. EXCEPT AS PROVIDED IN THIS AGREEMENT, THERE ARE NO REFUNDS, RETURNS, EXCHANGES, OR REPLACEMENTS.

(b). Bezpieczeństwo systemów Użytkownika. Użytkownik ponosi wyłączną odpowiedzialność z tytułu (i) zapewnienia poufności, bezpieczeństwa i integralności swojego połączenia sieciowego, danych i serwerów; (ii) zapobiegania ryzyku i ponoszenie ryzyka w przypadku wystąpienia wszelkich strat czy szkód dotyczących jakichkolwiek danych na swoich serwerach; oraz (iii) tworzenia archiwów i kopii zapasowych wszelkich danych.

(c). WYŁĄCZENIE ODPOWIEDZIALNOŚCI Z TYTUŁU GWARANCJI I ŚRODKI PRAWNE. W MAKSYMALNYM ZAKRESIE DOZWOLONYM PRZEZ PRZEPISY OBOWIĄZUJĄCEGO PRAWA GWARANCJE I ŚRODKI PRAWNE W NINIEJSZEJ UMOWIE SĄ WYŁĄCZNE I OBOWIĄZUJĄ ZAMIĄST WSZYSTKICH INNYCH GWARANCJI I ŚRODKÓW PRAWNYCH. EFI, JEJ DOSTAWCY I LICENCJODAWCY WYRAŹNIE ZASTRZEGAJĄ SOBIE WSZELKIE INNE GWARANCJE I ŚRODKI PRAWNE, W TYM W SZCZEGÓLNOŚCI DOROZUMIANE GWARANCJE PRZYDATNOŚCI DO CELÓW HANDLOWYCH, ZDATNOŚCI DO OKREŚLONEGO CELU I NIENARUSZANIA PRAW OSÓB TRZECICH; WSZELKIE GWARANCJE DOTYCZĄCE BEZPIECZEŃSTWA; ORAZ WSZELKIE GWARANCJE DOTYCZĄCYCH TEGO, ŻE DZIAŁANIE PRODUKTU BĘDZIE NIEZAKŁÓCONE ALBO ODPORNE NA BŁĘDY. EFI NIE UDZIELA ŻADNYCH GWARANCJI, DOROZUMIANYCH ANI INNYCH, DOTYCZĄCYCH DZIAŁANIA ANI NIEZAWODNOŚCI ŻADNYCH INNYCH PRODUKTÓW ALBO USŁUG PODMIOTÓW ZEWNĘTRZNYCH.

W MAKSYMALNYM ZAKRESIE, W JAKIM ZEZWALAJĄ NA TO PRZEPISY OBOWIĄZUJĄCEGO PRAWA, JEDYNYM I WYŁĄCZNYM ŚRODKIEM PRAWNYM PRZYSŁUGUJĄCYM UŻYTKOWNIKOWI Z TYTUŁU NARUSZENIA NINIEJSZYCH OGRANICZONYCH GWARANCJI ORAZ DZIAŁANIEM WYCZERPUJĄCYM ODPOWIEDZIALNOŚĆ EFI I JEJ DOSTAWCÓW W ZAKRESIE PRODUKTÓW, USŁUG I GWARANCJI JEST, WEDŁUG UZNANIA EFI: (1) NAPRAWA ALBO WYMIANA PRODUKTU ALBO PONOWNE WYŚWIADCZENIE USŁUGI, KTÓRE NIE SPEŁNIAJĄ WARUNKÓW OGRANICZONEJ GWARANCJI ALBO (2) ZWROT KOSZTÓW ODPOWIADAJĄCY OBOWIĄZUJĄCEJ W DANYM CZASIE UCZCIWEJ WARTOŚCI RYNKOWEJ (W STOSOWNYCH PRZYPADKACH) PRODUKTU CZY USŁUGI, KTÓRE NIE SPEŁNIAJĄ WARUNKÓW OGRANICZONEJ GWARANCJI. Z WYJĄTKIEM PRZYPADKÓW OKREŚLONYCH W NINIEJSZEJ UMOWIE, NIE PRZYSŁUGUJĄ ŻADNE ZWROTY KOSZTÓW, ZWROTY, WYMIANY ANI ZAMIANY.

7. Infringement Indemnification.

EFI shall indemnify you from IP Claims and reimburse you for damages paid by you to the party bringing the IP Claim pursuant to a final, non-appealable judgment that the Product directly infringes any Third Party IP Rights. If you do not notify EFI in writing within 10 business days of learning of the IP Claim, and give EFI proper and full information, assistance, and exclusive authority to defend or settle the IP Claim, EFI will be relieved of its obligations under this Section. If the Product or any part of it is in EFI's opinion likely to become the subject of a claim of infringement of Third Party IP Rights, or if it is adjudicatively determined that the Product or any part of it infringes Third Party IP Rights, EFI may at its option (i) obtain for you a license or right to use the Third Party IP Rights so you can continue to use the Product, or (ii) replace or modify the Product with other suitable and reasonably equivalent non-infringing technology or parts, or (iii) if it is not commercially reasonable to take the actions described in clauses (i) or (ii) in this sentence, terminate your License and, if you return the Product to EFI, refund a portion of the license fee paid by you equal to the then-current reasonable commercial value (if any) of the Product. EFI shall not be responsible, liable, or obligated to indemnify or reimburse you if the alleged infringement arises out of (i) compliance with your requirements or specifications that are outside EFI's standard specifications for the Product, (ii) any addition or incorporation to or modification of the Product at your request, (iii) any combination of the Product with any product or software not provided by EFI, or (iv) use of the Product in the practice of a process or system other than that for which it was intended. In any event as described in the preceding sentence, you shall defend and/or settle any claim brought against EFI at your own expense, and shall indemnify EFI against any costs, legal fees, other expenses, and damages required for the defense or settlement of the claim.

THE RIGHTS GRANTED TO YOU IN THIS SECTION ARE YOUR SOLE AND EXCLUSIVE REMEDIES FOR ANY ALLEGED INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

7. Zwolnienie z odpowiedzialności z tytułu naruszenia.

EFI zwalnia Użytkownika z odpowiedzialności z tytułu naruszenia praw własności intelektualnej i zwróci Użytkownikowi wszelkie koszty odszkodowania wypłacone podmiotowi, który złoży Roszczenie dot. WI i w sprawie którego wydane zostanie prawomocne orzeczenie sądu stanowiące, że Produkt w sposób bezpośredni narusza Prawa WI podmiotów zewnętrznych. EFI zostanie zwolniona ze wszystkich zobowiązań wynikających z postanowień niniejszego ustępu, chyba że Użytkownik powiadomi EFI na piśmie w ciągu 10 dni roboczych od powzięcia wiedzy na temat Roszczenia dot. WI i przekaże EFI odpowiednie i kompletne informacje, udzieli wsparcia i wyłącznego prawa do obrony bądź zaspokojenia Roszczenia dot. WI. Jeżeli zdaniem EFI istnieje prawdopodobieństwo, że Produkt albo jakakolwiek jego część mogą stanowić przedmiot roszczenia dotyczącego naruszenia Praw WI podmiotów zewnętrznych albo jeżeli na drodze sądowej zostanie stwierdzone, że Produkt albo jakakolwiek jego część narusza Prawa WI podmiotów zewnętrznych, EFI może, wedle własnego uznania: (i) uzyskać licencję lub prawo do korzystania z Praw WI podmiotów zewnętrznych dla Użytkownika, tak by mógł on dalej korzystać z Produktu; albo (ii) wymienić albo zmodyfikować Produkt korzystając z innych odpowiednich technologii lub części stanowiących ich uzasadnione odpowiedniki; albo (iii) jeżeli podjęcie działań określonych w punktach (i) lub (ii) nie jest uzasadnione z handlowego punktu widzenia, unieważnić Licencję Użytkownika oraz, jeżeli Użytkownik zwróci Produkt EFI, zwrócić część pokrytej przez Użytkownika opłaty licencyjnej odpowiadającej obowiązującej w danym czasie uczciwej wartości rynkowej (w stosownych przypadkach) Produktu. EFI nie ponosi odpowiedzialności ani nie ma obowiązku zwolnić Użytkownika z odpowiedzialności ani zwrócić kosztów, w przypadku gdy domniemane naruszenie wynika z (i) przestrzegania wymagań lub specyfikacji Użytkownika wykraczających poza standardowe specyfikacje EFI dotyczące Produktu; (ii) dodatków lub zmian wprowadzonych do Produktu na życzenie Użytkownika, (iii) połączenia Produktu z dowolnym produktem lub oprogramowaniem, których nie zapewnia EFI; lub (iv) korzystania z Produktu w ramach procesów lub systemów innych niż przeznaczone do tego celu. W przypadkach opisanych w poprzednim zdaniu Użytkownik będzie odpierać albo zaspokajać wszelkie roszczenia wniesione przeciwko EFI na własny koszt i zwalnia EFI z obowiązku pokrycia wszelkich kosztów, kosztów obsługi prawnej, pozostałych wydatków oraz odszkodowań wymaganych w celu odparcia albo zaspokojenia roszczenia.

PRAWA PRYZNANE UŻYTKOWNIKOWI W NINIEJSZYM USTĘPIE STANOWIĄ JEDYNY I WYŁĄCZNY ŚRODEK PRAWY W PRZYPADKU WSZELKICH DOMNIEMANYCH PRZYPADKÓW NARUSZENIA PRAW WŁASNOŚCI INTELEKTUALNEJ PODMIOTÓW ZEWNĘTRZNYCH.

8. LIMITATION OF LIABILITY.

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL EFI OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY, OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EFI IS NOT RESPONSIBLE FOR ANY LOST PROFITS OR REVENUE, LOSS OF USE OF THE PRODUCT, LOSS OF DATA, OR THE COST OF RECOVERING ANY DATA. EXCEPT FOR INSTANCES INVOLVING EFI'S WILLFUL MISCONDUCT, EFI WILL NOT BE LIABLE FOR DAMAGES ARISING FROM ANY BREACH, UNAUTHORIZED ACCESS, MISUSE, OR INTRUSION RELATED TO YOUR DATA ON EFI'S OR ITS SUPPLIERS' SERVERS OR ANY NETWORK YOU USE IN CONNECTION WITH THE PRODUCT.

IN NO EVENT WILL EFI'S TOTAL LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATED TO THE PRODUCTS, SERVICES, ACCESS, AND/OR THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, UNDER STATUTE, OR OTHERWISE) EXCEED THE TOTAL AMOUNT OF THE FEES ACTUALLY PAID BY YOU IN THE 12 MONTHS PRECEDING THE CLAIM FOR THE EFI PRODUCT, SERVICES, OR ACCESS GIVING RISE TO THE CLAIM. YOU AGREE THAT THIS AMOUNT IS SUFFICIENT TO SATISFY THE ESSENTIAL PURPOSE OF THIS AGREEMENT AND THAT THE PRICE OF THE PRODUCT, PROFESSIONAL SERVICES, OR ACCESS REFLECTS THIS ALLOCATION OF RISK.

THE FOREGOING LIMITATIONS OF LIABILITY AND DISCLAIMERS FORM AN ESSENTIAL ELEMENT OF THIS AGREEMENT, WITHOUT WHICH EFI WOULD NOT HAVE LICENSED OR SOLD THE PRODUCT TO YOU OR PROVIDED YOU WITH ACCESS.

8. OGRANICZENIE ODPOWIEDZIALNOŚCI.

W ZAKRESIE DOZWOLONYM PRAWEM EFI ANI JEJ DOSTAWCY CZY LICENCJODAWCY W ŻADNYM RAZIE NIE BĘDĄ PONOSIĆ ŻADNEJ ODPOWIEDZIALNOŚCI Z TYTUŁU SZKÓD POŚREDNICH, SPECJALNYCH, UBOCZNYCH, NASTĘPCZYCH, PRZYKŁADOWYCH, RETORSYJNYCH, CZY ZWIĄZANYCH Z POLEGANIEM NA ZAWARTEJ UMOWIE, BEZ WZGLĘDU NA PRZYCZYNĘ CZY PODSTAWY ODPOWIEDZIALNOŚCI, NAWET W PRZYPADKU UZYSKANIA INFORMACJI O MOŻLIWOŚCI PONIESIENIA TAKICH SZKÓD. EFI NIE PONOSI ODPOWIEDZIALNOŚCI Z TYTUŁU ŻADNYCH UTRACONYCH KORZYŚCI CZY PRZYCHODÓW, STRAT WYNIKAJĄCYCH Z KORZYSTANIA Z PRODUKTU, UTRATY DANYCH ANI KOSZTU ODZYSKIWANIA DANYCH. Z WYJĄTKIEM PRZYPADKÓW OBEJMUJĄCYCH WINĘ UMYŚLNĄ EFI, EFI NIE PONOSI ODPOWIEDZIALNOŚCI Z TYTUŁU SZKÓD DOTYCZĄCYCH DANYCH UŻYTKOWNIKA WYNIKAJĄCYCH Z NARUSZENIA, NIEUPOWAŻNIONEGO DOSTĘPU, NIEWŁAŚCIWEGO UŻYTKOWANIA CZY WŁAMANIA, DO KTÓRYCH DOSZŁO NA SERWERACH EFI LUB JEJ DOSTAWCÓW LUB PODCZAS KORZYSTANIA Z SIECI, Z KTÓRYCH UŻYTKOWNIK KORZYSTA W ZWIĄZKU Z PRODUKTEM.

W ŻADNYM WYPADKU CAŁKOWITA ODPOWIEDZIALNOŚĆ EFI Z TYTUŁU WSZELKICH SZKÓD DOTYCZĄCYCH LUB WYNIKAJĄCYCH Z PRODUKTÓW, USŁUG, DOSTĘPU LUB NINIEJSZEJ UMOWY, NIEZALEŻNIE OD PODSTAWY POWÓDZTWA (CZY TO NA MOCY UMOWY, DELIKTU, USTAWY CZY INNEJ PODSTAWY) NIE MOŻE PRZEKROCYĆ RZECZYWISTEJ ŁĄCZNEJ KWOTY ZAPŁACONEJ PRZEZ UŻYTKOWNIKA W CIĄGU 12 MIESIĘCY POPRZEDZAJĄCYCH ZŁOŻENIE ROSZCZENIA DOTYCZĄCEGO PRODUKTU EFI, USŁUG ALBO DOSTĘPU STANOWIĄCYCH PODSTAWĘ ROSZCZENIA. UŻYTKOWNIK POTWIERDZA, ŻE KWOTA TA JEST WYSTARCZAJĄCA DO WYPEŁNIENIA PODSTAWOWEGO CELU NINIEJSZEJ UMOWY ORAZ ŻE CENA PRODUKTU, USŁUG SPECJALISTYCZNYCH ALBO DOSTĘPU ODZWIERCIEDLA TEN PODZIAŁ RYZYKA.

POWYŻSZE OGRANICZENIA ODPOWIEDZIALNOŚCI I WYŁĄCZENIA STANOWIĄ NIEROZŁĄCZNĄ CZĘŚĆ NINIEJSZEJ UMOWY, BEZ KTÓREJ EFI NIE UDZIELIŁABY UŻYTKOWNIKOWI LICENCJI, NIE SPRZEDAŁABY MU PRODUKTU ANI NIE UDZIELIŁABY MU DOSTĘPU.

BECAUSE SOME JURISDICTIONS DO NOT ALLOW SOME OR ALL OF THE EXCLUSIONS OR LIMITATIONS OF LIABILITY IN THIS AGREEMENT, SOME OR ALL OF THEM MAY NOT APPLY TO YOU.

9. Proprietary Rights and Confidential Information.

(a). No Implied Conveyance of Proprietary Rights. The Product, Documentation, and any Work Product are the valuable, confidential, and proprietary property of EFI, its suppliers and licensors. EFI is not conveying any of its Intellectual Property Rights, except the limited rights specified in this Agreement. You shall maintain and reproduce all copyright, trademark, patent, and other proprietary notices on the Product in the same form and manner as delivered by EFI.

(b). Protection of Information. You shall not disclose any of EFI's Confidential Information, and shall take precautions with respect to EFI's Products and Confidential Information that are at least as protective as you take to protect your own confidential information and proprietary rights of the greatest sensitivity. You shall advise your employees and authorized independent contractors of the confidential and proprietary nature of the Product and EFI's Confidential Information and of the restrictions imposed by this Agreement, and confine access to the Product and EFI's Confidential Information to those individuals who need it in the ordinary course and scope of their employment or relationship with you. Except as specified in this Agreement, you shall not directly or indirectly disclose any part of the Product, EFI's Confidential Information, or Documentation to any third party.

(c). Termination; Injunctive Relief. Your violation of the confidentiality obligations or of EFI's Intellectual Property Rights may cause irreparable damage that cannot be fully remedied by money damages. In the event of any actual or threatened violation, you agree that EFI will be entitled, in addition to any other remedy available to it, to (i) terminate this Agreement, retake possession of the Product, execute the License Key, and/or terminate Access, and/or (ii) obtain injunctive or other equitable relief from any court of competent jurisdiction to prevent any further violation.

PONIEWAŻ NIEKTÓRE SYSTEMY PRAWNE NIE DOPUSZCZAJĄ NIEKTÓRYCH ALBO WSZYSTKICH WYŁĄCZEŃ BĄDŹ OGRANICZEŃ ODPOWIEDZIALNOŚCI ZAWARTYCH W NINIEJSZEJ UMOWIE, NIEKTÓRE Z NICH ALBO WSZYSTKIE MOGĄ NIE DOTYCZYĆ DANEGO UŻYTKOWNIKA.

9. Prawa własności i Informacje poufne.

(a). Brak domniemanego przeniesienia Praw własności. Produkt, Dokumentacja i wszelkie Wyniki prac stanowią wartościową, poufną i zastrzeżoną własność EFI, jej dostawców i licencjodawców. EFI nie przenosi żadnych Praw własności intelektualnej, z wyjątkiem ograniczonych praw określonych w niniejszej Umowie. Użytkownik ma obowiązek zachować i powielać wszelkie zamieszczone na Produkcie informacje o prawach autorskich, znaki towarowe, patenty i inne informacje zastrzeżone w takiej samej postaci i w taki sam sposób, w jakich zostały dostarczone przez EFI.

(b). Ochrona danych. Użytkownikowi nie wolno ujawniać żadnych Informacji poufnych EFI i musi on przedsięwziąć wobec Produktów i Informacji poufnych EFI przynajmniej takie środki ostrożności, jakie przedsięwziąłby w przypadku ochrony własnych informacji poufnych i wysoce wrażliwych praw własności. Użytkownik ma obowiązek powiadomić swoich pracowników i autoryzowanych, niezależnych wykonawców o poufnym i zastrzeżonym charakterze Produktu i Informacji poufnych EFI oraz o ograniczeniach nałożonych na mocy niniejszej Umowy oraz udostępnić Produkt i Informacje poufne EFI wyłącznie tym osobom, które potrzebują ich w ramach standardowego trybu i zakresu swojej pracy lub współpracy z Użytkownikiem. Z wyjątkiem przypadków określonych w niniejszej Umowie, Użytkownik nie może w sposób bezpośredni ani pośredni ujawniać żadnej części Produktu, Informacji poufnych EFI ani Dokumentacji żadnemu podmiotowi zewnętrznemu.

(c). Rozwiązanie Umowy; Zabezpieczenie roszczeń w drodze nakazu lub zakazu sądowego. Naruszenie przez Użytkownika obowiązku zachowania poufności lub Praw własności intelektualnej EFI może spowodować niepowetowane szkody, w przypadku których środek prawny w postaci odszkodowania finansowego nie będzie wystarczający. W przypadku naruszenia albo ryzyka naruszenia Użytkownik potwierdza, że oprócz wszelkich innych przysługujących jej środków prawnych, EFI będzie mieć prawo (i) rozwiązać niniejszą Umowę, odzyskać Produkt, zrealizować Klucz licencyjny lub odebrać możliwość Dostępu lub (ii) uzyskać zabezpieczenie roszczeń w drodze nakazu lub zakazu sądowego albo inny środek prawny wynikający z zasad słuszności, przyznany przez sąd właściwy w celu zapobiegania dalszym naruszeniom.

(d). Use of Your Trademarks and Logos. Subject to any reasonable use guidelines, you grant EFI a non-exclusive, worldwide, royalty-free license to use Customer Marks in connection with this Agreement, for use with the Product, for promoting EFI's Products in marketing materials, print, or on-line advertising, and for identifying you as an EFI customer. You shall also secure for EFI any rights or sublicenses required for EFI's use of the trademarks or service marks of your Affiliates. EFI acknowledges that (i) Customer Marks are owned solely and exclusively by you or your Affiliates, (ii) EFI has no other rights, title, or interest in or to Customer Marks, and (iii) all use and goodwill of Customer Marks by EFI inures to the benefit of you and your Affiliates.

10. Termination.

(a). This Agreement may be terminated immediately upon written notice to the other party (i) by EFI, if you fail to make any required payment other than Maintenance Fees, (ii) by the non-breaching party, if you or EFI fails to cure a material breach within 30 days after written notice from the non-breaching party, or (iii) by EFI, if you cease doing business as a going concern, become the object of voluntary or involuntary bankruptcy or liquidation proceedings that are not dismissed within 60 days after the initial filing, or if a receiver is appointed with respect to a substantial portion of your assets.

(b). Upon termination, you shall promptly (i) pay EFI all unpaid fees accrued before the termination, (ii) return all EFI Confidential Information and the Product, and (iii) return any materials, programs, manuals, and other items related to or derived from the Product in your possession or control. EFI shall use commercially reasonable efforts to provide you with any proprietary data belonging to you in the format in which it is stored by EFI at the time of termination.

11. Audit Rights.

EFI may audit your use of or Access to the Product. Any audit will take place after prior notice to you, during regular business hours, and in a manner that does not unreasonably interfere with your normal business. If the audit shows that you are using or accessing the Product in a way that violates this Agreement, EFI may invoice you for such use or Access, including late fees, interest, and expenses associated with the audit. If you do not timely pay that invoice, EFI may exercise its termination rights and pursue any other rights or remedies available to it.

(d). Wykorzystywanie znaków towarowych i logo Użytkownika. Z zachowaniem wszelkich uzasadnionych wytycznych dotyczących użytkownika, Użytkownik udziela EFI niewyłączonej, nieograniczonej terytorialnie, nieobciążonej tantiemami licencji na korzystanie ze Znaków klienta w związku z niniejszą Umową, w celu wykorzystania wraz z Produktem, promowania Produktów EFI w materiałach marketingowych, materiałach drukowanych lub reklamach internetowych oraz identyfikacji Użytkownika jako klienta EFI. Użytkownik ma również obowiązek udzielić EFI wszelkich praw lub dalszych licencji koniecznych w celu korzystania przez EFI ze znaków towarowych lub znaków usługowych Jednostek stowarzyszonych Użytkownika. EFI przyjmuje do wiadomości, że: (i) Znaki klienta są wyłączną własnością Użytkownika albo Jednostek stowarzyszonych Użytkownika; (ii) EFI nie przysługują żadne inne prawa, tytuły własności ani udziały dotyczące Znaków klienta; oraz (iii) każdorazowe wykorzystanie przez EFI Znaków klienta oraz ich renoma będą działać na korzyść Użytkownika i jego Jednostek stowarzyszonych.

10. Rozwiązanie Umowy.

(a). Niniejsza Umowa może zostać rozwiązana ze skutkiem natychmiastowym za wypowiedzeniem doręczonym drugiej stronie: (i) przez EFI, jeżeli Użytkownik nie wnieśli jakiegokolwiek wymaganej opłaty innej niż Opłaty za utrzymanie produktu; (ii) przez stronę niedopuszczającą się naruszenia, jeżeli Użytkownik albo EFI nie usunie istotnego naruszenia w ciągu 30 dni od otrzymania pisemnego powiadomienia od strony niedopuszczającej się naruszenia; albo (iii) przez EFI, jeżeli Użytkownik straci możliwość kontynuowania działalności, wniesiony zostanie dobrowolny albo przymusowy wniosek o upadłość albo likwidację, który nie zostanie odrzucony w terminie 60 dni od pierwszego złożenia albo jeżeli na znaczącej części majątku Użytkownika zostanie ustanowiony syndyk.

(b). Po rozwiązaniu umowy Użytkownik musi bezzwłocznie: (i) wnieść na rzecz EFI wszelkie nieuiszczone opłaty, które stały się należne przed rozwiązaniem Umowy; (ii) zwrócić wszelkie Informacje poufne EFI i Produkt; oraz (iii) zwrócić wszelkie materiały, programy, instrukcje i inne przedmioty dotyczące Produktu albo z nim związane, będące w posiadaniu albo pod kontrolą Użytkownika. EFI ma obowiązek podjąć wszelkie uzasadnione handlowo starania, aby dostarczyć Użytkownikowi wszelkie należące do niego informacje zastrzeżone w formacie, w którym są one przechowywane przez EFI w momencie rozwiązania umowy.

11. Prawa do przeprowadzenia audytu.

EFI może przeprowadzić audyt dotyczący korzystania z Produktu albo Dostępu do Produktu. Audyty będą odbywać się po wystosowaniu do Użytkownika powiadomienia z wyprzedzeniem, w trakcie normalnych godzin pracy oraz w sposób, który nie będzie w sposób nieuzasadniony utrudniać działalności Użytkownika. Jeżeli w ramach audytu zostanie wykazane, że Użytkownik korzysta z lub uzyskuje dostęp do Produktu w sposób, który narusza postanowienia niniejszej Umowy, EFI może wystawić Użytkownikowi fakturę za takie korzystanie lub Dostęp, w tym opłaty za opóźnienie, odsetki i koszty związane z audytem. Jeżeli Użytkownik nie opłaci faktury w terminie, EFI może skorzystać z prawa do rozwiązania umowy i innych przysługujących jej praw i środków prawnych.

12. Consent to Use Data.

EFI may collect and use technical data and related information to facilitate providing and/or confirming authorized use of Products, Access, Professional Services, and/or Maintenance to and by you. Subject to EFI's then-current privacy policy (available at <https://www.efi.com/legal/privacy/>) and applicable laws and regulations, EFI may (i) use this information to improve its products, to provide customized services or technologies to you, and/or to confirm authorized use, (ii) transfer this information to EFI's affiliates, agents, and partners, and (iii) transfer this information to the United States and/or any other country where EFI or its affiliates, agents, and partners maintain facilities.

13. Compliance with Laws.

(a). Export Law Compliance. The Product and related technology, information, and materials are subject to the export laws and regulations of the United States. You shall comply with those and any other applicable export laws or regulations. You are solely responsible for obtaining any necessary export licenses and exemptions. The Product and related technology, information, and materials may not be exported or re-exported to any U.S.-embargoed country, to any person or entity on any list of prohibited parties designated by the U.S. government, or otherwise in violation of any export law or regulation.

(b). Compliance with Laws. You may only use the Product in compliance with all applicable laws and regulations. Upon written notice to you, EFI may modify or suspend your use of or Access to the Product as necessary to comply with any law or regulation. Both parties acknowledge their responsibilities and commitments to abide by and comply with international anti-corruption laws, including but not limited to the United States Foreign Corrupt Practices Act and the United Kingdom Anti-Bribery Act, and any amendments and regulations relating to those laws, in addition to each of our own ethical guidelines (EFI's Code of Conduct is available online at <http://ir.efi.com/committee-details/code-business-conduct-and-ethics>). Specifically, for example, no employee, or any individual or entity acting on behalf of or for the benefit of either EFI or Customer, may give or receive anything of value, or anything that may be perceived as valuable, to or from a government official or any other individual for the purpose of influencing any act, securing any improper advantage, or obtaining or retaining business.

12. Zgoda na wykorzystanie Danych.

EFI może gromadzić i wykorzystywać dane techniczne i związane z nimi informacje w celu zapewnienia albo potwierdzenia Użytkownikowi lub przez Użytkownika uprawnionego użytkownika Produktów, Dostępu, Usług specjalistycznych lub usług Utrzymania. Z zastrzeżeniem obowiązującej w danym momencie polityki prywatności EFI (dostępnej pod adresem <https://www.efi.com/legal/privacy/>) oraz obowiązujących przepisów prawa, EFI może (i) wykorzystywać te informacje w celu udoskonalania swoich produktów, świadczenia Użytkownikowi spersonalizowanych usług albo potwierdzania uprawnionego użytkownika; (ii) przekazywać te informacje jednostkom stowarzyszonym, pełnomocnikom i partnerom EFI; oraz (iii) przekazywać te informacje do Stanów Zjednoczonych lub jakiegokolwiek innego kraju, w którym EFI albo jej jednostki stowarzyszone, pełnomocnicy i partnerzy posiadają placówki.

13. Przestrzeganie przepisów prawa.

(a). Przestrzeganie przepisów eksportowych. Produkt oraz związane z nim technologie, informacje i materiały podlegają przepisom prawa eksportowego Stanów Zjednoczonych. Użytkownik ma obowiązek przestrzegać powyższych oraz wszelkich innych odnośnych przepisów prawa eksportowego. Do wyłącznych obowiązków Użytkownika należy uzyskanie wszelkich niezbędnych pozwoleń na wywóz i odstępstw. Produktu ani powiązanych technologii, informacji i materiałów nie można eksportować ani ponownie eksportować do żadnych krajów objętych embargiem USA ani do osób czy podmiotów znajdujących się na liście podmiotów zakazanych wskazanych przez organy rządu USA, ani z naruszeniem jakichkolwiek przepisów prawa eksportowego.

(b). Przestrzeganie przepisów prawa. Użytkownik może korzystać z Produktu jedynie zgodnie z obowiązującymi przepisami prawa. EFI może zmienić lub zawiesić prawo Użytkownika do korzystania z Produktu albo dostęp do niego w sposób konieczny do zapewnienia zgodności z przepisami, po pisemnym powiadomieniu Użytkownika. Obie strony przyjmują do wiadomości swoje obowiązki i zobowiązania w zakresie przestrzegania międzynarodowych przepisów prawa antykorupcyjnego, w tym amerykańskiej Ustawy o zagranicznych praktykach korupcyjnych (Foreign Corrupt Practices Act) i brytyjskiej Ustawy o zapobieganiu łapownictwu (Anti-Bribery Act) oraz wszelkich nowelizacji i przepisów wykonawczych dotyczących tych ustaw, oprócz swoich własnych wytycznych etycznych (Kodeks postępowania EFI jest dostępny online na stronie <http://ir.efi.com/committee-details/code-business-conduct-and-ethics>). W szczególności żaden pracownik ani inna osoba lub podmiot występujący w imieniu albo na rzecz EFI bądź Klienta nie przyjmie korzyści majątkowych ani niczego, co można postrzegać jako korzyść majątkową, od żadnego urzędnika państwowego czy innej osoby, jak również nie przekaze im takich korzyści w celu wywarcia wpływu na jakąkolwiek czynność, uzyskania nienależnej korzyści albo uzyskania bądź utrzymania zamówień.

14. General Provisions.

(a). Taxes. Except with respect to income recognized by EFI, you are liable for all tariffs, duties, and taxes, however designated or levied, based on your possession, use of, or Access to the Product, this Agreement, and/or any Professional Services, including but not limited to sales, use, value added, excise, services, personal property, or other taxes.

(b). Governing Law. This Agreement is not governed by the 1980 UN Convention on Contracts for the International Sales of Goods or any other international treaty or convention. Rather, this Agreement is governed in all respects by the laws of the State of California, USA, without regard to conflicts of laws principles. For all disputes related to this Agreement, the Product, Access, or any services provided under this Agreement, each party consents to the exclusive personal jurisdiction and venue of the state and federal courts in and for Santa Clara County, California, USA.

(c). Severability; Interpretation. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by any court of competent jurisdiction, that provision will be fully severable and this Agreement will be construed and enforced as if it were not included. This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor or against either party. The captions are for convenience only and do not affect the scope, intent, or meaning of the provisions. Any failure or delay to enforce any provision of this Agreement will not be deemed a waiver of EFI's right to do so.

(d). No Assignment. Assignment or transfer of this Agreement in its entirety, including all Licenses purchased, whether voluntarily, by operation of law, or otherwise, requires EFI's prior written consent, which may be withheld, delayed, or conditioned in EFI's sole discretion, and may require payment of a License transfer fee. Partial assignment or transfer of this Agreement, including a portion of Licenses purchased, whether voluntarily, by operation of law, or otherwise, is prohibited. Any merger, consolidation or acquisition of Customer or other transfer of all or substantially all of the shares or assets of Customer is deemed to be an assignment under this Agreement. Any attempted assignment or transfer without EFI's consent is void.

14. Postanowienia ogólne.

(a). Podatki. Z wyjątkiem przychodów wykazanych przez EFI Użytkownik będzie zobowiązany do opłacenia wszelkich taryf, opłat celnych i podatków, bez względu na nazwę i sposób nakładania, wynikających z posiadania, korzystania i uzyskiwania przez Użytkownika dostępu do Produktu, niniejszej Umowy lub wszelkich Usług specjalistycznych, w tym w szczególności podatku od sprzedaży, użytkowania, wartości dodanej, usług, majątku osobistego, podatku akcyzowego i innych podatków.

(b). Prawo właściwe. Niniejsza Umowa nie podlega przepisom Konwencji Narodów Zjednoczonych o umowach międzynarodowej sprzedaży towarów z 1980 roku ani żadnym innym międzynarodowym traktatom ani konwencjom. Niniejsza Umowa we wszystkich aspektach podlega przepisom prawa amerykańskiego stanu Kalifornia, bez uwzględnienia norm kolizyjnych. W przypadku wszelkich sporów związanych z niniejszą Umową, Produktem, Dostępem albo jakimkolwiek innymi usługami świadczonymi na mocy tej Umowy, każda ze stron przyjmuje wyłączną właściwość osobową i miejscową sądów federalnych i stanowych w hrabstwie Santa Clara w amerykańskim stanie Kalifornia.

(c). Rozdzielność postanowień; Interpretacja. Jeżeli sąd właściwy uzna którekolwiek z postanowień niniejszej Umowy za niezgodne z prawem, nieważne albo niewykonalne, takie postanowienie zostanie uznane za mające charakter całkowicie rozdzielnego wobec pozostałych postanowień, a niniejsza Umowa będzie interpretowana i wykonywana tak, jak gdyby nie obejmowała tego postanowienia. Niniejsza Umowa będzie interpretowana uczciwie i zgodnie z jej postanowieniami, bez bezwzględnego skłaniania się ku interpretacji korzystniejszej albo mniej korzystnej dla którejkolwiek ze Stron. Nagłówki w niniejszej Umowie mają wyłącznie charakter orientacyjny i nie wpływają na zakres, znaczenie ani interpretację żadnych postanowień niniejszej Umowy. Niewykonanie lub opóźnienie w wykonaniu jakiegokolwiek postanowienia niniejszej Umowy nie stanowi odstąpienia od przysługującego EFI prawa do wykonania tego postanowienia.

(d). Zakaz cesji. Użytkownik nie może dokonywać przeniesienia ani cesji, zarówno dobrowolnie, z mocy prawa, jak i w inny sposób, żadnej części niniejszej Umowy, w tym jakichkolwiek zakupionych Licencji, bez uzyskania uprzedniej pisemnej zgody EFI, która może zostać wstrzymana, opóźniona albo udzielona warunkowo, wedle wyłącznego uznania EFI, oraz może wymagać wniesienia opłaty za przeniesienie Licencji. Dokonywanie częściowego przeniesienia bądź cesji, zarówno dobrowolnie, z mocy prawa, jak i w inny sposób, żadnej części niniejszej Umowy, w tym części zakupionych Licencji, jest zabronione. Za cesję w rozumieniu niniejszej Umowy uznaje się każdą fuzję, konsolidację lub nabycie Klienta lub inne przeniesienie wszystkich lub zasadniczo wszystkich udziałów lub aktywów Klienta. Wszelkie próby dokonania przeniesienia albo cesji bez zgody EFI będą nieważne.

(e). Language. This Agreement is only in English, which is controlling in all respects. If EFI has provided you with a translation, the translation is for your convenience only and the English-language version, not the translation, is legally binding. If there are any conflicts or inconsistencies between the English-language version and a translation, the English-language version controls. Any notices relating to this Agreement must be in writing in English.

(f). Entire Agreement and Modification. With respect to the subject matter or any term of this Agreement: (i) this Agreement constitutes the entire understanding of the parties; (ii) this Agreement supersedes all prior and contemporaneous communications and understandings (including but not limited to discussions, representations, warranties, inducements, promises, and agreements); (iii) there are no such communications or understandings not explicitly contained herein; (iv) neither party has relied on any such communications or understandings except as explicitly contained in this Agreement; and (v) any waiver, modification, or amendment will be effective only if in a writing signed by the parties, where email does not constitute a signed writing.

(g). Orders and Acceptance. All orders for Products or Professional Services made pursuant to this Agreement are non-cancelable, non-refundable and must be submitted at least fifteen (15) days prior to the requested order delivery date. For any given order, you shall make the order and corresponding payment to EFI or its subsidiary or Affiliate depending upon which company is making the sale of Products or Professional Services for that order. Orders are not binding without written notification of acceptance from EFI. This Agreement governs all subsequent orders, and nothing contained in Customer's purchase orders or other communications will in any way modify this Agreement.

(h). Independent Contractors. You and EFI, and our respective employees and representatives, are and will be independent contractors with respect to the other party. Neither party by virtue of this Agreement has any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

(e). Język Umowy. Niniejsza Umowa została sporządzona wyłącznie w języku angielskim, który ma znaczenie nadrzędne we wszystkich jej aspektach. Jeżeli Użytkownik otrzymał od EFI tłumaczenie, wówczas takie tłumaczenie zostało zapewnione jedynie dla jego wygody, natomiast wersja angielska, a nie tłumaczenie, jest wersją prawnie wiążącą. W przypadku jakichkolwiek sprzeczności albo niezgodności pomiędzy wersją angielską a tłumaczeniem, charakter nadrzędny ma wersja angielska. Wszelkie powiadomienia związane z niniejszą Umową muszą być sporządzane na piśmie w języku angielskim.

(f). Całość Umowy i zmiany. W odniesieniu do przedmiotu lub dowolnego warunku niniejszej Umowy: (i) niniejsza Umowa stanowi całość porozumienia pomiędzy Stronami; (ii) niniejsza Umowa zastępuje wszelkie wcześniejsze lub jednoczesne ustalenia i porozumienia (w tym m.in. rozmowy, oświadczenia, gwarancje, gratyfikacje, obietnice i umowy); (iii) nie istnieją żadne inne tego typu ustalenia ani porozumienia, jeżeli nie zostały one wyraźnie wymienione w niniejszej Umowie; (iv) żadna ze Stron nie polegała na żadnych tego typu ustaleniach ani porozumieniach poza ustaleniami i porozumieniami wyraźnie wymienionymi w niniejszej Umowie; oraz (v) każde zrzeczenie się praw, modyfikacja lub zmiana będzie ważna wyłącznie pod warunkiem, że została sporządzona w formie pisemnego dokumentu podpisanego przez Strony, przy czym wiadomość e-mail nie stanowi pisemnego podpisanego dokumentu.

(g). Zamówienia i ich przyjmowanie. Nie ma możliwości anulowania żadnego zamówienia na Produkty i Usługi specjalistyczne złożonego zgodnie z niniejszą Umową bądź uzyskania za nie zwrotu kosztów, a ponadto zamówienia takie należy składać co najmniej piętnaście (15) dni przed wybranym terminem dostawy. W przypadku każdego zamówienia Użytkownik złoży zamówienie i uiszczy właściwą płatność na rzecz EFI lub jej jednostki zależnej lub stowarzyszonej, zależnie od tego, która spółka dokonuje sprzedaży Produktów i Usług specjalistycznych w ramach danego zamówienia. Zamówienie jest wiążące wyłącznie wtedy, gdy EFI wystawi pisemne zawiadomienie o jego przyjęciu. Niniejsza Umowa obejmuje wszystkie kolejne zamówienia i żaden element zamówień lub innych wiadomości Klienta nie może w żaden sposób zmienić niniejszej Umowy.

(h). Niezależni wykonawcy. Użytkownik i EFI oraz odpowiednio pracownicy i przedstawiciele obu stron są i będą pozostawać względem siebie w stosunku niezależnych wykonawców. Niniejsza Umowa nie nadaje żadnej ze stron prawa ani upoważnienia do podejmowania działań ani zaciągania jakichkolwiek zobowiązań, wyraźnych ani dorozumianych, w imieniu drugiej strony.

(i). Survival. The provisions of this Agreement that relate to fees and payment terms, ownership of intellectual property and proprietary rights, export law compliance, termination, confidentiality, infringement indemnification, warranty disclaimers, limitation of liability, governing law, survivability, force majeure, severability and interpretation, definitions, modification and use of software products owned or distributed by Microsoft or Oracle included in an EFI Product will survive termination of this Agreement.

(j). Force Majeure. Except for payment of monies, no party will be liable for its failure to perform any obligations on account of strikes, shortages, failure or acts of suppliers, riots, insurrection, fires, flood, storm, explosions, acts of God, war, military operations, acts of terrorism whether actual or threatened, acts of a public enemy, epidemics, quarantines, governmental action, labor conditions, earthquakes, material shortages, or any cause that is similar to those enumerated or beyond the reasonable control of the affected party.

(k). U.S. Government Restricted Rights. Use, duplication, or disclosure of the Product by the United States Government is subject to restrictions as set forth in FAR 12.212 or DFARS 227.7202-3 - 227.7202-4 and, to the extent required under U.S. federal law, the minimum restricted rights as set out in FAR 52.227-14, Restricted Rights Notice (June 1987) Alternate III(g)(3) (June 1987) or FAR 52.227-19 (June 1987). To the extent any technical data is provided pursuant to the Agreement, such data is protected per FAR 12.211 and DFARS 227.7102-2 and to the extent explicitly required by the U.S. Government, is subject to limited rights as set out in DFARS 252.227.7015 (November 1995) and DFARS 252.227-7037 (September 1999). If any of the above-referenced agency regulations are modified or superseded, the subsequent equivalent regulation shall apply. The name of the Contractor is Electronics For Imaging, Inc.

15. Product-Specific and Third Party Provisions.

If you have obtained a License for certain Products, some of the following terms and conditions might apply to you.

(a). Products that include Microsoft Software (such as Windows or SQL Server).

(i). Pozostawanie postanowień w mocy. Postanowienia niniejszej Umowy związane z opłatami i warunkami płatności, prawami własności intelektualnej oraz prawami własności, zgodnością z prawem eksportowym, rozwiązaniem umowy, poufnością, zwolnieniem z odpowiedzialności z tytułu naruszenia, wyłączeniem odpowiedzialności z tytułu gwarancji, ograniczeniem odpowiedzialności, prawem właściwym, pozostawianiem postanowień w mocy, siłą wyższą, rozdzielnością postanowień i interpretacją, definicjami, modyfikacjami oraz użyciem oprogramowania stanowiącego własność lub dystrybuowanego przez Microsoft lub Oracle, użytego w Produkcie EFI, pozostają w mocy po rozwiązaniu niniejszej Umowy.

(j). Siła wyższa. Poza obowiązkiem opłacania należności, żadna ze Stron nie ponosi odpowiedzialności za niewykonanie jakichkolwiek swoich zobowiązań z powodu strajków, niedoborów, działań lub zaniechań dostawców, a także zamieszek, powstań, pożarów, powodzi, burz, wybuchów, klęsk żywiołowych, wojny, działań wojskowych, aktów terrorystycznych lub gróźb ich przeprowadzenia, działań wroga publicznego, epidemii, kwarantann, czynności rządowych, warunków pracy, trzęsień ziemi, niedoborów materiałów ani innych powodów podobnych do tutaj wymienionych lub leżących poza rozsądną kontrolą Strony, na której spoczywa dane zobowiązanie.

(k). Ograniczenia praw wynikające z przepisów obowiązujących w Stanach Zjednoczonych. Korzystanie, kopiowanie albo ujawnianie informacji dotyczących Produktu przez władze Stanów Zjednoczonych podlega ograniczeniom określonym w Federalnym Prawie Zamówień Rządowych (Federal Acquisition Regulations, FAR) w podpunkcie 12.212 albo w Aneksie dotyczącym Federalnego Prawa Zamówień Rządowych na Potrzeby Obronności (Defense Federal Acquisition Regulation Supplement, DFARS) w podpunktach 227.7202-3–227.7202-4 oraz podlega, w zakresie, w jakim jest to wymagane amerykańskimi przepisami federalnymi, minimalnemu ograniczeniu praw, w sposób określony w FAR 52.227-14, Informacji o Ograniczonych Prawach (Restricted Rights Notice; czerwiec 1987) ustęp alternatywny III(g)(3) (czerwiec 1987) albo FAR 52.227-19 (czerwiec 1987). W zakresie, w jakim jakiekolwiek dane techniczne są dostarczane na mocy Umowy, dane te są chronione przepisami FAR 12.211 oraz DFARS 227.7102-2, a w zakresie, w jakim jest to wymagane przez amerykański rząd, dane te podlegają ograniczeniu praw, jak określono to w DFARS 252.227.7015 (listopad 1995) oraz DFARS 252.227-7037 (wrzesień 1999). W przypadku zmiany lub zastąpienia któregoś z wyżej wspomnianych przepisów organów rządowych, stosuje się późniejsze równoważne przepisy. Nazwa Wykonawcy to Electronics For Imaging, Inc.

15. Postanowienia dotyczące konkretnych Produktów i podmiotów zewnętrznych.

Użytkownika, który uzyskał Licencję na określone Produkty, mogą obowiązywać niektóre z poniższych warunków.

(a). Produkty obejmujące oprogramowanie spółki Microsoft (takie jak Windows lub SQL Server).

(i). The term “Product” as used in this Agreement includes certain Microsoft software and related documentation, associated media, “online” or electronic documentation, upgrades and updates. EFI does not own these products and the use thereof is subject to certain rights and limitations.

(ii). Microsoft is not responsible for any support services for the Product. Notwithstanding the foregoing, in the event any support issues arise related to the Microsoft software that cannot be resolved by EFI, support to you may be provided by Microsoft pursuant to the Microsoft Premier support services agreement, or a similar type agreement, between EFI and Microsoft.

(iii). The Product is not fault-tolerant. The Product is not designed or intended for use in any situation where failure or fault of any kind of the Product could lead to death or serious bodily injury of any person, or to severe physical or environmental damage (“High Risk Use”). You are not licensed to use the Product in, or in conjunction with, High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: aircraft or other modes of human mass transportation, nuclear or chemical facilities, and Class III medical devices under the Federal Food, Drug, and Cosmetic Act. You shall not use the Product in, or in connection with, any High Risk Use. You are responsible for taking all appropriate measures to ensure the safe use of the Product if used for such purposes and EFI and its suppliers, including Microsoft, will not be liable for any claims or damages arising from such use.

(b). Products that include Software Products Owned or Distributed by Oracle.

(i). The term “Product” as used in this Agreement includes certain software products provided by EFI that are owned or distributed by Oracle USA, Inc. (“Oracle”) and related program documentation (the “Oracle Programs”); EFI does not own the Oracle Programs and the use thereof is subject to certain rights and limitations. The Oracle Programs included herein are subject to a restricted use license and can only be used in conjunction with the Product. Oracle or its licensors retain all ownership of intellectual property rights to the Oracle Programs. You are hereby notified that Oracle is a supplier of EFI and a third-party beneficiary to this Agreement to the extent that this Agreement contains provisions which relate to your use of the Oracle Programs. Such provisions are made expressly for the benefit of Oracle and are enforceable by Oracle in addition to EFI.

(i). Termin „Produkt” stosowany w tej Umowie obejmuje określone oprogramowanie Microsoft oraz powiązaną dokumentację, powiązane nośniki, dokumentację „online” albo elektroniczną, a także uaktualnienia i aktualizacje. Produkty te nie stanowią własności EFI, a ich użytkowanie podlega określonym prawom i ograniczeniom.

(ii). Microsoft nie ma obowiązku świadczenia żadnych usług wsparcia w odniesieniu do Produktu. Niezależnie od powyższego, w przypadku pojawienia się jakichkolwiek problemów dotyczących wsparcia w zakresie oprogramowania Microsoft, których EFI nie może rozwiązać, Użytkownikowi może zostać udzielone wsparcie na mocy umowy Wsparcia Microsoft Premier Support lub innej tego typu umowy, zawartej pomiędzy EFI a spółką Microsoft.

(iii). Produkt nie jest odporny na błędy. Produkt nie został opracowany ani nie jest przeznaczony do użytku w jakiegokolwiek sytuacji, w której jakakolwiek awaria lub błąd Produktu mogłyby spowodować śmierć lub ciężkie uszkodzenie ciała jakiegokolwiek osoby ani też poważne uszkodzenie fizyczne lub szkody ekologiczne („Użytkowanie związane z wysokim ryzykiem”). Użytkownikowi nie przyznano licencji na użytkowanie Produktu stanowiące Użytkowanie związane z wysokim ryzykiem lub z nim związane. Użytkowanie związane z wysokim ryzykiem jest ŚCIŚLE ZABRONIONE. Użytkowanie związane z wysokim ryzykiem dotyczy na przykład: statków powietrznych lub innych środków transportu zbiorowego, instalacji jądrowych lub chemicznych oraz wyrobów medycznych klasy III zgodnie z Federalną ustawą o żywności, lekach i kosmetykach (Federal Food, Drug, and Cosmetic Act). Użytkownik zobowiązuje się nie korzystać z Produktu w ramach Użytkowania związanego z wysokim ryzykiem ani w związku z takim Użytkowaniem. Użytkownik jest zobowiązany do podjęcia wszelkich odpowiednich środków w celu zapewnienia bezpiecznego użytkowania Produktu w przypadku użytkowania w powyższych celach, a EFI i jej dostawcy, w tym Microsoft, nie ponoszą odpowiedzialności z tytułu jakichkolwiek roszczeń lub szkód powstałych wskutek powyższego użytkowania.

(b). Produkty obejmujące oprogramowanie stanowiące własność lub rozprowadzane przez Oracle.

(i). Pojęcie „Produkt” stosowane w niniejszej Umowie obejmuje określone oprogramowanie dostarczone przez EFI stanowiące własność lub rozprowadzane przez spółkę Oracle USA, Inc. (zwaną dalej „Oracle”) i powiązaną dokumentację programową (zwane dalej „Programami Oracle”); Programy Oracle nie stanowią własności EFI, a ich użytkowanie podlega określonym prawom i ograniczeniom. Programy Oracle, o których mowa w niniejszej Umowie, podlegają ograniczonej licencji na użytkowanie i można je użytkować tylko łącznie z Produktem. Oracle lub jej licencjodawcy zachowują wszelkie prawa własności intelektualnej do Programów Oracle. Niniejszym zawiadamiam się Użytkownika, że Oracle jest dostawcą EFI oraz beneficjentem zewnętrznym niniejszej Umowy w zakresie, w jakim niniejsza Umowa zawiera postanowienia związane z użyciem przez Użytkownika Programów Oracle. Powyższe postanowienia zawarto w Umowie wyraźnie na korzyść Oracle i mogą być egzekwowane zarówno przez EFI, jak i Oracle.

(ii). You acknowledge and agree that you are prohibited from (a) publishing any results of benchmark tests run on the Oracle Programs, (b) using the Oracle Programs for rental, timesharing, subscription service, hosting, or outsourcing, and (c) removing or modifying any program markings or notice of Oracle's or Oracle's licensors' proprietary rights.

(iii). To the extent not prohibited by law, in no event will Oracle be liable for (a) any damages, whether direct, indirect, incidental, special, punitive or consequential, and (b) any loss of profits, revenue, data or data use, arising from the use of the Oracle Programs.

(iv). You hereby permit EFI to (a) report any audit results obtained pursuant to this Agreement to Oracle to the extent such results are related to the Oracle Programs, or (b) assign such rights to audit your use of the Oracle Programs to Oracle.

(v). You are hereby notified that some Oracle Programs may include source code that Oracle may provide as part of its standard shipment of such programs, which source code is governed by the terms of this Agreement.

(vi). The Computer Information Transactions Act does not apply to this Agreement.

(vii). You acknowledge and agree that in the event a third party technology may be appropriate or necessary for use with some Oracle Programs, it will be specified in the Product package documentation or as otherwise noted, and such third party technology is licensed to you only for use with the Product under the terms of the third party license agreement specified in the Product package documentation or as otherwise noted, and not under the terms of this Agreement.

(c). E-commerce Applications.

(i). Use at Site Location. You may use or Access the Product only for production activity at the Site Location. If you have more than one production facility, you may not use or Access the Product for production activity at any facility other than the Site Location(s) for which you have been granted a license.

(ii). Links. If you have obtained a License for EFI e-Commerce Software, you represent and warrant that you have the right to create and maintain, or to allow EFI to create and maintain, all Links to the Product and any other websites mutually agreed upon between you and EFI. You shall incorporate EFI's "Powered by EFI" logo on any website utilizing EFI e-commerce Software.

(ii). Użytkownik przyjmuje do wiadomości i wyraża zgodę na to, że zabrania mu się: (a) publikować jakichkolwiek wyników testów porównawczych Programów Oracle; (b) wynajmować Programów Oracle, użytkować ich w ramach systemu z podziałem czasu, udzielać na nie abonamentu, hostować lub użytkować w ramach outsourcingu oraz (c) usuwać lub zmieniać oznaczenia programu albo informacje o prawach własności Oracle lub licencjodawców Oracle.

(iii). W zakresie dozwolonym prawem, Oracle w żadnym przypadku nie będzie odpowiedzialna za: (a) jakiegokolwiek szkody, czy to bezpośrednie, pośrednie, przypadkowe, specjalne, następcze, czy odszkodowania prewencyjne oraz (b) jakąkolwiek utratę korzyści, przychodów, danych lub wykorzystywanie danych wskutek użytkowania Programów Oracle.

(iv). Niniejszym Użytkownik wyraża zgodę na to, aby EFI (a) zgłaszała Oracle wszelkie wyniki audytu uzyskane zgodnie z niniejszą Umową w zakresie, w jakim takie wyniki będą związane z Programami Oracle albo (b) przeniosła na Oracle prawo do przeprowadzenia audytu użytkowania Programów Oracle przez Użytkownika.

(v). Niniejszym zawiadamia się Użytkownika, że niektóre Programy Oracle mogą zawierać kod źródłowy dostarczany przez Oracle jako ewentualna część standardowej dostawy programów, który podlega postanowieniom niniejszej Umowy.

(vi). Niniejsza Umowa nie podlega przepisom Ustawy dotyczącej transakcji związanych z informacjami komputerowymi (Computer Information Transactions Act).

(vii). Użytkownik przyjmuje do wiadomości i wyraża zgodę na to, że w przypadku gdy właściwe albo konieczne będzie użycie technologii podmiotu zewnętrznego wraz z niektórymi Programami Oracle, zostanie to określone w dokumentacji pakietu Produktu albo w inny sposób, a licencja na technologię podmiotu zewnętrznego jest przyznawana Użytkownikowi jedynie w celu użytkowania jej z Produktem zgodnie z postanowieniami umowy licencyjnej podmiotu zewnętrznego zawartej w dokumentacji pakietu Produktu albo w inny podany sposób, a nie zgodnie z postanowieniami niniejszej Umowy.

(c). Aplikacje e-commerce.

(i). Korzystanie w Miejscu użytkowania. Użytkownik może korzystać z Produktu lub uzyskać do niego Dostęp tylko w przypadku wykonywania czynności produkcyjnych w Miejscu użytkowania. Jeżeli Użytkownik posiada więcej niż jeden zakład produkcyjny, nie może on korzystać z Produktu ani uzyskać do niego Dostępu w celu wykonywania czynności w zakładzie produkcyjnym innym niż Miejsca użytkowania, dla których udzielono mu licencji.

(ii). Łącza. Jeżeli Użytkownik uzyskał Licencję na Oprogramowanie e-commerce EFI, wówczas oświadcza on i gwarantuje, że ma prawo tworzyć i utrzymywać wszelkie łącza do Produktu oraz wszelkich innych witryn ustalonych przez Użytkownika i EFI albo zezwalać EFI na tworzenie i utrzymywanie takich łącz. Użytkownik będzie zamieszczać logo EFI „Powered by EFI” na każdej stronie wykorzystującej Oprogramowanie e-commerce EFI.

(ii). Relationships with Third Parties. Use of or Access to the e-Commerce Product does not create a contract or other obligation between you and any of your customers or between EFI and any of your customers or vendors. EFI cannot and does not guarantee the performance of any of your customers, vendors, or other third parties. EFI will have no liability in connection with any dispute between you and any third party, and any third party dispute will not relieve you of any obligation to EFI under this Agreement.

(d). Open Source Software. Some versions of the Products contain open source software. Open source software is licensed to you under that software's own license terms, which can be found in the "Help," "About," "Read Me," or other specified portion of the Product. You are responsible for complying with any terms and conditions applicable to any open source software. To the extent that this Agreement imposes greater restrictions on you than the open source software license terms, the open source software license terms control, but solely with respect to the open source software.

16. Definitions.

"**Access**" means the connection to and use of a Product by Customer via an Internet web browser under the terms of this Agreement.

"**Affiliate**" means any entity directly or indirectly controlling, controlled by, or under common control with a party.

"**Agreement**" means this License and Purchase Agreement.

"**Confidential Information**" means any information that you have been informed or have a reasonable basis to believe is confidential to EFI, whether provided to you before, on, or after this Agreement, including, for example, ideas, programs, data, software, systems configurations, reports, projections, initiatives, customer data, or other business or technical information. Confidential Information includes any written information marked as confidential or proprietary, and any information disclosed orally or visually that is identified as confidential or proprietary at or around the time of its disclosure. All EFI Intellectual Property Rights and technical information related to the Product are Confidential Information whether or not marked as confidential or proprietary.

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"**Documentation**" means user's guides, manuals, and other information related to the Product or Professional Services.

(ii). Relacje z podmiotami zewnętrznymi. Użytkowanie Produktu e-commerce ani uzyskanie do niego Dostępu nie tworzy umowy ani innego zobowiązania pomiędzy Użytkownikiem a którymkolwiek jego klientami ani pomiędzy EFI a którymkolwiek klientami bądź dostawcami Użytkownika. EFI nie może i nie gwarantuje żadnego postępowania klientów czy dostawców Użytkownika ani innych podmiotów zewnętrznych. EFI nie ponosi odpowiedzialności w związku z żadnym sporem pomiędzy Użytkownikiem a podmiotem zewnętrznym, a żaden spór z podmiotem zewnętrznym nie zwalnia Użytkownika z żadnego z jego obowiązków wobec EFI w ramach niniejszej Umowy.

(d). Otwarte oprogramowanie. Niektóre wersje Produktów obejmują Otwarte oprogramowanie. Użytkownikowi zostaje przyznana licencja na Otwarte oprogramowanie właściwa dla danego oprogramowania, zawarta w częściach „Pomoc”, „O oprogramowaniu”, w pliku „Read me” albo w innej wskazanej części Produktu. Użytkownik ma obowiązek przestrzegać ewentualnych warunków użytkowania obowiązujących w odniesieniu do jakiegokolwiek otwartego oprogramowania. W zakresie, w jakim niniejsza Umowa nakłada na Użytkownika większe ograniczenia niż warunki licencji otwartego oprogramowania, zastosowanie mają warunki licencji otwartego oprogramowania, jednak wyłącznie w stosunku do danego otwartego oprogramowania.

16. Definicje.

„**Dostęp**” oznacza połączenie z Produktem i użytkowanie Produktu przez Klienta za pośrednictwem przeglądarki internetowej, zgodnie z warunkami niniejszej Umowy.

„**Jednostka stowarzyszona**” oznacza dowolny podmiot bezpośrednio lub pośrednio kontrolujący lub kontrolowany bądź pozostający pod wspólną kontrolą którejkolwiek ze stron.

„**Umowa**” oznacza niniejszą Umowę licencyjną i sprzedaż.

„**Informacje poufne**” oznaczają wszelkie informacje, o których Użytkownik został poinformowany lub ma uzasadnione podstawy by stwierdzić, że są poufnymi informacjami EFI, uzyskane przez Użytkownika przed podpisaniem, w okresie trwania lub po wygaśnięciu niniejszej Umowy, w tym między innymi pomysły, programy, dane, oprogramowanie, konfiguracje systemowe, raporty, założenia, inicjatywy, dane klientów lub inne informacje biznesowe lub techniczne. Informacje poufne obejmują wszelkie informacje w formie pisemnej oznaczone jako poufne albo zastrzeżone i wszelkie informacje ujawnione w formie ustnej lub graficznej określone jako poufne albo zastrzeżone podczas ich ujawnienia lub wkrótce po ich ujawnieniu. Wszelkie Prawa własności intelektualnej i informacje techniczne EFI dotyczące Produktu stanowią Informacje poufne niezależnie od ich oznaczenia jako poufne albo zastrzeżone.

„**Znaki klienta**” oznaczają nazwę i logo Użytkownika albo inne znaki towarowe, znaki usługowe albo inne znaki.

„**Dokumentacja**” oznacza przewodniki użytkownika, instrukcje i inne informacje dotyczące Produktu lub Usług specjalistycznych.

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„**Initial Term**” means the three-year period of time beginning on the Start Date.

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„**Okres wyjściowy**” oznacza trzyletni okres rozpoczynający się wraz z Datą rozpoczęcia.

„**Prawa własności intelektualnej**” oznaczają, oddzielnie albo łącznie, wszelkie patenty, prawa autorskie, znaki towarowe, znaki usługowe, tajemnice handlowe, nazwy handlowe albo inne prawa własności intelektualnej.

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“**License Key**” means a programming code included in the Product that, if executed or deactivated, renders the Product or portions of it inoperable.

“**Link**” means a hypertext reference that, when activated, moves users from one website to another on the Internet.

“**Maintenance**” means (i) correction of material defects so that the Product will operate materially in conformity with the warranties in this Agreement, (ii) periodic updates that incorporate corrections of material defects and fixes of minor bugs in the Product, (iii) telephone or email/electronic consultation services regarding the use of the Product during EFI’s standard support hours, and (iv) enhancements and/or revisions to software components of the Product, which are subject to additional charge unless they are provided at no charge to substantially all other licensees.

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W razie jakichkolwiek pytań, więcej informacji znajdą Państwo w witrynie internetowej EFI www.efi.com.

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(b). Licença Perpétua. Na hipótese de obtenção de Licença perpétua, a Licença poderá ser revogada pela EFI se você suspender a Manutenção do Software por dois (2) períodos anuais consecutivos de Manutenção. Você poderá instalar apenas o número de cópias do Software no Local do(s) Site(s) para os quais foram obtidas a Licença de uso por você, seus empregados ou contratados independentes autorizados. Você poderá fazer e reter uma cópia adicional somente para fins de *backup* e poderá transferir qualquer Local do Site mediante a obtenção do consentimento prévio por escrito da EFI.

(c). Licença por Prazo Definido. Em caso de obtenção de Licença por prazo definido, salvo especificação em contrário na Documentação de Compra, a Vigência Inicial dessa Licença é de 3 (três) anos a partir da Data de Início. Se você não enviar uma notificação por escrito sobre o término do prazo para a EFI pelo menos 90 dias antes do fim da Vigência Inicial ou qualquer Vigência da Renovação, o prazo será automaticamente renovado às Taxas da EFI então em vigor. Apenas você, seus empregados ou contratados independentes autorizados, e seus usuários finais, conforme o caso, poderão Acessar o Produto, e somente com relação ao seu negócio. Você é o único responsável por assegurar que todos os lançamentos de dados sejam feitos de forma tempestiva e precisa, de acordo com as suas exigências. Você deverá indenizar a EFI quanto a qualquer responsabilização, indenizações ou custos decorrentes dos dados lançados por você ou seus usuários finais em seu nome.

(d). Third-Party Materials. Some third-party materials distributed with the Product may be subject to other terms and conditions, which are typically found in a separate license agreement or “Read Me” file provided with those third-party materials. The License does not apply to any third-party software except as specified herein.

(e). Unauthorized Use. THE PRODUCT MAY CONTAIN A LICENSE KEY TO PREVENT UNAUTHORIZED USE AND EFI MAY EXECUTE OR DEACTIVATE THE LICENSE KEY UPON TERMINATION OF YOUR LICENSE. YOU ACKNOWLEDGE THAT THE LICENSE KEY IS NOT A VIRUS, AND THAT EXECUTION OR DEACTIVATION OF THE LICENSE KEY MAY RENDER THE PRODUCT OR A PORTION OF IT INOPERABLE. IF THE LICENSE KEY IS EXECUTED OR DEACTIVATED AS SPECIFIED IN THIS AGREEMENT, YOU MAY BE OBLIGATED TO PAY EFI'S THEN-CURRENT FEE TO REACTIVATE THE PRODUCT.

2. Installation and Professional Services.

(a). Installation. Unless specified in the Purchase Documentation, the installation and implementation of the Product is your exclusive responsibility. EFI has no responsibility to modify the Product to cause it to function or operate on any particular hardware system, configuration, or platform or with any other software.

(b). Professional Services. You may purchase Professional Services from EFI, and statement(s) of work may be created to more fully describe the scope, duration, and/or Fees for the Professional Services, which will be governed by this Agreement. All pre-paid Professional Services must be used within twenty-four (24) months of the Start Date.

(c). Compensation and Expenses. On-site Professional Services days are based on a standard 8-hour work day. Additional hours will be billed at EFI's then-current applicable rate unless a different rate is mutually agreed. Customer shall reimburse EFI for all reasonable out-of-pocket expenses (including travel, lodging and meals) incurred in connection with on-site Professional Services session(s). Professional Services scheduled and/or performed (i) during after-hours on a weekday or (ii) on a Saturday will be invoiced at 150% of EFI's then-current Professional Services Fees. Professional Services scheduled and/or performed on a Sunday or a government-recognized holiday will be invoiced at 200% of EFI's then-current Professional Services Fees.

3. Hosted Solutions.

If EFI or its designated third-party providers are hosting the Software, the following additional terms and conditions apply:

(d). Materiais de Terceiros. Alguns materiais de terceiros distribuídos com o Produto poderão estar sujeitos a outros termos e condições, tipicamente encontrados em contrato de licenciamento separado ou no arquivo “Leia-me” (“*Read Me*”) fornecido com esses materiais de terceiros. A Licença não se aplica a qualquer software de terceiros, salvo especificação neste Contrato.

(e). Uso Não Autorizado. O PRODUTO PODERÁ CONTER UMA CHAVE DA LICENÇA PARA IMPEDIR O USO NÃO AUTORIZADO E A EFI PODERÁ EXECUTAR OU DESATIVAR A CHAVE DA LICENÇA AO TÉRMINO DE SUA LICENÇA. VOCÊ RECONHECE QUE A CHAVE DA LICENÇA NÃO É UM VÍRUS E QUE A EXECUÇÃO OU DESATIVAÇÃO DA CHAVE DA LICENÇA PODERÁ TORNAR O PRODUTO OU PARTE DO PRODUTO INOPERÁVEL. SE A CHAVE DA LICENÇA FOR EXECUTADA OU DESATIVADA CONFORME ESPECIFICADO NESTE CONTRATO, VOCÊ PODERÁ SER OBRIGADO A EFETUAR O PAGAMENTO DA TAXA DA EFI ENTÃO EM VIGOR PARA REATIVAR O PRODUTO.

2. Instalação e Serviços Profissionais.

(a). Instalação. Salvo especificação na Documentação de Compra, a instalação e implantação do Produto é sua responsabilidade exclusiva. A EFI não é responsável pela modificação do Produto para que ele funcione ou opere em qualquer sistema de hardware, configuração ou plataforma específicos ou juntamente com qualquer outro software.

(b). Serviços Profissionais. Você poderá adquirir os Serviços Profissionais da EFI, e declarações de trabalho poderão ser elaboradas para descrever de forma mais completa o escopo, duração e/ou Taxas pelos Serviços Profissionais, que serão regidos por este Contrato. Todos os Serviços Profissionais pré-pagos deverão ser utilizados no período de 24 (vinte e quatro) meses da Data de Início.

(c). Remuneração e Despesas. Os dias de Serviços Profissionais no local baseiam-se em dias de oito horas de jornada. Horas adicionais serão cobradas segundo as taxas da EFI então em vigor, salvo previsão sobre taxa diferente mutuamente acordada. O Cliente deverá reembolsar a EFI pelas despesas diretas razoáveis (inclusive despesas de viagem, hospedagem e refeições) incorridas com relação aos Serviços Profissionais prestados no local. O valor dos Serviços Profissionais agendados e/ou realizados (i) fora do horário comercial em dias úteis ou (ii) aos sábados corresponderá a 150% do valor das Taxas pelos Serviços Profissionais da EFI então em vigor. O valor dos Serviços Profissionais agendados e/ou realizados aos domingos ou feriado oficialmente reconhecido corresponderá a 200% do valor das Taxas pelos Serviços Profissionais da EFI então em vigor.

3. Soluções Hospedadas.

Se a EFI ou seus prestadores terceirizados designados hospedarem o Software, os seguintes termos e condições adicionais aplicar-se-ão:

(a). Access. EFI or its designated provider will provide those services necessary to allow you Access, including a password(s).

(b). Data Entry. All data generated by and through your Access will reside on servers of EFI or its third party providers.

(c). Password Security. You are solely responsible for (i) ensuring that only authorized individuals have access to passwords to Access the Product, (ii) assigning roles and authority levels for your Access, (iii) the conduct of individuals with Access, and (iv) maintaining the confidentiality and integrity of passwords and authority levels. You shall indemnify and hold EFI harmless from any liability, damages, or costs arising from your failure to comply with this Section.

(d). Scheduled Downtime and Upgrades. Downtime is required from time-to-time for regular maintenance of the technology that supports the Product. EFI shall use commercially reasonable efforts to perform scheduled downtime outside normal business hours. EFI may also install new or updated software from time to time, including supporting software and firmware, in addition to the Software, to aid in providing ongoing stability and security of the hosted solution. You shall facilitate commercially reasonable upgrades and operations without undue delay or objection.

(e). Unexpected Outages. EFI shall use commercially reasonable efforts to avoid unexpected outages and to restore Access as soon as possible. If you do not have Access for more than two (2) consecutive hours within any 24-hour period because of an unexpected outage caused by EFI, you may request credit for one day of the applicable Fees (based on an average of that month's invoice). THIS IS YOUR SOLE AND EXCLUSIVE REMEDY AND EFI'S ENTIRE LIABILITY FOR UNSCHEDULED DOWNTIME OR OUTAGES, AND EFI WILL NOT BE LIABLE FOR ANY DAMAGES RELATED TO ANY UNSCHEDULED DOWNTIME OR OUTAGES.

(f). Self-Hosting. You at all times retain the right to self-host the Product from another location and, if you are being granted a term license, continue to pay the Term License Fees for the Software. Any Professional Services performed by EFI in migrating a hosted solution to a self-hosted solution are billable at EFI's standard rates.

(g). Maintenance. If you are being granted a perpetual License as a hosted solution, you must remain on Maintenance for the period that EFI or its designated third-party provider is providing the hosting services to you.

4. Fees and Delivery.

(a). Fees. You shall pay all applicable Fees.

(a). Acesso. A EFI ou seu prestador terceirizado designado prestará os serviços necessários para lhe permitir o Acesso, inclusive a(s) senha(s).

(b). Lançamento de Dados. Todos os dados gerados pelo seu Acesso ou por meio dele residirão nos servidores da EFI ou de seus prestadores terceirizados.

(c). Segurança por Senha. Você é o único responsável (i) por assegurar que apenas indivíduos autorizados tenham acesso às senhas de Acesso ao Produto, (ii) por designar os papéis e níveis de autoridade para o seu Acesso, (iii) pela conduta dos indivíduos com Acesso, e (iv) pela manutenção da confidencialidade e integridade das senhas e níveis de autoridade. Você deverá indenizar a EFI por qualquer responsabilização, indenizações ou custos decorrentes de sua não observância dessa Seção.

(d). Período de Inatividade e Atualizações Programadas. É necessário um período de inatividade (*downtime*) de tempos em tempos para a regular manutenção da tecnologia que suporta o Produto. A EFI deverá empregar os esforços comercialmente razoáveis para que o período de inatividade programada ocorra fora do horário comercial. A EFI também poderá instalar software novo ou atualizado de tempos em tempos, inclusive software e firmware de suporte, além do Software, para auxiliar na prestação da estabilidade e segurança contínuos da solução hospedada. Você deverá facilitar as atualizações e operações comercialmente razoáveis sem atrasos ou objeções indevidas.

(e). Interrupções Inesperadas. A EFI deverá empregar esforços comercialmente razoáveis para evitar interrupções inesperadas e restaurar o Acesso assim que possível. Se você não tiver Acesso por mais de 2 (duas) horas consecutivas em qualquer período de 24 horas devido a uma interrupção inesperada causada pela EFI, você poderá solicitar um crédito correspondente a um dia das Taxas aplicáveis (com base na média da fatura daquele mês). ESTE É O ÚNICO E EXCLUSIVO PROVIMENTO A QUE VOCÊ TEM DIREITO E A RESPONSABILIDADE INTEGRAL DA EFI POR PERÍODOS DE INATIVIDADE OU INTERRUPTÕES NÃO PROGRAMADAS, SENDO QUE A EFI NÃO SERÁ RESPONSÁVEL POR QUAISQUER DANOS RELACIONADOS A QUAISQUER PERÍODOS DE INATIVIDADE OU INTERRUPTÕES NÃO PROGRAMADAS.

(f). Auto-Hospedagem. Você sempre terá o direito de auto-hospedar o Produto de outro local e, em caso de licença por prazo definido, você continuará a pagar as Taxas pelo Prazo da Licença do Software. Quaisquer Serviços Profissionais realizados pela EFI na migração da solução hospedada para uma solução auto-hospedada serão cobrados às taxas padrão da EFI.

(g). Manutenção. Em caso de obtenção de Licença perpétua da solução hospedada, você deverá continuar com a Manutenção pelo período em que a EFI ou seus prestadores terceirizados designados prestarem os serviços de hospedagem a você.

4. Taxas e Entrega.

(a). Taxas. Você deverá efetuar o pagamento de todas as Taxas aplicáveis.

(b). Title and Risk of Loss. Title and risk of loss for any media or hardware for the Product transfers to you at EFI's designated manufacturing plant(s) or warehouse(s). If the Product is delivered electronically, risk of loss transfers to you when the Product or Access is made available to you.

(c). Hardware Delivery. Unless otherwise specified in the Purchase Documentation, where you are purchasing hardware: (i) EFI shall act as agent for you and procure insurance against risk of loss and/or procure and prepay for shipment, (ii) you shall reimburse EFI for all charges relating to the shipment of hardware upon EFI providing an invoice for such charges. EFI shall use commercially reasonable efforts to ship hardware as soon as practicable following execution of this Agreement and EFI's receipt of any required deposits. If you request a delay in delivery or otherwise cause a delay in the transportation process, EFI reserves the right to separately charge you for any costs it incurs for paying the logistics company to store and warehouse hardware on your behalf.

5. Product Maintenance.

(a). Subject to your timely payment of all applicable Fees, EFI or its designated provider will provide you with annual Maintenance for the Product. Maintenance terms automatically renew for consecutive 12-month periods unless cancelled by either party with written notice at least 30 days before the Maintenance Renewal Date. Notwithstanding the foregoing, Maintenance for certain Products (e.g., individual Software modules that are part of the EFI Software solution) may only be cancelled in the event that you are no longer using those certain Products; please first consult with EFI in the event you desire to cancel Maintenance for any Product.

(b). You must possess a valid License to use any upgrade or update. By using an upgrade or update, your license to any previous version of the Product automatically terminates. If you (i) have an out-of-date version of the Product or (ii) are not current on Maintenance due to your failure to timely pay Maintenance Fees and wish to update your version of the Product, you must pay any unpaid Fees and may be subject to additional fees to transfer or convert any old data. EFI reserves the right to discontinue Maintenance for all out-of-date versions of the Product.

6. Warranty and Disclaimer.

(b). Titularidade e Risco de Perda. A titularidade e o risco de perda de qualquer mídia ou hardware do Produto são transferidos a você na(s) unidade(s) de fabricação ou armazém(ns) designados da EFI. Se o Produto for entregue eletronicamente, o risco de perda é transferido a você no momento em que o Produto ou o Acesso é disponibilizado a você.

(c). Entrega de Hardware. Salvo especificação em contrário na Documentação de Compra, que dispõe sobre a aquisição de hardware: (i) a EFI atuará como seu preposto e providenciará seguro contra risco de perda e/ou providenciará e pré-pagará o envio, (ii) você deverá reembolsar a EFI por todas as despesas relacionadas ao envio de hardware mediante a apresentação pela EFI da fatura dessas despesas. A EFI deverá empregar esforços comercialmente razoáveis para enviar o hardware assim que possível após a celebração deste Contrato e o recebimento pela EFIA dos depósitos exigidos. Se você solicitar uma postergação da entrega ou de outra forma causar um atraso no processo de transporte, a EFI reserva-se o direito de cobrar de você, separadamente, quaisquer custos que a EFI incorrer relacionados a pagamentos efetuados à empresa de logística para armazenar o hardware em seu nome.

5. Manutenção de Produto.

(a). Sujeito ao pagamento pontual de todas as Taxas aplicáveis por você, a EFI ou seu prestador designado prestará Manutenção anual do Produto. Os prazos da Manutenção serão automaticamente renovados por períodos de 12 meses consecutivos, salvo se cancelados por qualquer das partes mediante notificação por escrito com antecedência de pelo menos 30 dias da Data de Renovação da Manutenção. Não obstante, a Manutenção de determinados Produtos (e.g., módulos individuais de Software que sejam parte da solução de Software da EFI) somente poderá ser cancelada caso você não esteja mais utilizando aqueles determinados Produtos; caso você deseje cancelar a Manutenção de qualquer Produto, consulte a EFI antes.

(b). Você deve possuir uma Licença válida para utilizar qualquer *upgrade* ou atualização. Ao utilizar um *upgrade* ou atualização, sua licença de qualquer versão anterior do Produto será automaticamente encerrada. Se você (i) possuir uma versão desatualizada do Produto ou (ii) não estiver em dia com a Manutenção devido à falta de pagamento pontual das Taxas de Manutenção e desejar atualizar sua versão do Produto, você deverá efetuar o pagamento de qualquer Taxa não paga e poderá estar sujeito a taxas adicionais de transferência ou conversão de quaisquer dados antigos. A EFI reserva-se o direito de interromper a Manutenção de todas as versões desatualizadas do Produto.

6. Garantia e Ressalva (*Disclaimer*).

(a). Limited Warranties. EFI warrants to you that (i) EFI has the right to grant the License, (ii) subject to your timely payment of all applicable Fees, the Products as delivered to you will perform materially in accordance with EFI's then-current, applicable specifications if all available updates, upgrades, and bug-fixes are properly installed, and (iii) any Professional Services you purchase will be provided in good and workmanlike manner consistent with generally accepted industry standards. This warranty does not apply to defects attributable to (A) any equipment or software not provided or approved for use by EFI, (B) any modification of the Product by you, your employees, or any third party acting on your behalf, (C) any accident, neglect, misuse, or abuse by you, your employees, or any third party acting on your behalf, or (D) exposure of the Product to conditions outside the range of environmental, power, and operating specifications provided by EFI. You shall cooperate fully and promptly with EFI's attempts to identify the cause of any claimed breach of this limited warranty.

(b). Security of Your Systems. You are solely responsible for (i) ensuring the confidentiality, security, and integrity of your network connectivity, data, and servers, (ii) preventing and bearing the risk of any loss or damage to any data on your servers, and (iii) maintaining archive and backup copies of any data.

(c). WARRANTY DISCLAIMER AND REMEDIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES AND REMEDIES IN THIS AGREEMENT ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES. EFI, ITS SUPPLIERS, AND LICENSORS SPECIFICALLY DISCLAIM ANY OTHER WARRANTIES AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT; ANY WARRANTIES RELATING TO SECURITY; AND ANY WARRANTIES THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED, OR ERROR-FREE. EFI MAKES NO WARRANTY, IMPLIED OR OTHERWISE, REGARDING THE PERFORMANCE OR RELIABILITY OF ANY OTHER THIRD PARTY PRODUCTS, OR SERVICES.

(a). Garantia Limitada. A EFI lhe garante que (i) a EFI tem o direito de conferir a Licença, (ii) sujeito ao pagamento pontual de todas as Taxas aplicáveis, os Produtos, conforme entregues a você, terão o desempenho essencialmente de acordo com as especificações da EFI então em vigor, se todas as atualizações, *upgrades* e correções de *bugs* disponíveis tiverem sido adequadamente instaladas, e (iii) quaisquer Serviços Profissionais que você adquirir serão prestados de forma satisfatória e profissional, de acordo com os padrões da indústria geralmente aceitos. Essa garantia não se aplica a defeitos atribuíveis a (A) qualquer equipamento ou software não fornecido ou aprovado para uso pela EFI, (B) qualquer modificação do Produto por você, seus empregados ou qualquer terceiro atuando em seu nome, (C) qualquer acidente, negligência, uso indevido ou mau uso por você, seus empregados ou qualquer terceiro atuando em seu nome, ou (D) exposição do Produto a condições fora do espectro das especificações ambientais, de energia e operacionais fornecidas pela EFI. Você deverá cooperar inteira e prontamente com a EFI em suas tentativas de identificar a causa de qualquer suposta violação dessa garantia limitada.

(b). Segurança de Seus Sistemas. Você é o único responsável por (i) assegurar a confidencialidade, segurança e integridade da sua conectividade de rede, dados e servidores, (ii) impedir e assumir o risco de qualquer prejuízo ou danos a quaisquer dados em seus servidores, e (iii) manter o arquivo e cópias de *backup* de quaisquer dados.

(c). RESSALVA (DISCLAIMER) DA GARANTIA E PROVIMENTOS. CONFORME PERMITIDO EM LEI, AS GARANTIAS E PROVIMENTOS CONTIDOS NESTE CONTRATO SÃO EXCLUSIVOS E SUBSTITUEM TODAS AS OUTRAS GARANTIAS E PROVIMENTOS. A EFI, SEUS FORNECEDORES E LICENCIANTES ESPECIFICAMENTE RENUNCIAM QUAISQUER OUTRAS GARANTIAS E PROVIMENTOS, INCLUSIVE, ENTRE OUTROS, AS GARANTIAS IMPLÍCITAS DE COMERCIALIZAÇÃO, ADEQUAÇÃO PARA DETERMINADO FIM E NÃO VIOLAÇÃO; QUAISQUER GARANTIAS RELACIONADAS À SEGURANÇA; E QUAISQUER GARANTIAS DE QUE O FUNCIONAMENTO DO PRODUTO SERÁ ININTERRUPTO, OU LIVRE DE ERROS. A EFI NÃO PRESTA GARANTIA, IMPLÍCITA OU NÃO, QUANTO AO DESEMPENHO OU CONFIABILIDADE DE QUAISQUER PRODUTOS DE TERCEIRO, OU SERVIÇOS.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOLE AND EXCLUSIVE REMEDY TO WHICH YOU ARE ENTITLED FOR BREACH OF THESE LIMITED WARRANTIES, AND THE ENTIRE LIABILITY OF EFI AND ITS SUPPLIERS RELATING TO BREACH OF THESE LIMITED WARRANTIES, IS, AT EFI'S OPTION, TO (1) REPAIR OR REPLACE THE PRODUCT OR RE-PERFORM THE SERVICE THAT DOES NOT MEET THE LIMITED WARRANTY, OR (2) PROVIDE A REFUND OF THE THEN-CURRENT REASONABLE COMMERCIAL VALUE (IF ANY) FOR THE PRODUCT OR SERVICE THAT DOES NOT MEET THE LIMITED WARRANTY. EXCEPT AS PROVIDED IN THIS AGREEMENT, THERE ARE NO REFUNDS, RETURNS, EXCHANGES, OR REPLACEMENTS.

7. Infringement Indemnification.

EFI shall indemnify you from IP Claims and reimburse you for damages paid by you to the party bringing the IP Claim pursuant to a final, non-appealable judgment that the Product directly infringes any Third Party IP Rights. If you do not notify EFI in writing within 10 business days of learning of the IP Claim, and give EFI proper and full information, assistance, and exclusive authority to defend or settle the IP Claim, EFI will be relieved of its obligations under this Section. If the Product or any part of it is in EFI's opinion likely to become the subject of a claim of infringement of Third Party IP Rights, or if it is adjudicatively determined that the Product or any part of it infringes Third Party IP Rights, EFI may at its option (i) obtain for you a license or right to use the Third Party IP Rights so you can continue to use the Product, or (ii) replace or modify the Product with other suitable and reasonably equivalent non-infringing technology or parts, or (iii) if it is not commercially reasonable to take the actions described in clauses (i) or (ii) in this sentence, terminate your License and, if you return the Product to EFI, refund a portion of the license fee paid by you equal to the then-current reasonable commercial value (if any) of the Product. EFI shall not be responsible, liable, or obligated to indemnify or reimburse you if the alleged infringement arises out of (i) compliance with your requirements or specifications that are outside EFI's standard specifications for the Product, (ii) any addition or incorporation to or modification of the Product at your request, (iii) any combination of the Product with any product or software not provided by EFI, or (iv) use of the Product in the practice of a process or system other than that for which it was intended. In any event as described in the preceding sentence, you shall defend and/or settle any claim brought against EFI at your own expense, and shall indemnify EFI against any costs, legal fees, other expenses, and damages required for the defense or settlement of the claim.

CONFORME PERMITIDO EM LEI, O ÚNICO E EXCLUSIVO PROVIMENTO A QUE VOCÊ TEM DIREITO PELA VIOLAÇÃO DESSAS GARANTIAS LIMITADAS, E A PLENA RESPONSABILIDADE DA EFI E SEUS FORNECEDORES QUANTO À VIOLAÇÃO DESSAS GARANTIAS LIMITADAS, É DE, A CRITÉRIO DA EFI, (1) CONSERTAR OU SUBSTITUIR O PRODUTO OU REALIZAR NOVAMENTE O SERVIÇO QUE NÃO ATENDEU À GARANTIA LIMITADA, OU (2) REEMBOLSAR O VALOR COMERCIAL RAZOÁVEL À ÉPOCA (SE HOUVER) DO PRODUTO OU SERVIÇO QUE NÃO ATENDER À GARANTIA LIMITADA. SALVO DISPOSIÇÃO NESTE CONTRATO, NÃO HÁ RESTITUIÇÕES, DEVOLUÇÕES, TROCAS OU SUBSTITUIÇÕES.

7. Indenização por Violação.

A EFI deverá indenizá-lo na hipótese de Reivindicações de Propriedade Intelectual e reembolsá-lo pelas indenizações pagas por você à parte que tiver ajuizado a Reivindicação de Propriedade Intelectual, nos termos da sentença transitada em julgado que determine que o Produto viola diretamente quaisquer Direitos de Propriedade Intelectual de Terceiros. Se você não notificar a EFI por escrito no prazo de 10 dias úteis a partir do conhecimento da Reivindicação de Propriedade Intelectual, fornecendo à EFI informações adequadas e completas, assistência e exclusivos poderes para contestar ou chegar a um acordo sobre a Reivindicação de Propriedade Intelectual, a EFI ficará liberada de suas obrigações nos termos dessa Seção. Se, na opinião da EFI, for provável que o Produto ou qualquer parte do Produto tornar-se-á objeto de reivindicação de violação de Direitos de Propriedade Intelectual de Terceiros, ou se, segundo a jurisprudência, ficar determinado que o Produto ou qualquer parte do Produto viola Direitos de Propriedade Intelectual de Terceiros, a EFI poderá, a seu critério, (i) obter para você a licença ou direito de uso dos Direitos de Propriedade Intelectual de Terceiros para que você possa continuar a usar o Produto, ou (ii) substituir ou modificar o Produto por outras tecnologias ou partes não infringentes adequadas e razoavelmente equivalentes, ou (iii) se não for comercialmente razoável tomar as medidas descritas nas cláusulas (i) ou (ii) dessa frase, rescindir a sua Licença e, se você devolver o Produto à EFI, reembolsar-lhe uma parte da taxa da licença paga correspondente aos valores comercialmente razoáveis então em vigor (se houver) do Produto. A EFI não será responsável, responsabilizada ou obrigada a indenizá-lo ou reembolsá-lo se a suposta violação decorrer de (i) observância de suas exigências ou especificações fora das especificações padrão de Produto da EFI, (ii) qualquer adição, incorporação ou modificação do Produto mediante sua solicitação, (iii) qualquer combinação do Produto com qualquer produto ou software não fornecido pela EFI, ou (iv) uso do Produto em processo ou sistema além daqueles para os quais o Produto era pretendido. Em qualquer das hipóteses descritas na frase anterior, você deverá contestar e/ou chegar a um acordo sobre qualquer reivindicação ajuizada contra a EFI, às suas custas, e deverá indenizar a EFI por quaisquer custos, honorários jurídicos, outras despesas e indenizações exigidas para a contestação ou acordo sobre a reivindicação.

THE RIGHTS GRANTED TO YOU IN THIS SECTION ARE YOUR SOLE AND EXCLUSIVE REMEDIES FOR ANY ALLEGED INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

8. LIMITATION OF LIABILITY.

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL EFI OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY, OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EFI IS NOT RESPONSIBLE FOR ANY LOST PROFITS OR REVENUE, LOSS OF USE OF THE PRODUCT, LOSS OF DATA, OR THE COST OF RECOVERING ANY DATA. EXCEPT FOR INSTANCES INVOLVING EFF'S WILLFUL MISCONDUCT, EFI WILL NOT BE LIABLE FOR DAMAGES ARISING FROM ANY BREACH, UNAUTHORIZED ACCESS, MISUSE, OR INTRUSION RELATED TO YOUR DATA ON EFF'S OR ITS SUPPLIERS' SERVERS OR ANY NETWORK YOU USE IN CONNECTION WITH THE PRODUCT.

IN NO EVENT WILL EFF'S TOTAL LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATED TO THE PRODUCTS, SERVICES, ACCESS, AND/OR THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, UNDER STATUTE, OR OTHERWISE) EXCEED THE TOTAL AMOUNT OF THE FEES ACTUALLY PAID BY YOU IN THE 12 MONTHS PRECEDING THE CLAIM FOR THE EFI PRODUCT, SERVICES, OR ACCESS GIVING RISE TO THE CLAIM. YOU AGREE THAT THIS AMOUNT IS SUFFICIENT TO SATISFY THE ESSENTIAL PURPOSE OF THIS AGREEMENT AND THAT THE PRICE OF THE PRODUCT, PROFESSIONAL SERVICES, OR ACCESS REFLECTS THIS ALLOCATION OF RISK.

THE FOREGOING LIMITATIONS OF LIABILITY AND DISCLAIMERS FORM AN ESSENTIAL ELEMENT OF THIS AGREEMENT, WITHOUT WHICH EFI WOULD NOT HAVE LICENSED OR SOLD THE PRODUCT TO YOU OR PROVIDED YOU WITH ACCESS.

OS DIREITOS QUE LHE SÃO CONFERIDOS NESTA SEÇÃO CONSTITUEM SEU ÚNICO E EXCLUSIVO PROVIMENTO QUANTO A QUALQUER SUPOSTA VIOLAÇÃO DE DIREITOS DE PROPRIEDADE INTELECTUAL DE QUALQUER TERCEIRO.

8. LIMITAÇÃO DE RESPONSABILIDADE.

CONTANTO QUE NÃO PROIBIDO POR LEI, EM NENHUMA HIPÓTESE A EFI OU SEUS FORNECEDORES OU LICENCIANTES SERÃO RESPONSABILIZADOS POR QUALQUER INDENIZAÇÃO INDIRETA, ESPECIAL, INCIDENTAL, INDENIZAÇÃO POR DANO INDIRETO, INDENIZAÇÃO POR DESCUMPRIMENTO CONTRATUAL OU INDENIZAÇÃO PUNITIVA, MESMO QUE EM RAZÃO DE QUALQUER TEORIA DE RESPONSABILIDADE, MESMO QUE CIENTE DA POSSIBILIDADE DE IMPOSIÇÃO DESSAS INDENIZAÇÕES. A EFI NÃO É RESPONSÁVEL POR QUAISQUER LUCROS CESSANTES, PERDA DO USO DO PRODUTO, PERDA DE DADOS OU CUSTO DE RECUPERAÇÃO DE QUAISQUER DADOS. SALVO HIPÓTESES ENVOLVENDO A MÁ CONDUTA DOLOSA DA EFI, A EFI NÃO SERÁ RESPONSÁVEL POR INDENIZAÇÕES DECORRENTES DE QUALQUER VIOLAÇÃO, ACESSO NÃO AUTORIZADO, MAU USO OU INVASÃO RELACIONADA AOS DADOS DO CLIENTE NOS SERVIDORES DA EFI OU DE SEUS FORNECEDORES OU EM QUALQUER REDE UTILIZADA POR VOCÊ COM RELAÇÃO AO PRODUTO.

EM NENHUMA HIPÓTESE A RESPONSABILIDADE PLENA DA EFI POR TODAS AS REIVINDICAÇÕES DECORRENTES DO PRODUTO, SERVIÇOS, ACESSOS E/OU ESTE CONTRATO, OU RELACIONADAS A ELES, INDEPENDENTEMENTE DO TIPO DE AÇÃO (ATOS ILÍCITOS CONTRATUAIS, ATOS ILÍCITOS EXTRA CONTRATUAIS, ATOS ILÍCITOS SEGUNDO A LEI OU OUTROS) EXCEDERÁ O VALOR TOTAL DAS TAXAS EFETIVAMENTE PAGAS POR VOCÊ NOS 12 MESES ANTERIORES À REIVINDICAÇÃO RELACIONADA AO PRODUTO, SERVIÇOS OU ACESSO DA EFI QUE DER ORIGEM À REIVINDICAÇÃO. VOCÊ CONCORDA QUE ESSE VALOR É SUFICIENTE PARA SATISFAZER O PROPÓSITO ESSENCIAL DESTES CONTRATOS E QUE O PREÇO DO PRODUTO, SERVIÇOS PROFISSIONAIS OU ACESSO REFLETE ESSA ALOCAÇÃO DE RISCO.

AS LIMITAÇÕES DE RESPONSABILIDADE E RESSALVAS (*DISCLAIMERS*) ACIMA FORMAM ELEMENTO ESSENCIAL DESTES CONTRATOS, SEM OS QUAIS A EFI NÃO TERIA LICENCIADO OU VENDIDO O PRODUTO OU FORNECIDO ACESSO A VOCÊ.

BECAUSE SOME JURISDICTIONS DO NOT ALLOW SOME OR ALL OF THE EXCLUSIONS OR LIMITATIONS OF LIABILITY IN THIS AGREEMENT, SOME OR ALL OF THEM MAY NOT APPLY TO YOU.

9. Proprietary Rights and Confidential Information.

(a). No Implied Conveyance of Proprietary Rights. The Product, Documentation, and any Work Product are the valuable, confidential, and proprietary property of EFI, its suppliers and licensors. EFI is not conveying any of its Intellectual Property Rights, except the limited rights specified in this Agreement. You shall maintain and reproduce all copyright, trademark, patent, and other proprietary notices on the Product in the same form and manner as delivered by EFI.

(b). Protection of Information. You shall not disclose any of EFI's Confidential Information, and shall take precautions with respect to EFI's Products and Confidential Information that are at least as protective as you take to protect your own confidential information and proprietary rights of the greatest sensitivity. You shall advise your employees and authorized independent contractors of the confidential and proprietary nature of the Product and EFI's Confidential Information and of the restrictions imposed by this Agreement, and confine access to the Product and EFI's Confidential Information to those individuals who need it in the ordinary course and scope of their employment or relationship with you. Except as specified in this Agreement, you shall not directly or indirectly disclose any part of the Product, EFI's Confidential Information, or Documentation to any third party.

(c). Termination; Injunctive Relief. Your violation of the confidentiality obligations or of EFI's Intellectual Property Rights may cause irreparable damage that cannot be fully remedied by money damages. In the event of any actual or threatened violation, you agree that EFI will be entitled, in addition to any other remedy available to it, to (i) terminate this Agreement, retake possession of the Product, execute the License Key, and/or terminate Access, and/or (ii) obtain injunctive or other equitable relief from any court of competent jurisdiction to prevent any further violation.

COMO ALGUMAS JURISDIÇÕES NÃO PERMITEM ALGUMAS OU TODAS AS EXCLUSÕES OU LIMITAÇÕES DE RESPONSABILIDADE CONTIDAS NESTE CONTRATO, ALGUMAS OU TODAS ELAS PODEM NÃO SE APLICAR A VOCÊ.

9. Direitos de Propriedade e Informações Confidenciais.

(a). Proibição de Transferência Tácita de Direitos de Propriedade. O Produto, Documentação e qualquer Produto de Trabalho são bens de valor, confidenciais e particulares da EFI, seus fornecedores e licenciantes. A EFI não está transferindo quaisquer de seus Direitos de Propriedade Intelectual, exceto os direitos limitados especificados neste Contrato. Você deverá manter e reproduzir todos os avisos de direitos autorais, marcas registradas, patentes e outros avisos de propriedade sobre o Produto conforme entregue pela EFI.

(b). Proteção das Informações. Você não deverá divulgar quaisquer Informações Confidenciais da EFI e deverá tomar precauções para proteger os Produtos e Informações Confidenciais da EFI pelo menos iguais às precauções que você tomaria para proteger as suas próprias informações confidenciais e direitos de propriedade mais sensíveis. Você deverá avisar os seus empregados e contratados independentes autorizados sobre a natureza confidencial e privada do Produto e das Informações Confidenciais da EFI e sobre as restrições impostas por este Contrato, restringindo o acesso ao Produto e Informações Confidenciais da EFI aos indivíduos que deles necessitem no curso normal e dentro do escopo de suas atividades como seus empregados ou segundo o relacionamento que mantenham com você. Salvo especificação neste Contrato, você não deverá divulgar, direta ou indiretamente, qualquer parte do Produto, as Informações Confidenciais da EFI ou a Documentação a qualquer terceiro.

(c). Rescisão; Medida Liminar. A violação, pelo Cliente, das suas obrigações de confidencialidade ou dos Direitos de Propriedade Intelectual da EFI poderá causar um dano irreparável que poderá não ser plenamente reparado por meio de indenização pecuniária. Na hipótese de qualquer violação efetiva ou ameaça de violação, você concorda que a EFI, além de qualquer outra medida a ela disponível, terá o direito de (i) rescindir este Contrato, retomar a posse do Produto, executar a Chave da Licença, e/ou encerrar o Acesso, e/ou (ii) obter medida liminar ou outra tutela de equidade junto a qualquer juízo competente para impedir qualquer outra violação.

(d). Use of Your Trademarks and Logos. Subject to any reasonable use guidelines, you grant EFI a non-exclusive, worldwide, royalty-free license to use Customer Marks in connection with this Agreement, for use with the Product, for promoting EFI's Products in marketing materials, print, or on-line advertising, and for identifying you as an EFI customer. You shall also secure for EFI any rights or sublicenses required for EFI's use of the trademarks or service marks of your Affiliates. EFI acknowledges that (i) Customer Marks are owned solely and exclusively by you or your Affiliates, (ii) EFI has no other rights, title, or interest in or to Customer Marks, and (iii) all use and goodwill of Customer Marks by EFI inures to the benefit of you and your Affiliates.

10. Termination.

(a). This Agreement may be terminated immediately upon written notice to the other party (i) by EFI, if you fail to make any required payment other than Maintenance Fees, (ii) by the non-breaching party, if you or EFI fails to cure a material breach within 30 days after written notice from the non-breaching party, or (iii) by EFI, if you cease doing business as a going concern, become the object of voluntary or involuntary bankruptcy or liquidation proceedings that are not dismissed within 60 days after the initial filing, or if a receiver is appointed with respect to a substantial portion of your assets.

(b). Upon termination, you shall promptly (i) pay EFI all unpaid fees accrued before the termination, (ii) return all EFI Confidential Information and the Product, and (iii) return any materials, programs, manuals, and other items related to or derived from the Product in your possession or control. EFI shall use commercially reasonable efforts to provide you with any proprietary data belonging to you in the format in which it is stored by EFI at the time of termination.

11. Audit Rights.

EFI may audit your use of or Access to the Product. Any audit will take place after prior notice to you, during regular business hours, and in a manner that does not unreasonably interfere with your normal business. If the audit shows that you are using or accessing the Product in a way that violates this Agreement, EFI may invoice you for such use or Access, including late fees, interest, and expenses associated with the audit. If you do not timely pay that invoice, EFI may exercise its termination rights and pursue any other rights or remedies available to it.

(d). Uso de Marcas Registradas e Logotipos do Cliente. Sujeito a quaisquer diretrizes de uso razoáveis, você confere à EFI licença não exclusiva, mundial e isenta do pagamento de royalties para o uso das Marcas do Cliente com relação a este Contrato, para utilização com o Produto, para promover os Produtos da EFI em materiais de marketing, impressos ou propaganda online e para identificar você como cliente da EFI. Você também deverá garantir à EFI quaisquer direitos ou sublicenças exigidas para que a EFI possa utilizar as marcas registradas ou marcas de serviço de suas Coligadas. A EFI reconhece que (i) as Marcas do Cliente são de propriedade única e exclusiva do Cliente ou das Coligadas do Cliente, (ii) a EFI não possui outros direitos, títulos ou interesses quanto às Marcas do Cliente, e (iii) toda utilização e ágio das Marcas do Cliente pela EFI reverte em benefício do Cliente e das Coligadas do Cliente.

10. Rescisão.

(a). Este Contrato poderá ser imediatamente rescindido mediante notificação por escrito à outra parte (i) pela EFI, se você deixar de efetuar qualquer pagamento exigido além das Taxas de Manutenção, (ii) pela parte não infratora, se você ou a EFI deixar de sanar violação relevante no prazo de 30 dias após notificação por escrito da parte não infratora, ou (iii) pela EFI, se você deixar de ser uma empresa em funcionamento, tornar-se objeto de processo de autofalência ou falência, processo de liquidação que não seja arquivado em 60 dias após a data da propositura, ou se for nomeado um depositário judicial para uma parte substancial de vossos ativos.

(b). Mediante a rescisão, você deverá imediatamente (i) efetuar o pagamento de todas as taxas não pagas à EFI, acumuladas antes da rescisão, (ii) devolver todas as Informações Confidenciais da EFI e o Produto, e (iii) devolver quaisquer materiais, programas, manuais e outros itens relacionados ao Produto ou dele decorrentes que estiverem em vossa posse ou controle. A EFI deverá empregar esforços comercialmente razoáveis para lhe devolver quaisquer dados privados de vossa propriedade no formato no qual estejam armazenados pela EFI à época da rescisão.

11. Direitos de Auditoria.

A EFI poderá auditar o uso do Produto ou o Acesso por você. Qualquer auditoria ocorrerá após o envio de notificação prévia a você, durante o horário comercial, de forma a não interferir desarrazoadamente em vosso negócio. Se a auditoria demonstrar que você está usando ou acessando o Produto de forma a violar este Contrato, a EFI poderá emitir uma fatura por esse uso ou Acesso, contendo inclusive multa moratória, juros e despesas associadas à auditoria. Se você não efetuar o pontual pagamento dessa fatura, a EFI poderá exercer seu direito de rescisão e buscar quaisquer outros direitos ou tutelas disponíveis a ela.

12. Consent to Use Data.

EFI may collect and use technical data and related information to facilitate providing and/or confirming authorized use of Products, Access, Professional Services, and/or Maintenance to and by you. Subject to EFI's then-current privacy policy (available at <https://www.efi.com/legal/privacy/>) and applicable laws and regulations, EFI may (i) use this information to improve its products, to provide customized services or technologies to you, and/or to confirm authorized use, (ii) transfer this information to EFI's affiliates, agents, and partners, and (iii) transfer this information to the United States and/or any other country where EFI or its affiliates, agents, and partners maintain facilities.

13. Compliance with Laws.

(a). Export Law Compliance. The Product and related technology, information, and materials are subject to the export laws and regulations of the United States. You shall comply with those and any other applicable export laws or regulations. You are solely responsible for obtaining any necessary export licenses and exemptions. The Product and related technology, information, and materials may not be exported or re-exported to any U.S.-embargoed country, to any person or entity on any list of prohibited parties designated by the U.S. government, or otherwise in violation of any export law or regulation.

(b). Compliance with Laws. You may only use the Product in compliance with all applicable laws and regulations. Upon written notice to you, EFI may modify or suspend your use of or Access to the Product as necessary to comply with any law or regulation. Both parties acknowledge their responsibilities and commitments to abide by and comply with international anti-corruption laws, including but not limited to the United States Foreign Corrupt Practices Act and the United Kingdom Anti-Bribery Act, and any amendments and regulations relating to those laws, in addition to each of our own ethical guidelines (EFI's Code of Conduct is available online at <http://ir.efi.com/committee-details/code-business-conduct-and-ethics>). Specifically, for example, no employee, or any individual or entity acting on behalf of or for the benefit of either EFI or Customer, may give or receive anything of value, or anything that may be perceived as valuable, to or from a government official or any other individual for the purpose of influencing any act, securing any improper advantage, or obtaining or retaining business.

14. General Provisions.

(a). Taxes. Except with respect to income recognized by EFI, you are liable for all tariffs, duties, and taxes, however designated or levied, based on your possession, use of, or Access to the Product, this Agreement, and/or any Professional Services, including but not limited to sales, use, value added, excise, services, personal property, or other taxes.

12. Consentimento para o Uso de Dados.

A EFI poderá coletar e utilizar dados técnicos e informações relacionadas para facilitar a prestação e/ou confirmar o uso autorizado dos Produtos, Acesso, Serviços Profissionais, e/ou Manutenção. Sujeito à política de privacidade da EFI então em vigor (disponível em <https://www.efi.com/legal/privacy/>) e leis e regulamentos aplicáveis, a EFI poderá (i) utilizar essa informação para aprimorar os seus produtos, prestar serviços ou fornecer tecnologias customizadas e/ou confirmar o uso autorizado, (ii) transferir essas informações às coligadas, prepostos e parceiros da EFI, e (iii) transferir essas informações aos Estados Unidos e/ou qualquer outro país onde a EFI ou suas coligadas, prepostos e parceiros mantenham instalações.

13. Observância das Leis.

(a). Observância da Legislação de Exportação. O Produto e a tecnologia, informações e materiais relacionados estão sujeitos às leis e regulamentos sobre exportação dos Estados Unidos. Você deverá cumprir essas e quaisquer outras leis ou regulamentos de exportação aplicáveis. Você é o único responsável por obter qualquer licença de exportação necessária ou isenção de licença. O Produto e a tecnologia, informações e materiais relacionados poderão não ser exportados ou re-exportados a qualquer país embargado pelos Estados Unidos, a qualquer pessoa ou entidade incluída em qualquer lista de partes proibidas designada pelo governo dos Estados Unidos ou que de outra forma viole qualquer lei ou regulamento de exportação.

(b). Observância das Leis. Você somente poderá usar o Produto em cumprimento de todas as leis e regulamentos aplicáveis. Mediante notificação por escrito enviada a você, a EFI poderá modificar ou suspender o uso do Produto ou Acesso a ele conforme necessário em cumprimento de qualquer lei ou regulamento. Ambas as partes reconhecem a sua responsabilidade e compromisso de cumprir as leis anticorrupção internacionais, inclusive, entre outras, a Lei sobre Práticas de Corrupção no Exterior dos Estados Unidos (*United States Foreign Corrupt Practices Act*) e a Lei Antissuborno do Reino Unido (*United Kingdom Anti-Bribery Act*), e aditamentos e regulamentos relacionados a essas leis, além de cada uma de nossas próprias diretrizes éticas (o Código de Conduta da EFI está disponível online em <http://ir.efi.com/committee-details/code-business-conduct-and-ethics>). Especificamente, por exemplo, nenhum empregado ou qualquer indivíduo ou entidade atuando em nome e em benefício da EFI ou do Cliente poderá dar a funcionário público ou qualquer outro indivíduo, nem deles receber, qualquer item de valor ou qualquer item que possa ser percebido como de valor com o fim de influenciar qualquer ato, garantir qualquer vantagem indevida ou obter ou reter negócios.

14. Disposições Gerais.

(a). Impostos. Exceto com relação ao lucro reconhecido pela EFI, você é responsável pelo recolhimento de todas as tarifas, tributos e impostos, qualquer que seja a sua denominação ou incidência, com base na posse e uso do Produto ou Acesso a ele, este Contrato e/ou quaisquer Serviços Profissionais, inclusive, entre outros, impostos sobre a venda, o uso, o valor agregado, a produção, serviços, bens imóveis ou outros impostos.

(b). Governing Law. This Agreement is not governed by the 1980 UN Convention on Contracts for the International Sales of Goods or any other international treaty or convention. Rather, this Agreement is governed in all respects by the laws of the State of California, USA, without regard to conflicts of laws principles. For all disputes related to this Agreement, the Product, Access, or any services provided under this Agreement, each party consents to the exclusive personal jurisdiction and venue of the state and federal courts in and for Santa Clara County, California, USA.

(c). Severability; Interpretation. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by any court of competent jurisdiction, that provision will be fully severable and this Agreement will be construed and enforced as if it were not included. This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor or against either party. The captions are for convenience only and do not affect the scope, intent, or meaning of the provisions. Any failure or delay to enforce any provision of this Agreement will not be deemed a waiver of EFI's right to do so.

(d). No Assignment. Assignment or transfer of this Agreement in its entirety, including all Licenses purchased, whether voluntarily, by operation of law, or otherwise, requires EFI's prior written consent, which may be withheld, delayed, or conditioned in EFI's sole discretion, and may require payment of a License transfer fee. Partial assignment or transfer of this Agreement, including a portion of Licenses purchased, whether voluntarily, by operation of law, or otherwise, is prohibited. Any merger, consolidation or acquisition of Customer or other transfer of all or substantially all of the shares or assets of Customer is deemed to be an assignment under this Agreement. Any attempted assignment or transfer without EFI's consent is void.

(e). Language. This Agreement is only in English, which is controlling in all respects. If EFI has provided you with a translation, the translation is for your convenience only and the English-language version, not the translation, is legally binding. If there are any conflicts or inconsistencies between the English-language version and a translation, the English-language version controls. Any notices relating to this Agreement must be in writing in English.

(f). Entire Agreement and Modification. With respect to the subject matter or any term of this Agreement: (i) this Agreement constitutes the entire understanding of the parties; (ii) this Agreement supersedes all prior and contemporaneous communications and understandings (including but not limited to discussions, representations, warranties, inducements, promises, and agreements); (iii) there are no such communications or understandings not explicitly contained herein; (iv) neither party has relied on any such communications or understandings except as explicitly contained in this Agreement; and (v) any waiver, modification, or amendment will be effective only if in a writing signed by the parties, where email does not constitute a signed writing.

(b). Direito Aplicável. Este Contrato não é regido pela Convenção das Nações Unidas sobre Contratos de Compra e Venda Internacional de Mercadorias de 1980 ou qualquer outro tratado ou convenção internacional. Este Contrato é regido, em todos os seus aspectos, pelas leis do Estado da Califórnia, Estados Unidos, sem considerar os princípios de conflitos de leis. Para todas as controvérsias relacionadas a este Contrato, ao Produto, ao Acesso ou a quaisquer serviços prestados nos termos deste Contrato, cada parte dá seu consentimento à competência exclusiva em razão da pessoa e foro das cortes estaduais e federais do Condado de Santa Clara, Califórnia, Estados Unidos.

(c). Independência das Cláusulas; Interpretação. Se qualquer disposição deste Contrato for considerada ilegal, inválida ou inexecutável por qualquer corte de jurisdição competente, essa disposição será plenamente apartada e este Contrato será interpretado e executado como se não contivesse essa cláusula. Este Contrato será interpretado de forma justa de acordo com os seus termos e sem qualquer interpretação restritiva a favor ou contra qualquer uma das partes. Os títulos são utilizados apenas por conveniência e não afetam o escopo, intenção ou significado das disposições. Qualquer falha ou atraso na execução de qualquer disposição deste Contrato não será considerado uma renúncia do direito da EFI de assim executá-lo.

(d). Proibição de Cessão. A cessão ou transferência deste Contrato em sua inteireza, inclusive todas as Licenças adquiridas, voluntariamente, por força de lei ou de outra forma, exige o consentimento prévio por escrito da EFI, que poderá ser retido, atrasado ou condicionado a único critério da EFI, e poderá exigir o pagamento de uma taxa de transferência da Licença. A cessão ou transferência parcial deste Contrato, inclusive de parte das Licenças adquiridas, voluntariamente, por força de lei ou de outra forma, é proibida. Qualquer incorporação, fusão ou aquisição do Cliente ou outra transferência de todas ou substancialmente todas as ações ou ativos do Cliente é considerada uma cessão nos termos deste Contrato. Qualquer tentativa de cessão ou transferência sem o consentimento da EFI é nulo.

(e). Idioma. Este Contrato foi redigido apenas em inglês, idioma que prevalecerá em todos os aspectos. Caso a EFI tenha lhe fornecido uma tradução, a tradução será apenas para a vossa conveniência e a versão em idioma inglês, e não a tradução, é vinculante. Se houver qualquer conflito ou inconsistências entre a versão em idioma inglês e a tradução, a versão em idioma inglês prevalecerá. Quaisquer notificações relacionadas a este Contrato deverão ser redigidas em inglês.

(f). Acordo Completo e Modificação. Com relação ao objeto ou qualquer termo deste Contrato: (i) este Contrato constitui o entendimento completo das partes; (ii) este Contrato substitui todas as comunicações e entendimentos anteriores e concomitantes (inclusive, entre outros, discussões, declarações, garantias, incentivos, promessas e acordos); (iii) não há comunicações ou entendimentos que não estejam explicitamente aqui contidos; (iv) nenhuma das partes contou com qualquer dessas comunicações ou entendimentos, exceto conforme explicitamente contidos neste Contrato; e (v) qualquer renúncia, modificação ou aditamento somente produzirão efeitos se formalizados por escrito e assinados pelas partes, sendo que e-mails não constituem documento por escrito assinado.

(g). Orders and Acceptance. All orders for Products or Professional Services made pursuant to this Agreement are non-cancelable, non-refundable and must be submitted at least fifteen (15) days prior to the requested order delivery date. For any given order, you shall make the order and corresponding payment to EFI or its subsidiary or Affiliate depending upon which company is making the sale of Products or Professional Services for that order. Orders are not binding without written notification of acceptance from EFI. This Agreement governs all subsequent orders, and nothing contained in Customer's purchase orders or other communications will in any way modify this Agreement.

(h). Independent Contractors. You and EFI, and our respective employees and representatives, are and will be independent contractors with respect to the other party. Neither party by virtue of this Agreement has any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

(i). Survival. The provisions of this Agreement that relate to fees and payment terms, ownership of intellectual property and proprietary rights, export law compliance, termination, confidentiality, infringement indemnification, warranty disclaimers, limitation of liability, governing law, survivability, force majeure, severability and interpretation, definitions, modification and use of software products owned or distributed by Microsoft or Oracle included in an EFI Product will survive termination of this Agreement.

(j). Force Majeure. Except for payment of monies, no party will be liable for its failure to perform any obligations on account of strikes, shortages, failure or acts of suppliers, riots, insurrection, fires, flood, storm, explosions, acts of God, war, military operations, acts of terrorism whether actual or threatened, acts of a public enemy, epidemics, quarantines, governmental action, labor conditions, earthquakes, material shortages, or any cause that is similar to those enumerated or beyond the reasonable control of the affected party.

(k). U.S. Government Restricted Rights. Use, duplication, or disclosure of the Product by the United States Government is subject to restrictions as set forth in FAR 12.212 or DFARS 227.7202-3 - 227.7202-4 and, to the extent required under U.S. federal law, the minimum restricted rights as set out in FAR 52.227-14, Restricted Rights Notice (June 1987) Alternate III(g)(3) (June 1987) or FAR 52.227-19 (June 1987). To the extent any technical data is provided pursuant to the Agreement, such data is protected per FAR 12.211 and DFARS 227.7102-2 and to the extent explicitly required by the U.S. Government, is subject to limited rights as set out in DFARS 252.227.7015 (November 1995) and DFARS 252.227-7037 (September 1999). If any of the above-referenced agency regulations are modified or superseded, the subsequent equivalent regulation shall apply. The name of the Contractor is Electronics For Imaging, Inc.

(g). Pedidos e Aceitação. Todos os pedidos de Produtos ou Serviços Profissionais feitos segundo este Contrato não poderão ser cancelados ou reembolsados e deverão ser enviados com antecedência de pelo menos 15 (quinze) dias da data de entrega do pedido solicitado. Para qualquer pedido, você deverá realizar o pedido e efetuar o pagamento correspondente à EFI ou sua subsidiária ou Coligada, dependendo de qual empresa está realizando a venda dos Produtos ou Serviços Profissionais daquele pedido. Os pedidos não são vinculantes sem a notificação por escrito da aceitação da EFI. Este Contrato rege todos os pedidos subsequentes, sendo que nada contido nos pedidos de compra do Cliente ou outras comunicações modificarão este Contrato de qualquer forma.

(h). Contratados Independentes. Você e a EFI, e nossos respectivos empregados e representantes, são e serão contratados independentes com relação um ao outro. Nenhuma das partes, em função deste Contrato, possui qualquer direito, poder ou autoridade para agir ou criar qualquer obrigação, expressa ou tácita, em nome da outra parte.

(i). Vigência após o Término do Contrato. As disposições deste Contrato relacionadas às taxas e condições de pagamento, titularidade da propriedade intelectual e direitos de propriedade, observância das leis de exportação, rescisão, confidencialidade, indenização por violação, ressalvas (*disclaimers*) às garantias, limitação de responsabilidade, direito aplicável, vigência após o término do contrato, força maior, independência das cláusulas e interpretação, definições, modificação e uso dos produtos de software detidos ou distribuídos pela Microsoft ou Oracle incluídas no Produto da EFI permanecerão em vigor após o término deste Contrato.

(j). Força Maior. Exceto pelo pagamento de valores, nenhuma das partes será responsável por deixar de cumprir qualquer de suas obrigações devido a greve, escassez, ato ou omissão de fornecedores, tumulto, insurreição, incêndio, inundação, tempestade, explosão, caso fortuito, guerra, operações militares, atos de terrorismo ou tentativas de atos de terrorismo, atos de inimigo público, epidemias, quarentenas, ações governamentais, condições trabalhistas, terremotos, escassez relevante ou qualquer outra causa similar a estas enumeradas ou que estejam além do controle razoável da parte afetada.

(k). Direitos Restritos do Governo dos Estados Unidos. O uso, a duplicação ou divulgação do Produto pelo Governo dos Estados Unidos está sujeito às restrições previstas no FAR 12.212 ou DFARS 227.7202-3 - 227.7202-4 e, conforme exigência segundo a lei federal dos Estados Unidos, aos direitos restritos mínimos previstos no FAR 52.227-14, Aviso de Direitos Restritos (*Restricted Rights Notice*) (Junho de 1987) Alternate III(g)(3) (Junho de 1987) ou FAR 52.227-19 (Junho de 1987). Caso quaisquer dados técnicos sejam prestados nos termos deste Contrato, esses dados são protegidos pelo FAR 12.211 e DFARS 227.7102-2 e, conforme explicitamente exigido pelo Governo dos Estados Unidos, estão sujeitos aos direitos limitados previstos no DFARS 252.227.7015 (Novembro de 1995) e DFARS 252.227-7037 (Setembro de 1999). Se quaisquer dos regulamentos acima mencionados sofrerem modificações ou forem substituídos, o regulamento equivalente subsequente será aplicado. O nome do Contratado é Electronics For Imaging, Inc.

15. Product-Specific and Third Party Provisions.

If you have obtained a License for certain Products, some of the following terms and conditions might apply to you.

(a). Products that include Microsoft Software (such as Windows or SQL Server).

(i). The term “Product” as used in this Agreement includes certain Microsoft software and related documentation, associated media, “online” or electronic documentation, upgrades and updates. EFI does not own these products and the use thereof is subject to certain rights and limitations.

(ii). Microsoft is not responsible for any support services for the Product. Notwithstanding the foregoing, in the event any support issues arise related to the Microsoft software that cannot be resolved by EFI, support to you may be provided by Microsoft pursuant to the Microsoft Premier support services agreement, or a similar type agreement, between EFI and Microsoft.

(iii). The Product is not fault-tolerant. The Product is not designed or intended for use in any situation where failure or fault of any kind of the Product could lead to death or serious bodily injury of any person, or to severe physical or environmental damage (“High Risk Use”). You are not licensed to use the Product in, or in conjunction with, High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: aircraft or other modes of human mass transportation, nuclear or chemical facilities, and Class III medical devices under the Federal Food, Drug, and Cosmetic Act. You shall not use the Product in, or in connection with, any High Risk Use. You are responsible for taking all appropriate measures to ensure the safe use of the Product if used for such purposes and EFI and its suppliers, including Microsoft, will not be liable for any claims or damages arising from such use.

(b). Products that include Software Products Owned or Distributed by Oracle.

(i). The term “Product” as used in this Agreement includes certain software products provided by EFI that are owned or distributed by Oracle USA, Inc. (“Oracle”) and related program documentation (the “Oracle Programs”); EFI does not own the Oracle Programs and the use thereof is subject to certain rights and limitations. The Oracle Programs included herein are subject to a restricted use license and can only be used in conjunction with the Product. Oracle or its licensors retain all ownership of intellectual property rights to the Oracle Programs. You are hereby notified that Oracle is a supplier of EFI and a third-party beneficiary to this Agreement to the extent that this Agreement contains provisions which relate to your use of the Oracle Programs. Such provisions are made expressly for the benefit of Oracle and are enforceable by Oracle in addition to EFI.

15. Disposições Específicas do Produto e Disposições de Terceiros.

Se você tiver obtido uma Licença para determinados Produtos, alguns dos termos e condições seguintes podem aplicar-se a você.

(a). Produtos que incluem Software da Microsoft (como o Windows ou SQL Server).

(i). O termo “Produto”, da forma utilizada neste Contrato, inclui determinado software da Microsoft e documentação relacionada, mídia associada, documentação “online” ou eletrônica, *upgrades* e atualizações. A EFI não é proprietária desses produtos e o seu uso está sujeito a determinados direitos e limitações.

(ii). A Microsoft não é responsável por quaisquer serviços de suporte do Produto. Não obstante, na hipótese de ocorrência de quaisquer questões de suporte relacionadas a software da Microsoft que não possam ser resolvidas pela EFI, a Microsoft poderá lhe prestar suporte nos termos do contrato de serviços de suporte Microsoft Premier, ou contrato-tipo similar, celebrado entre a EFI e a Microsoft.

(iii). O Produto não é tolerante a falhas. O Produto não foi desenhado nem é pretendido para uso em qualquer situação em que a falha de qualquer tipo de Produto possa levar à morte ou lesão corporal grave de qualquer pessoa, ou dano físico ou ambiental grave (“Uso de Alto Risco”). Você não tem licença para fazer Uso de Alto Risco do Produto. O Uso de Alto Risco é ESTRITAMENTE PROIBIDO. O Uso de Alto Risco inclui, por exemplo, o seguinte: transporte por aeronave ou outros modos de transporte em massa de pessoas, instalações nucleares ou químicas, e dispositivos médicos Classe III segundo a Lei Federal sobre Alimentos, Medicamentos e Cosméticos (*Federal Food, Drug, and Cosmetic Act*). Você não deve fazer qualquer Uso de Alto Risco do Produto. Você é responsável por tomar todas as medidas adequadas para assegurar o uso seguro do Produto se empregados para esses fins e a EFI e seus fornecedores, inclusive a Microsoft, não serão responsáveis por quaisquer reivindicações ou indenizações decorrentes desse uso.

(b). Produtos que incluem Produtos de Software de Propriedade da Oracle ou Distribuídos por ela.

(i). O termo “Produto”, conforme utilizado neste Contrato, inclui determinados produtos de software fornecidos pela EFI e que são de propriedade da Oracle USA, Inc. (“Oracle”) ou distribuídos por ela, e a documentação de programa relacionada (os “Programas da Oracle”); a EFI não é proprietária dos Programas da Oracle e o seu uso está sujeito a determinados direitos e limitações. Os Programas da Oracle aqui incluídos estão sujeitos a uma licença de uso restrita e somente podem ser usados em conjunto com o Produto. A Oracle ou seus licenciados detêm todos os direitos de propriedade intelectual dos Programas da Oracle. Você fica desde já notificado de que a Oracle é fornecedora da EFI e beneficiária deste Contrato, pois este Contrato contém disposições que se relacionam ao uso dos Programas da Oracle por você. Essas disposições são expressamente previstas em benefício da Oracle e são exequíveis pela Oracle e pela EFI.

(ii). You acknowledge and agree that you are prohibited from (a) publishing any results of benchmark tests run on the Oracle Programs, (b) using the Oracle Programs for rental, timesharing, subscription service, hosting, or outsourcing, and (c) removing or modifying any program markings or notice of Oracle's or Oracle's licensors' proprietary rights.

(iii). To the extent not prohibited by law, in no event will Oracle be liable for (a) any damages, whether direct, indirect, incidental, special, punitive or consequential, and (b) any loss of profits, revenue, data or data use, arising from the use of the Oracle Programs.

(iv). You hereby permit EFI to (a) report any audit results obtained pursuant to this Agreement to Oracle to the extent such results are related to the Oracle Programs, or (b) assign such rights to audit your use of the Oracle Programs to Oracle.

(v). You are hereby notified that some Oracle Programs may include source code that Oracle may provide as part of its standard shipment of such programs, which source code is governed by the terms of this Agreement.

(vi). The Computer Information Transactions Act does not apply to this Agreement.

(vii). You acknowledge and agree that in the event a third party technology may be appropriate or necessary for use with some Oracle Programs, it will be specified in the Product package documentation or as otherwise noted, and such third party technology is licensed to you only for use with the Product under the terms of the third party license agreement specified in the Product package documentation or as otherwise noted, and not under the terms of this Agreement.

(c). E-commerce Applications.

(i). Use at Site Location. You may use or Access the Product only for production activity at the Site Location. If you have more than one production facility, you may not use or Access the Product for production activity at any facility other than the Site Location(s) for which you have been granted a license.

(ii). Links. If you have obtained a License for EFI e-Commerce Software, you represent and warrant that you have the right to create and maintain, or to allow EFI to create and maintain, all Links to the Product and any other websites mutually agreed upon between you and EFI. You shall incorporate EFI's "Powered by EFI" logo on any website utilizing EFI e-commerce Software.

(ii). Você reconhece e concorda que está proibido de (a) publicar quaisquer resultados de testes de *benchmark* realizados nos Programas da Oracle, (b) usar os Programas da Oracle para fins de aluguel, *timesharing*, serviço de assinatura, hospedagem ou terceirização, e (c) remover ou modificar quaisquer marcas de programa ou avisos sobre os direitos de propriedade da Oracle ou dos licenciantes da Oracle.

(iii). Conforme não proibido por lei, em nenhuma hipótese será admitida a responsabilidade da Oracle por (a) quaisquer indenizações, sejam elas diretas, indiretas, incidentais, especiais, punitivas ou por dano indireto, e (b) quaisquer lucros cessantes, perda de receitas, perda de dados ou perda de uso de dados decorrentes do uso dos Programas da Oracle.

(iv). Você desde já permite que a EFI (a) reporte quaisquer resultados de auditoria obtidos nos termos deste Contrato à Oracle, já que esses resultados estão relacionados aos Programas da Oracle, ou (b) realize a cessão desses direitos para a Oracle, para fins de condução da auditoria do uso dos Programas da Oracle por você.

(v). Você desde já fica notificado de que alguns dos Programas da Oracle poderão incluir código fonte que a Oracle poderá fornecer como parte do envio padrão desses programas, sendo que esse código fonte é regido pelos termos deste Contrato.

(vi). A Lei de Transações de Informações sobre Computadores (*Computer Information Transactions Act*) não se aplica a este Contrato.

(vii). Você reconhece e concorda que, na hipótese de uma tecnologia de terceiro ser apropriada ou necessária para o uso com alguns dos Programas da Oracle, isso estará especificado na documentação da embalagem do Produto ou apresentado de outra forma, e essa tecnologia de terceiro é licenciada a você somente para uso com o Produto nos termos do contrato de licenciamento de terceiro especificado na documentação da embalagem do Produto ou apresentado de outra forma, e não nos termos deste Contrato.

(c). Aplicações de E-commerce.

(i). Uso no Local do Site. Você poderá usar ou Acessar o Produto somente para atividades de produção no Local do Site. Se você tiver mais de uma instalação de produção, você não poderá usar ou Acessar o Produto para atividades de produção em qualquer instalação além do Local do Site para o qual você obteve a licença.

(ii). Links. Se você tiver obtido a Licença da EFI e-Commerce Software, você declara e garante que tem direito a criar e manter, ou a permitir que a EFI crie e mantenha, todos os Links para o Produto e quaisquer outros websites mutuamente acordados entre você e a EFI. Você deverá incorporar o logotipo "Powered by EFI" da EFI em qualquer website que utilize o Software de e-commerce da EFI.

(ii). Relationships with Third Parties. Use of or Access to the e-Commerce Product does not create a contract or other obligation between you and any of your customers or between EFI and any of your customers or vendors. EFI cannot and does not guarantee the performance of any of your customers, vendors, or other third parties. EFI will have no liability in connection with any dispute between you and any third party, and any third party dispute will not relieve you of any obligation to EFI under this Agreement.

(d). Open Source Software. Some versions of the Products contain open source software. Open source software is licensed to you under that software's own license terms, which can be found in the "Help," "About," "Read Me," or other specified portion of the Product. You are responsible for complying with any terms and conditions applicable to any open source software. To the extent that this Agreement imposes greater restrictions on you than the open source software license terms, the open source software license terms control, but solely with respect to the open source software.

16. Definitions.

"**Access**" means the connection to and use of a Product by Customer via an Internet web browser under the terms of this Agreement.

"**Affiliate**" means any entity directly or indirectly controlling, controlled by, or under common control with a party.

"**Agreement**" means this License and Purchase Agreement.

"**Confidential Information**" means any information that you have been informed or have a reasonable basis to believe is confidential to EFI, whether provided to you before, on, or after this Agreement, including, for example, ideas, programs, data, software, systems configurations, reports, projections, initiatives, customer data, or other business or technical information. Confidential Information includes any written information marked as confidential or proprietary, and any information disclosed orally or visually that is identified as confidential or proprietary at or around the time of its disclosure. All EFI Intellectual Property Rights and technical information related to the Product are Confidential Information whether or not marked as confidential or proprietary.

"**Customer Marks**" means your name and logo or other trademarks, service marks, or other marks.

"**Documentation**" means user's guides, manuals, and other information related to the Product or Professional Services.

"**EFI**" means Electronics For Imaging, Inc., Electronics for Imaging BV, Electronics For Imaging United Kingdom Limited, Metrics Sistemas De Informacao Ltda., alphagraph Team GmbH, or another EFI subsidiary or Affiliate referred to in the Purchase Documentation.

(ii). Relacionamento com Terceiros. O uso ou Acesso ao Produto de e-Commerce não cria um contrato ou outra obrigação entre você e qualquer de seus clientes ou entre a EFI e qualquer de seus clientes ou fornecedores. A EFI não pode garantir e não garante o desempenho de qualquer de seus clientes, fornecedores ou outros terceiros. A EFI não será responsável em qualquer controvérsia havida entre você e qualquer terceiro, e qualquer controvérsia com terceiro não o liberará de qualquer obrigação junto à EFI nos termos deste Contrato.

(d). Software de Fonte Aberta. Algumas versões dos Produtos contêm software de fonte aberta. O software de fonte aberta lhe é licenciado nos termos de licenciamento do software, que está disponível em "Ajuda", "Sobre", "Leia-me" ou outro local especificado do Produto. Você é responsável pelo cumprimento de quaisquer termos e condições aplicáveis a qualquer software de fonte aberta. Como esse Contrato impõe mais restrições a você do que os termos de licenciamento do software de fonte aberta, os termos de licenciamento do software de fonte aberta prevalecem, mas somente com relação ao software de fonte aberta.

16. Definições.

"**Acesso**" significa a conexão ao Produto e sua utilização pelo Cliente via navegador de web pela Internet, nos termos deste Contrato.

"**Coligada**" significa qualquer entidade que, direta ou indiretamente, controle uma parte, seja controlada por uma parte ou esteja sob o controle comum de uma parte.

"**Contrato**" significa este Contrato de Licenciamento e Compra.

"**Informações Confidenciais**" significa qualquer informação que lhe tenha sido comunicada ou que razoavelmente acredite-se que seja confidencial com relação à EFI, tenha essa informação sido prestada antes, durante ou após este Contrato, inclusive, por exemplo, ideias, programas, dados, software, configurações de sistemas, relatórios, projeções, iniciativas, dados de cliente, ou outras informações comerciais ou técnicas. Informações Confidenciais incluem qualquer informação escrita marcada como confidencial ou particular, e qualquer informação divulgada verbal ou visualmente que seja identificada como confidencial ou particular no momento de sua divulgação. Todos os Direitos de Propriedade Intelectual da EFI e informações técnicas relacionadas ao Produto são Informações Confidenciais, estejam elas marcadas ou não como confidenciais ou particular.

"**Marcas do Cliente**" significa a razão social e logomarca do Cliente ou outras marcas registradas, marcas de serviço ou outras marcas do Cliente.

"**Documentação**" significa os guias de usuário, manuais e outras informações relacionadas ao Produto ou Serviços Profissionais.

"**EFI**" significa Electronics For Imaging, Inc., Electronics for Imaging BV, Electronics For Imaging United Kingdom Limited, Metrics Sistemas De Informacao Ltda., alphagraph Team GmbH, ou outra subsidiária ou Coligada da EFI referida na Documentação de Compra.

“**Excluded License**” means any license that requires as a condition of use, modification, and/or distribution of software subject to the Excluded License, that such software or other software combined and/or distributed with such software be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making derivative works, or (iii) redistributable at no charge.

“**Fees**” means the fees for the Product, Access, or Professional Services, including any fees set forth in your Purchase Documentation, License fees, hardware fees, Term License Fees, Hosting Fees, Maintenance Fees, or other applicable fees. Unless otherwise specified in the Purchase Documentation, payments for any fees must be made within 30 days of the date of the invoice in the currency listed in the Purchase Documentation. Any amount not paid when due is subject to a service charge equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by law, and EFI may defer shipments of Products and/or provision of services until all overdue payments are received. Payment of the service charge will not foreclose any other right that EFI may have as a consequence of late payment. In the event that EFI is required to take legal action to collect unpaid amounts, and EFI is successful in such action, Customer shall reimburse all costs and reasonable attorneys’ fees incurred by EFI in such action.

“**Hosting Fees**” means the hosting fees described in the Purchase Documentation. Unless otherwise specified in the Purchase Documentation, payment obligations for Hosting Fees commence on the first day of the next month following 30 days from the Start Date.

“**Initial Term**” means the three-year period of time beginning on the Start Date.

“**Intellectual Property Rights**” means, individually or collectively, any patent, copyright, trademark, service mark, trade secret, trade name, or other intellectual property right.

“**IP Claim**” means a lawsuit filed against you by a third party that is not a patent assertion entity or non-practicing entity.

“**License**” means the license granted to you for the Product you have obtained.

“**License Key**” means a programming code included in the Product that, if executed or deactivated, renders the Product or portions of it inoperable.

“**Link**” means a hypertext reference that, when activated, moves users from one website to another on the Internet.

“**Licença Excluída**” significa qualquer licença que imponha como condição de uso, modificação e/ou distribuição de software sujeito à Licença Excluída, que esse software ou outro software combinado e/ou distribuído com esse software seja (i) divulgado ou distribuído em formato de código fonte, (ii) licenciado para fins de realização de trabalhos derivados, ou (iii) redistribuível sem custo.

“**Taxas**” significa as taxas pelo Produto, Acesso ou Serviços Profissionais, inclusive quaisquer taxas previstas na Documentação de Compra, taxas de Licença, taxas de hardware, Taxas pelo Prazo da Licença, Taxas de Hospedagem, Taxas de Manutenção ou outras taxas aplicáveis. Salvo especificação em contrário na Documentação de Compra, o pagamento de quaisquer taxas deve ser efetuado no prazo de 30 dias da data da fatura em moeda listada na Documentação de Compra. Qualquer valor não pago no vencimento está sujeito a uma taxa de serviço equivalente a 1,5% (um e meio por cento) por mês ou o valor máximo permitido em lei, o que for menor, e a EFI poderá postergar o envio de Produtos e/ou a prestação de serviços até que todos os pagamento vencidos tenham sido recebidos. O pagamento da taxa de serviço não exclui qualquer outro direito que a EFI possa vir a ter em razão do pagamento em atraso. Caso a EFI tenha que tomar medidas legais para cobrar os valores devidos e assim obtenha êxito, o Cliente deverá reembolsar todos os custos e honorários advocatícios razoáveis incorridos pela EFI na ação pertinente.

“**Taxas de Hospedagem**” significa as taxas de hospedagem descritas na Documentação de Compra. Salvo especificação em contrário na Documentação de Compra, as obrigações de pagamento referentes às Taxas de Hospedagem iniciam-se no primeiro dia do mês seguinte após 30 dias da Data de Início.

“**Vigência Inicial**” significa o período de três anos a partir da Data de Início.

“**Direitos de Propriedade Intelectual**” significa, individual ou coletivamente, qualquer patente, direito autoral, marca registrada, marca de serviço, segredo de empresa, nome comercial ou outro direito de propriedade intelectual.

“**Reivindicação de Propriedade Intelectual**” significa um processo ajuizado contra você por terceiro que não seja uma entidade de asserção de patentes ou entidade não praticante (*non-practicing entity*).

“**Licença**” significa a licença que lhe foi concedida pelo Produto obtido.

“**Chave da Licença**” significa o código de programação incluído no Produto que, se executado ou desativado, torna o Produto ou partes dele inoperáveis.

“**Link**” significa a referência em hypertexto que, quando ativada, move os usuários de um website para outro na Internet.

“**Maintenance**” means (i) correction of material defects so that the Product will operate materially in conformity with the warranties in this Agreement, (ii) periodic updates that incorporate corrections of material defects and fixes of minor bugs in the Product, (iii) telephone or email/electronic consultation services regarding the use of the Product during EFI’s standard support hours, and (iv) enhancements and/or revisions to software components of the Product, which are subject to additional charge unless they are provided at no charge to substantially all other licensees.

“**Maintenance Fees**” means the support and/or maintenance fees charged by EFI and/or a third party for the Product. Unless otherwise specified in the Purchase Documentation, payment obligations for Maintenance Fees commence on the first day of the next month following 30 days from the Start Date and continue for 12 consecutive months thereafter, subject to any Maintenance renewal term(s). Any use of a virtual private network or other requirement that requires EFI to act outside of its normal processes in order to provide Maintenance to you may be subject to additional fees.

“**Maintenance Renewal Date**” means the anniversary of the start of the Maintenance coverage period stated on the first Software Maintenance invoice that EFI issued to you, whether issued pursuant to this Agreement or a prior agreement or Purchase Documentation.

“**Product**” means Software or hardware, and may also include third party software and documentation, downloads, on-line materials, bug fixes, patches, releases, release notes, updates, upgrades, technical support materials, and information related to the EFI software or hardware.

“**Professional Service(s)**” means any training, installation, implementation, customization and/or other professional services provided by EFI to Customer.

“**Purchase Documentation**” means the purchase order, investment summary, statement of work, written agreement, or other documentation executed by you by which you agreed to obtain a license, Product, or service from EFI or one of EFI’s partners.

“**Renewal Term**” means the three-year period following the Initial Term or another Renewal Term unless specified otherwise in your Purchase Documentation. Fees for any Renewal Term may be increased to EFI’s then-current fees.

“**Site Location**” means the printing plant or facility specified in the Purchase Documentation.

“**Software**” means the EFI software listed on the Purchase Documentation or licensed to you under this Agreement.

“**Start Date**” means the Effective Date of the Purchase Documentation or the date the Product is made available to you, whichever is later.

“**Manutenção**” significa (i) a correção de defeito relevantes para que o Produto opere substancialmente em conformidade com as garantias deste Contrato, (ii) atualizações periódicas que incorporem correções de defeitos relevantes e corrija pequenos defeitos (*bugs*) no Produto, (iii) serviços de consulta por telefone ou email ou por via eletrônica sobre a utilização do Produto durante o horário padrão de suporte da EFI, e (iv) aprimoramentos e/ou revisões dos componentes de software do Produto, sujeitos à cobrança de taxas adicionais, salvo se prestados sem custo a substancialmente todos os outros licenciados.

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(b). Data Entry. All data generated by and through your Access will reside on servers of EFI or its third party providers.

(c). Password Security. You are solely responsible for (i) ensuring that only authorized individuals have access to passwords to Access the Product, (ii) assigning roles and authority levels for your Access, (iii) the conduct of individuals with Access, and (iv) maintaining the confidentiality and integrity of passwords and authority levels. You shall indemnify and hold EFI harmless from any liability, damages, or costs arising from your failure to comply with this Section.

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(b). Ввод данных. Все данные, которые генерируются в процессе или в результате вашего Доступа, остаются на серверах компании EFI или ее сторонних поставщиков.

(c). Безопасность пароля. Вы единолично отвечаете за (i) ограничение доступа к паролям для Доступа к Продукту неуполномоченных лиц, (ii) распределение должностей и уровней полномочий для Доступа, (iii) действия лиц с правом Доступа и (iv) соблюдение конфиденциальности паролей и уровней полномочий, и обеспечение их надежности. Вы обязуетесь оградить EFI от любой ответственности и гарантируете возмещение ущерба и расходов, возникающих в результате нарушения вами условий настоящего Раздела.

(d). Scheduled Downtime and Upgrades. Downtime is required from time-to-time for regular maintenance of the technology that supports the Product. EFI shall use commercially reasonable efforts to perform scheduled downtime outside normal business hours. EFI may also install new or updated software from time to time, including supporting software and firmware, in addition to the Software, to aid in providing ongoing stability and security of the hosted solution. You shall facilitate commercially reasonable upgrades and operations without undue delay or objection.

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(f). Самостоятельный хостинг. Вы имеете право в любое время разместить на своем сервере Продукт, перенесенный с другого места размещения и, если вы получили лицензию с ограниченным сроком действия, продолжайте уплачивать Сборы за использование лицензии с ограниченным сроком действия на Программное обеспечение. Любые Профессиональные услуги, предоставленные компанией EFI по перенесению размещенного решения в целях самостоятельного хостинга оплачиваются согласно стандартным тарифам EFI.

(g). Техническое обслуживание. Если вам предоставлена бессрочная Лицензия в качестве размещенного решения, вы должны пользоваться услугами Технического обслуживания на протяжении периода, во время которого компания EFI или уполномоченный ею сторонний поставщик предоставляет вам услуги по размещению.

4. Сборы и поставка.

(a). Сборы. Вы обязуетесь оплачивать все соответствующие Сборы.

(b). Title and Risk of Loss. Title and risk of loss for any media or hardware for the Product transfers to you at EFI's designated manufacturing plant(s) or warehouse(s). If the Product is delivered electronically, risk of loss transfers to you when the Product or Access is made available to you.

(c). Hardware Delivery. Unless otherwise specified in the Purchase Documentation, where you are purchasing hardware: (i) EFI shall act as agent for you and procure insurance against risk of loss and/or procure and prepay for shipment, (ii) you shall reimburse EFI for all charges relating to the shipment of hardware upon EFI providing an invoice for such charges. EFI shall use commercially reasonable efforts to ship hardware as soon as practicable following execution of this Agreement and EFI's receipt of any required deposits. If you request a delay in delivery or otherwise cause a delay in the transportation process, EFI reserves the right to separately charge you for any costs it incurs for paying the logistics company to store and warehouse hardware on your behalf.

5. Product Maintenance.

(a). Subject to your timely payment of all applicable Fees, EFI or its designated provider will provide you with annual Maintenance for the Product. Maintenance terms automatically renew for consecutive 12-month periods unless cancelled by either party with written notice at least 30 days before the Maintenance Renewal Date. Notwithstanding the foregoing, Maintenance for certain Products (e.g., individual Software modules that are part of the EFI Software solution) may only be cancelled in the event that you are no longer using those certain Products; please first consult with EFI in the event you desire to cancel Maintenance for any Product.

(b). You must possess a valid License to use any upgrade or update. By using an upgrade or update, your license to any previous version of the Product automatically terminates. If you (i) have an out-of-date version of the Product or (ii) are not current on Maintenance due to your failure to timely pay Maintenance Fees and wish to update your version of the Product, you must pay any unpaid Fees and may be subject to additional fees to transfer or convert any old data. EFI reserves the right to discontinue Maintenance for all out-of-date versions of the Product.

(b). Право собственности и риск случайной гибели. Право собственности и риск случайной гибели любых данных или оборудования для обеспечения работы Продукта переходят к вам на указанном(-ых) компанией EFI производственном(-ых) или складском(-их) объекте(-ах). Если Продукт предоставляется в электронном виде, риск случайной гибели переходит к вам с момента предоставления вам Продукта или Доступа.

(c). Поставка аппаратного обеспечения. Если иное не указано в Сопроводительной документации, то при покупке вами аппаратного обеспечения: (i) компания EFI выступает в качестве вашего агента и приобретает полис страхования на случай риска случайной гибели и (или) организует пересылку и осуществляет ее предоплату, (ii) вы обязуетесь возместить EFI все расходы, связанные с пересылкой аппаратного обеспечения после предоставления вам счета-фактуры на такие расходы компанией EFI. EFI прилагает все возможные усилия для отправки аппаратного обеспечения в кратчайшие сроки, следуя условиям настоящего Соглашения и получив необходимые авансовые платежи. Если вы делаете запрос на отсрочку поставки или любым другим образом задерживаете отправку, EFI оставляет за собой право требовать возмещения расходов, связанных с оплатой услуг логистической компании по хранению аппаратного обеспечения от вашего имени.

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(b). Чтобы использовать улучшение или обновление, вы должны обладать действующей Лицензией. При использовании улучшения или обновления, ваша лицензия на предыдущую версию Продукта автоматически прекращает свое действие. Если вы (i) владеете устаревшей версией Продукта или (ii) не имеете права на Техническое обслуживание по причине несвоевременной уплаты Сбора за техническое обслуживание, но хотите обновить свою версию Продукта, вам необходимо оплатить все непоплаченные сборы, кроме того, с вас может взиматься дополнительный сбор на перенос или преобразование старых данных. EFI оставляет за собой право прекратить предоставление услуги Технического обслуживания всех устаревших версий Продукта.

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(b). Security of Your Systems. You are solely responsible for (i) ensuring the confidentiality, security, and integrity of your network connectivity, data, and servers, (ii) preventing and bearing the risk of any loss or damage to any data on your servers, and (iii) maintaining archive and backup copies of any data.

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(b). Безопасность ваших систем. Вы единолично несете ответственность за (i) обеспечение конфиденциальности, безопасности и надежности вашего сетевого соединения, данных и серверов, (ii) предупреждение и взятие на себя риска любых убытков или ущерба в отношении любых данных на ваших серверах и (iii) хранение архивных и резервных копий любых данных.

(c). ОТКАЗ ОТ ПРЕДОСТАВЛЕНИЯ ГАРАНТИЙ И СРЕДСТВА ПРАВОВОЙ ЗАЩИТЫ. В ТОЙ СТЕПЕНИ, В КОТОРОЙ ЭТО РАЗРЕШЕНО ЗАКОНОДАТЕЛЬСТВОМ, ГАРАНТИИ И СРЕДСТВА ПРАВОВОЙ ЗАЩИТЫ, ПЕРЕЧИСЛЕННЫЕ В НАСТОЯЩЕМ СОГЛАШЕНИИ, ЯВЛЯЮТСЯ ИСКЛЮЧИТЕЛЬНЫМИ И ЗАМЕНЯЮТ СОБОЙ ЛЮБЫЕ ДРУГИЕ ГАРАНТИИ И СРЕДСТВА ПРАВОВОЙ ЗАЩИТЫ. КОМПАНИЯ EFI, ЕЕ ПОСТАВЩИКИ И ЛИЦЕНЗИАРЫ ЧЕТКО ЗАЯВЛЯЮТ ОБ ОТКАЗЕ ОТ ЛЮБЫХ ГАРАНТИЙ И СРЕДСТВ ПРАВОВОЙ ЗАЩИТЫ, ВКЛЮЧАЯ, НО НЕ ОГРАНИЧИВАЯСЬ ПОДРАЗУМЕВАЕМЫМИ ГАРАНТИЯМИ ТОВАРНОГО СОСТОЯНИЯ, ПРИГОДНОСТИ ДЛЯ ИСПОЛЬЗОВАНИЯ ДЛЯ КОНКРЕТНОЙ ЦЕЛИ И ОТСУТВИЕМ НАРУШЕНИЯ ПРАВ; ЛЮБЫМИ ГАРАНТИЯМИ, ОТНОСЯЩИМИСЯ К БЕЗОПАСНОСТИ; И ЛЮБЫМИ ГАРАНТИЯМИ В ОТНОШЕНИИ БЕСПЕРЕБОЙНОЙ И БЕЗОПИБОЧНОЙ РАБОТЫ ПРОДУКТА. EFI НЕ ДАЕТ НИКАКИХ ГАРАНТИЙ, ПОДРАЗУМЕВАЕМЫХ ИЛИ ИНЫХ, В ОТНОШЕНИИ СВОЙСТВ ИЛИ НАДЕЖНОСТИ ЛЮБЫХ ДРУГИХ ПРОДУКТОВ ИЛИ УСЛУГ ТРЕТЬИХ ЛИЦ.

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8. LIMITATION OF LIABILITY.

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL EFI OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY, OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EFI IS NOT RESPONSIBLE FOR ANY LOST PROFITS OR REVENUE, LOSS OF USE OF THE PRODUCT, LOSS OF DATA, OR THE COST OF RECOVERING ANY DATA. EXCEPT FOR INSTANCES INVOLVING EFI'S WILLFUL MISCONDUCT, EFI WILL NOT BE LIABLE FOR DAMAGES ARISING FROM ANY BREACH, UNAUTHORIZED ACCESS, MISUSE, OR INTRUSION RELATED TO YOUR DATA ON EFI'S OR ITS SUPPLIERS' SERVERS OR ANY NETWORK YOU USE IN CONNECTION WITH THE PRODUCT.

ПРАВА, ПРЕДОСТАВЛЕННЫЕ ВАМ В ДАННОМ РАЗДЕЛЕ, ЯВЛЯЮТСЯ ВАШИМ ЕДИНСТВЕННЫМ И ИСКЛЮЧИТЕЛЬНЫМ СРЕДСТВОМ ПРАВОВОЙ ЗАЩИТЫ В СЛУЧАЕ ЛЮБЫХ ЗАЯВЛЯЕМЫХ НАРУШЕНИЙ ПРАВ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ ТРЕТЬИХ ЛИЦ.

8. ОГРАНИЧЕНИЕ ОТВЕТСТВЕННОСТИ

В ТОЙ СТЕПЕНИ, В КАКОЙ ЭТО НЕ ЗАПРЕЩЕНО ЗАКОНОДАТЕЛЬСТВОМ, НИ В КАКОМ СЛУЧАЕ КОМПАНИЯ EFI ИЛИ ЕЕ ПОСТАВЩИКИ ИЛИ ЛИЦЕНЗИРАБЫ НЕ НЕСУТ ОТВЕТСТВЕННОСТИ ЗА КАКИЕ-ЛИБО НЕПРЯМЫЕ, СПЕЦИАЛЬНЫЕ, СЛУЧАЙНЫЕ, КОСВЕННЫЕ, КОМПЕНСАЦИОННЫЕ, ПРИСУЖДАЕМЫЕ В ПОКАЗАТЕЛЬНОМ ПОРЯДКЕ ИЛИ ШТРАФНЫЕ УБЫТКИ, ВНЕ ЗАВИСИМОСТИ ОТ ПРИЧИН И ОСНОВАНИЙ ИХ ВОЗНИКНОВЕНИЯ ИЛИ ВНЕ ЗАВИСИМОСТИ ОТ ПРИЧИН И ВИДОВ ОТВЕТСТВЕННОСТИ, ДАЖЕ ЕСЛИ ВЕРОЯТНОСТЬ ТАКИХ УБЫТКОВ БЫЛА ПРЕДСКАЗАНА. EFI НЕ НЕСЕТ ОТВЕТСТВЕННОСТИ ЗА КАКУЮ-ЛИБО УПУЩЕННУЮ ВЫГОДУ ИЛИ ПРИБЫЛЬ, УТРАТУ ВОЗМОЖНОСТИ ЭКСПЛУАТАЦИИ, ПОТЕРЮ ДАННЫХ ИЛИ РАСХОДЫ НА ВОССТАНОВЛЕНИЕ КАКИХ-ЛИБО ДАННЫХ. ЗА ИСКЛЮЧЕНИЕМ СЛУЧАЕВ УМЫШЛЕННОГО НАРУШЕНИЯ СО СТОРОНЫ EFI, КОМПАНИЯ EFI НЕ НЕСЕТ ОТВЕТСТВЕННОСТИ ЗА УБЫТКИ, ПОНЕСЕННЫЕ В РЕЗУЛЬТАТЕ ТАКИХ ДЕЙСТВИЙ, КАК НАРУШЕНИЕ, НЕСАНКЦИОНИРОВАННЫЙ ДОСТУП, НЕНАДЛЕЖАЩЕЕ ИСПОЛЬЗОВАНИЕ ИЛИ ВЗЛОМ, СВЯЗАННЫЕ С ВАШИМИ ДАННЫМИ НА СЕРВЕРАХ EFI ИЛИ ЕЕ ПОСТАВЩИКОВ ИЛИ В ЛЮБЫХ СЕТЯХ, КОТОРЫЕ ВЫ ИСПОЛЬЗУЕТЕ В СВЯЗИ С ПРОДУКТОМ.

IN NO EVENT WILL EFI'S TOTAL LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATED TO THE PRODUCTS, SERVICES, ACCESS, AND/OR THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, UNDER STATUTE, OR OTHERWISE) EXCEED THE TOTAL AMOUNT OF THE FEES ACTUALLY PAID BY YOU IN THE 12 MONTHS PRECEDING THE CLAIM FOR THE EFI PRODUCT, SERVICES, OR ACCESS GIVING RISE TO THE CLAIM. YOU AGREE THAT THIS AMOUNT IS SUFFICIENT TO SATISFY THE ESSENTIAL PURPOSE OF THIS AGREEMENT AND THAT THE PRICE OF THE PRODUCT, PROFESSIONAL SERVICES, OR ACCESS REFLECTS THIS ALLOCATION OF RISK.

THE FOREGOING LIMITATIONS OF LIABILITY AND DISCLAIMERS FORM AN ESSENTIAL ELEMENT OF THIS AGREEMENT, WITHOUT WHICH EFI WOULD NOT HAVE LICENSED OR SOLD THE PRODUCT TO YOU OR PROVIDED YOU WITH ACCESS.

BECAUSE SOME JURISDICTIONS DO NOT ALLOW SOME OR ALL OF THE EXCLUSIONS OR LIMITATIONS OF LIABILITY IN THIS AGREEMENT, SOME OR ALL OF THEM MAY NOT APPLY TO YOU.

9. Proprietary Rights and Confidential Information.

(a). No Implied Conveyance of Proprietary Rights. The Product, Documentation, and any Work Product are the valuable, confidential, and proprietary property of EFI, its suppliers and licensors. EFI is not conveying any of its Intellectual Property Rights, except the limited rights specified in this Agreement. You shall maintain and reproduce all copyright, trademark, patent, and other proprietary notices on the Product in the same form and manner as delivered by EFI.

МАКСИМАЛЬНАЯ ОТВЕТСТВЕННОСТЬ EFI ПО ВСЕМ ПРЕТЕНЗИЯМ, ВОЗНИКАЮЩИМ В СВЯЗИ С ПРОДУКТАМИ, УСЛУГАМИ, ДОСТУПОМ И (ИЛИ) НАСТОЯЩИМ СОГЛАШЕНИЕМ, НЕЗАВИСИМО ОТ ФОРМЫ ПОДАЧИ ИСКА (ПО ДОГОВОРУ, ВСЛЕДСТВИЕ ПРАВОНАРУШЕНИЯ, СОГЛАСНО УСТАВУ ИЛИ НА ИНОМ ОСНОВАНИИ), НЕ МОЖЕТ ПРЕВЫШАТЬ ОБЩУЮ СУММУ СБОРОВ, ФАКТИЧЕСКИ УПЛАЧЕННЫХ ВАМИ ЗА 12 МЕСЯЦЕВ, ПРЕДШЕСТВУЮЩИХ ТАКОЙ ПРЕТЕНЗИИ В ОТНОШЕНИИ ПРОДУКТА, УСЛУГ ИЛИ ДОСТУПА EFI, СТАВШИХ ПРИЧИНОЙ ТАКОЙ ПРЕТЕНЗИИ. ВЫ СОГЛАШАЕТЕСЬ, ЧТО ТАКАЯ СУММА ЯВЛЯЕТСЯ ДОСТАТОЧНОЙ ДЛЯ ДОСТИЖЕНИЯ ОСНОВНОЙ ЦЕЛИ НАСТОЯЩЕГО СОГЛАШЕНИЯ, А ТАКЖЕ С ТЕМ, ЧТО ЦЕНА НА ПРОДУКТ, ПРОФЕССИОНАЛЬНЫЕ УСЛУГИ ИЛИ ДОСТУП СООТВЕТСТВУЮТ ТАКОМУ РАСПРЕДЕЛЕНИЮ РИСКА.

ВЫШЕИЗЛОЖЕННЫЕ ОГРАНИЧЕНИЯ ОТВЕТСТВЕННОСТИ И ОТКАЗ ОТ ОТВЕТСТВЕННОСТИ ПРЕДСТАВЛЯЮТ СОБОЙ СУЩЕСТВЕННЫЙ ЭЛЕМЕНТ НАСТОЯЩЕГО СОГЛАШЕНИЯ, БЕЗ КОТОРОГО КОМПАНИЯ EFI НЕ ПРЕДОСТАВИЛА БЫ ВАМ ЛИЦЕНЗИЮ ИЛИ ПРОДАЛА БЫ ПРОДУКТ, ИЛИ НЕ ПРЕДОСТАВИЛА БЫ ДОСТУП.

ВВИДУ ТОГО, ЧТО В НЕКОТОРЫХ ЮРИСДИКЦИЯХ НЕ ДОПУСКАЮТСЯ НЕКОТОРЫЕ ИЛИ ВСЕ ИСКЛЮЧЕНИЯ ИЛИ ОГРАНИЧЕНИЯ ОТВЕТСТВЕННОСТИ, ИЗЛОЖЕННЫЕ В НАСТОЯЩЕМ СОГЛАШЕНИИ, НЕКОТОРЫЕ ИЛИ ВСЕ ИЗ НИХ МОГУТ НЕ РАСПРОСТРАНЯТЬСЯ НА ВАС.

9. Права собственности и конфиденциальная информация.

(a). Соглашение не подразумевает передачу Прав собственности. Продукт, Документация или любые Результаты работы являются ценной, конфиденциальной и проприетарной собственностью компании EFI, ее поставщиков и лицензиаров. EFI не передает свои Права на интеллектуальную собственность, за исключением ограниченных прав, указанных в настоящем Соглашении. Вы обязуетесь поддерживать и воспроизводить все сведения об авторских правах, товарные знаки, патенты и прочие уведомления о правообладателе Продукта в той же форме и тем же способом, как это делает компания EFI.

(b). Protection of Information. You shall not disclose any of EFI's Confidential Information, and shall take precautions with respect to EFI's Products and Confidential Information that are at least as protective as you take to protect your own confidential information and proprietary rights of the greatest sensitivity. You shall advise your employees and authorized independent contractors of the confidential and proprietary nature of the Product and EFI's Confidential Information and of the restrictions imposed by this Agreement, and confine access to the Product and EFI's Confidential Information to those individuals who need it in the ordinary course and scope of their employment or relationship with you. Except as specified in this Agreement, you shall not directly or indirectly disclose any part of the Product, EFI's Confidential Information, or Documentation to any third party.

(c). Termination; Injunctive Relief. Your violation of the confidentiality obligations or of EFI's Intellectual Property Rights may cause irreparable damage that cannot be fully remedied by money damages. In the event of any actual or threatened violation, you agree that EFI will be entitled, in addition to any other remedy available to it, to (i) terminate this Agreement, retake possession of the Product, execute the License Key, and/or terminate Access, and/or (ii) obtain injunctive or other equitable relief from any court of competent jurisdiction to prevent any further violation.

(d). Use of Your Trademarks and Logos. Subject to any reasonable use guidelines, you grant EFI a non-exclusive, worldwide, royalty-free license to use Customer Marks in connection with this Agreement, for use with the Product, for promoting EFI's Products in marketing materials, print, or on-line advertising, and for identifying you as an EFI customer. You shall also secure for EFI any rights or sublicenses required for EFI's use of the trademarks or service marks of your Affiliates. EFI acknowledges that (i) Customer Marks are owned solely and exclusively by you or your Affiliates, (ii) EFI has no other rights, title, or interest in or to Customer Marks, and (iii) all use and goodwill of Customer Marks by EFI inures to the benefit of you and your Affiliates.

(b). Защита информации. Вы обязуетесь не разглашать любую Конфиденциальную информацию EFI и принять все возможные меры в отношении Продуктов и Конфиденциальной информации EFI, обеспечивающие не меньший уровень защиты, чем меры, принимаемые вами для защиты собственной наиболее уязвимой конфиденциальной информации и прав собственности. Вы обязуетесь уведомить своих сотрудников и уполномоченных независимых подрядчиков о конфиденциальном и патентном характере Продукта и Конфиденциальной информации EFI, а также об ограничениях, налагаемых настоящим Соглашением, и предоставить доступ к Продукту и Конфиденциальной информации EFI только тем лицам, которым он необходим для выполнения рабочих задач или поддержания деловых отношений с вами. За исключением указанного в настоящем Соглашении, вы не имеете права прямо или косвенно раскрывать третьим лицам информацию о любой части Продукта, Конфиденциальную информацию EFI или раскрывать информацию, содержащуюся в Документации.

(c). Расторжение соглашения; обеспечительные меры. Нарушение обязательств в части сохранения конфиденциальности или Прав на интеллектуальную собственность компании EFI с вашей стороны может привести к непоправимому ущербу, который невозможно полностью компенсировать путем денежной компенсации убытков. Вы соглашаетесь, что в случае любого фактического или потенциального нарушения компания EFI имеет право, кроме прочих доступных ей средств правовой защиты, (i) расторгнуть настоящее Соглашение, восстановить свое право владения Продуктом, исполнить Лицензионный ключ и (или) прекратить Доступ, и (или) (ii) получить от любого суда компетентной юрисдикции судебный запрет или иное аналогичное средство судебной защиты с целью предотвратить дальнейшие нарушения.

(d). Использование ваших товарных знаков и логотипов. В соответствии с любыми разумными указаниями по эксплуатации вы предоставляете компании EFI неисключительную, глобальную, бесплатную лицензию на использование Знаков заказчика в связи с настоящим Соглашением с целью их использования с Продуктом, для продвижения Продуктов EFI в маркетинговых материалах, печатной или интернет-рекламе, а также для указания вас как заказчика EFI. Вы также предоставляете компании EFI любые права или сублицензии, необходимые ей для использования товарных знаков или знаков обслуживания ваших Аффилированных компаний. EFI признает, что (i) единоличным и исключительным собственником Знаков заказчика являетесь вы или ваши Аффилированные компании, (ii) EFI не имеет других прав, права собственности или оснований на получение прав на Знаки заказчика, и (iii) любое использование Знаков заказчика и репутации Знаков заказчика компанией EFI осуществляется с выгодой для вас и ваших Аффилированных компаний.

10. Termination.

(a). This Agreement may be terminated immediately upon written notice to the other party (i) by EFI, if you fail to make any required payment other than Maintenance Fees, (ii) by the non-breaching party, if you or EFI fails to cure a material breach within 30 days after written notice from the non-breaching party, or (iii) by EFI, if you cease doing business as a going concern, become the object of voluntary or involuntary bankruptcy or liquidation proceedings that are not dismissed within 60 days after the initial filing, or if a receiver is appointed with respect to a substantial portion of your assets.

(b). Upon termination, you shall promptly (i) pay EFI all unpaid fees accrued before the termination, (ii) return all EFI Confidential Information and the Product, and (iii) return any materials, programs, manuals, and other items related to or derived from the Product in your possession or control. EFI shall use commercially reasonable efforts to provide you with any proprietary data belonging to you in the format in which it is stored by EFI at the time of termination.

11. Audit Rights.

EFI may audit your use of or Access to the Product. Any audit will take place after prior notice to you, during regular business hours, and in a manner that does not unreasonably interfere with your normal business. If the audit shows that you are using or accessing the Product in a way that violates this Agreement, EFI may invoice you for such use or Access, including late fees, interest, and expenses associated with the audit. If you do not timely pay that invoice, EFI may exercise its termination rights and pursue any other rights or remedies available to it.

12. Consent to Use Data.

EFI may collect and use technical data and related information to facilitate providing and/or confirming authorized use of Products, Access, Professional Services, and/or Maintenance to and by you. Subject to EFI's then-current privacy policy (available at <https://www.efi.com/legal/privacy/>) and applicable laws and regulations, EFI may (i) use this information to improve its products, to provide customized services or technologies to you, and/or to confirm authorized use, (ii) transfer this information to EFI's affiliates, agents, and partners, and (iii) transfer this information to the United States and/or any other country where EFI or its affiliates, agents, and partners maintain facilities.

10. Расторжение.

(a). Настоящее Соглашение может быть расторгнуто немедленно посредством письменного уведомления одной из сторон (i) по инициативе EFI, если вы не произвели обязательные платежи, за исключением Сборов за техническое обслуживание, (ii) по инициативе исправной стороны, если вы или EFI не устранили существенное нарушение в течение 30 дней с момента письменного уведомления исправной стороной, или (iii) по инициативе EFI, если вы прекращаете непрерывную деятельность, становитесь объектом добровольной или принудительной процедуры признания банкротом или ликвидации, которая не была прекращена в течение 60 дней с момента возбуждения, или если назначен конкурсный управляющий для значительной части ваших активов.

(b). При расторжении вы обязуетесь как можно быстрее (i) выплатить EFI все неоплаченные сборы, накопившиеся до момента расторжения, (ii) вернуть всю Конфиденциальную информацию EFI и Продукт, и (iii) вернуть все материалы, программы, руководства и прочие компоненты, связанные с Продуктом или основанные на нем, которые находятся в вашем владении или под вашим контролем. EFI обязуется приложить все возможные усилия, чтобы предоставить принадлежащие вам данные, представляющие вашу собственность, в формате, в котором они хранятся в компании EFI на момент расторжения Соглашения.

11. Право на аудит.

EFI вправе проверить, как вы используете Продукт или получаете к нему Доступ. Любой аудит проводится после отправки вам предварительного уведомления, в течение стандартного рабочего времени и таким образом, чтобы избежать необоснованного нарушения вашего обычного режима работы. Если в ходе аудита выявлено, что вы используете Продукт или получаете к нему доступ в нарушение настоящего Соглашения, EFI может выставить вам счет за такое использование или Доступ, который может включать комиссию за просрочку, проценты и расходы, связанные с проведением аудита. Если вы своевременно не оплатите такой счет, компания EFI может воспользоваться своим правом расторжения или любыми другими доступными ей правами или средствами правовой защиты.

12. Разрешение на использование данных.

EFI может собирать и использовать технические данные и связанную с ними информацию в целях предоставления и (или) подтверждения санкционированного использования Продуктов, Доступа, Профессиональных услуг и (или) Технического обслуживания, предоставляемого вам или вами. В соответствии с настоящей политикой конфиденциальности компании EFI (доступна по адресу <https://www.efi.com/legal/privacy/>) и действующим законодательством и правовыми нормами, EFI может: (i) использовать эту информацию для усовершенствования своей продукции, для предоставления вам индивидуализированных услуг или технологий, и (или) подтверждения санкционированного доступа, (ii) передавать эту информацию своим аффилированным компаниям, агентам и партнерам, (iii) передавать эту информацию в США и (или) в любую другую страну, в которой есть объекты компании EFI, ее аффилированных компаний, агентов и партнеров.

13. Compliance with Laws.

(a). Export Law Compliance. The Product and related technology, information, and materials are subject to the export laws and regulations of the United States. You shall comply with those and any other applicable export laws or regulations. You are solely responsible for obtaining any necessary export licenses and exemptions. The Product and related technology, information, and materials may not be exported or re-exported to any U.S.-embargoed country, to any person or entity on any list of prohibited parties designated by the U.S. government, or otherwise in violation of any export law or regulation.

(b). Compliance with Laws. You may only use the Product in compliance with all applicable laws and regulations. Upon written notice to you, EFI may modify or suspend your use of or Access to the Product as necessary to comply with any law or regulation. Both parties acknowledge their responsibilities and commitments to abide by and comply with international anti-corruption laws, including but not limited to the United States Foreign Corrupt Practices Act and the United Kingdom Anti-Bribery Act, and any amendments and regulations relating to those laws, in addition to each of our own ethical guidelines (EFI's Code of Conduct is available online at <http://ir.efi.com/committee-details/code-business-conduct-and-ethics>). Specifically, for example, no employee, or any individual or entity acting on behalf of or for the benefit of either EFI or Customer, may give or receive anything of value, or anything that may be perceived as valuable, to or from a government official or any other individual for the purpose of influencing any act, securing any improper advantage, or obtaining or retaining business.

14. General Provisions.

(a). Taxes. Except with respect to income recognized by EFI, you are liable for all tariffs, duties, and taxes, however designated or levied, based on your possession, use of, or Access to the Product, this Agreement, and/or any Professional Services, including but not limited to sales, use, value added, excise, services, personal property, or other taxes.

13. Соблюдение требований законодательства.

(a). Соблюдение законодательства об экспорте. Продукт и связанные с ним технологии, информация и материалы регулируются законами об экспорте и правовыми нормами Соединенных Штатов Америки. Вы обязуетесь соблюдать эти и любые другие действующие законы об экспорте или правовые нормы. Вы несете единоличную ответственность за получение любых необходимых лицензий и льгот на экспорт. Продукт и связанные с ним технологии, информация и материалы запрещено экспортировать или вывозить обратно в любые страны, на которые распространяется эмбарго США, для любых физических или юридических лиц, входящих в список запрещенных лиц, составленный правительством США, или иным образом в нарушение любых законов об экспорте или правовых норм.

(b). Соблюдение требований законодательства. Вы вправе использовать Продукт только при условии соблюдения всех действующих законов и правовых норм. Посредством направления вам письменного уведомления компания EFI может изменить или приостановить использование вами Продукта или Доступ к нему, если это необходимо в соответствии с каким-либо законом или правовой нормой. Стороны признают свои обязанности и обязательства по соблюдению международных законов по борьбе с коррупцией, включая, помимо прочего, Закон Соединенных Штатов «О борьбе с коррупцией во внешнеторговой деятельности» и Закон Великобритании «О борьбе со взяточничеством», а также любых поправок и положений, касающихся этих законов, в дополнение ко всем собственным этическим принципам (Кодекс поведения EFI доступен в сети Интернет по адресу <http://ir.efi.com/committee-details/code-business-conduct-and-ethics>). В частности, например, ни один сотрудник, ни одно физическое или юридическое лицо, действующее от имени или в интересах компании EFI или Заказчика, не имеет права передавать какие бы то ни было ценности или что бы то ни было, что может быть сочтено ценностью, государственным служащим или любым другим лицам или получать от них, чтобы повлиять на законодательное решение, обеспечить неправомерные преимущества, а также получить или сохранить деловые возможности.

14. Общие положения.

(a). Налоги. За исключением прибыли, признанной компанией EFI, вы несете ответственность за уплату всех таможенных пошлин, сборов и налогов, независимо от того, с какой целью они назначаются или взимаются, основанных на владении вами Продуктом, его использовании или Доступе к нему, этом Соглашении и (или) любых Профессиональных услугах, включая, среди прочего, налоги на продажу, использование, добавленную стоимость, акциз, услуги, личное имущество и прочие налоги.

(b). Governing Law. This Agreement is not governed by the 1980 UN Convention on Contracts for the International Sales of Goods or any other international treaty or convention. Rather, this Agreement is governed in all respects by the laws of the State of California, USA, without regard to conflicts of laws principles. For all disputes related to this Agreement, the Product, Access, or any services provided under this Agreement, each party consents to the exclusive personal jurisdiction and venue of the state and federal courts in and for Santa Clara County, California, USA.

(c). Severability; Interpretation. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by any court of competent jurisdiction, that provision will be fully severable and this Agreement will be construed and enforced as if it were not included. This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor or against either party. The captions are for convenience only and do not affect the scope, intent, or meaning of the provisions. Any failure or delay to enforce any provision of this Agreement will not be deemed a waiver of EFI's right to do so.

(d). No Assignment. Assignment or transfer of this Agreement in its entirety, including all Licenses purchased, whether voluntarily, by operation of law, or otherwise, requires EFI's prior written consent, which may be withheld, delayed, or conditioned in EFI's sole discretion, and may require payment of a License transfer fee. Partial assignment or transfer of this Agreement, including a portion of Licenses purchased, whether voluntarily, by operation of law, or otherwise, is prohibited. Any merger, consolidation or acquisition of Customer or other transfer of all or substantially all of the shares or assets of Customer is deemed to be an assignment under this Agreement. Any attempted assignment or transfer without EFI's consent is void.

(b). Регулирующее законодательство. Настоящее Соглашение не регулируется Конвенцией ООН о договорах международной купли-продажи товаров 1980 г. или любыми другими международными договорами или конвенциями. Настоящее Соглашение во всех отношениях регулируется законодательством штата Калифорния, США, без учета коллизионных норм. В отношении всех споров, связанных с настоящим Соглашением, Продуктом, Доступом или любыми услугами, предоставляемыми в соответствии с настоящим Соглашением, каждая из сторон соглашается, что исключительной компетенцией по кругу лиц обладают и местом рассмотрения являются государственные и федеральные суды округа Санта-Клара, штат Калифорния, США.

(c). Автономность положений договора; толкование. Если какое-либо положение настоящего Соглашения признается незаконным, недействительным или не подлежащим принудительному исполнению любым судом надлежащей юрисдикции, такое положение является полностью автономным, а настоящее Соглашение толкуется и исполняется так, как если бы такое положение не было в него включено. Настоящее Соглашение толкуется в соответствии с его условиями и не трактуется ограничительного в пользу или против любой из сторон. Заголовки используются исключительно для удобства и не влияют на сферу применения, цель или значение положений. Неприведение в принудительное исполнение или задержка в таком исполнении любого положения настоящего Соглашения не считается отказом компании EFI от своего права на такое действие.

(d). Запрет на уступку. Уступка или передача прав и обязанностей по настоящему Соглашению в целом – включая все приобретенные Лицензии – на добровольной основе, в силу действия закона или на иных основаниях не может осуществляться без предварительного письменного согласия со стороны EFI, в котором может быть отказано, оно может быть дано с задержкой или содержать условия, внесенные по единоличному усмотрению EFI, и может содержать требования об уплате сбора за перенос Лицензии. Частичная уступка или передача прав и обязанностей по настоящему Соглашению – включая часть приобретенных лицензий – как на добровольной основе, так и в силу действия закона или на иных основаниях, запрещена. В случае слияния, объединения или приобретения Заказчика, или иной передачи всех или большинства акций или активов Заказчика происходит уступка прав и обязанностей согласно настоящему Соглашению. Любые попытки уступки или передачи прав и обязанностей без согласия EFI не имеют юридической силы.

(e). Language. This Agreement is only in English, which is controlling in all respects. If EFI has provided you with a translation, the translation is for your convenience only and the English-language version, not the translation, is legally binding. If there are any conflicts or inconsistencies between the English-language version and a translation, the English-language version controls. Any notices relating to this Agreement must be in writing in English.

(f). Entire Agreement and Modification. With respect to the subject matter or any term of this Agreement: (i) this Agreement constitutes the entire understanding of the parties; (ii) this Agreement supersedes all prior and contemporaneous communications and understandings (including but not limited to discussions, representations, warranties, inducements, promises, and agreements); (iii) there are no such communications or understandings not explicitly contained herein; (iv) neither party has relied on any such communications or understandings except as explicitly contained in this Agreement; and (v) any waiver, modification, or amendment will be effective only if in a writing signed by the parties, where email does not constitute a signed writing.

(g). Orders and Acceptance. All orders for Products or Professional Services made pursuant to this Agreement are non-cancelable, non-refundable and must be submitted at least fifteen (15) days prior to the requested order delivery date. For any given order, you shall make the order and corresponding payment to EFI or its subsidiary or Affiliate depending upon which company is making the sale of Products or Professional Services for that order. Orders are not binding without written notification of acceptance from EFI. This Agreement governs all subsequent orders, and nothing contained in Customer's purchase orders or other communications will in any way modify this Agreement.

(h). Independent Contractors. You and EFI, and our respective employees and representatives, are and will be independent contractors with respect to the other party. Neither party by virtue of this Agreement has any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

(e). Язык. Настоящее Соглашение составлено только на английском языке, и эта версия имеет преимущественную силу во всех отношениях. Если компания EFI предоставила вам перевод, это сделано исключительно для вашего удобства, а юридическую силу имеет только версия на английском языке, а не перевод. В случае возникновения расхождений или противоречий между версией на английском языке и переводом, версия на английском языке имеет преимущественную силу. Любые примечания к настоящему Соглашению составляются в письменном виде на английском языке.

(f). Полнота Соглашения и внесение изменений. В отношении предмета или любого термина настоящего Соглашения: (i) настоящее Соглашение представляет собой полный объем договоренностей между сторонами; (ii) настоящее Соглашение лишает законной силы все предшествующие и совпадающие по времени сообщения и договоренности (включая, помимо прочего, переговоры, заявления, гарантии, убеждения, обещания и соглашения); (iii) не существует сообщений или договоренностей, которые бы явно не содержались в настоящем Соглашении; (iv) ни одна сторона не полагается на любое такое сообщение или любую такую договоренность кроме тех, что явно содержатся в настоящем Соглашении; и (v) любой отказ, изменение или поправка вступает в силу, только если она изложена в письменном виде и подписана сторонами, если электронное сообщение не является подписанным документом.

(g). Заказы и их принятие. Все заказы на поставку Продуктов или предоставление Профессиональных услуг, размещенные в соответствии с настоящим Соглашением, не могут быть отменены, не подлежат возврату и должны быть оформлены не менее чем за пятнадцать (15) дней до запрашиваемой даты поставки заказа. В случае каждого отдельного заказа вы должны его оформить и произвести соответствующую оплату в адрес компании EFI или ее дочерней компании, или Аффилированной компании, в зависимости от того, какая компания осуществляет продажу Продуктов или предоставляет Профессиональные услуги по этому заказу. Заказы не являются обязательными к исполнению без письменного подтверждения об их принятии компанией EFI. Настоящее Соглашение регулирует все последующие оформления и принятия заказов, и ничего, что может содержаться в заказе Заказчика на покупку или в других сообщениях, не может каким-либо образом изменить настоящее Соглашение.

(h). Независимые подрядчики. Вы и компания EFI, а также наши соответствующие сотрудники и представители, являются и должны быть независимыми подрядчиками в отношении другой стороны. Ни одна из сторон в силу действия настоящего Соглашения не имеет права или полномочий выступать или создавать какие-либо обязательства, как прямые, так и подразумеваемые, от лица другой стороны.

(i). Survival. The provisions of this Agreement that relate to fees and payment terms, ownership of intellectual property and proprietary rights, export law compliance, termination, confidentiality, infringement indemnification, warranty disclaimers, limitation of liability, governing law, survivability, force majeure, severability and interpretation, definitions, modification and use of software products owned or distributed by Microsoft or Oracle included in an EFI Product will survive termination of this Agreement.

(j). Force Majeure. Except for payment of monies, no party will be liable for its failure to perform any obligations on account of strikes, shortages, failure or acts of suppliers, riots, insurrection, fires, flood, storm, explosions, acts of God, war, military operations, acts of terrorism whether actual or threatened, acts of a public enemy, epidemics, quarantines, governmental action, labor conditions, earthquakes, material shortages, or any cause that is similar to those enumerated or beyond the reasonable control of the affected party.

(k). U.S. Government Restricted Rights. Use, duplication, or disclosure of the Product by the United States Government is subject to restrictions as set forth in FAR 12.212 or DFARS 227.7202-3 - 227.7202-4 and, to the extent required under U.S. federal law, the minimum restricted rights as set out in FAR 52.227-14, Restricted Rights Notice (June 1987) Alternate III(g)(3) (June 1987) or FAR 52.227-19 (June 1987). To the extent any technical data is provided pursuant to the Agreement, such data is protected per FAR 12.211 and DFARS 227.7102-2 and to the extent explicitly required by the U.S. Government, is subject to limited rights as set out in DFARS 252.227.7015 (November 1995) and DFARS 252.227-7037 (September 1999). If any of the above-referenced agency regulations are modified or superseded, the subsequent equivalent regulation shall apply. The name of the Contractor is Electronics For Imaging, Inc.

(i). Применение положений после прекращения действия Соглашения. Положения настоящего Соглашения, связанные со сборами и условиями оплаты, правами на результаты интеллектуальной деятельности и правами собственности, соблюдением законодательства об экспорте, расторжением, конфиденциальностью, ограждением от ответственности в случае нарушения прав, отказом от гарантийных обязательств, ограничением ответственности, регулирующим законодательством, применением положений после прекращения действия Соглашения, форс-мажорными обстоятельствами, автономностью положений и толкованием, определениями, изменением и использованием продуктов программного обеспечения, собственником или дистрибьютором которого являются компании Microsoft или Oracle, включенного в Продукт EFI, сохраняют свою юридическую силу после прекращения действия настоящего Соглашения.

(j). Обстоятельства непреодолимой силы. За исключением выплаты денежных средств, ни одна из сторон настоящего Соглашения не несет ответственности за неисполнение каких-либо своих обязательств в связи с забастовками, нехваткой материалов или оборудования, бездействием или действиями поставщиков, беспорядками, восстаниями, мятежами, пожарами, наводнениями, штормами, взрывами, стихийными бедствиями, войнами, военными действиями, фактическими террористическими актами или угрозами совершения террористических актов, действиями враждебного государства, эпидемиями, карантинами, действиями правительства, трудовыми условиями, землетрясениями, нехваткой материалов или в связи с какими-либо другими аналогичными вышеперечисленным причинами, находящимися вне разумного контроля такой стороны.

(k). Ограниченные права правительства США. На использование, копирование или раскрытие Продукта правительством США распространяются ограничения, изложенные в Постановлении по федеральным закупкам (Federal Acquisition Regulation, FAR) 12.212 или в Дополнении к федеральному положению о военных закупках (Defense Federal Acquisition Regulation Supplement, DFARS) 227.7202-3 - 227.7202-4, а также, если этого требует федеральное законодательство США, минимальные ограниченные права согласно FAR 52.227-14, Приписке об ограниченных правах (июнь 1987 г.), вариант III(g)(3) (июнь 1987 г.) или FAR 52.227-19 (июнь 1987 г.). Если в рамках настоящего Соглашения предоставляются какие-либо технические данные, защита таких данных обеспечивается в соответствии с FAR 12.211 и DFARS 227.7102-2, а также, если того прямо требует правительство США, на них распространяются ограниченные права, описанные в DFARS 252.227.7015 (ноябрь 1995 г.) и DFARS 252.227-7037 (сентябрь 1999 г.). В случае изменения или замены правовых норм любого из вышеуказанных органов, применяется новая аналогичная правовая норма. Наименование подрядчика — Electronics For Imaging, Inc.

15. Product-Specific and Third Party Provisions.

If you have obtained a License for certain Products, some of the following terms and conditions might apply to you.

(a). Products that include Microsoft Software (such as Windows or SQL Server).

(i). The term “Product” as used in this Agreement includes certain Microsoft software and related documentation, associated media, “online” or electronic documentation, upgrades and updates. EFI does not own these products and the use thereof is subject to certain rights and limitations.

(ii). Microsoft is not responsible for any support services for the Product. Notwithstanding the foregoing, in the event any support issues arise related to the Microsoft software that cannot be resolved by EFI, support to you may be provided by Microsoft pursuant to the Microsoft Premier support services agreement, or a similar type agreement, between EFI and Microsoft.

(iii). The Product is not fault-tolerant. The Product is not designed or intended for use in any situation where failure or fault of any kind of the Product could lead to death or serious bodily injury of any person, or to severe physical or environmental damage (“High Risk Use”). You are not licensed to use the Product in, or in conjunction with, High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: aircraft or other modes of human mass transportation, nuclear or chemical facilities, and Class III medical devices under the Federal Food, Drug, and Cosmetic Act. You shall not use the Product in, or in connection with, any High Risk Use. You are responsible for taking all appropriate measures to ensure the safe use of the Product if used for such purposes and EFI and its suppliers, including Microsoft, will not be liable for any claims or damages arising from such use.

(b). Products that include Software Products Owned or Distributed by Oracle.

15. Положения, касающиеся Продукта и третьих лиц.

Если вы приобрели Лицензию на использование определенных Продуктов, к вам могут применяться некоторые из следующих условий.

(а). Продукты, включающие программное обеспечение Microsoft (например, Windows или SQL Server).

(i). Термин «Продукт» в контексте настоящего Соглашения включает определенное программное обеспечение Microsoft и связанную с ним документацию, медиаданные, «онлайн» или электронную документацию, улучшения и обновления. EFI не является собственником этих продуктов, а потому на них распространяется действие определенных прав и ограничений.

(ii). Microsoft не несет ответственности за любые услуги поддержки Продукта. Независимо от вышележащего в случае возникновения вопросов о поддержке, связанных с программным обеспечением Microsoft, которые компания EFI не может решить, необходимую вам поддержку может предоставить компания Microsoft в соответствии с соглашением об обеспечении премьер-поддержки Microsoft или аналогичного соглашения, заключенного между EFI и Microsoft.

(iii). Продукт не является безотказным. Продукт не предназначен для использования в любых ситуациях, в которых его отказ или выход из строя может привести к смерти или серьезной травме человека, а также к серьезному физическому или экологическому ущербу («Использование в условиях повышенного риска»). Ваша лицензия не позволяет использовать Продукт в ситуациях, связанных с повышенным риском. Использование в условиях повышенного риска СТРОГО ЗАПРЕЩЕНО. Использование в условиях повышенного риска включает, например, следующее: гражданская авиация или прочие способы массовых перевозок пассажиров, атомные или химические объекты, медицинские устройства III категории согласно Федеральному закону о пищевых продуктах, лекарственных и косметических средствах. Вы не имеете права использовать Продукт в ситуациях, связанных с повышенным риском. Вы несете ответственность за принятие всех необходимых мер, гарантирующих безопасное использование Продукта, если он используется в таких целях, при этом компания EFI и ее поставщики, включая Microsoft, не несут ответственности за любые претензии или ущерб, возникшие в результате такого использования.

(b). Продукты, включающие программные продукты, принадлежащие компании Oracle или распространяемые ею.

(i). The term “Product” as used in this Agreement includes certain software products provided by EFI that are owned or distributed by Oracle USA, Inc. (“Oracle”) and related program documentation (the “Oracle Programs”); EFI does not own the Oracle Programs and the use thereof is subject to certain rights and limitations. The Oracle Programs included herein are subject to a restricted use license and can only be used in conjunction with the Product. Oracle or its licensors retain all ownership of intellectual property rights to the Oracle Programs. You are hereby notified that Oracle is a supplier of EFI and a third-party beneficiary to this Agreement to the extent that this Agreement contains provisions which relate to your use of the Oracle Programs. Such provisions are made expressly for the benefit of Oracle and are enforceable by Oracle in addition to EFI.

(ii). You acknowledge and agree that you are prohibited from (a) publishing any results of benchmark tests run on the Oracle Programs, (b) using the Oracle Programs for rental, timesharing, subscription service, hosting, or outsourcing, and (c) removing or modifying any program markings or notice of Oracle’s or Oracle’s licensors’ proprietary rights.

(iii). To the extent not prohibited by law, in no event will Oracle be liable for (a) any damages, whether direct, indirect, incidental, special, punitive or consequential, and (b) any loss of profits, revenue, data or data use, arising from the use of the Oracle Programs.

(iv). You hereby permit EFI to (a) report any audit results obtained pursuant to this Agreement to Oracle to the extent such results are related to the Oracle Programs, or (b) assign such rights to audit your use of the Oracle Programs to Oracle.

(v). You are hereby notified that some Oracle Programs may include source code that Oracle may provide as part of its standard shipment of such programs, which source code is governed by the terms of this Agreement.

(vi). The Computer Information Transactions Act does not apply to this Agreement.

(vii). You acknowledge and agree that in the event a third party technology may be appropriate or necessary for use with some Oracle Programs, it will be specified in the Product package documentation or as otherwise noted, and such third party technology is licensed to you only for use with the Product under the terms of the third party license agreement specified in the Product package documentation or as otherwise noted, and not under the terms of this Agreement.

(i). Понятие «Продукт» в контексте настоящего Соглашения включает определенные предоставляемые компанией EFI программные продукты, которые принадлежат компании Oracle USA, Inc. («Oracle») или распространяются данной компанией, а также соответствующую программную документацию («Программы Oracle»). Компания EFI не является собственником Программ Oracle, а их использование может регламентироваться соответствующими правами и иметь соответствующие ограничения. Программы Oracle, включенные в предмет настоящего Соглашения, регулируются лицензией на ограниченное использование и могут использоваться только в сочетании с Продуктом. Oracle и ее лицензиары сохраняют за собой все права на интеллектуальную собственность в отношении Программ Oracle. Настоящим вы уведомляете о том, что Oracle является поставщиком EFI и сторонним выгодоприобретателем в соответствии с положениями настоящего Соглашения, относящимися к использованию Программ Oracle. Такие положения прямо внесены в текст соглашения в пользу Oracle, и Oracle имеет право требовать их выполнения в той же мере, что и EFI.

(ii). Вы признаете и соглашаетесь с тем, что вам запрещается (a) публиковать какие-либо результаты контрольного тестирования Программ Oracle, (b) использовать Программы Oracle в целях аренды, в режиме разделения времени, обслуживания на базе подписки, хостинга или аутсорсинга, а также (c) удалять или изменять в программах любые указания и уведомления об имущественных правах Oracle или лицензиаров Oracle.

(iii). В той степени, в какой это не запрещено действующим законодательством Oracle ни при каких обстоятельствах не несет ответственности за (a) какие-либо убытки (прямые, косвенные, случайные, специальные, штрафные или сопутствующие) и (b) упущенную выгоду, прибыль, потерю данных или возможности использования данных, возникшие в связи с использованием Программ Oracle.

(iv). Настоящим вы признаете за EFI право на (a) передачу результатов аудита в соответствии с условиями настоящего Соглашения в адрес Oracle, если такие результаты касаются Программ Oracle, или (b) делегирование прав на проверку использования вами Программ Oracle компании Oracle.

(v). Настоящим вы уведомляете, что некоторые Программы Oracle могут содержать исходный код, предоставляемый Oracle в составе стандартной конфигурации таких программ. На этот код распространяются условия настоящего Соглашения.

(vi). Закон о сделках с компьютерной информацией на условия настоящего Соглашения не распространяется.

(vii). Вы признаете и соглашаетесь, что в случае, если сторонняя технология будет уместной или необходимой для использования с некоторыми Программами Oracle, это будет указано в документации к Продукту или указано иначе, и что такая сторонняя технология предоставлена вам в пользование вместе с Продуктом на условиях изложенного в документации к Продукту или иным образом лицензионного соглашения третьего лица, а не на условиях настоящего Соглашения.

(c). E-commerce Applications.

(i). Use at Site Location. You may use or Access the Product only for production activity at the Site Location. If you have more than one production facility, you may not use or Access the Product for production activity at any facility other than the Site Location(s) for which you have been granted a license.

(ii). Links. If you have obtained a License for EFI e-Commerce Software, you represent and warrant that you have the right to create and maintain, or to allow EFI to create and maintain, all Links to the Product and any other websites mutually agreed upon between you and EFI. You shall incorporate EFI's "Powered by EFI" logo on any website utilizing EFI e-commerce Software.

(ii). Relationships with Third Parties. Use of or Access to the e-Commerce Product does not create a contract or other obligation between you and any of your customers or between EFI and any of your customers or vendors. EFI cannot and does not guarantee the performance of any of your customers, vendors, or other third parties. EFI will have no liability in connection with any dispute between you and any third party, and any third party dispute will not relieve you of any obligation to EFI under this Agreement.

(d). Open Source Software. Some versions of the Products contain open source software. Open source software is licensed to you under that software's own license terms, which can be found in the "Help," "About," "Read Me," or other specified portion of the Product. You are responsible for complying with any terms and conditions applicable to any open source software. To the extent that this Agreement imposes greater restrictions on you than the open source software license terms, the open source software license terms control, but solely with respect to the open source software.

16. Definitions.

"**Access**" means the connection to and use of a Product by Customer via an Internet web browser under the terms of this Agreement.

"**Affiliate**" means any entity directly or indirectly controlling, controlled by, or under common control with a party.

"**Agreement**" means this License and Purchase Agreement.

(c). Приложения электронной коммерции.

(i). Использование на Объекте. Вы можете использовать Продукт или получать к нему Доступ исключительно для выполнения работы на Объекте. Если у вас более одного предприятия, вы не сможете использовать Продукт или получать к нему Доступ с целью производственной деятельности на любых других предприятиях, кроме Объекта(-ов), для которого(-ых) вам была предоставлена лицензия..

(ii). Ссылки. Приобретая лицензию компании EFI на использование Программного обеспечения для электронной коммерции, вы заверяете и гарантируете, что вы имеете право на создание и поддержку или на выдачу разрешения компании EFI на создание и поддержку всех Ссылок на Продукт или иные веб-сайты на основе взаимного соглашения между вами и EFI. Вы соглашаетесь включить логотип EFI «Powered by EFI» («При поддержке EFI») на любом сайте, использующем Программное обеспечение для электронной коммерции EFI.

(ii). Отношения с третьими лицами. Использование Продукта для электронной коммерции или Доступ к нему не создает договорных или других обязательств между вами и любыми вашими заказчиками, а также между EFI и любыми вашими заказчиками или поставщиками. EFI не может гарантировать и не гарантирует эффективность работы любых ваших заказчиков, поставщиков или третьих лиц. EFI освобождается от ответственности в случае споров между вами и любым третьим лицом, а любой спор третьих лиц не освобождает вас от ответственности перед EFI по настоящему Соглашению.

(d). Программное обеспечение с открытым исходным кодом. Некоторые версии Продукта содержат программное обеспечение с открытым исходным кодом. Программное обеспечение с открытым исходным кодом предоставляется на условиях соответствующей лицензии для такого ПО, которые можно найти в разделах «Справка», «О программе», файле «Read Me» или других компонентах Продукта. Вы несете ответственность за соблюдение всех соответствующих условий использования программного обеспечения с открытым исходным кодом. Если положения настоящего Соглашения налагают более жесткие ограничения на использование программного обеспечения, чем условия лицензии на использование программного обеспечения с открытым исходным кодом, лицензия на использование программного обеспечения с открытым исходным кодом распространяется только на такое программное обеспечение.

16. Термины и определения.

Доступ — подключение и использование Продукта Заказчиком через Интернет с помощью браузера в соответствии с условиями настоящего Соглашения.

Аффилированная компания — любое юридическое лицо, которое прямо или косвенно контролирует сторону, находится под контролем стороны или находится под контролем лица, контролирующего в том числе сторону Соглашения.

Соглашение — настоящее Соглашение о предоставлении лицензии и покупке.

“**Confidential Information**” means any information that you have been informed or have a reasonable basis to believe is confidential to EFI, whether provided to you before, on, or after this Agreement, including, for example, ideas, programs, data, software, systems configurations, reports, projections, initiatives, customer data, or other business or technical information. Confidential Information includes any written information marked as confidential or proprietary, and any information disclosed orally or visually that is identified as confidential or proprietary at or around the time of its disclosure. All EFI Intellectual Property Rights and technical information related to the Product are Confidential Information whether or not marked as confidential or proprietary.

“**Customer Marks**” means your name and logo or other trademarks, service marks, or other marks.

“**Documentation**” means user’s guides, manuals, and other information related to the Product or Professional Services.

“**EFI**” means Electronics For Imaging, Inc., Electronics for Imaging BV, Electronics For Imaging United Kingdom Limited, Metrics Sistemas De Informacao Ltda., Alphagraph Team GmbH, or another EFI subsidiary or Affiliate referred to in the Purchase Documentation.

“**Excluded License**” means any license that requires as a condition of use, modification, and/or distribution of software subject to the Excluded License, that such software or other software combined and/or distributed with such software be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making derivative works, or (iii) redistributable at no charge.

Конфиденциальная информация — любая информация, переданная вам или имеющая разумные основания считаться конфиденциальной для EFI, предоставленная перед заключением данного Соглашения, во время его исполнения или после его расторжения, в том числе, например, идеи, программы, данные, программное обеспечение, конфигурации системы, отчеты, прогнозы, инициативы, данные заказчиков или другая коммерческая или техническая информация. Конфиденциальная информация включает любую письменную информацию, обозначенную, как конфиденциальная или защищенная правами собственности, а также любую информацию, предоставленную в устной или письменной форме и обозначенную, как конфиденциальная или защищенная правами собственности, в момент раскрытия или в соответствующий промежуток времени. Все Права интеллектуальной собственности EFI и вся техническая информация, относящаяся к Продукту, являются Конфиденциальной информацией, даже если они не обозначены как конфиденциальная или защищенная правом собственности информация.

Знаки заказчика — ваше название и логотип, а также прочие товарные знаки, знаки обслуживания и иные обозначения.

Документация — инструкции пользователя, руководства и прочая информация, имеющая отношение к Продукту или Профессиональным услугам.

EFI — компании Electronics For Imaging, Inc., Electronics For Imaging BV, Electronics For Imaging United Kingdom Limited, Metrics Sistemas De Informacao Ltda., Alphagraph Team GmbH, а также дочерние или Аффилированные компании EFI, на которые ссылается Сопроводительная документация.

Исключенная лицензия — любая лицензия, требующая для использования, изменения и (или) распространения программного обеспечения, на которое распространяется такая Исключенная лицензия, чтобы это программное обеспечение или другое программное обеспечение, совмещаемое и (или) распространяемое с таким программным обеспечением, (i) раскрывалось или распространялось в форме исходного кода, (ii) подлежало лицензированию в целях создания производных продуктов или (iii) распространялось бесплатно.

“**Fees**” means the fees for the Product, Access, or Professional Services, including any fees set forth in your Purchase Documentation, License fees, hardware fees, Term License Fees, Hosting Fees, Maintenance Fees, or other applicable fees. Unless otherwise specified in the Purchase Documentation, payments for any fees must be made within 30 days of the date of the invoice in the currency listed in the Purchase Documentation. Any amount not paid when due is subject to a service charge equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by law, and EFI may defer shipments of Products and/or provision of services until all overdue payments are received. Payment of the service charge will not foreclose any other right that EFI may have as a consequence of late payment. In the event that EFI is required to take legal action to collect unpaid amounts, and EFI is successful in such action, Customer shall reimburse all costs and reasonable attorneys’ fees incurred by EFI in such action.

“**Hosting Fees**” means the hosting fees described in the Purchase Documentation. Unless otherwise specified in the Purchase Documentation, payment obligations for Hosting Fees commence on the first day of the next month following 30 days from the Start Date.

“**Initial Term**” means the three-year period of time beginning on the Start Date.

“**Intellectual Property Rights**” means, individually or collectively, any patent, copyright, trademark, service mark, trade secret, trade name, or other intellectual property right.

“**IP Claim**” means a lawsuit filed against you by a third party that is not a patent assertion entity or non-practicing entity.

“**License**” means the license granted to you for the Product you have obtained.

“**License Key**” means a programming code included in the Product that, if executed or deactivated, renders the Product or portions of it inoperable.

“**Link**” means a hypertext reference that, when activated, moves users from one website to another on the Internet.

Сборы — оплата за Продукт, Доступ или Профессиональные услуги, в том числе любые установленные в Сопроводительной документации сборы, лицензионные сборы, сборы за аппаратное обеспечение, Сборы за использование лицензии с ограниченным сроком действия, Оплата хостинга, Сборы за техническое обслуживание или другие применимые сборы. Если в Сопроводительной документации не указано иное, оплату всех сборов необходимо совершить в течение 30 дней с даты выставления счета-фактуры в указанной в Сопроводительной документации валюте. За любую вовремя не уплаченную сумму взимается плата за обслуживание в размере менее одного с половиной процента (1,5%) в месяц или в максимально разрешенном законодательством размере, а EFI оставляет за собой право отложить поставку Продуктов и (или) предоставления услуг, пока не будут получены все просроченные платежи. Уплата сбора за обслуживание не влияет на возможность EFI воспользоваться любым другим правом, которое компания может получить вследствие несвоевременной уплаты. В случае если компания EFI вынуждена обратиться в суд для взыскания задолженности, и добивается положительного решения в этом отношении, Заказчик обязан возместить все издержки и разумные гонорары адвокатов, понесенные компанией EFI в ходе предприятия этих действий.

Оплата хостинга — сумма, подлежащая оплате за услуги хостинга, указанная в Сопроводительной документации. Если в Сопроводительной документации не указано иное, Оплата хостинга подлежит производству в первый день следующего месяца спустя 30 дней с момента наступления Начальной даты.

Первоначальный период — период длительностью три года с момента наступления Начальной даты.

Права интеллектуальной собственности — патенты, авторские права, товарные знаки, знаки обслуживания, коммерческая тайна, коммерческие наименования и другие права интеллектуальной собственности вместе или по отдельности.

Претензии, связанные с интеллектуальной собственностью — судебный иск против вас со стороны третьего лица, не являющегося патентной или формальной организацией.

Лицензия — лицензия, предоставляемая вам на приобретенный Продукт.

Лицензионный ключ — программный код, содержащийся в Продукте, который в случае исполнения или деактивации делает Продукт или его компоненты непригодными к использованию.

Ссылка — гипертекстовая ссылка, которая при активации позволяет перейти от одного веб-сайта в Интернете к другому.

“**Maintenance**” means (i) correction of material defects so that the Product will operate materially in conformity with the warranties in this Agreement, (ii) periodic updates that incorporate corrections of material defects and fixes of minor bugs in the Product, (iii) telephone or email/electronic consultation services regarding the use of the Product during EFI’s standard support hours, and (iv) enhancements and/or revisions to software components of the Product, which are subject to additional charge unless they are provided at no charge to substantially all other licensees.

“**Maintenance Fees**” means the support and/or maintenance fees charged by EFI and/or a third party for the Product. Unless otherwise specified in the Purchase Documentation, payment obligations for Maintenance Fees commence on the first day of the next month following 30 days from the Start Date and continue for 12 consecutive months thereafter, subject to any Maintenance renewal term(s). Any use of a virtual private network or other requirement that requires EFI to act outside of its normal processes in order to provide Maintenance to you may be subject to additional fees.

“**Maintenance Renewal Date**” means the anniversary of the start of the Maintenance coverage period stated on the first Software Maintenance invoice that EFI issued to you, whether issued pursuant to this Agreement or a prior agreement or Purchase Documentation.

“**Product**” means Software or hardware, and may also include third party software and documentation, downloads, on-line materials, bug fixes, patches, releases, release notes, updates, upgrades, technical support materials, and information related to the EFI software or hardware.

“**Professional Service(s)**” means any training, installation, implementation, customization and/or other professional services provided by EFI to Customer.

“**Purchase Documentation**” means the purchase order, investment summary, statement of work, written agreement, or other documentation executed by you by which you agreed to obtain a license, Product, or service from EFI or one of EFI’s partners.

“**Renewal Term**” means the three-year period following the Initial Term or another Renewal Term unless specified otherwise in your Purchase Documentation. Fees for any Renewal Term may be increased to EFI’s then-current fees.

Техническое обслуживание — (i) исправление существенных неполадок, препятствующих нормальной работе Продукта в соответствии с содержащимися в настоящем Соглашении гарантийными обязательствами, (ii) регулярное обновление, включающее исправление существенных дефектов и незначительных неполадок в Продукте, (iii) консультации по телефону, электронной почте и другим средствам связи в отношении работы с Продуктом в стандартное рабочее время технической поддержки EFI и (iv) усовершенствование и (или) проверка работоспособности программных компонентов Продукта, выполняемые за дополнительную плату, за исключением случаев, когда такие услуги предоставляются бесплатно для большинства лицензий.

Сбор за техническое обслуживание — оплата за техническую поддержку и (или) обслуживание, выплачиваемая в адрес EFI и (или) третьего лица в связи с использованием Продукта. Если иное не указано в Сопроводительной документации, оплата Сбора за техническое обслуживание подлежит производству в первый день следующего месяца спустя 30 дней с Начальной даты и должна производиться на протяжении следующих 12 месяцев, что закреплено в условиях Технического обслуживания. Использование виртуальной частной сети и другие условия, в связи с которыми требуется работа EFI за пределами нормальных процедур по Техническому обслуживанию, может быть связана с повышением суммы Сбора за техническое обслуживание.

Дата продления срока технического обслуживания — окончание очередного года с момента начала Технического обслуживания, указанного на первом счете-фактуре за предоставление услуг Технического обслуживания Программного обеспечения, выписанном вам компанией EFI либо на основании настоящего Договора, либо на основании предыдущего договора или Сопроводительной документации.

Продукт — Программное и аппаратное обеспечение, в том числе он может включать программные продукты и документацию третьих лиц, загружаемую информацию, онлайн-ресурсы, отладочные компоненты, мелкие и крупные исправления, релизы, информацию о релизах, обновления, улучшения, вспомогательные технические материалы, а также информацию, связанную с программным и аппаратным обеспечением EFI.

Профессиональные услуги — обучение, установка, внедрение, настройка конфигурации и (или) прочие профессиональные услуги, предоставляемые компанией EFI Заказчику.

Сопроводительная документация — заказ на покупку, инвестиционная ведомость, техническое задание, составленное в письменной форме соглашение, а также другие документы, которые вы подписываете для получения лицензии, Продукта или услуг от EFI или одного из партнеров EFI.

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“**Site Location**” means the printing plant or facility specified in the Purchase Documentation.

“**Software**” means the EFI software listed on the Purchase Documentation or licensed to you under this Agreement.

“**Start Date**” means the Effective Date of the Purchase Documentation or the date the Product is made available to you, whichever is later.

“**Term License Fees**” means the term license fees for the Product described in the Purchase Documentation, the payment of which entitles you to Maintenance at no additional charge. Unless otherwise specified in the Purchase Documentation, payment obligations for Term License Fees commence on the Start Date.

“**Third Party IP Rights**” means a third party’s U.S. patent rights.

“**Work Product**” means any and all ideas, concepts, and Intellectual Property Rights related in any way to the techniques, knowledge, and processes of the Product, Services, and deliverables provided by EFI, including any integration to third party products, whether or not developed for you.

“**You**”, “**you**” or “**Customer**” means the person or entity that obtained the Product under this Agreement and that is agreeing to be bound by this Agreement.

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Сборы за использование лицензии с ограниченным сроком действия — сборы за использование лицензии с ограниченным сроком действия на Продукт, описанный в Сопроводительной документации, уплата которых дает вам право на Техническое обслуживание без дополнительной платы. Если иное не указано в Сопроводительной документации, оплата Сбора за использование Лицензии с ограниченным сроком действия подлежит произведению в момент наступления Начальной даты.

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Вы, вы или **Заказчик** — физическое или юридическое лицо, получающее Продукт согласно условиям настоящего Соглашения и согласное выполнять его условия.

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Все остальные товарные знаки являются собственностью соответствующих владельцев.

По всем вопросам обращаться в службу поддержки EFI на сайте www.efi.com.

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(b). Perpetual License. If you are being granted a perpetual License, your License is revocable by EFI if you discontinue Maintenance for the Software for any two (2) consecutive annual Maintenance terms. You may install only the number of copies of the Software at the Site Location(s) for which you have been granted a License for use by you, your employees or authorized independent contractors. You may make and retain one additional copy for backup purposes only and may transfer the location of any Site Location if you obtain EFI's prior written consent.

(c). Term License. If you are being granted a term License, except as otherwise specified on the Purchase Documentation, such License has an Initial Term of three (3) years from the Start Date. If you do not provide written notice of termination to EFI at least 90 days before the end of the Initial Term or any Renewal Term, the term will automatically renew at EFI's then-current Fees. Only you, your employees or authorized independent contractors, and your end users, as applicable, may Access the Product, and only for your business. You are solely responsible for ensuring that data entry is timely, accurate, and reflects your requirements. You shall indemnify and hold EFI harmless from any liability, damages, or costs arising from data entered by you or your end users or on your behalf.

(d). Third-Party Materials. Some third-party materials distributed with the Product may be subject to other terms and conditions, which are typically found in a separate license agreement or "Read Me" file provided with those third-party materials. The License does not apply to any third-party software except as specified herein.

1. 许可。

(a). 概述。EFI 授予您有限、个人、不可转让和非独占的许可，您只能按文件规定的用途使用或访问软件和文件。仅您、您的员工或授权独立承包商以及您的最终用户（如适用）可使用或访问产品或文件。本软件只供许可使用，而非出售。除本协议规定外，您对软件或文件没有任何明示或暗示的所有权或任何其他权利。您不得对软件（包括任何数据库）或文件授予再许可、再授权、复制、修改、增强、纠正错误、创建衍生作品、反编译、解密、逆向工程或反汇编，或允许任何第三方这样做。您不得通过任何分时共享、服务机构或类似安排出租、租赁、出借或以其他方式分发或使用软件或文件，也不得以任何方式使软件或文件全部或部分受任何排除许可证的影响。新产品或更新、发布或升级时可能会提供附加条款和条件。

(b). 永久许可。如果您被授予永久许可，但在连续两（2）个年度维护期停止对软件的维护，EFI 可撤销您的许可。您只能在获得许可的指定场地位置安装约定数量的软件副本给您、您的员工或授权独立承包商使用。您可以制作并保留一份额外的副本，仅供备份之用。如果事先获得 EFI 书面同意，您可以转移软件安装的场地位置。

(c). 定期许可。如果您被授予定期许可，除购买文件另有规定外，该许可的初始期限为自开始日期起三（3）年。如果您在初始期限或任何续期期限结束前至少 90 天未向 EFI 发出书面终止通知，将按当时价格向 EFI 支付费用自动续期。仅您、您的员工或授权独立承包商以及您的最终用户（如适用）可以访问产品，并且只能用于您的业务。您应自行负责保证数据输入及时、准确，并且反映您的要求。因您、您的最终用户或代表输入的数据而产生的任何责任、损害或费用，您应向 EFI 作出赔偿并使其免受损害。

(d). 第三方材料。与产品一起分发的部分第三方资料可能受到其他条款和条件的约束，它们通常在单独的许可协议或此类第三方资料提供的“自述文件”中。许可不适用于任何第三方软件，但本协议另有规定时除外。

(e). Unauthorized Use. THE PRODUCT MAY CONTAIN A LICENSE KEY TO PREVENT UNAUTHORIZED USE AND EFI MAY EXECUTE OR DEACTIVATE THE LICENSE KEY UPON TERMINATION OF YOUR LICENSE. YOU ACKNOWLEDGE THAT THE LICENSE KEY IS NOT A VIRUS, AND THAT EXECUTION OR DEACTIVATION OF THE LICENSE KEY MAY RENDER THE PRODUCT OR A PORTION OF IT INOPERABLE. IF THE LICENSE KEY IS EXECUTED OR DEACTIVATED AS SPECIFIED IN THIS AGREEMENT, YOU MAY BE OBLIGATED TO PAY EFI'S THEN-CURRENT FEE TO REACTIVATE THE PRODUCT.

2. Installation and Professional Services.

(a). Installation. Unless specified in the Purchase Documentation, the installation and implementation of the Product is your exclusive responsibility. EFI has no responsibility to modify the Product to cause it to function or operate on any particular hardware system, configuration, or platform or with any other software.

(b). Professional Services. You may purchase Professional Services from EFI, and statement(s) of work may be created to more fully describe the scope, duration, and/or Fees for the Professional Services, which will be governed by this Agreement. All pre-paid Professional Services must be used within twenty-four (24) months of the Start Date.

(c). Compensation and Expenses. On-site Professional Services days are based on a standard 8-hour work day. Additional hours will be billed at EFI's then-current applicable rate unless a different rate is mutually agreed. Customer shall reimburse EFI for all reasonable out-of-pocket expenses (including travel, lodging and meals) incurred in connection with on-site Professional Services session(s). Professional Services scheduled and/or performed (i) during after-hours on a weekday or (ii) on a Saturday will be invoiced at 150% of EFI's then-current Professional Services Fees. Professional Services scheduled and/or performed on a Sunday or a government-recognized holiday will be invoiced at 200% of EFI's then-current Professional Services Fees.

3. Hosted Solutions.

If EFI or its designated third-party providers are hosting the Software, the following additional terms and conditions apply:

(a). Access. EFI or its designated provider will provide those services necessary to allow you Access, including a password(s).

(b). Data Entry. All data generated by and through your Access will reside on servers of EFI or its third party providers.

(c). Password Security. You are solely responsible for (i) ensuring that only authorized individuals have access to passwords to Access the Product, (ii) assigning roles and authority levels for your Access, (iii) the conduct of individuals with Access, and (iv) maintaining the confidentiality and integrity of passwords and authority levels. You shall indemnify and hold EFI harmless from any liability, damages, or costs arising from your failure to comply with this Section.

(e). 未经授权使用。产品可能包含一个许可证密钥，以防止未经授权的使用，EFI 可在您的许可终止后执行或取消激活许可证密钥。您承认许可证密钥并非病毒，而且执行或取消激活它将使产品或其部分无法操作。如果许可证密钥按本协议规定被执行或取消激活，您必须按当时价格向 EFI 支付费用以重新激活产品。

2. 安装和专业服务。

(a). 安装。除非购买文件另有规定，您应自行负责产品的安装和实施。EFI 不负责修改产品使其能够在任何特定的硬件系统、配置、平台或任何其他软件上运行或操作。

(b). 专业服务。您可以向 EFI 购买专业服务并创建工作说明书，以更全面地描述专业服务的范围、期限和/或费用，这些内容受本协议约束。所有预付款专业服务必须在开始日期后二十四 (24) 个月内使用。

(c). 报酬和费用。现场专业服务天数按 8 小时的标准工作日计算。额外的小时数将按 EFI 当时的适用费率计费，但双方约定其他费率时例外。客户应报销 EFI 产生的与现场专业服务有关的所有合理自付费用（包括差旅、住宿和膳食）。(i) 工作日下班后或(ii)周六安排和/或执行的专业服务将按 EFI 当时专业服务费的 150%开具发票。周日或政府认可假日安排和/或执行的专业服务将按 EFI 当时专业服务费的 200%开具发票。

3. 托管解决方案。

如果 EFI 或其指定第三方提供商托管软件，以下附加条款和条件适用：

(a). 访问。EFI 或其指定提供商将提供允许您访问的必要服务，包括密码。

(b). 数据输入。您的访问及藉由访问生成的所有数据都将保留在 EFI 或其第三方提供商的服务器上。

(c). 密码安全。您应自行负责：(i) 确保只有经授权的个人才能使用密码访问产品，(ii) 为您的访问分配角色和权限级别，(iii) 具有访问权限的个人的行为，以及(iv)维护密码和权限级别的保密性和完整性。因您未遵守本条规定而产生的任何责任、损害或费用，您应向 EFI 作出赔偿并使其免受损害。

(d). Scheduled Downtime and Upgrades. Downtime is required from time-to-time for regular maintenance of the technology that supports the Product. EFI shall use commercially reasonable efforts to perform scheduled downtime outside normal business hours. EFI may also install new or updated software from time to time, including supporting software and firmware, in addition to the Software, to aid in providing ongoing stability and security of the hosted solution. You shall facilitate commercially reasonable upgrades and operations without undue delay or objection.

(e). Unexpected Outages. EFI shall use commercially reasonable efforts to avoid unexpected outages and to restore Access as soon as possible. If you do not have Access for more than two (2) consecutive hours within any 24-hour period because of an unexpected outage caused by EFI, you may request credit for one day of the applicable Fees (based on an average of that month's invoice). THIS IS YOUR SOLE AND EXCLUSIVE REMEDY AND EFI'S ENTIRE LIABILITY FOR UNSCHEDULED DOWNTIME OR OUTAGES, AND EFI WILL NOT BE LIABLE FOR ANY DAMAGES RELATED TO ANY UNSCHEDULED DOWNTIME OR OUTAGES.

(f). Self-Hosting. You at all times retain the right to self-host the Product from another location and, if you are being granted a term license, continue to pay the Term License Fees for the Software. Any Professional Services performed by EFI in migrating a hosted solution to a self-hosted solution are billable at EFI's standard rates.

(g). Maintenance. If you are being granted a perpetual License as a hosted solution, you must remain on Maintenance for the period that EFI or its designated third-party provider is providing the hosting services to you.

4. Fees and Delivery.

(a). Fees. You shall pay all applicable Fees.

(b). Title and Risk of Loss. Title and risk of loss for any media or hardware for the Product transfers to you at EFI's designated manufacturing plant(s) or warehouse(s). If the Product is delivered electronically, risk of loss transfers to you when the Product or Access is made available to you.

(c). Hardware Delivery. Unless otherwise specified in the Purchase Documentation, where you are purchasing hardware: (i) EFI shall act as agent for you and procure insurance against risk of loss and/or procure and prepay for shipment, (ii) you shall reimburse EFI for all charges relating to the shipment of hardware upon EFI providing an invoice for such charges. EFI shall use commercially reasonable efforts to ship hardware as soon as practicable following execution of this Agreement and EFI's receipt of any required deposits. If you request a delay in delivery or otherwise cause a delay in the transportation process, EFI reserves the right to separately charge you for any costs it incurs for paying the logistics company to store and warehouse hardware on your behalf.

(d). 计划停机和升级。为了定期维护产品支持技术，时不时需要停机。EFI 应尽商业上合理的努力在正常工作时间以外执行计划停机。EFI 还可以不时安装新的或更新软件，包括软件以外的支持软件和固件，以保障托管解决方案的持续稳定性和安全性。您应为商业上合理的升级和操作提供便利，不得过分拖延或反对。

(e). 意外中断。EFI 应尽商业上合理的努力避免意外中断并尽快恢复访问。如果您在任何 24 小时内因 EFI 造成的意外中断而连续两(2)小时以上无法访问，您可以申请抵扣一天的适用费用（根据当月发票的平均值）。这是您唯一拥有的补救，也是 EFI 对计划外停机或中断的全部责任。对于任何计划外停机或中断相关的任何损害，EFI 概不负责。

(f). 自行托管。您始终保留从其他地点自行托管产品的权利，如果您被授予定期许可，则继续支付软件的定期许可费。EFI 在将托管解决方案迁移到自行托管解决方案的过程中所提供的任何专业服务均按 EFI 的标准费率计费。

(g). 维护。如果您被授予托管解决方案的永久许可，您必须在 EFI 或其指定第三方提供商向您提供托管服务期间保持维护状态。

4. 费用和交付。

(a). 费用。您应支付所有适用的费用。

(b). 所有权和损失风险。产品的任何介质或硬件的所有权和损失风险在 EFI 指定的制造工厂或仓库转移给您。如果产品以电子方式交付，向您提供产品或访问权限时，损失风险将转移给您。

(c). 硬件交付。除非购买文件中另有规定，否则在您购买硬件时：(i)EFI 应作为代理为您取得损失风险保险和/或取得并预付运费，(ii)您应在 EFI 提供收费发票后向 EFI 支付硬件运输相关的所有费用。EFI 应在签署本协议和收到任何要求的保证金后，采取商业上合理的努力在可行的情况下尽快运输硬件。如果您要求延迟交货或以其他方式导致运输过程延误，EFI 有权单独向您收取代向物流公司支付的硬件存放和仓储所产生的任何费用。

5. Product Maintenance.

(a). Subject to your timely payment of all applicable Fees, EFI or its designated provider will provide you with annual Maintenance for the Product. Maintenance terms automatically renew for consecutive 12-month periods unless cancelled by either party with written notice at least 30 days before the Maintenance Renewal Date. Notwithstanding the foregoing, Maintenance for certain Products (e.g., individual Software modules that are part of the EFI Software solution) may only be cancelled in the event that you are no longer using those certain Products; please first consult with EFI in the event you desire to cancel Maintenance for any Product.

(b). You must possess a valid License to use any upgrade or update. By using an upgrade or update, your license to any previous version of the Product automatically terminates. If you (i) have an out-of-date version of the Product or (ii) are not current on Maintenance due to your failure to timely pay Maintenance Fees and wish to update your version of the Product, you must pay any unpaid Fees and may be subject to additional fees to transfer or convert any old data. EFI reserves the right to discontinue Maintenance for all out-of-date versions of the Product.

6. Warranty and Disclaimer.

(a). Limited Warranties. EFI warrants to you that (i) EFI has the right to grant the License, (ii) subject to your timely payment of all applicable Fees, the Products as delivered to you will perform materially in accordance with EFI's then-current, applicable specifications if all available updates, upgrades, and bug-fixes are properly installed, and (iii) any Professional Services you purchase will be provided in good and workmanlike manner consistent with generally accepted industry standards. This warranty does not apply to defects attributable to (A) any equipment or software not provided or approved for use by EFI, (B) any modification of the Product by you, your employees, or any third party acting on your behalf, (C) any accident, neglect, misuse, or abuse by you, your employees, or any third party acting on your behalf, or (D) exposure of the Product to conditions outside the range of environmental, power, and operating specifications provided by EFI. You shall cooperate fully and promptly with EFI's attempts to identify the cause of any claimed breach of this limited warranty.

(b). Security of Your Systems. You are solely responsible for (i) ensuring the confidentiality, security, and integrity of your network connectivity, data, and servers, (ii) preventing and bearing the risk of any loss or damage to any data on your servers, and (iii) maintaining archive and backup copies of any data.

5. 产品维护。

(a). 在您及时支付所有适用费用的前提下，EFI 或其指定提供商将为您提供产品年度维护。除非任一方在维护续订日期前至少 30 天发出书面通知取消，否则维护条款将按 12 个月的连续期间自动续订。尽管有上述规定，仅在您不再使用某些产品的情况下，才能取消对这些产品（比如构成 EFI 软件解决方案组成部分的单个软件模块）的维护；如果您希望取消任何产品的维护，请先咨询 EFI。

(b). 您必须持有有效的许可证才能使用任何升级或更新。您在使用升级或更新时对产品任何先前版本的许可将自动终止。如果您(i)拥有产品的过时版本或(ii)由于您没有及时支付维护费而没有进行维护，但希望更新您的产品版本，您必须支付任何未支付的费用，并且可能需要支付额外费用转移或转换任何旧数据。EFI 保留对产品的所有过时版本停止维护的权利。

6. 有限保证及免责声明。

(a). 有限保证。EFI 向您保证：(i)EFI 有权授予许可，(ii)在您及时支付所有适用费用的前提下，如果已适当安装所有可用的更新、升级和错误修复程序，向您交付的产品将在实质上按 EFI 当时适用的规范执行，以及 (iii) 您购买的任何专业服务将以符合广泛认可行业标准的良好且技能熟练方式提供。本保证不适用于以下原因造成的缺陷：(A)任何并非 EFI 提供或批准使用的设备或软件；(B)您、您的员工或代表您的任何第三方对产品进行的任何修改；(C)您、您的员工或代表您的任何第三方的任何事故、疏忽、误用或滥用；或(D)产品暴露于 EFI 提供的环境、功率和操作规范范围之外的条件下。您应充分并迅速配合 EFI 查明任何声称违反本有限保证的事由。

(b). 您的系统安全。您应自行负责：(i)确保您的网络连接、数据和服务器的保密性、安全性和完整性，(ii)预防并承担服务器上任何数据丢失或损坏的风险，以及(iii)维护任何数据的存档和备份。

(c). WARRANTY DISCLAIMER AND REMEDIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES AND REMEDIES IN THIS AGREEMENT ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES. EFI, ITS SUPPLIERS, AND LICENSORS SPECIFICALLY DISCLAIM ANY OTHER WARRANTIES AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT; ANY WARRANTIES RELATING TO SECURITY; AND ANY WARRANTIES THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED, OR ERROR-FREE. EFI MAKES NO WARRANTY, IMPLIED OR OTHERWISE, REGARDING THE PERFORMANCE OR RELIABILITY OF ANY OTHER THIRD PARTY PRODUCTS, OR SERVICES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOLE AND EXCLUSIVE REMEDY TO WHICH YOU ARE ENTITLED FOR BREACH OF THESE LIMITED WARRANTIES, AND THE ENTIRE LIABILITY OF EFI AND ITS SUPPLIERS RELATING TO BREACH OF THESE LIMITED WARRANTIES, IS, AT EFI'S OPTION, TO (1) REPAIR OR REPLACE THE PRODUCT OR RE-PERFORM THE SERVICE THAT DOES NOT MEET THE LIMITED WARRANTY, OR (2) PROVIDE A REFUND OF THE THEN-CURRENT REASONABLE COMMERCIAL VALUE (IF ANY) FOR THE PRODUCT OR SERVICE THAT DOES NOT MEET THE LIMITED WARRANTY. EXCEPT AS PROVIDED IN THIS AGREEMENT, THERE ARE NO REFUNDS, RETURNS, EXCHANGES, OR REPLACEMENTS.

7. Infringement Indemnification.

EFI shall indemnify you from IP Claims and reimburse you for damages paid by you to the party bringing the IP Claim pursuant to a final, non-appealable judgment that the Product directly infringes any Third Party IP Rights. If you do not notify EFI in writing within 10 business days of learning of the IP Claim, and give EFI proper and full information, assistance, and exclusive authority to defend or settle the IP Claim, EFI will be relieved of its obligations under this Section. If the Product or any part of it is in EFI's opinion likely to become the subject of a claim of infringement of Third Party IP Rights, or if it is adjudicatively determined that the Product or any part of it infringes Third Party IP Rights, EFI may at its option (i) obtain for you a license or right to use the Third Party IP Rights so you can continue to use the Product, or (ii) replace or modify the Product with other suitable and reasonably equivalent non-infringing technology or parts, or (iii) if it is not commercially reasonable to take the actions described in clauses (i) or (ii) in this sentence, terminate your License and, if you return the Product to EFI, refund a portion of the license fee paid by you equal to the then-current reasonable commercial value (if any) of the Product. EFI shall not be responsible, liable, or obligated to indemnify or reimburse you if the alleged infringement arises out of (i) compliance with your requirements or specifications that are outside EFI's standard specifications for the Product, (ii) any addition or incorporation to or modification of the Product at your request,

(c). 保证免责声明和补救。在适用法律允许的最大限度内，本协议中的保证和补救是排他性的，并取代所有其他保证和补救。EFI 及其供应商和许可方特别声明不作任何其他保证和补救，包括但不限于：有关适销性、针对特定用途的适用性和不侵权的暗示保证；有关安全性的任何保证；以及产品的操作将不会中断或无错误的任何保证。EFI 对任何其他第三方产品或服务的性能或可靠性不作任何暗示或其他保证。

在适用法律允许的最大限度内，您对于违反有限保证有权采取的唯一和排他性的补救，EFI 及其供应商因违反有限保证产生的全部责任是根据 EFI 的选择：(1)修理或更换不符合有限保证的产品或重新提供服务，或(2)退回不符合有限保证的产品或服务的当时合理的商业价值（如果有）。除非本协议另有规定，不提供任何退款、退货、交换或替换服务。

7. 侵权赔偿。

EFI 应赔偿针对您的知识产权索赔，并补偿您因不可上诉的最终判决裁定产品直接侵犯任何第三方知识产权而向知识产权索赔的发起方支付的赔偿金。如果您未在获悉知识产权索赔后 10 个工作日内向 EFI 发出书面通知，也未向 EFI 提供适当和充分的信息、协助以及抗辩或和解知识产权索赔的专属权限，EFI 将被免除本节规定的义务。如果 EFI 认为产品或其任何部分可能成为第三方知识产权侵权索赔的对象，或经裁决确定产品或其任何部分侵犯第三方知识产权，EFI 可选择：(i)为您取得使用第三方知识产权的许可或权利，以便您可以继续使用产品，或(ii)以其他合适且合理等效的非侵权技术或部件替换或修改产品，或(iii)如果采取(i)或(ii)所述的行动在商业上不合理，将终止您的许可证。如果您将产品退回 EFI，将退还您支付的部分许可费，金额相当于产品当时的合理商业价值（如果有）。如果被诉侵权由以下原因造成，EFI 概不承担任何责任，也没有义务对您进行赔偿或补偿：(i)符合您的要求或规范，但不属于 EFI 的产品标准规范，(ii)按您的要求对产品进行任何添加、合并或修改，(iii)将产品与并非 EFI 提供的任何产品或软件进行任何组合；或(iv)将产品用于非预定用途的过程或系统。在上句所述的任何情况下，您应承担费用为 EFI 抗辩和/或和解任何针对 EFI 发起的索赔，并应赔偿 EFI 抗辩或和解索赔所需的任何费用、法律费用、其他支出和损害赔偿。

(iii) any combination of the Product with any product or software not provided by EFI, or (iv) use of the Product in the practice of a process or system other than that for which it was intended. In any event as described in the preceding sentence, you shall defend and/or settle any claim brought against EFI at your own expense, and shall indemnify EFI against any costs, legal fees, other expenses, and damages required for the defense or settlement of the claim.

THE RIGHTS GRANTED TO YOU IN THIS SECTION ARE YOUR SOLE AND EXCLUSIVE REMEDIES FOR ANY ALLEGED INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

8. LIMITATION OF LIABILITY.

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL EFI OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY, OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EFI IS NOT RESPONSIBLE FOR ANY LOST PROFITS OR REVENUE, LOSS OF USE OF THE PRODUCT, LOSS OF DATA, OR THE COST OF RECOVERING ANY DATA. EXCEPT FOR INSTANCES INVOLVING EFI'S WILLFUL MISCONDUCT, EFI WILL NOT BE LIABLE FOR DAMAGES ARISING FROM ANY BREACH, UNAUTHORIZED ACCESS, MISUSE, OR INTRUSION RELATED TO YOUR DATA ON EFI'S OR ITS SUPPLIERS' SERVERS OR ANY NETWORK YOU USE IN CONNECTION WITH THE PRODUCT.

IN NO EVENT WILL EFI'S TOTAL LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATED TO THE PRODUCTS, SERVICES, ACCESS, AND/OR THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, UNDER STATUTE, OR OTHERWISE) EXCEED THE TOTAL AMOUNT OF THE FEES ACTUALLY PAID BY YOU IN THE 12 MONTHS PRECEDING THE CLAIM FOR THE EFI PRODUCT, SERVICES, OR ACCESS GIVING RISE TO THE CLAIM. YOU AGREE THAT THIS AMOUNT IS SUFFICIENT TO SATISFY THE ESSENTIAL PURPOSE OF THIS AGREEMENT AND THAT THE PRICE OF THE PRODUCT, PROFESSIONAL SERVICES, OR ACCESS REFLECTS THIS ALLOCATION OF RISK.

THE FOREGOING LIMITATIONS OF LIABILITY AND DISCLAIMERS FORM AN ESSENTIAL ELEMENT OF THIS AGREEMENT, WITHOUT WHICH EFI WOULD NOT HAVE LICENSED OR SOLD THE PRODUCT TO YOU OR PROVIDED YOU WITH ACCESS.

BECAUSE SOME JURISDICTIONS DO NOT ALLOW SOME OR ALL OF THE EXCLUSIONS OR LIMITATIONS OF LIABILITY IN THIS AGREEMENT, SOME OR ALL OF THEM MAY NOT APPLY TO YOU.

本节授予您的权利是您对任何第三方知识产权侵权起诉的唯一补救。

8. 责任限制。

在法律不禁止的限度内，在任何情况下，EFI 或其供应商或许可方均不对与任何间接、特殊、附带、后果性、依赖性、惩戒性或惩罚性的损害负责，无论其因何产生，基于何种法律责任，即使已被告知可能发生此类损害。EFI 不对任何利润或收入损失、产品使用损失、数据损失或恢复任何数据的费用负责。除涉及 EFI 有故意不当行为的情况外，对您在 EFI 或其供应商的服务器或您使用的与产品有关的任何网络上的数据的任何违反、未经授权的访问、误用或入侵所造成的损害，EFI 概不负责。

在任何情况下，EFI 对因产品、服务、访问和/或本协议引起的或与之相关的所有索赔的全部责任，无论诉讼方式如何（合同、侵权、依据法规等），均不会超过您在索赔前 12 个月期间对引起索赔的 EFI 产品、服务或访问实际支付的费用总额。您同意该金额已充分满足本协议的根本目的，并同意产品、专业服务或访问的价格反映所述风险分配。

上述责任限制和免责声明构成本协议的一个要件，如果没有此要件，EFI 将不会向您授予产品许可、出售产品或向您提供访问权限。

由于某些司法管辖区不允许部分或全部排除和/或限制本协议下的责任，所以上述部分或全部的排除和限制可能对您不适用。

9. Proprietary Rights and Confidential Information.

(a). No Implied Conveyance of Proprietary Rights. The Product, Documentation, and any Work Product are the valuable, confidential, and proprietary property of EFI, its suppliers and licensors. EFI is not conveying any of its Intellectual Property Rights, except the limited rights specified in this Agreement. You shall maintain and reproduce all copyright, trademark, patent, and other proprietary notices on the Product in the same form and manner as delivered by EFI.

(b). Protection of Information. You shall not disclose any of EFI's Confidential Information, and shall take precautions with respect to EFI's Products and Confidential Information that are at least as protective as you take to protect your own confidential information and proprietary rights of the greatest sensitivity. You shall advise your employees and authorized independent contractors of the confidential and proprietary nature of the Product and EFI's Confidential Information and of the restrictions imposed by this Agreement, and confine access to the Product and EFI's Confidential Information to those individuals who need it in the ordinary course and scope of their employment or relationship with you. Except as specified in this Agreement, you shall not directly or indirectly disclose any part of the Product, EFI's Confidential Information, or Documentation to any third party.

(c). Termination; Injunctive Relief. Your violation of the confidentiality obligations or of EFI's Intellectual Property Rights may cause irreparable damage that cannot be fully remedied by money damages. In the event of any actual or threatened violation, you agree that EFI will be entitled, in addition to any other remedy available to it, to (i) terminate this Agreement, retake possession of the Product, execute the License Key, and/or terminate Access, and/or (ii) obtain injunctive or other equitable relief from any court of competent jurisdiction to prevent any further violation.

(d). Use of Your Trademarks and Logos. Subject to any reasonable use guidelines, you grant EFI a non-exclusive, worldwide, royalty-free license to use Customer Marks in connection with this Agreement, for use with the Product, for promoting EFI's Products in marketing materials, print, or on-line advertising, and for identifying you as an EFI customer. You shall also secure for EFI any rights or sublicenses required for EFI's use of the trademarks or service marks of your Affiliates. EFI acknowledges that (i) Customer Marks are owned solely and exclusively by you or your Affiliates, (ii) EFI has no other rights, title, or interest in or to Customer Marks, and (iii) all use and goodwill of Customer Marks by EFI inures to the benefit of you and your Affiliates.

10. Termination.

9. 专有权利和保密信息。

(a). 不暗示专有权利转让。 产品、文件和任何工作成果都是 EFI 及其供应商和许可方的宝贵、机密和专有财产。除本协议规定的有限权利外，EFI 不转让其任何知识产权。您应以 EFI 交付的相同形式和方式维持和复制产品的所有版权、商标、专利和其他专有权利通知。

(b). 信息的保护。 您不得泄露 EFI 的任何保密信息，并且应采取至少与保护您自身的保密信息和最敏感的专有权利相同的预防措施保护 EFI 的产品和保密信息。您应向员工和授权独立承包商指出产品和 EFI 保密信息的保密和专有性质以及本协议规定的限制，并仅限于在正常雇佣或与您建立关系过程中和范围下有必要知悉的个人访问产品和 EFI 保密信息。除本协议另有规定外，您不得直接或间接向任何第三方披露产品的任何部分、EFI 的保密信息或文件。

(c). 终止；禁令救济。 您对保密义务的违反或 EFI 知识产权的侵犯可能导致无法弥补的损失，且不能够通过金钱赔偿实现充分补救。在实际违反或威胁违反的情况下，您同意 EFI 将在其可用的任何其他补救之外有权：(i) 终止本协议，重新占有产品，执行许可证密钥和/或终止访问，和/或(ii) 从任何具有适当司法管辖权的法院取得禁令或其他衡平法救济，以阻止任何进一步的违反。

(d). 使用您的商标和标志。 在遵守任何合理使用指南的前提下，您授予 EFI 在全球范围内的非独占和无特许使用费的许可，允许将本协议相关的客户标志用于产品，推广 EFI 产品的营销材料、印刷品或在线广告，并且将您标识为 EFI 的客户。您还应保证为 EFI 取得使用您的关联公司的商标或服务标志所需的任何权利或分许可。EFI 承认：(i) 客户标志由您或您的关联公司独自拥有，(ii) EFI 对客户标志没有任何其他权利、所有权或利益，(iii) EFI 对客户标志的所有使用和商誉符合您和您的关联公司的利益。

10. 终止。

(a). This Agreement may be terminated immediately upon written notice to the other party (i) by EFI, if you fail to make any required payment other than Maintenance Fees, (ii) by the non-breaching party, if you or EFI fails to cure a material breach within 30 days after written notice from the non-breaching party, or (iii) by EFI, if you cease doing business as a going concern, become the object of voluntary or involuntary bankruptcy or liquidation proceedings that are not dismissed within 60 days after the initial filing, or if a receiver is appointed with respect to a substantial portion of your assets.

(b). Upon termination, you shall promptly (i) pay EFI all unpaid fees accrued before the termination, (ii) return all EFI Confidential Information and the Product, and (iii) return any materials, programs, manuals, and other items related to or derived from the Product in your possession or control. EFI shall use commercially reasonable efforts to provide you with any proprietary data belonging to you in the format in which it is stored by EFI at the time of termination.

11. Audit Rights.

EFI may audit your use of or Access to the Product. Any audit will take place after prior notice to you, during regular business hours, and in a manner that does not unreasonably interfere with your normal business. If the audit shows that you are using or accessing the Product in a way that violates this Agreement, EFI may invoice you for such use or Access, including late fees, interest, and expenses associated with the audit. If you do not timely pay that invoice, EFI may exercise its termination rights and pursue any other rights or remedies available to it.

12. Consent to Use Data.

EFI may collect and use technical data and related information to facilitate providing and/or confirming authorized use of Products, Access, Professional Services, and/or Maintenance to and by you. Subject to EFI's then-current privacy policy (available at <https://www.efi.com/legal/privacy/>) and applicable laws and regulations, EFI may (i) use this information to improve its products, to provide customized services or technologies to you, and/or to confirm authorized use, (ii) transfer this information to EFI's affiliates, agents, and partners, and (iii) transfer this information to the United States and/or any other country where EFI or its affiliates, agents, and partners maintain facilities.

13. Compliance with Laws.

(a). Export Law Compliance. The Product and related technology, information, and materials are subject to the export laws and regulations of the United States. You shall comply with those and any other applicable export laws or regulations. You are solely responsible for obtaining any necessary export licenses and exemptions. The Product and related technology, information, and materials may not be exported or re-exported to any U.S.-embargoed country, to any person or entity on any list of prohibited parties designated by the U.S. government, or otherwise in violation of any export law or regulation.

(a). 如发生以下任何情形，一方可立即向另一方发出书面通知终止本协议：(i)如果您未能支付维护费以外的任何要求款项，由EFI终止，(ii)如果您或EFI在非违约方发出书面通知后30天内未能纠正重大违约行为，由非违约方终止，或(iii)如果您不在作为持续经营的企业开展业务，成为自愿或非自愿破产或清算程序的对象，并且该程序在首次申请后60天内未被驳回，或如果您的大部分资产被指定接管人，由EFI终止。

(b). 终止时，您应立即：(i)向EFI支付终止前应计的所有未付费用，(ii)退回所有EFI保密信息和产品，(iii)退回与您占有或控制的产品有关或衍生的任何材料、程序、手册和其他物品。EFI应尽商业上的合理努力，以终止时EFI存储的格式向您提供属于您的任何专有数据。

11. 审计权。

EFI可审计您对产品的使用或访问。任何审计都将在向您发出事先通知后于正常营业时间内进行，并且不会采取不合理的方式干扰您的正常业务。如果审计显示您使用或访问产品的方式违反本协议，EFI可就该使用或访问向您开具发票，包括滞纳金、利息和与审计相关的费用。如果您未能及时支付该发票，EFI可行使终止权并寻求任何其他权利或补救。

12. 同意使用数据。

EFI可能收集和使用技术数据和相关信息，以便向您提供和/或确认您对产品、访问、专业服务和/或维护的授权使用。根据EFI最新的隐私政策（详情见<https://www.efi.com/legal/privacy/>）以及适用的法律和法规，EFI可(i)使用这些信息改进自己的产品，向您提供定制服务或技术和/或确认授权使用，(ii)将这些信息传输给自己的附属机构、代理和合作伙伴，以及(iii)将该信息传输到美国和/或EFI及其附属机构、代理和合作伙伴设有办事处的任何其他国家。

13. 遵守法律。

(a). 遵守出口法律。产品及相关技术、信息和材料受美国出口法律和法规的约束。您必须遵守美国法律和法规以及任何其他适用的出口法律和法规。您应自行负责取得任何必要的出口许可和豁免。产品及相关技术、信息和材料出口或再出口到任何美国禁运国家、美国政府指定的任何禁运方名单上的任何个人或实体、或以其他方式违反任何出口法律或法规。

(b). Compliance with Laws. You may only use the Product in compliance with all applicable laws and regulations. Upon written notice to you, EFI may modify or suspend your use of or Access to the Product as necessary to comply with any law or regulation. Both parties acknowledge their responsibilities and commitments to abide by and comply with international anti-corruption laws, including but not limited to the United States Foreign Corrupt Practices Act and the United Kingdom Anti-Bribery Act, and any amendments and regulations relating to those laws, in addition to each of our own ethical guidelines (EFI's Code of Conduct is available online at <http://ir.efi.com/committee-details/code-business-conduct-and-ethics>). Specifically, for example, no employee, or any individual or entity acting on behalf of or for the benefit of either EFI or Customer, may give or receive anything of value, or anything that may be perceived as valuable, to or from a government official or any other individual for the purpose of influencing any act, securing any improper advantage, or obtaining or retaining business.

14. General Provisions.

(a). Taxes. Except with respect to income recognized by EFI, you are liable for all tariffs, duties, and taxes, however designated or levied, based on your possession, use of, or Access to the Product, this Agreement, and/or any Professional Services, including but not limited to sales, use, value added, excise, services, personal property, or other taxes.

(b). Governing Law. This Agreement is not governed by the 1980 UN Convention on Contracts for the International Sales of Goods or any other international treaty or convention. Rather, this Agreement is governed in all respects by the laws of the State of California, USA, without regard to conflicts of laws principles. For all disputes related to this Agreement, the Product, Access, or any services provided under this Agreement, each party consents to the exclusive personal jurisdiction and venue of the state and federal courts in and for Santa Clara County, California, USA.

(c). Severability; Interpretation. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by any court of competent jurisdiction, that provision will be fully severable and this Agreement will be construed and enforced as if it were not included. This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor or against either party. The captions are for convenience only and do not affect the scope, intent, or meaning of the provisions. Any failure or delay to enforce any provision of this Agreement will not be deemed a waiver of EFI's right to do so.

(b). 遵守法律。您只能在遵守所有适用法律和法规的情况下使用产品。向您发出书面通知后，EFI 可在必要时修改或暂停您对产品的使用或访问，以遵守任何法律或法规。双方承认各自均有责任并承诺遵守和履行国际反腐败法律，包括但不限于美国《反海外腐败法》和英国《反贿赂法》，与这些法律有关的任何修正案和条例，以及双方各自的道德准则（EFI《职业守则》可通过以下网址在线查看 <http://ir.efi.com/committee-details/code-business-conduct-and-ethics>）。具体而言，例如何员工或代表 EFI 或客户或为其利益行事的任何个人或实体，均不得出于影响任何行为、取得任何不当利益、获取或保留业务之目的，向政府官员或任何其他个人赠送或接受任何有价值的物品或可能被视为有价值的物品。

14. 一般条款。

(a). 税收。除 EFI 确认的收入外，您应承担因占有、使用或访问产品、本协议和/或任何专业服务产生的所有关税、税款和税收（不论以何种方式指定或征收），包括但不限于营业税、使用税、增值税、消费税、服务税、个人财产税或其他税款。

(b). 管辖法律。《1980 年联合国国际货物销售合同公约》或任何其他国际协定或公约不适用于本协议。然而，本协议在所有方面均受加利福尼亚州法律管辖，不考虑法律冲突的原则。对于与本协议、产品、访问或本协议下提供的任何服务相关的所有争议，各方均同意接受美国加利福尼亚州圣克拉拉县的州法院和联邦法院的专属个人管辖权并将其作为审判地。

(c). 可分割性；解释。如果本协议的任何条款被任何具有适当司法管辖权的法院认定为不合法、无效或不可强制执行，该条款将可完全分割，本协议将继续解读和实施，犹如该条款不包含在内。本协议将依其条款公允解释，无任何有利于或不利于任一方的严格解释。标题仅为行文方便而设，不影响条款的范围、意图或含义。EFI 未能或延迟执行本协议的任何条款均不视为放弃执行。

(d). No Assignment. Assignment or transfer of this Agreement in its entirety, including all Licenses purchased, whether voluntarily, by operation of law, or otherwise, requires EFI's prior written consent, which may be withheld, delayed, or conditioned in EFI's sole discretion, and may require payment of a License transfer fee. Partial assignment or transfer of this Agreement, including a portion of Licenses purchased, whether voluntarily, by operation of law, or otherwise, is prohibited. Any merger, consolidation or acquisition of Customer or other transfer of all or substantially all of the shares or assets of Customer is deemed to be an assignment under this Agreement. Any attempted assignment or transfer without EFI's consent is void.

(e). Language. This Agreement is only in English, which is controlling in all respects. If EFI has provided you with a translation, the translation is for your convenience only and the English-language version, not the translation, is legally binding. If there are any conflicts or inconsistencies between the English-language version and a translation, the English-language version controls. Any notices relating to this Agreement must be in writing in English.

(f). Entire Agreement and Modification. With respect to the subject matter or any term of this Agreement: (i) this Agreement constitutes the entire understanding of the parties; (ii) this Agreement supersedes all prior and contemporaneous communications and understandings (including but not limited to discussions, representations, warranties, inducements, promises, and agreements); (iii) there are no such communications or understandings not explicitly contained herein; (iv) neither party has relied on any such communications or understandings except as explicitly contained in this Agreement; and (v) any waiver, modification, or amendment will be effective only if in a writing signed by the parties, where email does not constitute a signed writing.

(g). Orders and Acceptance. All orders for Products or Professional Services made pursuant to this Agreement are non-cancelable, non-refundable and must be submitted at least fifteen (15) days prior to the requested order delivery date. For any given order, you shall make the order and corresponding payment to EFI or its subsidiary or Affiliate depending upon which company is making the sale of Products or Professional Services for that order. Orders are not binding without written notification of acceptance from EFI. This Agreement governs all subsequent orders, and nothing contained in Customer's purchase orders or other communications will in any way modify this Agreement.

(h). Independent Contractors. You and EFI, and our respective employees and representatives, are and will be independent contractors with respect to the other party. Neither party by virtue of this Agreement has any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

(d). 不转让。本协议之全部转让或转移，包括购买的全部许可证，不论是否出于自愿、依据法律规定或其他方式，均要求获取 EFI 的事先书面同意。EFI 可酌情决定拒绝、延迟或附加条件，并且可以要求支付许可证转让费。本协议之部分转让或转移均受禁止，包括购买的部分许可证，不论是否出于自愿、依据法律规定或其他方式。对客户的所有兼并、合并或收购，或客户全部或几乎全部股份或资产的其他转让，均被视为本协议项下的转让。任何未经 EFI 同意的企图转让或转移均无效。

(e). 语言。本协议仅提供英语版本，在所有方面均以英语为准。EFI 可能仅为了方便您阅读提供翻译版本。英语版本应具有合法约束力，而非翻译版本。若英语版本和翻译版本之间存在任何冲突或不一致之处，应以英语版本为准。与本协议有关的任何通知必须以英文书写。

(f). 完整协议和修改。就本协议主题事项或任何条款而言：(i) 本协议构成双方的完整理解；(ii) 本协议取代先前和同期签订的一切沟通和谅解（包括但不限于讨论、陈述、保证、诱因、承诺和协议）；(iii) 没有本协议未明确包含的任何此类沟通或谅解；(iv) 除本协议明确包含的内容外，任一方均未依赖任何此类沟通或谅解；以及 (v) 任何放弃、修改或修正仅采取双方签署的书面形式方可生效，而电子邮件不构成签署的书面形式。

(g). 订单和接受。根据本协议发出的所有产品或专业服务订单均不可取消和不可退款，且必须在要求的订单交付日期之前至少十五（15）天提交。对于任何特定的订单，您应将订单和相应的款项交给 EFI 或其子公司或关联公司，具体取决于为该订单出售产品或提供专业服务的公司。未经 EFI 发出书面接受通知，订单不具有约束力。本协议适用于所有随后发出的订单，客户采购订单或其他通信中的任何内容均不会以任何方式修改本协议。

(h). 独立承包商。您和 EFI 以及我们各自的员工和代表是且将是对方的独立承包商。任一方均不得因本协议而有任何权利、权力或权限代表另一方行事或产生任何明示或暗示的义务。

(i). Survival. The provisions of this Agreement that relate to fees and payment terms, ownership of intellectual property and proprietary rights, export law compliance, termination, confidentiality, infringement indemnification, warranty disclaimers, limitation of liability, governing law, survivability, force majeure, severability and interpretation, definitions, modification and use of software products owned or distributed by Microsoft or Oracle included in an EFI Product will survive termination of this Agreement.

(j). Force Majeure. Except for payment of monies, no party will be liable for its failure to perform any obligations on account of strikes, shortages, failure or acts of suppliers, riots, insurrection, fires, flood, storm, explosions, acts of God, war, military operations, acts of terrorism whether actual or threatened, acts of a public enemy, epidemics, quarantines, governmental action, labor conditions, earthquakes, material shortages, or any cause that is similar to those enumerated or beyond the reasonable control of the affected party.

(k). U.S. Government Restricted Rights. Use, duplication, or disclosure of the Product by the United States Government is subject to restrictions as set forth in FAR 12.212 or DFARS 227.7202-3 - 227.7202-4 and, to the extent required under U.S. federal law, the minimum restricted rights as set out in FAR 52.227-14, Restricted Rights Notice (June 1987) Alternate III(g)(3) (June 1987) or FAR 52.227-19 (June 1987). To the extent any technical data is provided pursuant to the Agreement, such data is protected per FAR 12.211 and DFARS 227.7102-2 and to the extent explicitly required by the U.S. Government, is subject to limited rights as set out in DFARS 252.227.7015 (November 1995) and DFARS 252.227-7037 (September 1999). If any of the above-referenced agency regulations are modified or superseded, the subsequent equivalent regulation shall apply. The name of the Contractor is Electronics For Imaging, Inc.

15. Product-Specific and Third Party Provisions.

If you have obtained a License for certain Products, some of the following terms and conditions might apply to you.

(a). Products that include Microsoft Software (such as Windows or SQL Server).

(i). The term “Product” as used in this Agreement includes certain Microsoft software and related documentation, associated media, “online” or electronic documentation, upgrades and updates. EFI does not own these products and the use thereof is subject to certain rights and limitations.

(ii). Microsoft is not responsible for any support services for the Product. Notwithstanding the foregoing, in the event any support issues arise related to the Microsoft software that cannot be resolved by EFI, support to you may be provided by Microsoft pursuant to the Microsoft Premier support services agreement, or a similar type agreement, between EFI and Microsoft.

(i). 存续. 本协议中的费用 and 支付条件、知识产权和专有权利的所有权、遵守出口法律、终止、保密、侵权赔偿、保证免责声明、责任限制、管辖法律、存续、不可抗力、可分割性和解释、定义、EFI 产品中包含的 Microsoft 或 Oracle 拥有或分发的软件产品的修改和使用条款将在本协议终止后继续生效。

(j). 不可抗力. 除付款外，任一方将不会因罢工、短缺、供应商的不作为或作为、暴动、暴乱、火灾、洪水、暴风雨、爆炸、天灾、战争、军事行动、实际或威胁的恐怖主义行为、公敌行为、流行病、检疫、政府行动、劳动条件、地震、材料短缺、或类似于上述原因或超出受影响方合理控制的任何原因而未能履行任何义务而负有任何责任。

(k). 美国政府限制权利. 美国政府部门使用、复制或披露本软件的行为受 FAR 12.212 或 DFARS 227.7202-3 - 227.7202-4 规定的限制条款的约束，并且在美国联邦法律规定的范围内，受 FAR 52.227-14、限制权利通知（1987 年 6 月）Alternate III(g)(3)（1987 年 6 月）或 FAR 52.227-19（1987 年 6 月）规定的最低限制权利的约束。如果按照本协议提供任何技术数据，在此范围内这些数据受 FAR 12.211 和 DFARS 227.7102-2 规定的保护，并且在美国政府明确规定的范围内，受 DFARS 252.227.7015（1995 年 11 月）和 DFARS 252.227-7037（1999 年 9 月）规定的有限权利的约束。上述政府部门法规如有修改或被取代，应当以后来具有同等效力的法规为准。Electronics For Imaging, Inc. 是承包商名称。

15. 产品特定和第三方条款。

如果您已经取得特定产品的许可，以下部分条款和条件可能适用于您。

(a). 包含 Microsoft 软件（例如 Windows 或 SQL Server）的产品。

(i). 本协议中使用的“产品”一词包含特定的 Microsoft 软件和相关文件、相关媒介、“在线”或电子文件、升级和更新。EFI 不拥有这些产品，其使用须服从特定权利和限制。

(ii). Microsoft 不负责提供产品的任何支持服务。尽管有上述规定，但如果产生与 Microsoft 软件相关的任何支持问题并且 EFI 无法解决，Microsoft 可根据 EFI 和 Microsoft 之间签订的 Microsoft Premier 支持服务协议或类似协议向您提供支持。

(iii). The Product is not fault-tolerant. The Product is not designed or intended for use in any situation where failure or fault of any kind of the Product could lead to death or serious bodily injury of any person, or to severe physical or environmental damage (“High Risk Use”). You are not licensed to use the Product in, or in conjunction with, High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: aircraft or other modes of human mass transportation, nuclear or chemical facilities, and Class III medical devices under the Federal Food, Drug, and Cosmetic Act. You shall not use the Product in, or in connection with, any High Risk Use. You are responsible for taking all appropriate measures to ensure the safe use of the Product if used for such purposes and EFI and its suppliers, including Microsoft, will not be liable for any claims or damages arising from such use.

(b). Products that include Software Products Owned or Distributed by Oracle.

(i). The term “Product” as used in this Agreement includes certain software products provided by EFI that are owned or distributed by Oracle USA, Inc. (“Oracle”) and related program documentation (the “Oracle Programs”); EFI does not own the Oracle Programs and the use thereof is subject to certain rights and limitations. The Oracle Programs included herein are subject to a restricted use license and can only be used in conjunction with the Product. Oracle or its licensors retain all ownership of intellectual property rights to the Oracle Programs. You are hereby notified that Oracle is a supplier of EFI and a third-party beneficiary to this Agreement to the extent that this Agreement contains provisions which relate to your use of the Oracle Programs. Such provisions are made expressly for the benefit of Oracle and are enforceable by Oracle in addition to EFI.

(ii). You acknowledge and agree that you are prohibited from (a) publishing any results of benchmark tests run on the Oracle Programs, (b) using the Oracle Programs for rental, timesharing, subscription service, hosting, or outsourcing, and (c) removing or modifying any program markings or notice of Oracle’s or Oracle’s licensors’ proprietary rights.

(iii). To the extent not prohibited by law, in no event will Oracle be liable for (a) any damages, whether direct, indirect, incidental, special, punitive or consequential, and (b) any loss of profits, revenue, data or data use, arising from the use of the Oracle Programs.

(iv). You hereby permit EFI to (a) report any audit results obtained pursuant to this Agreement to Oracle to the extent such results are related to the Oracle Programs, or (b) assign such rights to audit your use of the Oracle Programs to Oracle.

(v). You are hereby notified that some Oracle Programs may include source code that Oracle may provide as part of its standard shipment of such programs, which source code is governed by the terms of this Agreement.

(vi). The Computer Information Transactions Act does not apply to this Agreement.

(iii). 产品不具有容错性。产品设计或用途并非用于任何类型的产品故障或过错可导致死亡或严重人身伤害，或导致严重物理或环境损害的情形（“高风险用途”）。您未获授权将产品用于高风险用途，或与高风险用途同时使用。严格禁止高风险用途。高风险用途包括但不限于：飞机或其他大规模载人运输方式、核设施或化学设施，以及《联邦食品、药品和化妆品法》规定的第三类医疗器械。您不应将产品用于高风险用途或与之相关的用途。倘若用于上述用途，您应负责采取一切适当的措施确保产品的安全使用，EFI 及其供应商（包括 Microsoft）将不会对因该用途导致的任何索赔或损害负有责任。

(b). 包含 Oracle 拥有或分发软件产品的产品。

(i). 本协议中使用的“产品”一词包含 EFI 提供、Oracle USA, Inc.（“Oracle”）拥有或分发的特定软件产品以及相关的程序文件（“Oracle 程序”）；EFI 不拥有 Oracle 程序，因此其使用受特定权利和限制约束。本协议包含的 Oracle 程序受限制使用许可证的约束，只能与产品一起使用。Oracle 或其许可方保留对 Oracle 程序全部知识产权的所有权。您特此被告知，本协议包含与您使用 Oracle 程序有关的条款时，Oracle 既是 EFI 的供应商，也是本协议的第三方受益人。这些条款明确表示为 Oracle 的利益而制定，除 EFI 以外，Oracle 也可以强制执行。

(ii). 您承认并同意，您被禁止：(a) 发布在 Oracle 程序上运行的任何基准测试结果；(b) 将 Oracle 程序用于出租、分时共享、订阅服务、托管或外包；以及 (c) 删除或修改 Oracle 或 Oracle 许可方的任何程序标记或专有权利通知。

(iii). 在法律不禁止的限度内，Oracle 绝不会因使用 Oracle 程序造成的：(a) 任何损害，无论是直接、间接、附带、特殊、惩罚性还是后果性的，以及 (b) 任何利润、收入、数据或数据使用的损失，而负有任何责任。

(iv). 您特此允许 EFI：(a) 向 Oracle 报告根据本协议获得的、与 Oracle 程序有关的任何审计结果，或 (b) 将您使用 Oracle 程序的审计权利转让给 Oracle。

(v). 您特此被告知，某些 Oracle 程序可能包含 Oracle 作为该程序标准发货的一部分提供的源代码，这些源代码受本协议条款的约束。

(vi). 《计算机信息交易法》不适用于本协议。

(vii). You acknowledge and agree that in the event a third party technology may be appropriate or necessary for use with some Oracle Programs, it will be specified in the Product package documentation or as otherwise noted, and such third party technology is licensed to you only for use with the Product under the terms of the third party license agreement specified in the Product package documentation or as otherwise noted, and not under the terms of this Agreement.

(c). E-commerce Applications.

(i). Use at Site Location. You may use or Access the Product only for production activity at the Site Location. If you have more than one production facility, you may not use or Access the Product for production activity at any facility other than the Site Location(s) for which you have been granted a license.

(ii). Links. If you have obtained a License for EFI e-Commerce Software, you represent and warrant that you have the right to create and maintain, or to allow EFI to create and maintain, all Links to the Product and any other websites mutually agreed upon between you and EFI. You shall incorporate EFI's "Powered by EFI" logo on any website utilizing EFI e-commerce Software.

(ii). Relationships with Third Parties. Use of or Access to the e-Commerce Product does not create a contract or other obligation between you and any of your customers or between EFI and any of your customers or vendors. EFI cannot and does not guarantee the performance of any of your customers, vendors, or other third parties. EFI will have no liability in connection with any dispute between you and any third party, and any third party dispute will not relieve you of any obligation to EFI under this Agreement.

(d). Open Source Software. Some versions of the Products contain open source software. Open source software is licensed to you under that software's own license terms, which can be found in the "Help," "About," "Read Me," or other specified portion of the Product. You are responsible for complying with any terms and conditions applicable to any open source software. To the extent that this Agreement imposes greater restrictions on you than the open source software license terms, the open source software license terms control, but solely with respect to the open source software.

16. Definitions.

"**Access**" means the connection to and use of a Product by Customer via an Internet web browser under the terms of this Agreement.

"**Affiliate**" means any entity directly or indirectly controlling, controlled by, or under common control with a party.

"**Agreement**" means this License and Purchase Agreement.

(vii).您承认并同意，在某些 Oracle 程序中使用第三方技术可能是合适或必要的，将在产品封装文件中指出或另行说明，并且该第三方技术仅许可给您与产品一起使用，所依据的是产品封装文件中指出或另行说明的第三方许可协议条款，而并非本协议的条款。

(c). 电子商务应用。

(i). 在指定场地位置使用。您对产品的使用或访问只能用于指定场地位置的生产活动。如果您有不止一个生产工厂，您可以在指定场地位置以外已被授予许可的任何工厂为了生产活动使用或访问产品。

(ii). 链接。如果您已获得 EFI 电子商务软件的许可证，您声明并保证您有权创建和维护或允许 EFI 创建和维护所有指向产品以及您与 EFI 约定的任何其他网站的链接。您应将 EFI 的 "Powered by EFI" 标识包含于任何使用 EFI 电子商务软件的网站。

(ii). 与第三方的关系。使用或访问电子商务产品不会在您与您的任何客户之间或 EFI 与您的任何客户或供应商之间产生合同或其他义务。EFI 不能够也不保证您的任何客户、供应商或其他第三方的履行。EFI 对您与任何第三方之间的任何争议不承担任何责任，任何第三方争议将不会免除您在本协议下对 EFI 的任何义务。

(d). 开源软件。某些版本的产品包含开源软件。开源软件根据其自身的许可条款授予许可给您，详情参见产品的 "帮助"、"关于"、"自述文件" 或其他指定部分。您有责任遵守适用于任何开源软件的任何条款和条件。倘若本协议对您施加的限制大于开源软件许可条款，则以开源软件许可条款为准，但仅限于开源软件。

16. 定义。

"**访问**" 是指客户根据本协议条款通过 Internet 网页浏览器连接和使用产品。

"**关联公司**" 是指直接或间接控制一方、受一方控制或与一方处于共同控制之下的任何实体。

"**协议**" 是指本许可和购买协议。

“**Confidential Information**” means any information that you have been informed or have a reasonable basis to believe is confidential to EFI, whether provided to you before, on, or after this Agreement, including, for example, ideas, programs, data, software, systems configurations, reports, projections, initiatives, customer data, or other business or technical information. Confidential Information includes any written information marked as confidential or proprietary, and any information disclosed orally or visually that is identified as confidential or proprietary at or around the time of its disclosure. All EFI Intellectual Property Rights and technical information related to the Product are Confidential Information whether or not marked as confidential or proprietary.

“**Customer Marks**” means your name and logo or other trademarks, service marks, or other marks.

“**Documentation**” means user’s guides, manuals, and other information related to the Product or Professional Services.

“**EFI**” means Electronics For Imaging, Inc., Electronics for Imaging BV, Electronics For Imaging United Kingdom Limited, Metrics Sistemas De Informacao Ltda., alphagraph Team GmbH, or another EFI subsidiary or Affiliate referred to in the Purchase Documentation.

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“**Fees**” means the fees for the Product, Access, or Professional Services, including any fees set forth in your Purchase Documentation, License fees, hardware fees, Term License Fees, Hosting Fees, Maintenance Fees, or other applicable fees. Unless otherwise specified in the Purchase Documentation, payments for any fees must be made within 30 days of the date of the invoice in the currency listed in the Purchase Documentation. Any amount not paid when due is subject to a service charge equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by law, and EFI may defer shipments of Products and/or provision of services until all overdue payments are received. Payment of the service charge will not foreclose any other right that EFI may have as a consequence of late payment. In the event that EFI is required to take legal action to collect unpaid amounts, and EFI is successful in such action, Customer shall reimburse all costs and reasonable attorneys’ fees incurred by EFI in such action.

“**Hosting Fees**” means the hosting fees described in the Purchase Documentation. Unless otherwise specified in the Purchase Documentation, payment obligations for Hosting Fees commence on the first day of the next month following 30 days from the Start Date.

“**Initial Term**” means the three-year period of time beginning on the Start Date.

“**保密信息**”是指您已被告知或有合理依据认为对 EFI 具有保密性的任何信息，无论是在本协议签订之前、签订时还是之后向您提供，包括例如创意、程序、数据、软件、系统配置、报告、预测、提议、客户数据或其他业务或技术信息。保密信息包括标记为保密或专有的任何书面信息，以及任何在披露时或披露前后被确定为保密或专有的口头或视觉披露信息。所有与产品有关的 EFI 知识产权和技术信息均为保密信息，无论是否标记为保密或专有。

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“**文件**”是指用户指南、手册以及与产品或专业服务有关的其他信息。

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“**已排除许可证**”是指任何要求以使用、修改和/或分发软件受已排除许可证约束作为条件的许可证，并且此类软件或与之组合和/或一起分发的其他软件必须 (i) 以源代码形式公开或分发；(ii) 为制作衍生作品授权；或 (iii) 免费再分发。

“**费用**”是指产品、访问或专业服务的费用，包括您的购买文件中规定的任何费用、许可费、硬件费、定期许可费、托管费、维护费或其他适用的费用。除非购买文件中另有规定，任何费用必须在发票日期后 30 天内以购买文件中所列的货币支付。任何到期未支付的款项将被收取服务费，服务费相当于每月百分之一点五(1.5%)或法律允许的最高金额，以较低者为准。EFI 可推迟产品发货和/或服务提供，直到收到所有逾期付款。服务费的支付将不会排除 EFI 因逾期付款而享有的任何其他权利。如果 EFI 需要通过法律诉讼收回未支付的款项，并且 EFI 在该等诉讼中胜诉，客户应补偿 EFI 在该诉讼中产生的所有费用和合理的律师费。

“**托管费**”是指购买文件中所述的托管费。除非购买文件中另有规定，托管费的付款义务从开始日期 30 天后下一个月的第一天开始。

“**初始期限**”是指从开始日期起的三年期限。

“**Intellectual Property Rights**” means, individually or collectively, any patent, copyright, trademark, service mark, trade secret, trade name, or other intellectual property right.

“**IP Claim**” means a lawsuit filed against you by a third party that is not a patent assertion entity or non-practicing entity.

“**License**” means the license granted to you for the Product you have obtained.

“**License Key**” means a programming code included in the Product that, if executed or deactivated, renders the Product or portions of it inoperable.

“**Link**” means a hypertext reference that, when activated, moves users from one website to another on the Internet.

“**Maintenance**” means (i) correction of material defects so that the Product will operate materially in conformity with the warranties in this Agreement, (ii) periodic updates that incorporate corrections of material defects and fixes of minor bugs in the Product, (iii) telephone or email/electronic consultation services regarding the use of the Product during EFI’s standard support hours, and (iv) enhancements and/or revisions to software components of the Product, which are subject to additional charge unless they are provided at no charge to substantially all other licensees.

“**Maintenance Fees**” means the support and/or maintenance fees charged by EFI and/or a third party for the Product. Unless otherwise specified in the Purchase Documentation, payment obligations for Maintenance Fees commence on the first day of the next month following 30 days from the Start Date and continue for 12 consecutive months thereafter, subject to any Maintenance renewal term(s). Any use of a virtual private network or other requirement that requires EFI to act outside of its normal processes in order to provide Maintenance to you may be subject to additional fees.

“**Maintenance Renewal Date**” means the anniversary of the start of the Maintenance coverage period stated on the first Software Maintenance invoice that EFI issued to you, whether issued pursuant to this Agreement or a prior agreement or Purchase Documentation.

“**Product**” means Software or hardware, and may also include third party software and documentation, downloads, on-line materials, bug fixes, patches, releases, release notes, updates, upgrades, technical support materials, and information related to the EFI software or hardware.

“**Professional Service(s)**” means any training, installation, implementation, customization and/or other professional services provided by EFI to Customer.

“**Purchase Documentation**” means the purchase order, investment summary, statement of work, written agreement, or other documentation executed by you by which you agreed to obtain a license, Product, or service from EFI or one of EFI’s partners.

“**Renewal Term**” means the three-year period following the Initial Term or another Renewal Term unless specified otherwise in your Purchase Documentation. Fees for any Renewal Term may be increased to EFI’s then-current fees.

“**知识产权**”是指单独或集体的任何专利、版权、商标、服务标志、商业秘密、商业名称或其他知识产权。

“**知识产权索赔**”是指并非专利主张实体或非执业实体的第三方对您发起的诉讼。

“**许可证**”是指对于您获得的产品授予您的许可证。

“**许可证密钥**”是指产品中包含的编程代码，如果执行或停用该代码，将使本软件或其部分无法操作。

“**链接**”是指激活时将用户从一个网站跳转至互联网上另一个网站的超文本引用。

“**维护**”是指 (i) 纠正重大缺陷，让产品运行基本符合本协议中的保证，(ii) 定期更新，包括纠正重大缺陷和修复产品中的小错误，(iii) 在 EFI 标准支持时间内提供关于产品使用的电话或电子邮件/电子咨询服务，以及 (iv) 增强和/或修订产品软件组件，这些服务都需要额外收费，除非也面向基本上所有其他被许可方免费提供。

“**维护费**”是指 EFI 和/或第三方对产品收取的支持和/或维护费。除非购买文件中另有规定，维护费的付款义务从开始日期 30 天后下一个月的第一天开始，并在此后连续 12 个月支付，但须遵守任何维护续订期限。任何使用虚拟专用网络或其他要求 EFI 在正常业务流程之外采取行动以向您提供维护的情况，可能需要支付额外费用。

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“**专业服务**”是指 EFI 向客户提供的任何培训、安装、实施、定制和/或其他专业服务。

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“**续订期限**”是指在初始期限或另一续订期限结束后的三年期限，除非在您的购买文件中另有规定。任何续订期限的费用可能会按 EFI 当时生效的价格增加。

“**Site Location**” means the printing plant or facility specified in the Purchase Documentation.

“**Software**” means the EFI software listed on the Purchase Documentation or licensed to you under this Agreement.

“**Start Date**” means the Effective Date of the Purchase Documentation or the date the Product is made available to you, whichever is later.

“**Term License Fees**” means the term license fees for the Product described in the Purchase Documentation, the payment of which entitles you to Maintenance at no additional charge. Unless otherwise specified in the Purchase Documentation, payment obligations for Term License Fees commence on the Start Date.

“**Third Party IP Rights**” means a third party’s U.S. patent rights.

“**Work Product**” means any and all ideas, concepts, and Intellectual Property Rights related in any way to the techniques, knowledge, and processes of the Product, Services, and deliverables provided by EFI, including any integration to third party products, whether or not developed for you.

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