NeurOptimal® Software License Agreement
(Effective April 12, 2018)

This Software License Agreement (herein, the "Agreement") is made between you, the customer who bought the NeurOptimal® product (consisting of Z AMP and dedicated laptop from which our software runs), and Zengar® Institute Inc. a corporation of Canada with an address at 520 Island Road, Victoria, BC CANADA V8S2T6. Throughout this Terms of Use, our company Zengar® is referred to as "Licensor", "Vendor", "Zengar", "we", "us" or "our." You, the user, are referred to as "you" or "your" or "Customer". The NeurOptimal® software is referred to as "NeurOptimal®". These Terms of Use may be referred to in the abbreviated form "Terms".

1. **WELCOME TO NEUROPTIMAL®**

   Thank you for choosing NeurOptimal® by Zengar®, the world leader in brain training and optimum performance technology. The document you are now reading, consisting of lettered paragraphs and numbered sub-paragraphs below, is your agreement with us. As described below, you accept this Agreement when you use the product and may be asked at installation to affirm your acceptance of this same agreement. Please read it carefully before signaling your acceptance by using the NeurOptimal® product.

   If you have any questions or concerns about this License, NeurOptimal® or our services, you may contact us at admin@neuroptimal.com, toll free at 1-866-990-6784 or directly at 1-514-312-6006.

2. **BINDING CONTRACT: EMPHASIS OF IMPORTANT PROVISIONS CONTAINED WITHIN**

   a. BINDING CONTRACT. BY USING THE NEUROPTIMAL® PRODUCT, YOU ARE FORMING AN AGREEMENT WITH US. THAT AGREEMENT IS WHAT YOU ARE READING RIGHT NOW. YOU AGREE THAT YOU HAVE READ THIS AGREEMENT FULLY AND AGREE TO BE BOUND BY ALL THE TERMS CONTAINED HEREIN**. IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, DO NOT USE THE PRODUCT.** IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR ASSOCIATION OR GROUP, YOU MUST HAVE ACTUAL AUTHORITY TO BIND THE ENTITY TO THESE TERMS AND CONDITIONS (IN WHICH CASE "YOU" OR "YOUR" WILL REFER TO THAT ENTITY); IF YOU REPRESENT AN ORGANIZATION BUT DO NOT HAVE AUTHORITY TO BIND THAT ORGANIZATION TO THIS AGREEMENT, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MAY NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE NEUROPTIMAL® PRODUCT.

b.   For customers who bought the NeurOptimal® product intending to rent or lease it to others for their private use, or in connection with a business, you may only do so by your customer or sub-licensee's ascent to all the terms and conditions of this Agreement. It is your responsibility to ensure any sub-licensee of yours has received a copy of this license, has read it, and accepted it prior to his/her use of the Product. As stated herein you shall be responsible and liable for the acts and omissions of any user or users arising from the access you grant to the Licensed Software.

c.   We reserve the right, in our sole discretion, to modify these Terms in the future. If we make changes, we will send customers an email alert and post a notice on our website prior to the date when a change becomes effective. On the effective date of the modified Terms, your continued use of our NeurOptimal® Product shall constitute your agreement to the modified Terms, which new terms are hereby incorporated into these Terms by this sentence.

d.   It is your responsibility to check these Terms of Use periodically for changes.

e.   THIS AGREEMENT CONTAINS AN ARBITRATION CLAUSE (SEE SECTION "8") AND CLASS ACTION WAIVER (SEE SECTION "9"): IN THIS AGREEMENT YOU ARE AGREEING THAT ANY DISPUTE YOU HAVE WITH US WILL BE RESOLVED BY BINDING ARBITRATION, AND YOU ARE WAIVING YOUR RIGHT TO PARTICIPATE IN A GROUP OR CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION. Read more below.

f.   THIS AGREEMENT CONTAINS INDEMNIFICATIONS, LIMITATIONS OF OUR LIABILITY, RELEASES, AND SEVERAL DISCLAIMERS WHICH EFFECT YOUR RIGHTS.

g.   As set forth below, every time you use this software you are doing so subject to this Agreement. This Agreement can be accepted by (i) clicking "I Agree" (or a similar link or control) during installation, (ii) installing a license key that was provided with a copy of this Agreement, or (iii) by using NeurOptimal® software that includes a link to a copy of this Agreement that is made available through a "help" or "about" link or command in the software. By performing any of the foregoing three acts, you are agreeing to be legally bound by the terms and conditions of this Agreement.

h.   This Agreement governs the Customer's rights to install and use the NeurOptimal® software, so it is important that you read and understand all its terms and conditions. If you do not agree to the terms and conditions of this Agreement, then you may not install or use the NeurOptimal® software and must click "I do not agree" (or a similar link or control) or immediately uninstall and return the Licensed Software to Licensor or its reseller.

3. ADDITIONAL USERS

If your installed software is used by others, you personally warrant and represent that you are authorized to accept the terms and conditions on this Agreement on behalf of that person or entity. If you are installing this software for an employer or a business, the "Customer" is the employer or business, and you personally warrant and represent that you are authorized to accept the terms and conditions on this Agreement on behalf of that employer or business. If you are a reseller, service provider, or contractor installing the software for an end user, the "Customer" is the person or entity that purchased the software license and you warrant and represent, both personally and on behalf of your employer, that you are authorized to accept the terms and conditions on this Agreement on behalf of that person or entity.

4. DEFINITIONS

a. "**Licensed Software**" means the Object Code (defined below) of the Licensor software that is installed as a result of you clicking "I Agree", or that you are otherwise using when you agree to this Agreement, and all enhancements to such software that the Licensor makes generally available to its users, in its sole discretion, for no additional cost during the term of this Agreement.

b. "**Authorized Use**" means use of the Licensed Software for Customer's own internal business operations in accordance with the Documentation for Customer and its wholly owned affiliates. Authorized Use does not include Prohibited Uses such as reverse engineering or decompiling, use to create a competing product or service, any effort to remove or circumvent any security feature or copy protection feature, any use beyond the scope of the license granted in this Agreement, or any illegal, infringing or improper use.

c. "**Confidential Information**" means (i) non-public information that one party to this Agreement gives to the other party that is marked or designated in writing as "Confidential" or "Proprietary," or is communicated directly between parties, where reasonable privacy is expected (ii) the Licensed Software and the Documentation, and (iii) all information relating to features and functions of the Licensed Software and its performance that is not released publicly by Licensor. Confidential Information does not include information that is shown by written documentation: (iv) to have been in the possession of, or rightfully known by, the recipient thereof without an obligation to maintain its confidentiality prior to

receipt from disclosing party; (v) to be generally known to the public without violation of this Agreement or another obligation of confidentiality owed to the disclosing party at the time of disclosure; or (vi) is obtained by the recipient without obligations of confidentiality, in good faith, from a third party having the right to disclose it.

d. "**Documentation**" means the electronic and paper documents, including technical, installation, user, training, help, and other documents delivered by Licensor or its reseller or representative to Licensor in conjunction with Licensed Software or made available to Customer via Licensor's website.

e. "**Effective Date**" means the earlier of (i) the date on which you agreed to the terms and conditions of this Agreement, and (ii) the earliest date on which you agreed to a prior version of this Agreement (if any).

f. "**Employee**" means an employee of Customer, or a third-party consultant engaged by Customer and permitted to access the Licensed Software as permitted under this Agreement.

g. "**Object Code**" means computer programs assembled, compiled, or converted to magnetic or electronic binary, which are readable and usable by computer equipment, media files including video and audio files viewable on a computer, and computer-readable files containing documents, tests, and explanatory material that are provided by Licensor in connection with the Licensed Software.

5. **LICENSE**

a. **Grant of License**. Subject to the terms, conditions and restrictions set forth in this Agreement, Licensor grants to Customer: a time-limited (beginning on the Effective Date and continuing until this Agreement is terminated or expires as set forth herein), limited, non-exclusive, non-transferable, license to use (for Customer's own, legitimate business purposes) the Licensed Software and Documentation on one machine, for the Authorized Use by Licensee, Licensee's Employees and customers **(the "License").** Customer agrees that within 7 (seven) calendar days of the expiration of the License, Customer will uninstall or otherwise destroy all copies of the Licensed Software, Documentation, and any portion thereof, in the possession or control of Customer or Customer's Employees. Customer may not make any use of any software for which Customer is not expressly obtaining a license under this Agreement. Customer understands and agrees that the Licensed Software and all copies thereof that Licensor provides to Customer are being licensed and not sold. Customer shall not own or have any rights in or to the

Licensed Software, Documentation, or any copies thereof, by virtue of this Agreement, other than the rights expressly conferred in the License. Any and all rights not expressly granted in this Agreement are expressly reserved by Licensor.

b. **Restrictions upon license**.

    i.   <u>Licensed Software</u>. Customer shall not, or permit any Employee or third party to, directly or indirectly: (1) reverse engineer, disassemble, or decompile the Licensed Software or any portion thereof; and/or (2) combine the Licensed Software or any portion thereof with any unauthorized third-party software.

    ii.   <u>Access to / Use of Licensed Software.</u>

        1.   Customer shall be responsible and liable for the acts and omissions of all users arising from the access to the Licensed Software provided by Customer. The Licensed Software may contain license protection procedures or technologies intended to limit access to the Licensed Software to that use permitted under this Agreement. Customer shall not circumvent or render inoperative any such protection procedures or technology or attempt, on its own or through any third party, to do so, and shall not assist any third party attempting to do so.

        2.   2. Customer's use of the Software shall comply with applicable requirements of the United States Food and Drug Administration ("FDA") and with all other applicable federal, state, local or foreign governments or agencies thereof.

        3.   3. Customer understands that Vendor has an expanding set of hardware and software requirements necessary to appropriately run the Licensed Software. Vendor therefore reserves the right to refuse licensing of any system that either does not meet those requirements, current at the time of licensing request, or is not a system that originates from Vendor directly or else Customer does not have express, written approval of by Vendor.

        4.   4. Customer must grant Licensed Software internet access minimally once every 7 (seven) consecutive days, so that license may be validated and required updates, if any, may be downloaded and installed. If Internet is not available for any period of time equal to or exceeding 7 (seven) days, Customer will notify Vendor in advance, prior to Internet disconnection period, to coordinate a

special resolution for Customer.

ii. <u>Installation.</u> The Licensed Software will be installed (by or for Customer) and used by Customer on only one machine purchased directly from Vendor. From time-to-time Customer will be required to install Licensed Software updates when prompted by Licensed Software. Customer may install and use the Licensed Software on a Replacement System only if one of the following applies (note service fees may apply): (1) the first machine is destroyed or otherwise physically rendered incapable of executing the Licensed Software and Vendor acknowledges as such in writing, (2) the Licensed Software (or a legally licensed previous version of Licensed Software) is securely deleted and/ or deactivated from the first machine remotely by Vendor, prior to installation on the replacement machine.

6. PAYMENT

a. **Fees**. The rights and licenses granted by Licensor in this Agreement are in consideration of payments made to Licensor or Licensor's authorized reseller. To the extent Customer has agreed to pay any amounts to Licensor or Licensor's authorized reseller, and fails to do so promptly and in full, Licensor may, in its sole discretion, terminate this Agreement and any licenses granted herein.

b. **Taxes**. Customer is liable for any and all sales, use, excise, value added, customs fees, or other similar taxes relating to the Licensed Software and related Vendor product(s) provided to Customer under this Agreement. If Customer is exempt from the payment of any such taxes, Customer must provide Licensor or Licensor's reseller with a valid tax exemption certificate prior to shipment of Licensed Software product(s); otherwise, absent proof of Customer's direct payment of such taxes to the applicable taxing authority prior to product shipment, Licensor or Licensor's reseller may invoice Customer for, and Customer will pay, all such taxes.

7. PROPRIETARY RIGHTS

a. **Ownership.** Customer acknowledges and agrees that Licensor owns, or is a licensee of, all right, title and interest in and to all Licensed Software (including all Source Code, Enhancements, and Modifications) and related Documentation and Licensor Confidential Information (and the media containing such Confidential Information) including, without limitation, all patent, trademark, copyright, trade secret, and other intellectual property rights related thereto. Licensee agrees that it shall obtain no rights in or to the Licensed Software, Documentation, Licensor

Confidential Information, or any intellectual property relating to the foregoing by virtue of this Agreement or Licensee's use of the Licensed Software, Documentation, or Licensor Confidential Information.

b. **Intellectual Property.** Customer acknowledges and agrees that Licensor owns all right, title and interest in and to the following Trademark Registrations, alone with all goodwill associated therewith:

ZENGAR U.S. Federal Registration Number 3,448,179

NEUROPTIMAL U.S. Federal Registration Number 3,782,223

Customer shall not cover, modify, or remove branding or product labels from equipment.

c. **Representations, Warranties and Covenants of Customer.** The Customer hereby makes the following representations, warranties, and covenants to the Vendor with respect to the Customer's and its employees' and agents' use of the Software:

   i. Customer acknowledges that the software and applications thereof have not been approved by the FDA. Any and all statements related to the software have not been evaluated by the FDA. The software is not intended to diagnose, treat, cure, or prevent any disease.

   ii. ii. All users of the software will be adequately trained and proficient in and with respect to the operation of the software and related hardware.

   iii. iii. All users of the software will be appropriately skilled to perform applications using the software and related hardware.

d. **Modifications.** Customer may not make modifications to, or derivative works based on, the Licensed Software or Documentation except to the extent such modifications or derivative works result from use of documented features of the Licensed Software as described in the Documentation.

e. **Confidential Information.** Customer agrees that the Licensed Software and Documentation contain Confidential Information, including trade secrets, know-how and other information, which is the exclusive property of Vendor. During the period this Agreement is in effect, and at all times after its termination, Customer and its employees and agents shall maintain the confidentiality of this information and shall not sell, license, sublicense, publish, display, distribute, disclose or otherwise make available this information to any third party nor use such information except as authorized by this Agreement. Customer shall not disclose any such information concerning the Software or Documentation to persons not an employee of Customer without the prior written consent of Vendor. Customer agrees that it will take appropriate action by instruction, agreement or otherwise

with Customer's employees to satisfy its obligations under this Agreement with respect to use, protection and security of Vendor's confidential information. Customer agrees to immediately notify Vendor of the unauthorized disclosure or use of the Software or Documentation and to assist Vendor in remedying such unauthorized use or disclosure.

f. **Required Disclosure.** In the event a party is required under applicable law, rule, regulation, court or administrative order to disclose Confidential Information of the other party, the first party shall use commercially reasonable efforts to: (a) notify the other party of the planned disclosure in time for the other party to seek a protective order or similar protection from disclosure; (b) limit such disclosure to the extent practicable; (c) make such disclosure only to the extent so required; and (d) reasonably cooperate with the disclosing party in any effort by the disclosing party to seek judicial or equivalent protection from disclosure.

8. **LIMITED WARRANTY; DISCLAIMER**

a. **Scope of Warranty.** Licensor warrants that, subject to this Section 8, for a period of one year from the date of delivery (the "Warranty Period"), the Licensed Software will materially perform in accordance with the Documentation provided it is used in accordance with the terms of this Agreement and the Documentation. Licensor does not warrant that the Licensed Software shall be uninterrupted or error free or will satisfy Customer's requirements.

b. **Obligations of Licensor.** For any claim under the warranty in Section 8a, Licensor's sole and exclusive remedy shall be, at Licensor's election, to provide program services to attempt, through reasonable efforts, to correct any material program defects discovered within the warranty periods or to replace the defective Software. The above remedies are available only if Licensor is promptly notified in writing, within the warranty periods, upon discovery of the defects by Customer and Licensor's examination of Software discloses that such defects exist.

c. **Limitations.** Licensor's obligations in Section 8b shall not apply: (a) to any authorized or unauthorized modifications to the Licensed Software; (b) if the Licensed Software is not used in accordance with the Documentation or this Agreement; (c) if Customer is not using the most recent version of the Licensed Software; or (d) to any error or defect caused by Customer, an Employee, any third party or any third party software.

d. **Disclaimer.** THE NEUROPTIMAL® PRODUCT AND ASSOCIATED SOFTWARE IS PROVIDED "AS IS". EXCEPT AS EXPRESSLY STATED IN THIS SECTION 8, LICENSOR

MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED WITH RESPECT TO THIS AGREEMENT OR THE LICENSED SOFTWARE OR ANY SERVICES PROVIDED TO CUSTOMER INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT AND LICENSOR EXPRESSLY DISCLAIMS ANY AND ALL SUCH WARRANTIES. LICENSOR DOES NOT WARRANT THAT: (i) THE LICENSED SOFTWARE WILL OPERATE UNINTERRUPTED; (ii) ALL LICENSED SOFTWARE ERRORS CAN BE CORRECTED; OR (iii) THE APPLICATIONS CONTAINED IN THE LICENSED SOFTWARE ARE DESIGNED TO MEET ALL OF CUSTOMER'S REQUIREMENTS.

e. **Exclusive Remedy.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ANY DOCUMENTATION TO THE CONTRARY, THIS SECTION 5 SETS FORTH CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE WARRANTY SET FORTH IN SECTION 8a ABOVE.

f. Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for certain types of damages. therefore, some of the above limitations in this section may not apply to you.

g. Nothing in these terms of use shall affect any non-waivable statutory rights that apply to you. if any provision or provisions of these terms of use shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full force and effect.

9. **LIMITATION OF LIABILITY**

a. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT, LICENSOR WILL NOT BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOODWILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, OR EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR OTHER DOCUMENT TO THE CONTRARY, UNDER NO CIRCUMSTANCES WILL LICENSOR BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE FEES PAID BY CUSTOMER TO LICENSOR HEREUNDER DURING THE 6 (SIX) MONTHS PRECEDING THE FIRST DATE SUCH CLAIM AROSE, AND IF SUCH DAMAGES RESULT FROM A SPECIFIC PRODUCT OR SERVICE, SUCH LIABILITY WILL BE LIMITED TO FEES PAID FOR THE RELEVANT PRODUCT OR SERVICE GIVING RISE TO THE LIABILITY FROM WHICH THE CLAIM AROSE DURING THE 6 (SIX) MONTHS

PRECEDING THE DATE SUCH CLAIM FIRST AROSE.

10. TERM AND TERMINATION
   a. **Term.** This Agreement and the license granted hereunder shall be effective as of the Effective Date set forth at the beginning of this Agreement and shall continue unless terminated as set forth in Section 10b.
   b. **Termination.** This Agreement will terminate upon the earliest to occur of the following:
      i. thirty (30) days after one party gives the other party notice of the other party's material breach of any provision of the Agreement, unless such other party has cured such breach during such thirty (30) day period; or
      ii. immediately if Customer becomes insolvent, makes an assignment for the benefit of creditors, appoints (or has appointed on its behalf) a trustee, receiver, or similar officer, or commences a proceeding seeking reorganization, liquidation or similar relief under any bankruptcy, insolvency, or similar debtor-relief statute, or
      iii. attempts to assign this Agreement or any license granted hereunder in any manner not explicitly permitted hereunder. In the event of termination hereunder, Licensor reserves the right to terminate any and all agreements between Licensor and Customer and all licenses granted by Licensor under this Agreement or otherwise.
   c. **Effect of Termination.** Upon termination of this Agreement for any reason:
      i. All amounts due and owing by Customer to Licensor or Licensor's reseller will be immediately payable;
      ii. Use of the Licensed Software and Documentation will immediately cease;
      iii. Customer will delete and/or remove all Licensed Software from all computer hardware and storage media within Customer's possession or control. Within seven (7) days after termination of this Agreement, Customer will return to Licensor all copies of the Licensed Software, Documentation and any other Licensor Confidential Information in any form, including but not limited to partial copies thereof, and will certify to Licensor that all copies and portions thereof have been destroyed or returned. The terms of this Agreement that by their nature should survive termination of this Agreement shall survive termination of this Agreement including, without limitation, the provisions concerning protection of Confidential Information, and limitations of liability.

11. ARBITRATION.

YOU AGREE THAT ALL DISPUTES BETWEEN YOU AND US (WHETHER OR NOT SUCH DISPUTE INVOLVES A THIRD PARTY) WITH REGARD TO YOUR RELATIONSHIP WITH US, INCLUDING WITHOUT LIMITATION DISPUTES RELATED TO THESE TERMS OF USE AND YOUR USE OF THE NEUROPTIMAL® PRODUCT, WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION IN BRITISH COLUMBIA, CANADA, UNDER THE CANADIAN ARBITRATION ASSOCIATION'S RULES FOR ARBITRATION OF CONSUMER-RELATED DISPUTES AND YOU AND WE HEREBY EXPRESSLY WAIVE TRIAL BY JURY. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION. If available as an alternative, you may bring a claim in "small claims" court in British Columbia, Canada. You may bring claims only on your own behalf.

12. WAIVER OF CLASS ACTION PARTICIPTION.

YOU ARE GIVING UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS. You also agree not to participate in claims brought in a private attorney general or representative capacity, or consolidated claims involving another person's account if we are a party to the proceeding. This dispute resolution provision will be governed by the Canadian Arbitration Association rules and not by any state or provincial law concerning arbitration. Judgment on the award rendered by the arbitrator may be entered in any court having competent jurisdiction. Any provision of applicable law notwithstanding, the arbitrator will not have authority to award damages, remedies or awards that conflict with these Terms of Use. This arbitration agreement will survive the termination of your relationship with us.

13. GENERAL PROVISIONS

a. **Assignment.** All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and to their respective heirs, successors, assigns and legal representatives, except that Customer shall not assign or otherwise transfer the Software or this Agreement to anyone, including any parent, subsidiaries, affiliated entities or third parties, or as part of the sale of any portion of its business, or pursuant to any merger, consolidation or reorganization, without Vendor's prior written consent. Vendor shall be entitled to assign this Agreement to a successor of all or substantially all of its relevant assets

without restriction.

b. **Entire Agreement.** This Agreement constitutes the entire agreement between Licensor and Customer with respect to the subject matter of this Agreement and all licenses granted herein, and supersedes all prior negotiations and agreements, whether oral or written, with respect to these matters. Customer agrees that it has not entered in this Agreement based on any representations other than those contained herein.

c. **Informal Dispute Resolution.** In the case of disputes under this Agreement, the parties shall first attempt in good faith to resolve their dispute informally, or by means of commercial mediation, without the necessity of a formal proceeding.

d. **Restricted Rights.**

If this Software is being licensed by the U.S. Government, the Software and related documentation is commercial computer software and documentation developed exclusively at private expense, and

    i. If acquired by or on behalf of a civilian agency, shall be subject to the terms of this computer software license as specified in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors; and

    ii. If acquired by or on behalf of units of the Department of Defense ("DOD") shall be subject to the terms of this commercial computer software license as specified in 48 C.F.R. 227.7202-2, DOD FAR Supplement and its successors.

e. **Export Law Assurances.**

Customer understands that the Software and Documentation are subject to export control laws and regulations. CUSTOMER MAY NOT DOWNLOAD OR OTHERWISE EXPORT OR RE-EXPORT THE SOFTWARE, THE DOCUMENTATION OR ANY UNDERLYING INFORMATION OR TECHNOLOGY EXCEPT IN FULL COMPLIANCE WITH ALL UNITED STATES AND OTHER APPLICABLE LAWS AND REGULATIONS, IN PARTICULAR, BUT WITHOUT LIMITATION, NONE OF THE SOFTWARE, THE DOCUMENTATION OR ANY UNDERLYING INFORMATION OR TECHNOLOGY MAY BE DOWNLOADED OR OTHERWISE EXPORTED OR RE- EXPORTED:

    i. INTO (OR TO A NATIONAL OR RESIDENT OF) CUBA, IRAQ, LIBYA, NORTH KOREA, IRAN, OR SYRIA; OR

    ii. ii. TO ANYONE ON THE U.S. TREASURY DEPARTMENT'S LIST OF SPECIALLY DESIGNATED NATIONALS OR THE U.S. COMMERCE DEPARTMENT'S TABLE OF DENIAL ORDERS. CUSTOMER HEREBY AGREES TO THE FOREGOING AND REPRESENTS AND WARRANTS THAT CUSTOMER IS NOT LOCATED IN,

UNDER CONTROL OF, OR A NATIONAL OR RESIDENT OF ANY SUCH COUNTRY OR ON ANY SUCH LIST.

f. **Independent Contractors.** Nothing in this Agreement or in the course of dealing between Licensor and Customer shall be deemed to create between Licensor and Customer a partnership, joint venture, association, employment relationship or any other relationship other than an independent contractor relationship.

g. **Severability.** If any provision of this Agreement is held invalid or unenforceable, the provision shall be deemed modified only to the extent necessary to render it valid or eliminated from this Agreement, as the case may be, and this Agreement shall be enforced and construed as if the provision had been included in this Agreement as modified or as if it had not been included, as the case may be.

h. **Waiver.** Failure or delay by either Party to enforce any of the provisions of this Agreement or any rights with respect to it or the failure to exercise any option provided under this Agreement shall in no way be considered a waiver of that provision, right or option, or in any way to affect the validity of this Agreement. Any waiver of any rights under this Agreement, or any modification or amendment of this Agreement, shall only be effective or enforceable, if expressed in writing and signed by both Parties.

i. **Governing Law.** This Agreement shall in all respects be governed by the laws of the British Columbia, Canada without reference to its principles of conflicts of laws. The parties hereby agree that all disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of and venue in the relevant courts within British Columbia, Canada. Customer hereby consents to the personal and exclusive jurisdiction and venue of these courts. The Parties hereby acknowledge and agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

j. **Notices.** All notices permitted or required under this Agreement shall be in writing and shall be delivered in person or sent via a nationally recognized overnight delivery service, to the address of the party specified in this Agreement or such other address as either party may specify in writing. Such notice shall be deemed to have been given upon receipt.

k. **Force Majeure.** Neither party to this Agreement, other than for payments due, will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control including, without limitation, Acts of God, labor disruption, war, terrorist threat or government action; provided that if either party is unable to perform its obligations under this Agreement for

one of these reasons it shall give prompt written notice thereof to the other party and the time for performance, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

l. **Acceptance and Binding Nature.** This Agreement may be accepted by either clicking an "I Accept" or equivalent link or control during installation of the Licensed Software, or by otherwise installing or using the Licensed Software. Customer acknowledges that this is intended to be, and is, a binding legal contract, whether it is accepted by Customer directly, or whether it is accepted by Licensor's reseller or an agent of Customer on behalf of Customer. Customer understands and acknowledges that any copying or use of the Licensed Software without an acceptance of this Agreement or a separate license Agreement signed by Licensor is illegal and will infringe Licensor's copyrights and other proprietary rights in the Licensed Software. Neither Licensor's reseller nor any party other than Licensor may alter or amend this Agreement in any manner and any attempted amendment or alteration will be null and void unless it is signed by an officer of Licensor. If Customer does not agree to all terms and conditions of this Agreement, Customer may not install or use the Licensed Software.