

CUSTOMER AGREEMENT MASTER TERMS AND CONDITIONS

This Customer Agreement Master Terms and Conditions (“Master Terms and Conditions”) is entered into between “Licensee” as set forth on the Spök Order Form (“Order Form”) and Spök. For purposes of these Master Terms and Conditions, Spök is defined as follows:

- If Licensee’s principal place of business is located in the United States, Mexico, Central America, South America, Europe (other than the United Kingdom and including Russia and Turkey), Africa or the Middle East “Spök” is defined as Spök, Inc. a corporation organized under the laws of the State of Delaware, having its headquarters office located at 6850 Versar Center, Suite 420, Springfield, VA 22151, United States of America.
- If Licensee’s principal place of business is located in Australia or New Zealand “Spök” is defined as Spök AUS Pty Ltd ABN 24 064 705 924 of 130 Main Street, Osborne Park, Western Australia 6017, Australia.
- If Licensee’s principal place of business is located in Canada “Spök” is defined as Spök Canada Inc. of 3701 Hastings Street, Burnaby, British Columbia V5C 2H6, Canada.
- If Licensee’s principal place of business is located in the United Kingdom “Spök” is defined as Spök UK Limited of 11th Floor Whitefriars, Lewins Mead, Bristol BS1 2NT, United Kingdom.

The entire agreement between the parties includes these Master Terms and Conditions, and each Order Form entered into by Customer and Spök at any time and which refers to these Master Terms and Conditions (collectively, the “Agreement”).

The following terms supplement and govern each Order Form entered into by Customer and any Spök at any time:

1. Definitions.

- 1.1 “Cure Period” means the thirty (30) days from receipt of a notice from a party that the other party will have to cure the breach to the reasonable satisfaction of the notifying party.
- 1.2 “Designated Users” means the maximum number of users or other quantity designation identified on an Order Form who are authorized to use the Software.
- 1.3 “Documentation” means the then-current electronic or printed material, operating and technical documentation relating to the functions, features or specifications and operations of the applicable Software and made available by Spök. Documentation excludes all marketing materials, proposals, demonstrations and content made available for instructional or informational purposes only.
- 1.4 “Hardware” means any physical components of a computer or other electronic system which is sold to the Licensee and described on an Order Form.
- 1.5 “Maintenance” means updates to the Software which Spök incorporates into the Software and does not separately price or market, together with using reasonable efforts to provide Licensee with avoidance procedures.
- 1.6 “Order Form” means an Order Form Agreement, a Statement of Work, other purchase orders, order form or similar entered into by Spök and Customer and referring to this Agreement.
- 1.7 “Permitted Users” means the natural persons authorized by Licensee to use the Products within the scope of the License and who each have an ID (profile) and password.
- 1.8 “Perpetual License” means a license to use the Software that does not have a term limit identified on an applicable Order Form.
- 1.9 “Products” means the Software and/or Hardware, together with its applicable Documentation, which have been included in an Order Form.
- 1.10 “Release” means the edition of a Product after it has been designated as a release and made generally available by Spök.
- 1.11 “Services” means training, implementation, consulting, subscription or other services provided by Spök, excluding Support.
- 1.12 “Software” means the software code and media described in an Order Form and any repairs, replacements, upgrades, updates, enhancements and new Releases provided by Spök under applicable Maintenance or Support, and any copies made available to the Licensee.
- 1.13 “Subscription License” means a license to use the Software that has a specific term limit identified on an applicable Order Form.
- 1.14 Service Level Expectation (“SLE”) means Spök’s then-current document describing the levels of Support available for purchase by Licensee under an Order Form, and the documents referenced therein. When a Licensee purchases premium levels of Support, Spök reserves the right to supplement its then-current SLE by attaching an amendment to an applicable Support Order Form.
- 1.15 “Support” means the level of maintenance and support services described in an Order Form and in the then-current SLE, and purchased by Licensee for the Spök Products listed in that Order Form.
- 1.16 “Maintenance and Support Term” means: (a) the Initial Term Maintenance and Support Term or (b) any Maintenance and Support Renewal Term under the applicable Order Form.

2. Software License. Upon execution of an Order Form by Spök and subject to compliance with this Agreement, Spök will provide Licensee a non-exclusive and non-transferable license to use and to allow its Permitted Users to use or access the Products described in the Order Form in the case of Software Products, in object code form only (the “License”). The License granted is up to the maximum number of Designated Users identified on the Order Form and is only for internal use by Licensee and Permitted Users for Licensee’s business operations. In no way does the License grant the Licensee and its Permitted Users the right to grant sub-licenses or authorizations, whether exclusive or non-exclusive, to third parties for access to or use of the Software.

3. Software License Limitations. Licensee and its Permitted Users shall not: (i) adapt the Software or create derivative versions of the Software; (ii) transmit, distribute or supply, whether by rental, sale, licensure, loan, or any other mechanism, partially or in full, the Software to any third party; (iii) rework the Software (e.g., for the purpose of correcting deficiencies) or make additions or improvements to the Software; (iv) reverse engineer the Software or attempt to derive source code from the Software; (v) alter or modify the Documentation; (vi) use the Software to provide support to or a service to any third party; (vii) copy the Software for any reason (including in a virtual environment, creating a test environment, redundant environment, for disaster recovery purposes, or replication of the Software, except to the extent Spök has given prior written consent to Licensee to copy the Software or the Licensee has licensed additional copies of the Software for the above purposes; (viii) remove or alter any of the confidential, proprietary or intellectual property rights notice(s) embedded in or that Spök otherwise provides with the Software; and (ix) simultaneously use the same User ID (profile) on more than one computer terminal or access point. Upon request during the Maintenance and Support Term and for a nominal handling charge, Spök will provide Licensee additional copies (either by CD/DVD or electronic format) of the Software listed in an Order Form (subject to the Designated Users for those Products).

The License is a temporary license until full payment for the Software has been received by Spök in accordance with the Payment section of the Order Form.

4. Delivery and Installation.

4.1 Spök will promptly deliver or make available to Licensee one copy of the Software and Hardware as listed in an Order Form. Unless stated otherwise on an Order Form title to any delivered Hardware passes at place of shipment (subject to the License), unless prohibited by applicable law. Licensee hereby acknowledges and agrees that all right title, and interest in and to the Software, the Documentation and any other related materials are, and shall remain, vested solely in Spök, and Licensee shall not hold itself as having any ownership or other rights with respect thereto.

4.2 Except as otherwise agreed in an Order Form, Licensee is responsible for all work and expenses associated with the installation of the Software and Hardware, delivery, training, data conversion, implementation and other services.

5. Services. The applicable Order Form will state (i) the rates and basis on how Services will be provided to Licensee, and (b) that Licensee will reimburse Spök for actual travel and out-of-pocket expenses incurred when rendering on-site Services, Support or other warranty services in accordance with Section 21.3. In the provision of Services to Licensee, Spök may share information of Licensee with its business partners as may be necessary to provide Services to Licensee. Any business partner engaged by Spök to assist in the provision of Services to Licensee will adhere to the Confidential Information standards contained in Section 23.

6. Maintenance and Support Services.

6.1 Maintenance and Support. Spök will provide Licensee with the level of Maintenance and Support identified on an Order Form for specified Products to the extent Licensee pays Spök the applicable fees as set forth on an Order Form ("Maintenance and Support Fees"). Subject to the level of Maintenance and Support purchased and Section 6.4(b), Maintenance and Support will include: (a) help desk support, (b) corrections to allow the unmodified Software (when properly installed and configured) to operate materially and substantially as described in the Documentation for those Software (by providing a program patch, update, new Release, or instruction for avoiding the error, as determined by Spök), and (c) updates and new Releases of the Software when made generally available by Spök for installation and use by Licensee. New Software requires a separate Order Form and is not provided as a new Release or as part of Support for other Software. Any Support services undertaken as a result of Licensee's failure to comply with these conditions will be charged at Spök's then-current time and materials rates.

6.2 Limitations on Maintenance and Support. All Support will be part of the applicable Products and will be performed pursuant to the Spök Support guidelines listed in the SLE and this Agreement. Spök's obligation to provide Licensee with Support for the Products owned by parties other than Spök is limited to providing Licensee with the Support that the applicable third-party owner provides to Spök for that Product. In this regard, to the extent that an agreement authorizing Spök to resell or sublicense a third-party's Product is terminated or expires prior to the expiration of the term of that Product, then Spök's obligation to provide Support to Licensee for that Product, and Licensee's obligation to pay Spök for such Support for that Product, shall automatically terminate simultaneously with the termination or expiration of the relevant agreement. Licensee must provide Spök with such facilities, equipment and support as are reasonably necessary for Spök to perform its obligations under this Agreement, including remote access to the Products.

6.3 Additional Maintenance and Support Provisions.

- a. During the Initial Maintenance and Support Term (as indicated in the Order Form), Spök (i) will directly or indirectly provide Maintenance and Support to Licensee for the Products pursuant to guidelines listed in the then-current SLE and any amendments associated with an executed Order Form and (ii) will not materially degrade its Support practices.
- b. Licensee is responsible for licensing and paying for additional third party products that may be required for use of upgrades, enhancements or new Releases of the Products.
- c. Unless otherwise described in an applicable Order Form, Spök does not maintain or support Products modified outside of Support or Services provided by Spök.
- d. Spök may make coterminous the annual renewal dates for Maintenance and Support purchased under one or more Order Forms.
- e. If Licensee terminates Maintenance and Support and subsequently seeks reinstatement of Maintenance and Support, Licensee agrees to pay Spök a reinstatement fee equal to two percent (2%) per month, for a period up to twenty-four months, of the then-current list price for its licensed Products. After twenty-four months, Licensee agrees that it must repurchase all Products it wants under Support at Spök's then-current list price.
- f. Maintenance and Support Fees are non-refundable.

6.4 Hardware/ Software Relocation, Modification, and Improper Use.

- a. Licensee shall advise Spök promptly of any change in location or modification to any Products covered by this Agreement. If such change, in Spök's opinion, increases the cost of testing or repairs, Spök reserves the right to increase Licensee's Maintenance and Support Fees. If the change creates a safety hazard or is likely to cause product malfunctions, Spök may, with Licensee's concurrence and at Licensee's expense, correct the condition and continue to perform maintenance. If the condition cannot be corrected to Spök's satisfaction, Spök reserves the right to terminate Support under this Agreement.
- b. Spök shall be under no obligation to provide Support if:
 - (1) The Products have been modified or moved without Spök's prior written approval;
 - (2) The Software identification marks have been removed or altered;
 - (3) The host computer does not conform to the update level necessary to support the Software or has been modified, other than by Spök personnel,

- so as not to conform to the specifications for which the Software was designed;
- (4) Licensee's version of the Software is no longer supported; or
 - (5) Licensee is using the Software in violation of the terms of this Agreement.

7. Limited Warranty and Disclaimer of Warranty.

7.1 Limited Warranty by Spök.

- a. **Software Warranty.** At the time of shipment of the Software, Spök warrants that (a) the applicable media for the Software will be free of defects, (b) Spök will have timely used up-to-date, commercially available virus scanning and cleaning, and will not have knowingly (based on the results of that scanning and cleaning) delivered Software containing any viruses, time bombs or other undocumented programs which inhibit the use of the Software, and (c) Software will include the functionality described in the Documentation for the Software.
- b. **Hardware Warranty.** Unless otherwise stated on an applicable Order Form, Spök warrants for a period of one year, beginning on the date of shipment that the Hardware is free from defects in material and workmanship. Spök's obligation under any Hardware warranty is limited to repairing and replacing, at Spök's option, the Hardware at no charge to Licensee.
- c. **Software and Hardware Warranty Conditions.** The Software and Hardware warranties set forth in Sections 7.1a and 7.1b are conditioned upon (i) Licensee's proper use, maintenance, management and supervision of the Software and Hardware, (ii) use with supplies or consumable materials supplied by Spök, (iii) use with a suitable operating environment, (iv) the absence of any intentional or negligent act or other cause external to the Software or Hardware affecting their operability or performance, and (v) the conditions set forth in Section 7.3.

7.2 Disclaimer of Warranty. **THE LIMITED WARRANTIES IN THIS SECTION 7 ARE MADE TO LICENSEE EXCLUSIVELY AND ARE IN LIEU OF ALL OTHER WARRANTIES. SPÖK MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE SOFTWARE, DOCUMENTATION, HARDWARE, SUPPORT, MAINTENANCE, AND SERVICES, IN WHOLE OR IN PART, OR ANY OTHER MATTER UNDER THIS AGREEMENT. SPÖK EXPLICITLY DISCLAIMS ALL WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, ACCURACY, SYSTEM INTEGRATION AND OF FITNESS FOR A PARTICULAR PURPOSE. SPÖK EXPRESSLY DOES NOT WARRANT THAT THE SOFTWARE, IN WHOLE OR IN PART, WILL BE ERROR FREE. FURTHER, SPÖK EXPRESSLY DOES NOT WARRANT THAT PRODUCTS OR ANY SUPPORT WILL BE USABLE BY LICENSEE IF THE PRODUCT HAS BEEN MODIFIED BY ANYONE OTHER THAN SPÖK, OR WILL OPERATE WITHOUT INTERRUPTION, OR WILL BE COMPATIBLE WITH ANY HARDWARE OR SOFTWARE OTHER THAN IDENTIFIED IN THE DOCUMENTATION. SPÖK DOES NOT WARRANT THAT THE SOFTWARE, SUPPORT, HARDWARE OR SERVICES ARE FREE OF NONMATERIAL DEFECTS OR THAT THEY WILL MEET THE SPECIFIC REQUIREMENTS OR NEEDS OF LICENSEE'S BUSINESS.**

7.3 Abrogation of Limited Warranty. The limited warranties in this Section 7 will be null and void to the extent that (i) without the prior written approval of Spök, which will not be unreasonably withheld, Support is performed on the Products by any party other than Spök or an Spök-approved party, or (ii) any addition to, removal from or modification of the Products is made without Spök's approval. All parts replaced under warranty will become the property of Spök. Licensee will be responsible for the cost of all requested Support and Services provided by Spök, which is not covered pursuant to a stated warranty.

7.4 Failure of Essential Purpose. **THE PARTIES HAVE AGREED THAT THE LIMITATIONS SPECIFIED IN SECTION 16 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE AND REGARDLESS OF WHETHER LICENSEE HAS ACCEPTED ANY SOFTWARE OR SERVICE UNDER THIS AGREEMENT.**

7.5 Secondary Use for Notification. Licensee understands and agrees that any Product used to assist in providing system notification to its users is limited to secondary notification only and that Licensee's own systems provide primary notification. Spök disclaims any warranty or responsibility for providing system notification to Licensee's users.

8. Indemnity by Spök. Spök will defend at its own expense any action against Licensee brought by a third party to the extent that the action is based upon a claim that the Software directly infringes any patent or copyright or misappropriates any trade secret and Spök will pay those costs and damages finally awarded against Licensee in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. Spök's obligations under this indemnification are expressly conditioned on the following: (i) Licensee must promptly notify Spök of any such claim; (ii) Licensee must in writing grant Spök sole control of the defense of any such claim and of all negotiations for its settlement or compromise (if Licensee chooses to represent its own interests in any such action, Licensee may do so at its own expense, but such representation must not prejudice Spök's right to control the defense of the claim and negotiate its settlement or compromise); (iii) Licensee must cooperate with Spök to facilitate the settlement or defense of the claim (including without limitation by making available all documents and information in Licensee's possession or control that are relevant to the claims and by making Licensee's personnel available to testify or consult with Spök or its attorneys in connection with such defense); (iv) the claim must not arise from modifications or (with the express exception of other software and third party hardware and software specified by Spök in writing as necessary for use with the Software) from the use or combination of products provided by Spök with items provided by Licensee or others; (v) Licensee must not by any act, including without limitation by any admission or acknowledgement, materially prejudice Spök's ability satisfactorily to defend or settle the claim; (vi) the claim does not arise out of Licensee's failure to comply with the terms of this Agreement, including without limitation use of the Software in a manner for which it was not designed (as evidenced by the Documentation) or Spök's instructions; and (vii) Spök's obligations shall not apply with respect to any version of the Software that is not the most current release if the infringement would have been avoided by use of the most current release. If any Software is, or in Spök's opinion is likely to become, the subject of an intellectual property rights infringement claim, then Spök, at its sole option and expense, and to the extent commercially reasonable, will either: (A) obtain for Licensee the right to continue using the Software under the terms of this Agreement; or (B) replace the Software with products that are substantially equivalent in function, or modify the Software so that it becomes non-infringing and substantially equivalent in function; or (C) terminate the License granted under Section 2 and refund to Licensee the portion of the license fee paid to Spök for the Software giving rise to the infringement claim, less a charge for use by Licensee based on straight-line amortization assuming a three year life, provided that Licensee has returned or destroyed and discontinued its use of the Software. **THE FOREGOING SETS FORTH SPÖK'S EXCLUSIVE OBLIGATION AND LIABILITY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND THIRD PARTY CLAIMS THEREFOR.**

9. Remedies.

9.1. Licensee's Remedies.

- a. Licensee's exclusive remedies, and Spök's exclusive obligations, for a breach by Spök of the Software Warranty or Hardware Warranty are as follows:
 - (i) Spök will provide Support (if purchased by Licensee) to repair, replace or furnish an upgrade of the non-conforming Products to enable those Products to comply with the applicable Software Warranty or Hardware Warranty; and
 - (ii) if Spök does not comply with Section 9.1(a)(i) within the applicable Cure Period, Licensee may terminate Support and Spök will refund the fees paid by Licensee to Spök for the non-conforming Products, subject to the limitations in Section 16.

- b. Licensee's exclusive remedies for breach of Spök's Service obligations are as follows:
 - (i) Spök will re-perform or re-deliver those Services at no additional charge within the Cure Period; and
 - (ii) if Spök does not complete that re-performance within the applicable Cure Period, Licensee may terminate the Services and Spök will refund the fees paid by Licensee to Spök for those Services not re-performed and timely cured, subject to the limitations in Section 16.

9.2 **Spök's Remedies.**

- a. Spök may suspend or terminate Support and/or Services at any time if any Spök invoices that are then due and payable, are not paid within fifteen (15) days after Spök informs Licensee of non-payment.
- b. Spök may terminate an Order Form and the applicable License under that Order Form if any undisputed License fee invoices under that Order Form are not paid by Licensee within fifteen (15) days after notice of late payment.
- c. Spök may immediately terminate this Agreement if Licensee breaches Section 17 (Compliance with Laws).
- d. Licensee will promptly destroy or return to Spök all Products if the License and the Agreement terminate as described in this Sections 9.2(b) and 9.2(c).

10. **Term and Termination.**

10.1 **Right of Termination.** A party has the right to terminate this Agreement or an Order Form if the other party breaches a material provision of this Agreement or related Order Form and fails to cure such breach within the applicable Cure Period. Except as provided below in this section and in Sections 9.2(b) and 9.2(c), to terminate this Agreement or an Order Form, the party seeking termination must give the other party written notice that describes the event or condition of termination in reasonable detail. If the event or condition giving rise to the right of termination is not cured within the Cure Period, the party desiring termination may terminate this Agreement or Order Form at any time thereafter upon written notice to the other party so long as the event or condition giving rise to the right of termination still exists. In addition to the foregoing, Licensee will have the right to terminate this Agreement without cause, upon written notice to Spök within three business days from the contract execution date without penalty or obligation.

10.2 **Survival of Obligations.** All obligations relating to non-use and non-disclosure of Confidential Information, indemnity, limitation of liability, warranty disclaimers, reservation of rights in intellectual property, and such other terms which by their nature survive termination, will survive termination of this Agreement.

10.3 **Termination Without Prejudice to Other Rights and Remedies.** Termination of this Agreement will be without prejudice to the terminating party's other rights and remedies pursuant to this Agreement.

11. **Notices.** All notices and other communications required or permitted under the Agreement must be in writing and will be deemed given when (i) delivered personally, (ii) sent by registered or certified mail, return receipt requested, or (iii) sent by overnight courier. Notices must be sent to a party at its address shown on the signature page of this Agreement, or to such other place as the party may subsequently designate for its receipt of notices in accordance with this Section 11. Licensee must promptly send copies of any notice of material breach and/or termination of the Agreement to Spök, Attention: Lead Counsel, Spök, Inc., 10400 Yellow Circle Drive, Eden Prairie, Minnesota 55343, United States of America or to such other place as Spök may subsequently designate for its receipt of notices.

12. **Force Majeure.** Neither party will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, including Acts of God, acts of war, terrorist acts, accident, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance, or the threat of any of the foregoing.

13. **Assignment.** Licensee may not assign, transfer, rent or re-license or otherwise transfer any of its rights or obligations under this Agreement, and any attempt at such assignment will be void without the prior written consent of Spök. For purposes of this Agreement, "assignment" shall include (i) use of the Software for benefit of any third party to a merger, acquisition and/or other consolidation by, with or of Licensee, including any new or surviving entity that results from such merger, acquisition and/or other consolidation, and (ii) use to provide outsourcing, service bureau, hosting services or training to third parties.

14. **No Waiver.** A party's failure to enforce its rights with respect to any single or continuing breach of this Agreement will not act as a waiver of the right of that party to later enforce any such rights or to enforce any other or any subsequent breach.

15. **Severability.** If any provision of this Agreement is illegal or unenforceable, it will be deemed stricken from the Agreement and the remaining provisions of the Agreement will remain in full force and effect. Failure of any party to enforce any provision of this Agreement will not constitute or be construed as a waiver of such provision or the right to enforce such provision.

16. **LIMITATION OF LIABILITY.** EXCEPT ONLY FOR (i) INDEMNIFICATION BY SPÖK FOR THIRD PARTY CLAIMS UNDER SECTION 8 ABOVE, (ii) BODILY INJURY, (iii) DIRECT DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY TO THE EXTENT CAUSED BY SPÖK'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (iv) SPÖK'S BREACH OF ITS OBLIGATIONS UNDER SECTION 19 BELOW, SPÖK'S AGGREGATE AND CUMULATIVE LIABILITY FOR RESCISSION AND/OR DAMAGES TO LICENSEE WILL BE, WHETHER IN CONTRACT OR TORT, LIMITED TO ACTUAL DIRECT MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE AGGREGATE FEES PAID BY LICENSEE TO SPÖK, EXCLUDING FEES PAID MORE THAN ONE YEAR PRIOR TO LICENSEE'S INITIAL NOTICE OF THE CLAIM TO SPÖK. IF NO DISCRETE FEE IS IDENTIFIED IN THE APPLICABLE ORDER FORM, SPÖK'S CUMULATIVE LIABILITY TO LICENSEE WILL BE AN AMOUNT NOT TO EXCEED THE FEE REASONABLY ASCRIBED BY SPÖK FOR THE COMPONENT SYSTEM GIVING RISE TO THE LIABILITY. IN NO EVENT WILL EITHER PARTY, WITH EXCEPTION OF A VIOLATION OF SECTION 3 OF THIS AGREEMENT BY LICENSEE, BE LIABLE FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS, LOSS OF USE, LOSS OF REVENUE OR LOSS OF DATA OR BUSINESS INTERRUPTION WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER PARTY WILL SEEK OR APPLY FOR SUCH DAMAGES.

17. **Compliance with Laws.** Licensee will comply with all laws, rules and regulations applicable to the use of the Software, including but not limited to (i) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.) and its implementing regulations. Without limiting the generality of the foregoing, Licensee shall comply with the medical device reporting requirements set forth at 21 C.F.R. Part 803, Subpart C, to the extent applicable; (ii) U.S. export controls; (iii) U.S. Foreign Corrupt Practices Act; and/or (iv) other similar laws and regulations that are applicable to the Licensee. Licensee acknowledges that Spök is not providing any electronic communications service and that Licensee is solely responsible for complying with any legal requirements applicable to its provision or use of electronic communications services in connection with the Software. Licensee shall not export the Products from the country of initial delivery by Spök without Spök's prior

written authorization and compliance with applicable law. Licensee is responsible for compliance with the Agreement by each of its Permitted Users and contractors.

18. Audit Rights. Spök may audit the records of Licensee to ensure compliance with the terms of this Agreement and each applicable Order Form(s). Licensee agrees that it will retain such records for a minimum of three (3) years after the termination or expiration of this Agreement. Except for audits based on alleged violation of ethics or laws where no notice is required, Spök will notify Licensee in writing at least ten (10) business days prior to any such audit. Any such audit will be conducted during Licensee's regular business hours at Licensee's offices and will not unreasonably interfere with Licensee's business activities. Spök may audit Licensee no more than once in any six (6) month period. If an audit reveals that Licensee is not in compliance with any terms of Section 27 (Anti-corruption), then Licensee will promptly reimburse Spök for the cost of such audit, work to immediately correct such violation, and within thirty (30) days will provide Spök with a written plan on the correction of the issue leading to the violation together with a strategy to avoid such violation in the future ("Correction Strategy"). Spök, in its sole discretion, will have the right to accept and/or modify any or all aspects of the Correction Strategy provided by Licensee. Licensee acknowledges that some Products may allow Spök to monitor and prohibit unauthorized use (subject to Section 23) and may require the installation and update of audit tools to allow Spök to verify Licensee compliance. Licensee will not prohibit the installation or use of those audit tools. [If Spök learns that Licensee has exceeded the number of Designated Users stated on an Order Form, and Licensee has not previously paid Spök for the applicable additional License fees, after written request from Spök, Licensee will promptly pay Spök: (a) the then-current list price for that coverage plus a 25% surcharge; (b) the reasonable costs of conducting the above verification if the number of users exceeding the Designated Users by more than 5%; and (c) any back Maintenance and Support Fees that would have been due to Spök had the Licensee held licenses for the actual number of Designated Users being used by Licensee.

19. HIPAA. To the extent that the regulations implementing the Health Insurance Portability and Accountability Act of 1996 and subsequently the Health Information Technology for Economic and Clinical Health Act (collectively, "the Acts"), apply to any Products, Support, or Services provided under this Agreement, Spök will conduct its activities in such a manner as to facilitate Licensee's compliance with the Acts. If an amendment to this Agreement is necessary to comply with the Acts, Spök and Licensee will negotiate such amendment in good faith prior to the applicable enforcement date. If Spök and Licensee cannot agree upon such an amendment, Licensee may terminate this Agreement upon thirty (30) days' written notice, provided that Licensee immediately returns to Spök or destroys all Products. Licensee shall not be entitled to a refund of any license fees paid to Spök in the event of termination pursuant to this paragraph 19.

20. Licensee Responsibilities. Throughout the term of this Agreement, Licensee shall take the following actions, and Licensee acknowledges that the obligation to provide Services and Support is conditioned upon Licensee taking such actions:

- (a) Follow all installation, operation and maintenance instructions.
- (b) Provide the specified environment, electrical and telecommunication connections.
- (c) Provide access to the Products to enable the performance of maintenance.
- (d) Have a representative available during any on-site Services or Support activity.
- (e) Maintain a procedure external to the Software and host computer for reconstruction of lost or altered files, data or programs to the extent Licensee deems necessary.

21. Payment and Taxes.

21.1 Payments. Payments of all fees are due as indicated on the Order Form.

21.2 Additional Costs. Licensee will reimburse Spök for actual travel and out-of-pocket expenses that Spök incurs in providing Licensee with Support or Services with reimbursement to be on an as-incurred basis. Licensee will also reimburse Spök for all charges incurred in connection with accessing Equipment, if any.

21.3 Taxes. Licensee is responsible for paying all taxes (except for taxes based on Spök's net income or capital stock) relating to this Agreement and payments made under this Agreement. Applicable tax amounts (if any) are NOT included in the fees set forth in this Agreement.

21.4 GST and Other Taxes (applicable to Australia and New Zealand Only).

- i. **GST.** All prices on the Spök Price List do not include any amount for the Goods and Services Tax ("GST"). (As used in this paragraph 21, terms that are defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) ("Act") have the meaning given in that Act.) If a supply under this Agreement is subject to GST, the recipient must pay the supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate. The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax Invoice. If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount. If a party is entitled to be reimbursed or indemnified under this Agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.
- ii. **Other Taxes.** As used in this paragraph 21, "Taxes" means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them except if imposed on, or calculated having regard to, the net income of Spök. If a law requires the Customer to deduct an amount in respect of Taxes from a payment under this Agreement such that Spök would not actually receive on the due date the full amount provided for under this Agreement, then: (i) the Customer agrees to deduct the amount for the Taxes (and any further deduction applicable to any further payment due under clause (iii) below); and (ii) the Customer agrees to pay an amount equal to the amount deducted to the relevant authority in accordance with applicable law and give the original receipts to Spök; and (iii) the amount payable shall be increased so that, after making the deduction and further deductions applicable to additional amounts payable under this clause, Spök is entitled to receive (at the time the payment is due) the amount it would have received if no deductions had been required.

21.5 Late Charges. Licensee will pay each Spök invoice within thirty (30) days of the date of invoice and in any event, on or before the dates specified in this Agreement or the applicable Order Form. Late payments are subject to a late charge equal to the lesser of: (i) one and one-half percent (1½%) per month;

or (ii) the highest rate permitted by applicable law.

- 21.6 **Creditworthiness.** Upon request, Licensee will provide Spök sufficient financial information to enable Spök to determine Licensee's creditworthiness. Spök may withhold delivery of any Products, Support or Services pending credit approval by Spök. Spök may request a current financial statement and/or obtain consumer credit report on Licensee to determine creditworthiness. If Licensee inquires whether a credit report was requested, Spök will provide information of such, if a report was received and the name, address and telephone number of the agency that supplied the report.
- 21.7 **Precedence.** The payment terms in the Agreement, an applicable Order Form or Spök's invoice prevail over any payment terms or other terms or conditions stated on a purchase order or other document from Licensee to place an order.

22. License Term.

- 22.1 **Perpetual License.** The license term for Software identified on a fully executed Order Form as being perpetual will be for a perpetual period of time, but is subject to compliance with this Agreement and may be terminated as provided herein.
- 22.2 **Subscription License.** The license term for Software identified on a fully executed Order Form as being a subscription will be for the initial term identified on the Order Form ("Initial Term"), is subject to compliance with this Agreement, and may be terminated as provided herein.

23. Confidential Information.

- 23.1 Confidential Information means: software code and benchmark tests for the Products, Documentation, Services, and Support; pricing; non-standard Spök contract terms; Permitted User ID (profile) and passwords; Licensee financial information; data; and all other information reasonably believed to be confidential, but excludes:
- a) information made generally available without restriction by the disclosing party or by an authorized third party;
 - b) information known to the receiving party independent of disclosures by the disclosing party;
 - c) information independently developed without access to or use of the disclosing party's Confidential Information; or
 - d) information that must be disclosed pursuant to court order. Licensee's Confidential Information also excludes any new features or functionality suggested by Licensee for the Products.
- 23.2 The parties will use reasonable efforts to keep each other's Confidential Information secret and will use that information only to fulfill the rights and obligations under this Agreement.
- 23.3 The parties will have the right of injunctive relief to maintain compliance with this Section 23 and to prevent unauthorized disclosure, use or export of the Products or other Confidential Information.

24. Governing Law.

United States, Mexico, South America and Central America

If Licensee is a legal entity formed in the United States, Mexico, or any South American or Central American country this Agreement shall be governed by and construed in accordance with the substantive laws of the State of Delaware, U.S.A. without regard to the conflict of laws provisions thereof and without regard to the UN Convention on Contracts for the International Sale of Goods (CISG). The parties agree that the state and federal courts sitting in the State of Delaware, U.S.A. will have exclusive jurisdiction over any claim arising out of this agreement and each party consents to the exclusive jurisdiction of such courts.

Canada

If Licensee is a legal entity formed in Canada this Agreement shall be governed by and construed in accordance with the substantive laws of Province of British Columbia without regard to the conflict of laws provisions thereof and without regard to the UN Convention on Contracts for the International Sale of Goods (CISG). The parties agree that the provincial and federal courts sitting in the Province of British Columbia will have exclusive jurisdiction over any claim arising out of this agreement and each party consents to the exclusive jurisdiction of such courts.

Australia and New Zealand

If Licensee is a legal entity formed in Australia or New Zealand this Agreement shall be governed by and is construed in accordance with the laws applicable in Western Australia without regard to the conflicts of laws provisions thereof and without regard to the UN Convention on Contracts for the International Sale of Goods (CISG). Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

Asia and Oceania (other than Australia and New Zealand)

If Licensee is a legal entity formed in Asia or in the Pacific region this Agreement shall be governed by and is construed in accordance with the laws of Singapore without regard to the conflicts of laws provisions thereof and without regard to the UN Convention on Contracts for the International Sale of Goods (CISG). Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Singapore and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

United Kingdom

If Licensee is a legal entity formed in the United Kingdom this Agreement shall be governed by and is construed in accordance with the laws of England and Wales without regard to the conflicts of laws provisions thereof and without regard to the UN Convention on Contracts for the International Sale of Goods (CISG). Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of England and Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

Europe (excluding the United Kingdom and including Russia and Turkey), Middle East and Africa

If Licensee is a legal entity formed in a European, Middle Eastern, African country then this Agreement shall be governed by and construed in accordance with the laws of England and Wales without regard to the conflict of laws provisions thereof and without regard to the UN Convention on Contracts for the International Sale of Goods (CISG). Any dispute arising out of or relating to this Agreement will be finally resolved by a panel of three arbitrators in accordance with the Rules for Arbitration of the London Court of International Arbitration. Judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction. The language of arbitration shall be English. Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party may also, without waiving any remedy under this agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the arbitrator's determination of the merits of the controversy.

Other Locations

If Licensee is a legal entity formed in countries not identified above, this Agreement shall be governed by and construed in accordance of the substantive laws of the State of Delaware, U.S.A. without regard to the conflict of laws provisions thereof and without regard to the UN Convention on Contracts for the International Sale of Goods (CISG). The parties agree that the state and federal courts sitting in Delaware, U.S.A. will have exclusive jurisdiction over any claim arising out of this agreement and each party consents to the exclusive jurisdiction of such courts.

25 Miscellaneous.

- 25.1 Publicity. Either party may publicize Licensee's selection of Spök. Specific prices and non-standard Spök contract terms will remain confidential under Section 23 above.
- 25.2 Jury Trial. Spök and Licensee each waive right to a trial by jury. No litigation or other legal action may be brought if the injured Party has known of the cause of action for more than two years. Each party will pay (without reimbursement) its own legal fees and expenses incurred in any dispute.
- 25.3 Effect of Termination. Upon any termination or expiration of this Agreement or any Order Form: (a) Licensee's rights under the License end (exclusive of the Licensee's right to use a license for Perpetual Software unless terminated under either Sections 9.2(b) or 9.2(c)), (b) the warranties and obligations to provide Support and Services end, and (c) the provisions of the Agreement concerning protection of intellectual property rights and Confidential Information survive.
- 25.4 No Hire of Certain Employees. Subject to applicable law, Licensee agrees that until one (1) year after the later of (a) the termination and non-renewal of the Maintenance and Support Term or (b) the completion of Services, Licensee will not hire, employ or contract for services with any employee of Spök who provides Support or Services to Licensee. If Licensee violates this Section 25.4, Licensee will pay Spök a fee of two times each hired employee's or contractor's most recent annual compensation.
- 25.5 Intellectual Property Rights. Spök retains all intellectual property rights in the Products and any improvements, modifications or derivative works thereof, as well as in the Services. Any and all feedback that Licensee provides to Spök regarding Spök products shall become the exclusive property of Spök without any payment, accounting, remuneration, or attribution to Licensee. "Feedback" means information provided, in any manner, by or on behalf of Licensee with respect to any Spök product or service or their enhancement, customization, configuration, installation, or implementation, including but not limited to ideas, concepts, suggestions, materials, functions, methods, processes, and rules.

26. U.S. Government Restricted Rights. Use, duplication or disclosure by the Government is subject to restrictions set form in subparagraphs (a) through (d) of the Commercial Computer-Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Product clause in DFARS 252.227-7013, or subdivision (c)(1) and (c)(2) of the Commercial Computer Product-Restricted Rights clause at 48 CFR 52,227-19, as applicable, and in similar clauses in the NASA FAR Supplement.

27. Anti-corruption.

- 27.1 Compliance with Anti-Corruption Laws. In performing under this Agreement, Licensee agrees to comply with all applicable anti-corruption laws, including, without limitation: the U.S. Foreign Corrupt Practices Act, 15 U.S.C. Section 78dd-1, et. seq. and its implementing regulations (the "FCPA"), the UK Bribery Act 2010, all other applicable anti-corruption laws, and all laws enacted to implement the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions.
- 27.2 Definitions. (A) Government Official means any official, officer, employee, representative, or family member of: (i) any federal, state, provincial, county or municipal government or any department or agency thereof; (ii) any public international organization or any department or agency thereof; or (iii) any company or other entity owned or controlled by any government. (B) Other Covered Party means any political party or party official, or any candidate for political office.
- 27.3 Warranties and Representations: Licensee warrants and represents to Spök that neither Licensee nor any of its officers, directors, employees, agents or other representatives in connection with any transaction made or to be made in connection with this Agreement, has or will pay, offer or promise to pay, or authorize the payment of, any money, or give or promise to give, or authorize the giving of any services or anything else of value, either directly or through a third party, to any Official or Other Covered Party for the purpose of (i) influencing any act or decision of the Government Official or Other Covered Party; (ii) inducing Government Official or Other Covered Party to do or omit do an act in violation of a lawful duty; (iii) securing any improper advantage.; or (iv) inducing the Government Official or Other Covered Party to influence the act or decision of a government or government instrumentality, in order to obtain or retain business, or direct business to, any person or entity, in any way related to this Agreement.
- 27.4 Third Party. Any third party who represents Licensee in connection with, or who will be involved in performing this Agreement or any related activity, shall certify to comply with all applicable anti-corruption laws and the obligations set forth in this Section prior to any involvement in this Agreement or related activity.
- 27.5 Conflict of Interest. Licensee is not aware of any Government Official or Other Covered Party having any financial interest in the subject matter of this Agreement or in any way personally benefiting, directly or indirectly, from this Agreement.
- 27.6 No political or charitable payments. No political contributions or charitable donations shall be given, offered, promised or paid at the request of any Government

Official or Other Covered Party that is in any way related to this Agreement or any related activity, without Spök's prior approval.

- 27.7. **Accounting.** Licensee agrees that it will maintain accurate and complete books and records of its receipts and expenses having to do with this Agreement in accordance with generally accepted accounting principles and the Foreign Corrupt Practices Act.
- 27.8. **Expenditures.** Licensee warrants that it will not pay any expenses of a Government Official in an amount in excess of \$100 without Spök's prior approval. Notwithstanding the foregoing, any payment of any amount which is made to pay the expenses of a Government Official is expressly prohibited if such payment is made with the intent to influence an action of a Government Official. Licensee further warrants that it will maintain all documentation and receipts for any expenses of Government Officials that it has paid.
- 27.9. **Certification of Compliance.** Within thirty days of a request by Spök, Licensee will confirm its compliance with the terms and conditions of this Section 27. Absent a reasonable suspicion of violation, Spök shall not issue such request more frequently than once every calendar year,
- 27.10 **Breach.** If Licensee breaches, or Spök reasonably suspects that Licensee has breached or will breach, any of the covenants set forth in this Section 27, (i) this Agreement shall become void; (ii) Spök shall have a right of action against Licensee for the amount of any monetary payment or thing of value made or given by Licensee in breach of any of such covenants; (iii) all obligations by Spök to pay any compensation to Licensee shall cease immediately; and (iv) Spök may at its sole discretion, rescind this Agreement and Licensee shall immediately return to Spök (A) all Products received from Spök and (B) any fees paid to Licensee arising from any transaction in violation of this Section 27.
- 27.11 **Notification of Investigation.** Licensee warrants that it shall promptly, but in no event longer than five (5) business days, notify Spök if Licensee or any third party employee, director or officer becomes subject to any investigation for corruption conduct during the course of this Agreement.
- 28. Export Controls.** Spök Products and its related documentation may not be exported or reexported in violation of the U.S. Export Administration Act of 1979 (P.L. 96-72) and its implementing regulations, the U.S. Foreign Corrupt Practices Act (15 U.S.C. § 78dd-1, et seq.) and its implementing regulations, or any other applicable laws (including commercial bribery laws), rules and regulations. Licensee shall bear all expenses relating to any necessary licenses and/or exemptions with respect to the export from the United States of the Products to any location so as to be in compliance with all applicable laws, rules and Regulations.
- 29. Entire Agreement.** This Agreement and any Order Forms executed between the parties contains the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications between the parties about its subject matter. Any purchase order or similar document, which may be issued by Licensee in connection with this Agreement does not supplant this Agreement. No modification of this Agreement will be effective unless it is in writing and signed by each party.
- 30. Sales by Authorized Spök Alliance Partners.** The Delivery and Installation (section 4), Services (section 5), Maintenance and Support Services (section 6), Remedies subsections 9.1 and 9.2(a-b), Notices (section 11), Payment and Taxes (section 21), and Entire Agreement (section 29) sections do not apply when the Licensee is acquiring Spök product(s) through an authorized member of Spök's Alliance Partner network when such authorized alliance partner is directly providing Licensee with Maintenance Services and Support and/or other professional services.