

## SOFTWARE SUBSCRIPTION AGREEMENT

### LANSA, Limited

26-30 Upper Marlborough Road  
St Albans, Hertfordshire AL1 3UU

BY PROCEEDING TO DOWNLOAD, INSTALL OR USE THE SOFTWARE IN WHICH THIS AGREEMENT IS ELECTRONICALLY EMBEDDED OR BY OBTAINING A LICENCE KEY FOR THIS SOFTWARE, YOU HEREBY ACKNOWLEDGE AND AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, THEN CLICK "DO NOT ACCEPT," DO NOT INSTALL OR USE THE SOFTWARE AND DELETE THE SOFTWARE FROM YOUR COMPUTER SYSTEM. BY INSTALLING OR USING THE SOFTWARE OR BY CLICKING ON "ACCEPT" YOU ACKNOWLEDGE AND AGREE THAT ON BEHALF OF YOURSELF AND YOUR EMPLOYER YOU HAVE READ THIS SOFTWARE LICENCE AGREEMENT CAREFULLY, THAT YOU AND YOUR EMPLOYER AGREE TO BE BOUND BY THIS AGREEMENT AND THAT IF APPLICABLE YOUR EMPLOYER HAS INFORMED YOU OF THE RELEVANT PROVISIONS OF THIS AGREEMENT WHICH MAY BE APPLICABLE TO YOU. THIS AGREEMENT, SHALL GOVERN YOUR INSTALLATION AND USE OF THE SOFTWARE IN WHICH THIS AGREEMENT IS ELECTRONICALLY EMBEDDED. LANSA URGES YOU TO CAREFULLY READ THIS AGREEMENT AND ASSESS YOUR USE OF THE SOFTWARE PRIOR TO INSTALLING OR USING THE SOFTWARE OR MAKING ANY DECISION TO USE OR PURCHASE IT.

THIS SOFTWARE LICENCE AGREEMENT, is dated as of the date of, in the case of any Evaluation Software (as defined in Section 16 below), the date of Customer's acquisition of a Licence Key, or in the case of any purchase of a Licence for use of the Licenced Software (as defined below), the date of the Purchase Order (as defined below) pursuant to which such Licence is purchased, is between LANSA, Limited, a company registered in England and Wales with registered number 2447383 ("LANSA"), and, in the case of any Evaluation Software, the customer to whom temporary Licences Keys are delivered or, in the case of any purchase of a Licence for use of the Licenced Software, the customer set forth on the purchase order pursuant to which such Licence is purchased (in each case, herein "Customer"), and sets forth the terms and conditions whereby LANSA agrees to provide to Customer and Customer agrees to acquire from LANSA one or more limited Licences to install and use certain software and use certain documentation and maintenance services related thereto, owned or Licenced by LANSA, as set forth on the Purchase Order (as defined below) pursuant to which Customer agrees to subscribe to the Products Licenced hereby, which is hereby incorporated herein by reference and made a part of this Agreement. To the extent any terms or conditions contained in the Purchase Order conflict with the terms or conditions contained in this Agreement, the terms and conditions of the Purchase Order shall supersede only those conflicting terms or conditions contained in this Agreement and only to the minimum extent necessary to harmonize the terms in such Purchase Order with the terms contained herein. The Purchase Order together with the terms and conditions of this Agreement, shall constitute and be construed as a single agreement consisting of the terms and conditions contained in the Purchase Order together with the terms of this Agreement. This Agreement specifically supersedes and replaces the terms and conditions of all prior agreements between LANSA and Customer, including, but not limited to, any shrink-wrap agreements, click-wrap agreements or demo or trial agreements which may accompany or are embedded in LANSA's products or which have been previously in force between the parties. If Customer is evaluating Evaluation Software (as defined in Section 16 below), then only the terms and conditions of Section 16 below (including those Sections of this Agreement incorporated therein by reference) will govern Customer's temporary use of such Evaluation Software (and no other terms of this Agreement shall apply to Customer or govern Customer's use of Evaluation Software) and upon purchase of a commercial Licence for such Evaluation Software, this entire Agreement, exclusive of Section 16, shall apply to Customer and govern all use of the Licenced Material (as defined below). In consideration of the mutual promises and agreements contained herein, the parties hereto also agree as follows:

## GENERAL TERMS AND CONDITIONS

### 1. Definitions –

- (a) "Agreement" means this software subscription agreement, together with all Exhibits, Schedules, Annexes, Purchase Orders made a part hereof in accordance with the terms of this Agreement and all amendments, modifications, supplements and alterations thereto effected in accordance with the terms of this Agreement.
- (b) "CLU" means (i) with respect to non-virtual environments, one (1) physical CPU Unit as calculated pursuant to Section 2(c) below; and (ii) with respect to virtual environments, up to four (4) virtual CPUs allocated to a virtual machine as calculated pursuant to Section 2(c) below.
- (c) "Confidential Information" means all technical and non-technical information in both tangible and intangible form, including, but not limited to, product design information, software code, technical information, customer information, discounting, cost and pricing information, financial information and the results derived from or methodology employed by Customer in conducting any benchmark testing of the Licenced Software; provided that the term "Confidential Information" shall not include information which the recipient can show by reasonable proof (i) to have been known by the recipient prior to the time of disclosure by the disclosing party, (ii) to have become part of the public domain through no fault or breach of this Agreement by the recipient, (iii) to have been disclosed to the recipient in good faith by a third party who is not under any obligation of confidence or secrecy to the disclosing party at the time such third party discloses the information to the recipient or (iv) to have been compelled to be produced by a court of competent jurisdiction, provided that the recipient shall first give notice to the disclosing party of any such request or order of the court to give the disclosing party an opportunity to contest or limit said request or order of the court.
- (d) "CPU" means the logic circuitry that responds to and processes the instructions that run a computer and/or that access or runs the Licenced Software and each CPU may be comprised of multiple processing cores, each of which may be configured to independently act as an individual CPU and shall, when so configured, be deemed a separate CPU under this definition for purposes of this Agreement.
- (e) "Error" means any error, defect or omission that (i) is discovered in the Licenced Software, (ii) is reproducible and (iii) prevents its operation substantially in accordance with the Licenced Documentation.
- (f) "Licenced Documentation" means the published user manuals that LANSA makes generally available for the Licenced Software.
- (g) "Licenced Material" means the Licenced Software and the Licenced Documentation.
- (h) "Licenced Software" means the machine-readable object code version of (i) the software specified on each Purchase Order, whether embedded on disc, tape, internet download site or other media and (ii) all Updates for the Licenced Software that Customer is entitled to receive in connection with its receipt of Maintenance Services pursuant to Section 4 of this Agreement.
- (i) "Licence Term" means (A) the initial period of time (the "Initial Term") (i) specified on the Purchase Order pursuant to which Customer agreed to lease the Licenced Material or (ii) to the extent no such initial period is specified on the Purchase Order, a one-year period of time, in each case commencing on the Effective Date and (B) all subsequent renewals and extensions thereof effected in accordance with the terms of this Agreement (each, a "Renewal Term").

- (j) "Maintenance Services" means the technical support services provided by LANSA pursuant to Section 4 hereof.
- (k) "Monitored Element" or "Monitored Device" means a physical server, virtual server, network device or any system or device with an IP address.
- (l) "Purchase Order" means (i) LANSA's standard price quote, purchase order, order form or purchase confirmation (including any purchase confirmation delivered electronically through an online store owned or controlled by LANSA or its subsidiaries), as such document may be amended, supplemented or modified from time to time in accordance with this Agreement or (ii) any other non-LANSA price quote, purchase order, order form or purchase confirmation delivered by Customer to LANSA but solely to the extent permitted by and delivered in accordance with Section 15.
- (m) "Update" means any revision, enhancement, improvement or modification to or programming fix for the Licenced Software or Licenced Documentation which LANSA makes generally available, incorporates into and makes a part of the Licenced Software or Licenced Documentation and does not separately price or market.

## 2. LICENCE –

- (a) **Use** – Subject to the terms and conditions of this Agreement, including, but not limited to the applicable licensing restrictions set forth in Section 2(b) below, and subject further to Customer's full compliance herewith and according to the scope, time period and other terms indicated on the applicable Purchase Order delivered in connection with this Agreement, LANSA hereby grants Customer and Customer hereby accepts from LANSA, a limited, non-exclusive and non-transferable right and Licence during the Licence Term to install the Licenced Software for internal business purposes only on computer hardware that is owned or operated by or on behalf of Customer and to access and use the Licenced Material subscribed to by Customer in accordance with the applicable restrictions and conditions contained in this Agreement and to copy the Licenced Material as permitted by this Agreement. Customer's right to use the Licenced Material shall extend to use by third parties under written agreement with Customer to provide outsourcing services for Customer's own internal business operations; provided, that (i) such third parties have agreed to abide by the terms of this Agreement and (ii) Customer shall remain primarily liable for all acts and omissions by such third parties. Upon expiration of the Licence Term this Agreement and all rights and Licences granted under this Agreement shall automatically terminate.
- (a) **Licence Usage and Restrictions** – Customer acknowledges and agrees that, as between Customer and LANSA, LANSA or its subsidiaries owns and shall continue to own all right, title, and interest in and to the Licence Material, including associated intellectual property rights under copyright, trade secret, patent, or trademark laws. This Agreement does not grant Customer any ownership interest in or to the Licenced Material, but only a limited right and Licence to install and use the Licence Software and to use the Licenced Materials in accordance with the terms of this Agreement and each applicable Purchase Order. Customer further acknowledges and agrees that the Licence granted hereunder shall expire automatically upon expiration or termination of the Licence Term and the restrictions applicable to Customer's installation and use of the Licence Software will vary according to the type of Licenced Software purchased by Customer and the type of Licence purchased by Customer. One or more of the restrictions set forth in this Section 2 may apply to the Licenced Software depending upon the type of Licenced purchased and the terms contained in the applicable Purchase Order relating to the Licenced Software. Customer is encouraged to carefully review all terms and restrictions contained in this Section 2 and each Purchase Order. Customer hereby agrees to the following Licence restrictions and conditions applicable to the Licenced Software as set forth in the Purchase Orders delivered by Customer under this Agreement:

by Customer on a "per-server" basis, Customer may install, operate and use such Licenced Software on the single server identified to LANSA per licence purchased by Customer;

- (ii) For all Licenced Software made generally available by LANSA on a "per-instance" basis and Licenced hereunder by Customer on a "per-instance" basis, Customer may install, operate and use such Licenced Software on one (1) instance per Licence purchased by Customer;
- (iii) For all Licenced Software made generally available by LANSA on a "per-server" basis and Licenced hereunder by Customer on a "per-server" basis, Customer may install, operate and use such Licenced Software on one (1) physical or one (1) virtual server per Licence purchased by Customer;
- (iv) For all Licenced Software made generally available by LANSA on a "per-user" or "per-seat" basis and Licenced hereunder by Customer on a "per-user" or "per-seat" basis, Customer may install and operate such Licenced Software on any number of physical servers or virtual servers or install and use any number of instances of the Licenced Software but Customer shall not access and use such Licenced Software by more than one (1) user per Licence purchased by Customer;
- (v) For all Licenced Software made generally available by LANSA on a "per-Monitored Element" or "per-Monitored Device" basis and Licenced hereunder by Customer on a "per-Monitored Element" or "per-Monitored Device" basis, Customer may install, operate and use such Licenced Software to monitor one (1) Monitored Element or Monitored Device per Licence purchased by Customer;
- (vi) For all Licenced Software expressly specified in a Purchase Order as a "Site-Licence," Customer may install, operate and use the Licenced Software on any number of instances, CPUs, seats, workstations, physical servers or virtual servers physically located at the building or computing facilities specified in the Purchase Order by address as the site and may do so with any number of users or seats;
- (vii) For all Licenced Software expressly specified in a Purchase Order as an "Enterprise-Licence," Customer may install, operate and use the Licenced Software on any number of instances, CPUs, physical servers or virtual servers and may do so with any number of users or seats; provided, that periodically upon LANSA's written request Customer shall provide LANSA with a written report evidencing actual installation and usage of the Licence Software and pay for all excess Licence usage in accordance with the terms of LANSA's standard true-up addendum (the terms of which are incorporated herein by reference upon Customer purchasing such enterprise Licence);
- (viii) For all Licenced Software made generally available by LANSA on a "per-CLU" basis and Licenced hereunder by Customer on a "per-CLU" basis (each, a "CLU Licence"), Customer may install, operate and use such Licenced Software on one (1) CLU per Licence purchased by Customer and the additional terms and conditions set forth in Section 2(c) below shall apply;
- (ix) For all Licenced Software made generally available by LANSA on a "single seat" or "workstation" basis and Licenced hereunder by Customer on a "single seat" or "workstation" basis (a "Single Seat Licence" or "Workstation Licence"), Customer may install and operate such Licenced Software on one (1) computer for use by one (1) end user;

- (x) For all Licenced Software made generally available by LANSa on a "concurrent users" basis (each, a "Concurrent Licence") and Licenced hereunder by Customer as a Concurrent Licence, Customer may install and operate such Licenced Software to be used concurrently on different computers by up to the authorized number of users for which Customer has purchased a Licence;
  - (xi) For all Licenced Software made generally available by LANSa on a "network named user" or "named user" basis and Licenced hereunder by Customer on a "network named user" or "named user" basis (a "Network Named User Licence" or "Named User Licence"), Customer may install and operate such Licenced Software on one or more computers and designate one (1) person in Customer's organization (the "Named User") who shall have the right to use the Licenced Software, provided that only the Named User uses the Licenced Software;
  - (xii) For all Licenced Software made generally available by LANSa on a "CPU" basis and Licenced hereunder by Customer on a "CPU" basis (a "CPU Licence"), Customer may install and operate such Licenced Software on any number of computers, provided that at no time may the Licenced Software be used to monitor more than the authorized number of CPUs for which Customer has purchased a Licence;
- (b) **Additional Terms Governing CLU Licences** – The following additional terms and conditions contained in this Section 2(c) shall apply to all Licenced Software Licenced to Customer by LANSa on a per-CLU basis.
- (i) In non-virtual environments, the total physical CPUs each requiring an individual CLU Licence is calculated as the sum of (A) the number of Licenced physical CPU sockets on the system motherboard that are populated with physical CPUs, each of which may have up to four (4) cores without requiring an additional CLU Licence in respect of Excess Cores (as defined below) as provided in clause (B) below (such initial four cores, the "Base Cores"), and (B) the sum of all Excess Cores calculated in accordance with this Section 2(c)(i). The term "Excess Cores" means, with respect to each physical CPU populated in a socket, the quotient of the aggregate number of all additional cores in excess of the Base Cores for such CPU divided by four (4) and rounded up to the nearest whole number. For example, if there is a two-socket server with each physical CPU socket populated with an eight-core processor, four (4) Physical CPU Units are counted (two in respect of the physical CPUs and two in respect of the cores in excess of the Base Cores per CPU) and four (4) CLU Licences for the Licenced Software are required. If there is a two-socket server with each physical CPU socket populated with a six-core processor, four (4) Physical CPU Units are counted (two in respect of the physical CPUs and two in respect of the cores in excess of the Base Cores per CPU) and four (4) CLU Licences for the Licenced Software are required.
  - (ii) In virtual environments, a virtual CPU requiring an individual CLU Licence is defined as up to four (4) virtual CPUs allocated to a virtual machine. For example, if four (4) virtual CPUs are allocated to a virtual machine, four (4) Virtual CPU Units are counted and one (1) CLU Licence for the Licenced Software is required. If seven (7) virtual CPUs are allocated to a virtual machine, seven (7) virtual CPUs are counted and two (2) CLU Licences for the Licenced Software are required.
- (c) **Copies & Disaster Recovery** -- Customer may make a reasonable number of back-up archival copies of the Licenced Software. In the event of any outage that results in the complete failure of the computer system upon which Customer has installed the Licenced Software, Customer's right to use the Licenced Software shall include, during the pendency of such outage, the temporary right to use the Licenced Software in a replacement computing

environment substantially similar to the original computing environment upon which the Licenced Software was installed immediately prior to such outage. Customer shall reproduce all confidentiality and proprietary notices on each of the copies permitted hereunder and maintain an accurate record of the location of each of the copies. Customer shall not otherwise copy or duplicate the Licenced Material. Customer shall not reverse engineer, disassemble, translate, modify, adapt, or decompile the Licenced Material or apply any procedure or process to the Licenced Material in order to ascertain, derive, and/or appropriate the source code or source listings for the Licenced Software or any trade secret or other proprietary information contained in the Licenced Software.

- (d) **Other Services** – All Licences and Maintenance Services purchased by Customer in respect of the Licenced Material shall be governed by this Agreement, together with the applicable Purchase Orders delivered hereunder. Unless otherwise agreed by the parties in writing, all other services purchased by Customer in respect of the Licenced Software, if any, including implementation services, training services and professional services (collectively, "Ancillary Services"), shall be governed solely by a separate written mutually acceptable services agreement entered into by the parties or, in the absence of such agreement, LANSa's standard professional services agreement, and acceptance of the Licenced Material shall not be contingent upon Customer's acceptance of any such Ancillary Services.

### 3. DELIVERY AND PAYMENT TERMS –

- (a) **Delivery** – All Licenced Material shall be delivered by LANSa to Customer via electronic delivery using a secure internet download site. Ownership of all Licences purchased hereunder and risk of loss for the related Licenced Materials shall be deemed to have passed to Customer once LANSa has made the Licenced Material available for download by Customer, notified Customer of the availability of the Licenced Material for download and provided Customer with all Licence Keys necessary for the installation and operation of the Licenced Software.
- (b) **Payment** -- Upon delivery of a Purchase Order by Customer, LANSa shall deliver an invoice to Customer specifying the subscription Licence fees and Maintenance Services fees payable for the Initial Term. Customer shall pay all Licence fees and Maintenance Services fees specified in each invoice within thirty (30) days of Customer's receipt of such invoice. In the event that Customer elects to pay any fees due hereunder with a credit card, (i) Customer is required to provide LANSa with a valid form of credit card payment and to keep all such credit card information current and accurate in respect of all renewal fees, (ii) Customer shall promptly notify LANSa if its credit card has changed or has been declined and (iii) Customer hereby consents to LANSa automatically processing and charging all fees due by Customer hereunder, including all renewal subscription fees, to the credit card submitted by Customer. All fees payable by Customer in respect of any Ancillary Services may be separately invoiced. Customer's payment obligation with respect to all Licence fees and Maintenance Services fees owing hereunder shall be independent of the provision of Ancillary Services, whether or not such Ancillary Services are separately invoiced. Any late payment of any amount owing hereunder shall accrue interest at a rate equal to the lesser of (i) 8% above the Bank of England base rate per annum and (ii) the maximum rate permitted by law.
- (c) **Taxes** – All payments referred to in this Agreement are exclusive of any national, European Union, value added tax, sales tax and any other applicable taxes, duties or imposts which (with the exception only of those based on LANSa's income) shall also be payable by Customer in accordance with applicable law.

4. **MAINTENANCE** – LANSa does not warrant that the Licenced Software will operate error-free or may be used error-free. With respect to the Licenced Software specified in each Purchase Order, upon Customer's payment of the Licence fees associated with such Licenced Software, as specified in each Purchase Order, LANSa shall provide Maintenance Services for such Licenced Software during the Licence Term in accordance EMEA Subscription SLA Ver. 120821

with this Section 4 and in accordance with the additional Maintenance Services terms specified in such Purchase Order. Maintenance Services includes problem determinations, reasonable problem resolutions, provisioning of software program temporary fixes and new releases. Maintenance Services shall also include any additional Maintenance Services terms specified in the Purchase Order pursuant to which Customer purchased a Licence to use the Licenced Software. Maintenance Services shall be provided in accordance with the additional Maintenance Services terms specified in such Purchase Order. Maintenance Services shall entitle Customer to receive, at no additional cost, all Updates.

**5. PROPRIETARY RIGHTS** – Customer shall not acquire, by virtue of this Agreement, any right or Licence other than as expressly provided herein. Customer shall not reproduce the Licenced Material or other confidential or proprietary information of LANSa, except as provided in this Agreement. All proprietary rights in and to the Licenced Material and all Evaluation Software (as defined in Section 16 below), all derivatives, translations, modifications, adaptations, improvements, enhancements or developments thereof and all confidential or proprietary information of LANSa, including without limitation, all rights under and with respect to patents, copyrights, trademarks and rights under the trade secret laws of any jurisdiction shall remain the sole property of LANSa or its applicable licensor, whether recognized by or perfected under applicable local law. Customer shall promptly notify LANSa of any infringement of LANSa's proprietary rights of which it becomes aware.

## **6. LIMITED WARRANTIES**

(d) **Warranty** - LANSa warrants to Customer that during the first thirty (30) days of the Initial Term (the "Warranty Period") the Licenced Software shall perform substantially as described in the accompanying Licenced Documentation. LANSa does not warrant that (i) the Licenced Software will satisfy or may be customized to satisfy any of Customer's requirements or any other particular use or (ii) the use of the Licenced Software will be uninterrupted or error-free. Laws from time to time in force may imply warranties that cannot be excluded or can only be excluded to a limited extent. This Agreement shall be read and construed subject to any such statutory provisions.

(e) **Remedies** – If (i) at any time during a Licence Term, the Licenced Software contains Errors which make the Licenced Software unable to perform substantially as described in the accompanying Licenced Documentation or (ii) during the Warranty Period, LANSa breaches the warranty set forth in clause (a) above, then Customer shall promptly notify LANSa of such Error or breach and LANSa shall (A) use all commercially reasonable efforts to correct such Error or breach within thirty (30) days of notification or (B) provide Customer within thirty (30) days of notification with a plan acceptable to Customer for correcting such Error or breach. If such Error or breach is not corrected or if an acceptable plan for correcting such Error or breach is not established within such thirty (30) day period, LANSa shall replace the defective Licenced Software or, if not practicable, accept the return of the defective Licenced Software and refund to Customer the pro rata pre-paid amount for the remaining portion of the Initial Term or Renewal Term, as applicable. LANSa's obligations under this Section 6(b) shall be waived in the event such Error or breach is due to (I) any defect in or misconfiguration of the computer hardware upon which the Licenced Software is installed, (II) improper handling or use of the software media by Customer, or (III) an unauthorized alteration, revision or configuration of the Licenced Software or to Customer's computer system by Customer or its employees. Customer acknowledges that this Section 6(b) sets forth Customer's sole and exclusive remedy, and LANSa's and its authorized representatives' sole and exclusive liability, for any breach of warranty, Error or failure of the Licenced Software to function properly.

(f) **Disclaimer** - EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO THE LICENCED MATERIAL, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY LANSa OR ITS

**AUTHORIZED REPRESENTATIVES OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF SATISFACTORY QUALITY, FREE FROM DEFECT, CONFORMITY WITH DESCRIPTION, SALE BY SAMPLE, OR FITNESS FOR PARTICULAR PURPOSE) ARE HEREBY OVERRIDDEN AND DISCLAIMED.**

## **7. INDEMNITY**

(a) **Indemnity** – Subject to this Section 7 and Section 8 below, LANSa agrees to indemnify, defend and hold harmless Customer from and against all claims, damages, losses, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) arising out of any claim by a third party asserting that the Licenced Material or any of Customer's use thereof, infringes upon any third party's patent, copyright or trademark, provided that (i) Customer promptly notifies LANSa in writing no later than thirty (30) days after Customer's notice of any potential claim, (ii) Customer permits LANSa to defend, compromise or settle the claim, and provided further that no settlement intended to bind Customer shall be made without Customer's prior written authorization and (iii) Customer gives LANSa all available information, reasonable assistance, and authority to enable LANSa to do so.

(b) **Alternative Remedy** - If a claim described in Paragraph 7(a) may or has been asserted, Customer will permit LANSa, at LANSa's option and expense, to (i) procure the right to continue using the Licenced Material, (ii) replace or modify the Licenced Material to eliminate the infringement while providing functionally equivalent performance or (iii) accept the return of the Licenced Material and refund to Customer the pro rata pre-paid amount for the remaining portion of the Initial Term or Renewal Term, as applicable.

(c) **Limitation** - LANSa shall have no indemnity obligation to Customer hereunder if the violation or infringement claim results from (i) a correction or modification of the Licenced Material not provided by LANSa or its authorized representative, (ii) the failure to promptly install an Update, (iii) the combination of the Licenced Software with other non-LANSa software and (iv) continuing the allegedly infringing activity after receiving written notice of such infringement claim from LANSa.

**8. NO CONSEQUENTIAL DAMAGES - UNDER NO CIRCUMSTANCES WILL LANSa OR ITS AUTHORIZED REPRESENTATIVES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS BY CUSTOMER OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, PROFITS, USE OF MONEY OR USE OF THE LICENCED MATERIAL, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, BREACH OF ANY INTELLECTUAL PROPERTY RIGHT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, EXCEPT ONLY IN THE CASE OF PERSONAL INJURY WHERE AND TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY INCURRED IN ANY ACTION OR PROCEEDING AGAINST LANSa OR ITS AUTHORIZED REPRESENTATIVE EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE SPECIFIC LICENCED SOFTWARE THAT DIRECTLY CAUSED THE DAMAGE.**

## **9. CONFIDENTIALITY**

(a) **Confidentiality.** – Customer acknowledges that the Licenced Materials incorporate confidential and proprietary information developed or acquired by or Licenced to LANSa and that all results of testing of the Licenced Software, whether performed by Customer or another third party, are confidential. In no event will Customer publish or disclose the results of any testing or performance specifications of the Licenced Software without LANSa's express prior written consent. A party that receives Confidential Information (the "Receiving Party") from the other party (the "Disclosing Party") shall not: (i) export or re-export (within the meaning of US laws or other export control laws or regulations)

any Confidential Information, except in strict compliance with US laws; (ii) reverse engineer any Confidential Information; or (iii) disclose or make available the Disclosing Party's Confidential Information to any of the Receiving Party's employees, agents, contractors or consultants or to any third parties, except those that have agreed in writing to be bound by terms and conditions substantially similar to, and no less restrictive with respect to limitations on use and disclosure, than those contained in this Agreement and each of which have a "need to know" in order to carry out the purposes set forth in this Agreement. Each party shall take all reasonable precautions necessary to safeguard the confidentiality of all Confidential Information disclosed by the other party, including those precautions (A) taken by the disclosing party to protect its own Confidential Information and (B) which the disclosing party or its authorized representative may reasonably request from time to time. Neither party shall allow the removal or defacement of any confidentiality or proprietary notice placed on the Confidential Information disclosed by the disclosing party. The placement of copyright notices on Confidential Information shall not constitute publication or otherwise impair their confidential nature of such information.

- (b) **Disclosure** - If an unauthorized use or disclosure of the disclosing party's Confidential Information occurs within the recipient party's enterprise, the recipient party will immediately notify the disclosing party or its authorized representative and take, at recipient party's expense, all steps which may be available to recover such Confidential Information and to prevent its subsequent unauthorized use or dissemination.

**10. TERMINATION** – Upon 30-days prior written notice to LANSA, Customer may terminate this Agreement; provided, however that Customer shall not be entitled to a refund (except as expressly set forth in Section 6(b) and 7(b)) of any amounts paid or a release from or cancellation, waiver or novation of any amount payable, and all such amounts payable or promised to be paid through the Licence Term shall automatically accelerate and be immediately due and payable and shall survive such termination of this Agreement. If Customer or any of Customer's employees, consultants, authorized representatives or permitted third parties breach any term or condition of this Agreement, LANSA may terminate this Agreement, without judicial or administrative resolution or obligation to refund. This Agreement will terminate automatically if Customer ceases to do business, becomes insolvent, goes or is put into receivership or liquidation, passes a resolution for its winding up (other than for the purpose of reconstruction or amalgamation) or for any of the foregoing, makes an arrangement for the benefit of its creditors, enters into bankruptcy, suspension of payments, moratorium, reorganization or any other proceeding that relates to insolvency or protection of creditors' rights or takes or suffers any similar action in consequence of debt. Upon the termination of this Agreement for any reason and upon expiration of the Licence Term, all rights granted to Customer hereunder will cease, and Customer will promptly (i) purge the Licenced Software and any related Updates from all of Customer's computer systems, storage media and other files, (ii) destroy the Licenced Material and all copies thereof and (iii) deliver to LANSA an affidavit certifying that Customer has complied with these termination obligations. The provision of Sections 1, 3, 8 through 15 and 17 shall survive the termination of this Agreement.

**11. EXPORT RESTRICTIONS** - Customer shall ensure that, with respect to the Licenced Materials and all related technical information, documents and materials, it shall not directly or indirectly breach or compromise compliance with any United Nations trade sanctions or EU or UK legislation or regulation, from time to time in force, which impose arms embargoes or control the export from the United Kingdom of goods, technology or software, including weapons of mass destruction and arms, military, paramilitary and security equipment and dual-use items (items designed for civil use but which can be used for military purposes) and certain drugs and chemicals. Customer acknowledges that the use of the Licenced Material and any related technical information, document and material, and direct derivatives thereof may be subject to U.S. and European export and import laws. Customer agrees to comply with all applicable export and import laws and regulation.

**12. EQUITABLE RELIEF** – The parties recognize that Sections 5, 9, 11 and 17(h) are necessary for the protection of the business and goodwill of the parties and are considered by the parties to be reasonable for such purpose. The parties agree that any breach of such Sections would cause the other

party substantial and irreparable damage and therefore, in the event of any such breach, in addition to other remedies which may be available, the non-breaching party shall have the right to seek specific performance and other injunctive and equitable relief in a court of law.

**13. LICENCE KEY & USE REPORTING** - Customer acknowledges that a security code owned and controlled by LANSA or its subsidiaries (the "Licence Key") is required to render the Licenced Software operational on Customer's computer hardware during the Licence Term. Once utilized to install the Licenced Software on Customer's computer hardware, no other security code will be required for the Licenced Material to operate on such computer hardware in accordance with the terms and restrictions contained in this Agreement and no other disabling device will prevent the Licenced Software from operating on Customer's computer hardware during the Licence Term. Further, Customer acknowledges that the Licence Key shall expire upon the expiration of the current Licence Term and that upon such expiration the Licenced Software shall cease to operate unless and until another Licence Key is obtained from LANSA. Customer shall not attempt to crack, alter or otherwise derive the Licence Key. LANSA shall promptly (which in the event of any renewal of a Licence Term shall be prior to expiration of the current Licence Term) provide Customer with all necessary Licence Keys upon renewal of each Licence Term and upon any authorized transfer of the Licenced Software to any other hardware equipment permitted under Section 2(b) of this Agreement. LANSA reserves the right to gather data on Licence usage by Customer for each item of Licenced Software, including Licence Key numbers, server IP addresses, email addresses of users, domain counts and other information deemed relevant, to ensure that the Licenced Software is being used in accordance with the terms of this Agreement. LANSA expressly prohibits domain count overrides without prior written approval. Customer hereby consents to LANSA gathering and processing such usage information and agrees not to block, electronically or otherwise, the transmission of data required for compliance with this Agreement. Any unauthorized use of the Licenced Software by Customer or other use by Customer in violation of the restrictions contained herein shall be deemed a material breach of this Agreement. In addition to the foregoing, within ten (10) business days of Customer's receipt of LANSA's written request, Customer shall provide to LANSA a written report certifying to LANSA the number of Licences for Licenced Software installed, used or accessed by Customer, the identity of the applicable servers, hardware or computers upon which such Licences are installed and, to the extent applicable, the installation location and location and number of users accessing such Licences, together with such other information as may be requested by LANSA and necessary to confirm Customer's compliance with the terms of this Agreement. The auditing, reporting and certification rights and obligations set forth in this Section 13 shall survive termination of this Agreement for a period of eighteen months..

**14. ENFORCEABILITY** - If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, void, invalid or illegal, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

#### **15. ENTIRE AGREEMENT**

- (a) Customer acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms. Customer and LANSA further agree that, subject to clause (b) below, this Agreement, together with all Purchase Orders delivered in connection herewith and all exhibits, schedules and annexes hereto, is the complete and exclusive statement of the agreement between Customer and LANSA and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement, including any shrink-wrap agreements, click-wrap agreements or demo or trial agreements which may accompany the Licenced Material or which may have been previously in force between the parties. Subject to clause (b) below, this Agreement may not be amended, modified, supplemented or altered except by a written agreement that is signed by both parties.

- (b) **UNDER NO CIRCUMSTANCES MAY THE TERMS OF THIS AGREEMENT OR ANY LANSA PURCHASE ORDER BE AMENDED, MODIFIED, SUPPLEMENTED, ALTERED, SUPERSEDED OR REPLACED BY ANY NON-LANSA INVOICE**

OR NON-LANSA PURCHASE ORDER OR OTHER SIMILAR INSTRUMENT DELIVERED BY CUSTOMER TO LANSA. EACH PARTY ACKNOWLEDGES AND AGREES THAT, AS A CONVENIENCE TO CUSTOMER AND ONLY FOR CUSTOMER'S INTERNAL ACCOUNTING PROCEDURES, CUSTOMER MAY DELIVER TO LANSA A CUSTOMER INVOICE OR CUSTOMER PURCHASE ORDER OR OTHER SIMILAR DOCUMENT FOR ANY TRANSACTION CONTEMPLATED HEREUNDER AND THAT NO ACTION BY LANSA, INCLUDING LANSA'S DELIVERY OF ANY LICENCED MATERIALS OR ACCEPTANCE OF PAYMENT, SHALL BE DEEMED TO BE ACCEPTANCE OF ANY OF THE TERMS OR CONDITIONS CONTAINED IN SUCH CUSTOMER INVOICE OR CUSTOMER PURCHASE ORDER OR OTHER SIMILAR INSTRUMENT AND SUCH TERMS AND CONDITIONS SHALL BE VOID AND OF NO FORCE OR EFFECT, UNLESS ACCEPTED BY LANSA PURSUANT TO A WRITTEN INSTRUMENT SIGNED BY BOTH PARTIES.

## 16. TRIAL LICENCE

- (a) If Customer has installed Evaluation Software (as defined below) and Customer is authorized by LANSA to evaluate such Evaluation Software (as defined below), then only the terms and conditions of this Section 16 (including those Sections of this Agreement incorporated in this Section 16 by reference) will govern Customer's temporary use of such Evaluation Software (and no other terms of this Agreement shall apply to Customer or govern Customer's use of Evaluation Software) and upon subscription to a commercial Licence for such Evaluation Software, this entire Agreement, exclusive of this Section 16, shall apply to Customer and govern all use of such commercial Licenced Material.
- (b) LANSA is the owner and provider of certain proprietary software and documentation that Customer may request to use, from time to time, on a temporary basis for the sole purpose of testing and evaluating such software prior to purchasing a commercial term Licence for such software ("Evaluation Software"). All installation and usage of Evaluation Software by Customer requires a temporary Licence Key or trial Licence Key to be issued by LANSA and Customer is only permitted to use Evaluation Software during the term of the temporary Licence Key or trial Licence Key issued by LANSA.
- (c) Evaluation Software is provided to Customer solely for evaluation purposes for Customer's own testing and evaluation purposes (an "Evaluation") and upon delivering a temporary Licence Key or trial Licence Key to Customer, LANSA hereby grants Customer a non-transferable, nonexclusive, limited Licence to operate and use the Evaluation Software for such Evaluation during the period commencing on the date Customer downloads the Evaluation Software and ending on the expiration of the temporary Licence Key or trial Licence Key (including any extensions thereof authorized by LANSA, the "Evaluation Period"). Customer agrees not to cause or permit the reverse engineering, disassembly, modification, translation or decompilation of any Evaluation Software. Customer shall not copy the Evaluation Software, or create or develop any derivative software based upon the Evaluation Software.
- (d) Customer acknowledges that all Evaluation Software incorporates confidential and proprietary information developed or acquired by or Licenced to LANSA and that all results of testing of the Evaluation Software, whether performed by Customer or another third party, are confidential. In no event will Customer publish or disclose the results of any testing or performance specifications of the Evaluation Software without LANSA's express prior written consent. Customer shall not remove or deface of any confidentiality or proprietary notice placed on the Evaluation Software. The placement of copyright notices on Evaluation Software shall not constitute publication or otherwise impair their confidential nature of such information.
- (e) **ALL EVALUATION SOFTWARE PROVIDED BY LANSA IS DELIVERED "AS IS, WHERE IS" AND LANSA SPECIFICALLY**

**DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LANSA DOES NOT WARRANT THAT THE EVALUATION SOFTWARE WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE. UNDER NO CIRCUMSTANCES WILL LANSA OR ITS AUTHORIZED REPRESENTATIVES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE OR WHETHER BASED ON CLAIMS BY CUSTOMER OR ANY THIRD PARTY, ARISING OUT OF OR RELATED TO CUSTOMER'S USE OF EVALUATION SOFTWARE. IN NO EVENT WILL THE AGGREGATE LIABILITY OF LANSA OR ITS AUTHORIZED REPRESENTATIVES INCURRED IN ANY ACTION OR PROCEEDING RELATING TO CUSTOMER'S USE OF EVALUATION SOFTWARE EXCEED ONE HUNDRED DOLLARS.**

- (f) The Evaluation and the evaluation Licence granted under this Section 16 shall automatically terminate immediately upon the earliest of (i) the expiration of the Evaluation Period, (ii) the date upon which Customer purchases a commercial Licence for such Evaluation Software and (iii) the date upon which either party notifies the other party of its termination of the Evaluation. Upon expiration of the Evaluation Period or the Evaluation, Customer shall cease using and shall uninstall and destroy the Evaluation Software unless Customer has purchased a commercial Licence for such Evaluation Software on or prior to such expiration.

Sections 1, 5, 8, 11, 14, 15 and 17(a) through 17(g) of this Agreement shall be deemed incorporated by this reference in this Section 16 and the Evaluation Licence granted under this Section 16.

## 17. MISCELLANEOUS

- (a) Customer shall not assign, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder to any other person or entity, whether by contract, merger or by operation of the law, without LANSA's prior written consent. In the event of any merger of Customer or a sale of substantially all of the assets of Customer in which Customer is not the surviving entity, Customer may assign or transfer any Licences granted under this Agreement; provided, that Customer provides LANSA with written notice of such transfer within thirty days of such merger or sale. Customer may, with LANSA's prior written consent (such consent not to be unreasonably withheld or delayed) transfer any licence granted hereunder (i) to an alternative computer of equivalent specification, upon payment to LANSA of 10% of the then current licence fee applicable to such licence (ii) to another entity, upon payment to LANSA of 15% of the then current licence fee applicable to such licence. Any assignment or delegation in breach of this Section 17(a) shall be void. This Agreement shall be binding upon the parties hereto and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.
- (b) All notices or approvals required or permitted under this Agreement must be given in writing and delivered to the appropriate party at the address set forth in this Agreement or in any Purchase Order delivered in connection with this Agreement.
- (c) The waiver of compliance with or breach of any term or condition of this Agreement or the failure of a party to exercise any right under this Agreement shall in no event constitute a waiver as to any other failure to comply or breach, whether similar or dissimilar in nature, or prevent the exercise of any right under this Agreement.
- (d) **THIS AGREEMENT WILL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF ENGLAND AND WALES WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW RULES. LANSA AND CUSTOMER HEREBY IRREVOCABLY AGREE ON BEHALF OF THEMSELVES THAT THE SOLE AND EXCLUSIVE JURISDICTION AND VENUE FOR ANY LITIGATION ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF SHALL BE IN THE COURTS OF ENGLAND AND WALES.**

- (e) Unless otherwise specified herein, the rights and remedies of LANSA set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to it at law or in equity.
- (f) This Agreement is not intended to be nor shall it be construed as a joint venture, association, partnership or other form of business organization or agency relationship.
- (g) Headings used in this Agreement are for reference purposes only and shall not be used to modify the meaning of the terms and conditions of this Agreement. This Agreement may be executed in counterparts, all of which shall constitute one single agreement between the parties hereto.
- (h) In consideration of the mutual covenants contained herein, including the rights and Licences granted to Customer herein, the parties hereto do hereby agree that for a period of two years following Customer's most recent purchase of any Licences or services, including Maintenance Service, from LANSA or its authorized representative, Customer shall not solicit, induce, hire, engage, or attempt to hire or engage any employee of LANSA, or in any other way interfere with LANSA's contractual or employment relations with any of its employees, nor will Customer hire or engage or attempt to hire or engage any individual who was an employee of LANSA at any time during such two-year period.

[END OF AGREEMENT]