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(viii) use the Product on operating systems or technology platforms other than those designated by Accutive;

(ix) use the Software or Documentation in violation of any law, regulation, or rule; or

(x) use the Software or Documentation for purposes of competitive analysis of the Software, the development of a competing software product or service, or any other purpose that is actually or potentially to Accutive's commercial disadvantage.

b. Accutive shall have, in addition to any other remedies available to it, the right to seek equitable remedies including injunctive relief in respect of Licensee's breach of its obligations under this EULA.

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a. Upon Accutive's written request, Licensee shall conduct a review of use of the Software and certify to Accutive in a written instrument signed by an authorized representative of Licensee that it is in full compliance with this EULA and the Order Acknowledgment and, in particular, that it is not using more licenses than have been purchased. In the event of non-compliance, Licensee shall immediately remedy such noncompliance and provide Accutive with written notice thereof. Licensee shall provide Accutive with all access and assistance as Accutive reasonably requests to further evaluate and remedy such noncompliance.

b. During the Term, Accutive may audit Licensee's use of the Software to ensure Licensee's compliance with this EULA and the Order Acknowledgment, provided that: (i) any such audit shall be conducted on not less than fifteen (15) days' prior notice to Licensee; and (ii) no more than one audit may be conducted in any twelve (12) month period except for good cause shown. Accutive also may, in its sole discretion, audit Licensee's systems within twelve (12) months after the end of the Term to ensure Licensee has ceased use of the Software and removed all copies of the Software from such systems as required hereunder. The Licensee shall fully cooperate with Accutive's personnel or agents conducting such audits and provide all reasonable access to records and information reasonably requested by Accutive. Accutive may conduct audits only during Licensee's normal business hours and in a manner that does not unreasonably interfere with the Licensee's business operations.

c. If the audit or any of the measures taken or implemented under this Section 4, determines that the Licensee's use of the Software exceeds or exceeded the use permitted by this EULA and the Order Acknowledgment then:

(i) Licensee shall, within thirty (30) days following the date of such determination by Accutive, pay to Accutive the retroactive License Fees for such excess use at the then-current rates for such licenses.

d. Accutive's remedies set forth in this Section 4 are cumulative and are in addition to, and not in lieu of, all other remedies the Accutive may have at law or in equity.

e. Licensee must provide notice to Accutive of the number of copies of the Software the Licensee has made upon Accutive's written request.

5) LICENSE FEES

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7) INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS

a. Licensee shall use commercially reasonable efforts to safeguard all Software (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access. Licensee shall promptly notify Accutive if Licensee becomes aware of any infringement of Accutive's Intellectual Property Rights in the Software and shall fully cooperate with Accutive, at Accutive's sole expense, in any legal action taken by Accutive to enforce its Intellectual Property Rights.

b. This EULA shall not be considered to be a sale of any Intellectual Property Rights or other proprietary interests embodied in the Products or components thereof (or any copy, derivative work, Update, upgrade, improvement or modification thereof), and nothing herein shall be deemed to establish or imply that the license granted is a conveyance of any underlying Intellectual Property Rights to the Products.

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d. The source code of the Software is a confidential trade secret of Accutive.

e. Accutive hereby reserves all rights not expressly granted to Licensee.

8) CONFIDENTIALITY

a. Receiving Party agrees not to use, disseminate, or in any way disclose any Confidential Information of Disclosing Party to any person, firm or business, except to the extent necessary for the performance of Receiving Party's obligations hereunder, and for any other purpose Disclosing Party may hereafter authorize in writing.

b. Receiving Party agrees to treat all Confidential Information of Disclosing Party with the same degree of care as Receiving Party accords to Receiving Party's own Confidential Information, but in no case less than reasonable care.

c. Receiving Party agrees to disclose Confidential Information only to those Receiving Party's employees and independent contractors who need to know such information, and Receiving Party certifies that Receiving Party's employees and/or independent contractors have previously agreed in writing, to be bound by substantially similar terms and conditions to those contained herein. Receiving Party shall give prompt written notice to Disclosing Party of any unauthorized use or disclosure of Disclosing

Party's Confidential Information. Receiving Party will take all reasonable measures to ensure that no unauthorized person shall have access to the Confidential Information and that all authorized parties having access refrain from making any unauthorized disclosure in violation of this EULA. Receiving Party agrees to assist Disclosing Party in remedying any such unauthorized use or disclosure by Receiving Party or any of its employees or independent contractors of Disclosing Party's Confidential Information. Receiving Party shall comply with all applicable federal and state laws, rules and regulations protecting the Confidential Information and privacy rights of the Disclosing Party, its Licensees and suppliers, and shall be responsible for any failure by its authorized parties to comply.

d. The obligations of Receiving Party under this Section 8 with respect to any portion of the Confidential Information of Disclosing Party, shall not apply to such portion that Receiving Party can demonstrate by competent evidence: (i) was in the public domain at or subsequent to the time such portion was communicated to Receiving Party by Disclosing Party, through no fault of Receiving Party; or (ii) was known by the Receiving Party prior to its receipt of the Confidential Information from the Disclosing Party; or (iii) is furnished by a third party to the Receiving Party as a matter of right and without restriction on disclosure; or (iv) is independently developed by the Receiving Party without use of, or reference to any Confidential Information of the Disclosing Party; or (v) is agreed in writing by the parties not to be considered Confidential Information.

e. A disclosure of Confidential Information, either in response to a valid order by a court or other governmental body or otherwise required by law, shall not be considered to be a breach of this EULA by Receiving Party or a waiver of confidentiality for other purposes; provided, however, Receiving Party shall provide prompt prior written notice thereof to Disclosing Party to enable Disclosing Party at its sole cost and expense to seek a protective order or otherwise prevent or limit such disclosure.

f. The parties acknowledge that it may be impossible to measure in money the damage to the parties hereto of any failure to comply with the obligations of this Section 8, that every such restriction and obligation is material, and that in the event of any such failure, the parties may not have an adequate remedy at law or in damages. Therefore, the parties agree that in the event of a breach of this Section 8, the Disclosing Party shall have the right to seek an injunction or other equitable relief to compel performance of all of the terms of this Section 8. The parties in no way waive their rights to contest any action on the merits or pursue any other remedy which may be available to such party.

g. Both parties agree to keep confidential any Confidential Information during the Term of this Agreement and for a period of five (5) years thereafter, with the exception of Confidential Information that constitutes trade secrets, which shall be confidential until such time as such Confidential Information is no longer a trade secret through no fault of the Receiving Party.

9) WARRANTY

a. Limited Software Warranty. For a period of thirty (30) days from the date Software is first made available by Accutive for download, Accutive warrants that such Software, as originally provided by Accutive, will perform substantially in accordance with the published Documentation applicable to the Software release purchased, provided that it is used on the computer hardware and with the operating system for which it was designed. In the event Accutive determines that the Software fails to comply with the foregoing warranty during the applicable warranty period, Accutive's sole obligation, and Licensee's sole remedy shall be, for Accutive to use commercially reasonable efforts to correct such defect in order to make the Software operate as warranted

b. Warranty Claims. Warranty claims must be made in writing during the warranty period accompanied by evidence of the defect satisfactory to Accutive together with any available details that may reasonably assist Accutive to reproduce the noncompliance and effect a cure. If Accutive determines that the Product is not defective or faulty within the terms of this Limited

Warranty, Licensee shall be liable for all costs of repairs at Accutive's then prevailing rates.

- c. Conditions to Warranty. This Limited Warranty is conditioned upon payment of the purchase invoice and proper use of the Product, in accordance with any instructions or manuals provided by or available from Accutive. Accutive shall have no obligation under this Limited Warranty unless Licensee promptly notifies Accutive in writing of any failures within the applicable warranty periods. This Limited Warranty extends only to the Licensee.
- d. Warranty Exclusions. This Limited Warranty shall not apply to Products that have been: (i) improperly installed, modified or repaired by anyone other than Accutive; (ii) used in a manner other than as authorized under the Documentation applicable to the Product purchased; (iii) installed, operated or maintained not in accordance with the instructions supplied by Accutive, including but not limited to the installation, operation or maintenance of the Products on any hardware, operating system or tools (including their specific configurations) that are not compatible with the Products; (iv) modified, altered or repaired by a party other than Accutive or a party authorized by Accutive; (v) operated or maintained in unsuitable environmental conditions, or by any other cause external to the Product or otherwise beyond Accutive's reasonable control, including any extreme power surge or failure or electromagnetic field, rough handling during transportation, fire or other act of God; (vi) use of the Products with telecommunication interfaces other than those supplied or approved by Accutive not meeting or not maintained in accordance with Accutive specifications as described in the Documentation, unless Accutive has specifically agreed in writing to include such modifications within the scope of this Agreement; (vii) damaged due to failure of power, air conditioning or humidity control, or failures of storage media not furnished by Accutive or for consumable operating supplies or accessories outside the parameters designated in the Documentation or elsewhere, unless specifically included in this Agreement; (viii) subjected to accident, unusual physical, electrical or electromagnetic stress, neglect, or misuse fault or negligence of Purchaser, its employees, agents, contractors or visitors, operator error; or (ix) where the serial numbers, warranty data or quality assurance decals on the Hardware are removed or altered. Accutive's warranty does not apply to (i) products manufactured by third parties and resold by Accutive, and (ii) software products that are not developed by Accutive.
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c. The obligation of each party to indemnify the other pursuant to this Section 10 shall survive the expiration or termination of this Agreement.

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a. Subject to Section 12 (Limitation of Liability), Accutiv will defend at its own expense, or at its option, settle any action brought by a third party against Licensee to the extent that it is based upon a claim that a Accutiv provided Product infringes a valid United States patent or copyright that are in effect as of the Effective Date, or misappropriates a third party's trade secret ("IP Claim"). Subject to Section 12 (Limitation of Liability), Accutiv will pay direct costs and direct monetary damages finally awarded against Licensee with respect to any such IP Claim, which are directly and solely attributable to such IP claim (the "IP Indemnity").

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13) PERSONAL DATA

It is the understanding of the parties, and a condition of this EULA, that Accutive will not require access to nor process any Personal Data to perform its obligations under this EULA and Licensee shall take appropriate precautions to prevent such access by Accutive or its personnel (including authorized subcontractors and agents).

14) COMPLIANCE WITH LAWS

- a. Licensee shall be solely responsible for and shall comply with all applicable laws, ordinances, rules and regulations imposed by any country or subdivision thereof applicable in connection with Licensee's performance under this EULA, including but not limited to laws and regulations applicable to: (i) the import and export of the Products; (ii) the U.S. Foreign Corrupt Practices Act, the UK Bribery Act or any other laws or regulations regarding corruption or bribery; (iii) the use of deceptive or misleading practices; or (iv) the privacy of users of personally identifiable information and the collection, storage, transfer and any other processing of any personally identifiable information collected or used by Licensee in any manner or maintained by third parties having authorized access to such information.
- b. Licensee shall obtain any and all permits, licenses, authorizations and/or certificates that may be required in any jurisdiction or by any regulatory or administrative agency in connection with the conduct of its

business and the distribution or sale of the Products.

- c. In addition to any other indemnity under this EULA, Licensee shall indemnify and hold Accutive and its Affiliates harmless from and against any and all claims, damages and liabilities asserted by any person or entity against Accutive in connection with any acts or omissions of Licensee's or third parties acting on Licensee's behalf which constitute a breach of this Section 14. Licensee's indemnification under this Section 14 shall include the payment of all reasonable attorneys' fees and other costs incurred by Accutive or its Affiliates. This provision shall survive any termination or expiration of this EULA.

15) TERM AND TERMINATION

- a. Unless sooner terminated in accordance with other provisions of this EULA, this EULA and the license granted hereunder, and any related SOW (if applicable) shall remain in effect for the term set forth on the Order Acknowledgment or until terminated as set forth herein (the "Term").
- b. Either party may terminate this EULA if: (i) the other party is notified in writing that it is in material breach of any material obligation under this EULA; and (ii) such other party fails to remedy such breach within thirty (30) days following receipt of written notice specifying the default or ten (15) days following such notice if the breach is a failure by Licensee to pay any fees required.
- c. Accutive may terminate this EULA if: (i) Licensee fails to make any payment when due; (ii) Licensee files or has filed against it a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, or is adjudicated bankrupt (ii) Licensee makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property.
- d. In the event of termination of this EULA for a material breach by Licensee and in addition to all other rights and obligations each party may have under this EULA: (i) the rights and licenses granted to the Products pursuant to this EULA shall automatically terminate; and (ii) Licensee shall, within thirty (30) days, ship to Accutive or destroy (including purging from any system or storage media) all items in its possession proprietary to Accutive, including but not limited to all Products, and upon request by Accutive, an authorized representative of Licensee shall certify in writing to Accutive that the Products and other Confidential Information of Accutive have been returned to Accutive or destroyed.
- e. Upon expiration or termination of this EULA for any other reason, the License granted hereunder for any term license shall terminate and Licensee shall cease using and destroy all copies of the Software and Documentation. No expiration or termination shall affect Licensee's obligation to pay all Licensee Fees that may have become due before such expiration or termination. Each party shall: (i) return to the other party all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information; (ii) permanently erase all of the other party's Confidential Information from its computer systems; and (iii) certify in writing to the other party that it has complied with the requirements of this clause.

16) GOVERNING LAW AND DISPUTE RESOLUTION

- a. Governing Law. This agreement will be governed by and interpreted in accordance with the internal laws of the State of California and, where such laws are preempted by the laws of the United States, by the internal laws of the United States, in each case without regard to (a) conflicts of laws principles, and (b) the applicability, if any, of the United Nations Convention on Contracts for the International Sale of Goods.
- b. Venue and Jurisdiction. In the event of any controversy or claim arising out of or relating to this agreement, or the breach or interpretation thereof, the parties will submit to the exclusive jurisdiction of and venue in the State courts of California located in Orange County. Each party hereby waives all defenses of lack of personal jurisdiction and forum non conveniens. Process may be served on either party in the manner authorized by applicable law or court rule.
- c. Legal Expenses. If any proceeding is brought by either party to enforce or interpret any term or provision of this Agreement, the prevailing party in such proceeding will be entitled to recover,

in addition to all other relief arising out of this Agreement, such party's reasonable attorneys' and other experts' (including without limitation accountants) fees and expenses.

17) FORCE MAJEURE

Accutive shall not be considered in default in performance of its obligations hereunder if performance of such obligations is prevented or delayed by any circumstances not within Accutive's reasonable control including, without limitation: acts of God, fire, explosion, flood, storm, terrorist attack, civil war, commotion or riots, war (or threat of war), pandemic, imposition of sanctions, embargoes or acts of government (including without limitation failure or delay to obtain export licenses), labor disputes, failure or delay of transportation, vendors or subcontractors, Accutive's inability to enter Licensee's premises to fulfill its obligations under this EULA when applicable, or any other similar cause or causes beyond the reasonable control of Accutive. Time of performance of Accutive's obligations hereunder shall be extended by the time period reasonably necessary to overcome the effects of such force majeure occurrences.

18) NOTIFICATIONS

All notices, requests and demands, and other communications required or permitted under this EULA shall be in writing and shall be given: (a) by personal delivery to a party; or (b) by an internationally recognized overnight courier service offering guaranteed overnight delivery. Notice shall be effective upon receipt. All such communications shall be sent to the Licensee at the address for Licensee stated in the Order Acknowledgment, and in the case of Accutive shall be addressed as follows: Accutive, 27068 La Paz Road, Suite 245, Aliso Viejo, California 92656. Either party may hereafter change its address for notice purposes by notice given to the other in accordance with the provisions of this paragraph.

19) STANDARD PRODUCTS

All Products shall be Accutive's standard Products. Unless specifically stated in a separate written agreement between Accutive and Licensee, Accutive shall have no obligation to create special or customized versions of any Product, or to ensure that the Products operate with Licensee's equipment, software, or systems. Accutive reserves the right, without prior approval from or notice to Licensee, to make changes to any Product: (i) to meet published Documentation; (ii) that do not adversely affect the performance of the Product such that the functionality or performance is less than that specified in the published Documentation; or (iii) when required for purposes of safety. Accutive also reserves the right to make changes to any Product without any obligation to make the same changes to Products previously ordered by or licensed to Licensee.

20) MISCELLANEOUS

- a. Assignment. Licensee may not assign this EULA or any of its right hereunder without the prior written consent of Accutive. Any attempt by the Licensee to assign any rights, duties or obligations, which arise under this EULA without such permission shall be void. Accutive may assign this EULA and its rights hereunder or delegate its obligations in whole or in any part, upon thirty (30) days prior written notice to Licensee.
- b. No Waiver. Any waiver or forbearance shall be valid only if in writing. No waiver by a party of any default shall operate as a waiver of any other default or of the same default on a future occasion. No delay, course of dealing or omission on the part of one party in exercising any right or remedy shall operate as a waiver thereof, and no single or partial exercise by such party of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy.
- c. Limitation of Time. No action, regardless of form, which arises from or is related in any way whatsoever to this EULA may be commenced more than eighteen (18) months after such cause of action accrues, except that an action for nonpayment may be brought at any time within the governing statute of limitations.
- d. Severability. If any provision or provisions of this EULA shall be held to be invalid, illegal or

unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, provided such provisions still express the intent of the parties. If the intent of the parties cannot be preserved, the EULA shall either be renegotiated or rendered null and void.

- e. **Modifications.** Any modifications to this EULA by Licensee must be in writing and signed by a duly authorized representative of Accutive. Accutive reserves the right, in its sole discretion, to modify or replace this EULA at any time. Any changes will be effective immediately upon posting of the revised version on Accutive's website or provided by email or other electronic communication to Licensee. Accutive will make reasonable efforts to notify Licensee of changes to this EULA, which may include posting a notice on Accutive's website, sending an email notification, or other reasonable means. By continuing to use the licensed product after any changes to the EULA are made by Accutive, Licensee agrees to be bound by the updated terms.
- f. **Non-exclusive remedies.** No remedy conferred by this EULA is intended to be exclusive of any remedy, except as expressly provided, and each and every remedy shall be cumulative and in addition to every other remedy given under this EULA or now or in the future existing in law or in equity or by statute or otherwise.
- g. **Right of Third Parties.** This EULA is not made for the benefit of, nor shall any of its provisions be enforceable by any person other than the parties to this Agreement and their respective successors and permitted assignees.
- h. **Marketing.** Accutive shall have the right to use Licensee's name and logo for marketing or promotional purposes on Accutive's website and in other communications with existing or potential Accutive customers.
- i. **Entire Agreement.** This EULA represents the entire agreement between the parties in relation to the subject matter contained herein and supersedes any previous agreement whether written or oral between the parties in relation to that subject matter. Accordingly, all other conditions, representations and warranties which would otherwise be implied (by law or otherwise) shall not form a part of this EULA.