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- 10. INDEMNITY EXCLUSIONS.** LICENSOR SHALL NOT BE LIABLE TO THE EXTENT ANY CLAIM REGARDING CUSTOMER'S USE OF THE LICENSOR SOFTWARE, SOFTWARE SERVICES AND MATERIALS IS BASED UPON OR ATTRIBUTABLE TO: (A) MODIFICATIONS MADE BY CUSTOMER TO THE LICENSOR SOFTWARE, SOFTWARE

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- 14. Export.** Software, Software Services, Documentation, Materials and related technical data, are subject to U.S. export control laws, including without limitation the U.S. Export Administration Act and its associated regulations and may be subject to export or import regulations of other countries. Customer hereby agrees that it will not export or re-export or provide access to the Software, Software Services, Documentation, and Materials in any form in violation of any applicable export or import laws of any jurisdiction.
- 15. Government Use.** If the Software, Software Services, Documentation, Materials and any other Licensor services are being or have been acquired with U.S. Federal Government funds, or Customer is an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Software, Software Services, or any related documentation of any kind, including technical data, manuals or Materials, is restricted in accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies. The Software, Materials and any Licensor services are COMMERCIAL ITEMS AS DEFINED BY THE FEDERAL ACQUISITION REGULATION. Use of the Software and Materials by the Government is further restricted according to the Agreement and any amendment hereto.

16. Term and Termination. This Agreement shall remain in effect until termination or expiration of all Order Forms, unless otherwise terminated earlier as provided hereunder. Either party may terminate: (a) this Agreement and/or any or all applicable Order Forms upon thirty (30) days prior written notice if the other party breaches a material provision of this Agreement and fails to cure such breach within the thirty (30) day notice period; (b) Maintenance, Term License or Subscription, upon prior written notice at least sixty (60) days prior to the end of any applicable annual Maintenance period or Term; or (c) an Order Form for Consulting Services, upon fifteen (15) days prior written notice by Customer or thirty (30) days prior written notice by Lessor. Order Forms that are not terminated or have not expired shall remain in full force and effect under this Agreement. The Agreement shall automatically terminate if either party files for bankruptcy, goes into receivership, becomes insolvent or makes an assignment for the benefit of creditors. Upon termination or expiration of this Agreement or an Order Form, Customer must cease using, de-install and permanently delete all of the applicable Software; whether or not modified or merged into other materials. Termination of this Agreement or any Order Form shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Customer of its obligation to pay all fees that have accrued or are otherwise owed by Customer under this Agreement.

17. Suspension. Lessor will be entitled to suspend any or all Software Services, Maintenance and/or Consulting Services upon 10 days written notice to Customer in the event Customer is in breach of this Agreement. Further, Lessor may suspend Customer's access and use of the Software Services if, and so long as, in Lessor's sole judgment, there is a security risk created by Customer that may interfere with the proper continued provision of the Software Services or the operation of Lessor's network or systems. Lessor will provide Customer advance notice of any such suspension at Lessor's reasonable discretion based on the nature of the circumstances giving rise to the suspension. Lessor will use reasonable efforts to re-establish the affected Software Services promptly after Lessor determines, in its reasonable discretion, that the situation giving rise to the suspension has been cured by Customer. Lessor may terminate the Software Services if any of the foregoing causes of suspension remain uncured by Customer. If Software Services are terminated by Lessor due to the foregoing, Lessor shall either provide Customer with or allow Customer access sufficient to retrieve all Customer's Output in comma separated value (CSV) format. Customer shall pay Lessor for its work resolving the situation giving rise to the suspension on a T&M basis, plus reasonable out-of-pocket expenses.

18. General Provisions

(a) All notices required under this Agreement shall be in writing. Notices will be effective if dispatched by facsimile; or electronic mail; by hand; reliable overnight delivery service or first-class, pre-paid mail if sent to the contract address for the intended recipient set forth in an Order Form. A copy of any notice of default, breach or termination shall also be sent to that party's General Counsel.

- (b) The losing party shall pay all reasonable costs, including, without limitation attorney's fees, incurred by the prevailing party in any action brought to enforce the prevailing party's rights under this Agreement.
- (c) This Agreement shall not be interpreted to create an agency or consignment relationship, and neither party is a partner, employee, agent or joint venture partner of, or with, the other.
- (d) During the term of any Order Form and for a period of one (1) year following expiration or termination of an Order Form, neither party shall actively solicit for employment any employee, contractor, or consultant, or other representative of the other party who performed services in connection with the applicable Order Form, without the prior written consent of the other party.
- (e) Licensor may designate any agent or subcontractor to perform such tasks and functions to complete any services covered under this Agreement. However, nothing in the preceding sentence shall relieve Licensor from responsibility for performance of its duties under the terms of this Agreement.
- (f) During the term of any Order Form and for a period of one (1) year following expiration or termination of an Order Form, Customer hereby grants Licensor and its independent auditors, at Licensor's expense, the right to audit Customer's compliance with this Agreement upon ten (10) days' notice and at reasonable times and to report any results to Licensor's licensors. Customer shall at no cost to Licensor (i) provide any assistance reasonably requested by Licensor or its designee in conducting any such audit, including installing and operating audit software, (ii) make requested personnel, records, and information available to Licensor or its designee, and (iii) in all cases, provide such assistance, personnel, records, systems access and information in an expeditious manner to facilitate the timely completion of such compliance verification. Customer's failure to comply with the provisions of this section will constitute a material breach of this Agreement. If the audit reveals any noncompliance, Customer shall reimburse Licensor for the reasonable costs and expenses of the audit (including but not limited to reasonable attorneys' fees), and Customer shall promptly cure any such noncompliance; provided, however, that the obligations under this section do not constitute a waiver of Licensor's termination rights and do not affect Licensor's right to payment for Software, Software Services or Materials related to usage in excess of the Number of Units.
- (g) No waiver by either party of any breach of any provision of this Agreement shall be construed as a waiver of that or any other provision on any other occasion.
- (h) Dates or times by which one party is required to perform under the Agreement shall be postponed automatically for so long as that party is prevented from performing by any act of or failure to act by, the other party. No delay or default in performance of any obligation by either party (except payment obligations), shall constitute a breach of the Agreement to the extent caused by force majeure or any other cause which is beyond its reasonable control, including, but not limited to,

fires, strikes, accidents, or acts of God.

(i) Except for an assignment, in whole or part, by Licensor to an Affiliate, neither party may assign this Agreement, in whole or in part, and/or any of its rights and/or obligations without the prior written consent of the other party (which shall not be unreasonably withheld). Any such attempted assignment shall be void. For the purposes of the foregoing, a change in control of Customer is deemed to cause or attempt to cause an assignment of the Agreement, in whole or part, and shall require Licensor's prior written consent.

(j) To the extent Customer or its successors or assigns enters into an Extraordinary Corporate Event after an Order Form Effective Date, those users, divisions or entities, which were added to or divested from Customer's organization as a result of the Extraordinary Corporate Event are not authorized to use the Software or Materials until those users, divisions or entities are added to this Agreement by way of a written amendment signed by duly authorized officers of the Licensor and Customer, or in the case of a divesture, the divested entity.

(k) This Agreement is for the benefit of the parties and their successors and permitted assigns, and does not confer any rights or benefits on any third party, including any employee of a party, any client of a party, or any employee of a client of a party. Notwithstanding the above, the parties acknowledge that all rights and benefits afforded to Licensor under this Agreement shall apply equally to the owner of any Third Party Software, and such third party is an intended third party beneficiary of this Agreement.

(l) The parties' rights and obligations under this section and sections entitled "Financial Terms", "Proprietary Notices", "Confidentiality", "Warranties and Disclaimers", "Indemnity", "Indemnity and Warranty Exclusions", "Remedies", "Disclaimers", "Limitation of Liability", "General Provisions" and those surviving provisions of the Supplemental Terms shall survive the expiration or termination of this Agreement and/or an Order Form.

(m) If Customer is entering into the Agreement from a European Union member country, United Kingdom, Norway, Switzerland, India or Australia, then the Agreement is governed by the laws of England and subject to the exclusive jurisdiction of the courts of England and Wales. If Customer is entering into the Agreement from Japan, then the Agreement is governed by the laws of Japan and subject to the exclusive jurisdiction of the courts of Japan. Otherwise, the Agreement is governed by the laws of the State of California without giving effect to its conflict of laws principles, and Customer agrees to submit to the personal and exclusive jurisdiction of the courts located within the county of Santa Clara, California, to resolve any dispute or claim arising from the Agreement. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to this Agreement.

(n) If any sentence, clause or other provision of this Agreement is held to be invalid, illegal or unenforceable under applicable law, including, but not limited to, any

limitation of liability, the validity, legality and enforceability of the remaining clauses and provisions shall in no way be affected or impaired thereby. The affected provision shall be interpreted in such a manner as to render it enforceable while attempting to closely approximate the intent and the economic effect of the affected provision.

19. Agreement Structure and Scope.

(a) Order of precedence. To the extent any terms and conditions of the Master Terms or Supplemental Terms conflict with the terms and conditions of additional license requirements or notices contained in the Documentation, then such license requirements or notices pertaining to Third Party Software included with the Software, shall control. To the extent any terms and conditions of these Master Terms conflict with the Supplemental Terms, the Supplemental Terms shall control. To the extent the Order Form conflicts with the Master Terms or Supplemental Terms, the Order Form shall control.

(b) Entire Agreement. The Agreement constitutes the parties' entire agreement relating to its subject matter. It supersedes all prior or contemporaneous oral or written communications, agreements, requests for proposals, proposals, conditions, representations, and warranties, or other communication between the parties relating to its subject matter. No modification to the Agreement will be binding unless in writing and includes a signature by an authorized representative of each party, except in the case of an Order Form where Licensor's acceptance shall be deemed to have occurred on Licensor's initial delivery of products or services under the Order Form. All pre-printed or standard terms of any Customer purchase order or other business processing document shall have no effect.

Addenda:

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Libevent 2.0.22

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w32api 3.0.0

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OpenSSL 1.0.2g

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PostgreSQL Database Server 9.3.0

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