



SOFTWARE TERMS

These *Software Terms* supplement the *General Terms* when Customer is acquiring Software Products under an Order. Capitalized terms that are not defined in context shall have the meanings set forth in Section 1 of the *General Terms*.

1. LICENSES

1.1. License Grant. Subject to the terms and conditions of the Agreement, Provider grants Customer a limited, nonexclusive, nontransferable license to use the Provider Software Products specified in an Order for the purposes set forth in Section 1.2(a) below.

- a. **Perpetual Licenses.** If Provider licenses a Provider Software Product to Customer on a perpetual basis (“Perpetual License”), as indicated in an Order, or if Provider does not indicate in the Order that the license is granted on a Subscription License basis (as defined below), then the license shall be deemed perpetual, but subject to termination for breach of the Agreement or as otherwise provided in the Agreement. Additionally, Provider grants Customer a nonexclusive, nontransferable, license to: (i) make a copy of Provider Software Products to be used solely for archival and disaster recovery purposes, provided that the copy is kept in a secure location and contains the copyright and other proprietary notices contained in the original; (ii) make copies of Documentation as reasonably necessary to support its authorized users in their use of Provider Software Products; and (iii) use any training course materials provided by Provider for training authorized users in their use of Provider Software Products.
- b. **Software as a Service, Subscription, or Term Licenses.** If Provider licenses a Provider Software Product to Customer either on a software as a service (SaaS), a subscription basis, or for a specified term (collectively or individually, a “Subscription License”), as set forth in an Order, the license shall remain in effect for thirty-six (36) months from the effective date of the Order unless a different period is indicated on the Order (the “Initial Subscription Term”) and shall automatically renew for subsequent renewal terms of at least twelve months each, or a longer period as specified in an Order, (each a “Renewal Subscription Term”) unless Customer notifies Provider in writing of its intent not to renew at least sixty days prior to the start of a Renewal Subscription Term. The license is in effect only during the Initial Subscription Term and any applicable Renewal Subscription Terms. If no Initial Subscription Term is specified in the Order, the Initial Subscription Term shall be for a period of twelve months, commencing on the effective date of the Order. Payment of applicable subscription fees is required to use the Provider Software Products during the Initial Subscription Term or Renewal Subscription Term. Subscription fees for Renewal Subscription Terms are subject to an increase not to exceed five percent (5%) over the fees charged for the preceding term, unless a greater increase is required by an escalation of a Third-Party Software Product provider’s rates, in which case Provider shall provide Customer reasonable advance notice of the amount of the proposed increase. Customer understands and agrees that if Customer terminates a Subscription License for Customer’s convenience prior to the end of the Initial Subscription Term or Renewal Subscription Term, Provider will have no obligation to refund any paid but unused subscription fees and Customer shall pay Provider an early termination fee to be calculated as the remaining unpaid months in the term multiplied by the then current monthly fee.

1.2. Scope of License and Restrictions

- a. **Scope of Licenses and Use of Products by Service Providers.** The licenses granted to Customer apply solely to the executable (i.e., object code) form of Provider Software Products, and solely to Permitted Users use of the Provider Software Products for the internal business purposes of Customer or its Controlled Affiliates. If Customer contracts with a third party for Provider Software Product implementation, customization, consulting, hosting or outsourcing services, the third party may use the Provider Software Product as licensed solely for purposes of providing such services, provided that (i) the third party is a Provider Business Partner authorized to provide such services; or (ii) Provider grants written approval in advance. No other service providers are entitled to access Provider Software Products. Customer is responsible for the third party’s compliance with the Agreement. Customer shall not permit access to Provider Software Products by any other third party (except for Customer Affiliates expressly authorized to use such items under the Agreement).
- b. **Third-Party Software Products.** Third-Party Software Products are licensed to Customer under the terms of the license agreement accompanying the Third-Party Software Product or the Order. If no license agreement accompanies the Third-Party Software Product or the Order, then Provider grants Customer a nonexclusive, nontransferable license to use the Third-Party Software Product for its own internal business purposes only. This license for Third-Party Software Products is subject to all the limitations and restrictions applicable to Provider Software Products. Software provided under any open source licensing model is governed solely by such open source licensing terms, which shall prevail over the Agreement.
- c. **Use Restrictions.** Unless expressly provided otherwise in the Agreement, Customer shall not sublicense, resell, lease, rent, copy, distribute or permit access to Software Products or Services or operate a software service bureau, outsourcing, time-sharing, application service provider, hosting, or similar business using them or otherwise use them for the benefit of another party (other than Customer Affiliates as expressly permitted in the Agreement). Customer shall not exceed the license counts (e.g., the number of server or desktop copies, number of concurrent users, number of “seats”) or other numeric restrictions or authorizations specified in an Order and paid for by Customer. Some Software Products may require license keys or contain other technical protection measures. Provider will provide Customer with software keys to the extent required to allow Customer to use Software Products in accordance with the Agreement. Customer acknowledges that Provider may monitor Customer’s compliance with license counts and other use restrictions through the Internet or other remote access to Software Products.

- d. **Customer Compliance.** Customer will not nor will Customer allow any third party to (i) attempt to gain unauthorized access to the Software Products, or its related systems and networks; (ii) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Software Products; (iii) use the Software Products to post, transmit or store material or information in violation of any local, state, federal or foreign law, regulation or treaty, or any third party privacy or intellectual property rights, including without limitation those related to privacy, electronic communications and anti-spam legislation; (iv) publish, post, upload or otherwise transmit Customer Data that contains any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another; or (v) use or permit the use of any tools in order to probe, scan or attempt to penetrate or benchmark the Software Products.
 - e. **Prohibition on Reverse Engineering.** Customer shall not modify, reverse engineer, disassemble, decrypt, decompile, create a patent based on, make derivative works of, or attempt to discover or modify in any way the underlying source code of Software Products and Services. If, despite the foregoing, Customer has rights under applicable law, Provider will honor those rights.
 - f. **U.S. Government Use.** Software Products are “commercial computer software” and “commercial computer software documentation” pursuant to DFAR Section 227.7202 and FAR Section 12.212 (and any successor sections). Use of Software Products, including reproduction and display of them, by the United States of America and/or any of its instrumentalities, regardless of form (collectively, the “Government”), is governed by the Agreement. Under no circumstances shall Provider be obligated to comply with any Government requirements regarding cost or pricing data or cost accounting requirements. If any Government requirement might apply, Customer shall notify Provider of the Government requirement and obtain a waiver or exemption for the benefit of Provider before Customer may use the Software Product.
 - g. **Statement of Verification.** Upon Provider’s written request, which shall be made no more frequently than once per calendar year, Customer shall furnish Provider with a document signed by Customer’s authorized representative listing the locations where Software Products are installed on Customer’s owned and operated hardware (if any) and the number and type of licenses being used for each Software Product. Customer is responsible for implementing reasonable procedures to ensure its compliance with the Agreement.
 - h. **Audit.** During the term of the Agreement and for two years thereafter, Provider or its independent audit firm may audit Customer’s and its Affiliates’ compliance with the terms and conditions of the Agreement. Any such audit shall be at Provider’s expense, require reasonable notice, and shall be performed during normal business hours and in such a manner as to minimize, to the extent reasonably possible, any impact to Customer’s business. Customer agrees that it will provide access to Customer’s sites for the purposes of, and shall cooperate in, such audit. If an audit reveals a breach of the Agreement by Customer or its Affiliates, including, but not limited to, the unlicensed use of any Software Products, then Customer, in addition to such other rights and remedies as may be available to Provider as a result of such breach, shall, if applicable, immediately pay Provider the applicable license fee for the Software Products at list price for the period of unauthorized use, and shall pay to Provider, within thirty (30) days of Provider’s provision of the results of such audit to Customer, the costs reasonably incurred by Provider in connection with the audit.
 - i. **Limits.** If Customer and its Affiliates fully comply with the requirements of the above “Statement of Verification” and “Audit” sections and Customer’s unlicensed use of Software Products was not willful, then Provider’s remedy for Customer’s unlicensed use shall be limited to the retroactive recovery of license fees at list price and reimbursement for the cost of the audit. If Customer or its Affiliates do not fully comply with the above “Statement of Verification” and “Audit” sections and/or their unlicensed use of Software Products is willful, in addition to the foregoing remedies Provider shall be entitled to all remedies and penalties legally available.
- 1.3. **Beta / Pre-Release.** From time to time, Provider may offer Customer an opportunity to use a beta or prerelease version of a Software Product (“Beta Version”) for a limited period of time (“Beta Period”), for demonstration, testing, evaluation, or other nonproduction purposes (“Beta Purposes”). Beta Versions are covered by the provisions of the Agreement, except that all Beta Versions are provided “AS IS” and without any warranty of any kind, express or implied.
- a. **Beta / Pre-Release Software Products.** For Beta Versions which have not been made generally available by Provider, Customer agrees that such Beta Version: (i) may not be used in a production environment; (ii) is not expected to function with the same reliability as generally available Software Products and may contain defects that are not found in generally available Software Products; (iii) will not be subject to any obligation by Provider to correct defects; and (iv) may not ever be made generally available for commercial use.
 - b. **Return or License of Beta / Pre-Release Products.** If Customer does not pay for and acquire a standard license to use the Beta Version at the end of the Beta Period (if such is made available to Customer as an option), then Customer shall promptly return the Beta Version to Provider and destroy all copies and any related Documentation in Customer’s possession. The nature, features, functionality, and performance of all Software Products, including Beta Versions, constitute Confidential Information of Provider subject to the “Confidential Information” section of the Agreement.
2. **SOFTWARE WARRANTIES AND REMEDIES.**
- a. **Provider Software Product Warranty.**
 - (i) **for Perpetual Licenses.** Provider warrants that each Provider Software Product licensed by Customer shall conform in all material respects with its Documentation for a period of thirty (30) days from the delivery date, unless a longer warranty period is specified in an Order. Thereafter, fees paid by Customer for Support Services will cover the reporting and correction of any non-conformance of the Software Products.

- (ii) **for Subscription Licenses.** Provider warrants that each Provider Software Product licensed by Customer shall conform in all material respects with its Documentation for the term of the Subscription License.
- b. Warranty Limitation.** Provider does not warrant that the operation of Provider Software Products will be uninterrupted or error free, will meet Customer requirements, or will be compatible with other software products except for compatibility committed in the Documentation or expressly set forth in an Order.
- c. Exclusive Remedies.** If notified by Customer in writing of a valid warranty claim for a Provider Software Product licensed by Customer during the warranty period, Provider shall, at its option, use commercially reasonable efforts to correct the defect at Provider's facilities or replace the Provider Software Product with a functionally comparable product that complies with the warranty. If Provider is unable, within a reasonable period of time, to provide a correction or replace the Provider Software Product with a functionally equivalent substitute, Provider shall notify Customer and Customer shall be entitled to a refund of (i) for Perpetual Licenses, the purchase price paid for the Provider Software Product licenses and a refund of fees paid for unused Support Services for the Provider Software Product upon prompt return of the Provider Software Product and all copies of it to Provider; or (ii) for Subscription Licenses, the Subscription License fees paid during the preceding twelve month period for the affected Provider Software Product. Upon return of the Provider Software Product all licenses shall be deemed cancelled. This section states Provider's entire liability and Customer's sole remedy for Provider Software Product warranty claims.
- d. Regulatory Requirements.** Certain Software Products may include functionality designed to assist Customer in complying with various regulatory requirements that may be applicable to Customer. Customer is solely responsible for understanding the regulatory requirements that apply to its business and for selecting and using Software Products in a manner that complies with applicable requirements.