

Software Agreement

THIS SOFTWARE AGREEMENT (“**AGREEMENT**”) GOVERNS YOUR USE OF THE SOFTWARE.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SOFTWARE.

This Agreement is effective between You and Us as of the date it is fully executed.

1. DEFINITIONS

“**Affiliate**” means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “**Control**,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Authorized Administrative Users**” means Our employees, consultants, contractors and agents that are authorized by Us to develop and test the Software and/or provide other service related activities.

“**Authorized Users**” means Your employees, consultants, contractors and agents that are authorized by You to access Your Data.

“**Malicious Code**” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

“**Order Form**” means the ordering documents for purchases hereunder, including any addenda thereto, that are entered into between You and Us from time to time. Order Forms shall be deemed incorporated herein by reference.

“**Software**” means the applications and platform provided by Us that are ordered by You under an Order Form, including associated online components but excluding Third Party Applications.

“**Third-Party Applications**” means online, Web-based applications and offline software products that are provided by third parties, interoperate with the Software, and are identified as third-party applications. For purposes of clarity, Third Party Applications shall include the DITA Open Toolkit.

“**User Guide**” means the online user guide for the Software, accessible via <http://easydita.com>, as updated from time to time. You acknowledge that

You have had the opportunity to review the User Guide.

“**We**,” “**Us**” or “**Our**” means Jorsek, LLC.

“**You**” or “**Your**” means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

“**Your Data**” means all electronic data or information submitted by You to the Software. For purposes of clarity, Your Data includes the stylesheets, the DITA specializations, and any plug-ins for the DITA Open Tool Kit provided by You, but does not include plug-ins for the DITA Open Tool Kit provided to You through Our Professional Services.

2. SOFTWARE

2.1. Provision of Software. For each server purchased by You as set forth in an Order Form, We hereby grant to You a nonexclusive, non-sublicensable, nontransferable (except as provided in Section 16.3 below) license to (i) install a single copy of the Software (“**Server Software**”), which Server Software shall be used solely by Authorized Users for Your business purposes to process and access Your Data; (ii) install a copy of the Software for back-up purposes on one fail-over server, provided however, that You only use such Software if and only for so long as the server on which the Server Software is installed has failed over to such fail-over server; (iii) install a single copy of the Software on one deployment server, which Deployment Software shall be used solely by Authorized Administrative Users for developing and testing purposes and other service related activities, and (iv) install instances as required for Your individual developers on their local, non-production clients (“**Developer Client Software**”), which Development Client Software shall be solely for a developer’s individual use for developing and testing purposes. All such licenses shall terminate immediately upon the termination of this Agreement. You agree that Your license of the Software is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

3. USE OF THE SOFTWARE

3.1. Our Responsibilities. We shall: (i) provide to You the support services set forth in [Schedule A](#) for the Software at no additional charge and (ii) provide the Software only in accordance with applicable laws and government regulations.

3.2. Your Responsibilities. You shall (i) be responsible for Users’ compliance with this Agreement as detailed below, (ii) be solely responsible for the accuracy, quality, integrity and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Software, and notify Us promptly of any

such unauthorized access or use, (iv) conflicts with the grant in Section 2.1; and (v) use the Software only in accordance with the this Agreement and applicable laws and government regulations. You shall not (a) make the Software available to anyone other than Users, (b) sell, resell, rent or lease the Software, (c) use the Software to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Software to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Software, or (f) attempt to gain unauthorized access to the Software. The license granted to You is non-exclusive and nothing in this Agreement shall prevent Us from offering the Software to any other party.

3.3. Usage and User Limitations. Software may be subject to other limitations, any such limitations are specified in this Agreement any related Order Form.

3.4. Audits. We may, upon five business (5) days prior written notice and not more than once in a calendar year, audit your use of the Software on the licensed server(s) during normal business hours and in accordance to best industry practices. Such audits shall be conducted so as to not interfere with Your business or operations. Any of Your Confidential Information disclosed in the course of an audit will be subject to the confidentiality provisions of this Agreement.

4. THIRD-PARTY PROVIDERS

4.1. Acquisition of Third-Party Products and Software. We may offer Third-Party Applications for license under Order Forms. Any other acquisition by You of Third-Party Applications and any related implementation, customization and other consulting services, and any exchange of data between You and any third-party provider, is solely between You and the applicable third-party provider. We do not warrant or support third-party products or services, whether or not they are designated by Us as "certified" or otherwise, except as specified in an Order Form. No purchase of third-party products or services is required to use the Software.

4.2. Third-Party Applications and Your Data. If You install or enable Third-Party Applications for use with the Software, You acknowledge that We may allow providers of those Third-Party Applications to access Your Data as required for the interoperation of such Third-Party Applications with the Software. We shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Third-Party Application providers. The Software shall allow You to restrict such access by restricting Users from installing or enabling such Third-Party Applications for use with the Software.

5. FEES AND PAYMENT FOR SOFTWARE

5.1. Fees. You shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (i) fees are quoted and payable in United States dollars (ii) fees are based on services purchased and not actual usage, (iii) payment obligations are non-cancelable and fees paid are non-refundable, except as otherwise provided in this Agreement, and (iv) the level of Software purchased cannot be downgraded during the relevant term stated on the Order Form. Software fees are based on annual periods that begin on the effective date of this Agreement and each annual anniversary thereof.

5.2. Invoicing and Payment. You will provide Us with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Us. If You provide credit card information to Us, You authorize Us to charge such credit card for all Software listed in the Order Form for the initial term and any renewal term(s) as set forth in Section 11.2 (Term of Software). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for maintaining complete and accurate billing and contact information in the Software.

5.3. Overdue fees. If fees that are not being disputed in good faith are not received from You by the due date, then at Our discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) We may condition future renewals and Order Forms on payment terms shorter than those specified in Section 5.2 (Invoicing and Payment).

5.4. Suspension of Service and Acceleration. If any amount owed by You under this or any other agreement for Our Software and/or services is thirty (30) or more days overdue, We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations not being disputed in good faith under this Agreement and other such agreements so that all such obligations become immediately due and payable, and suspend Our services to You, hereunder (including use of the Software) until such amounts are paid in full; provided that, notwithstanding the foregoing, We shall not take any such action (either acceleration or suspension) unless the amount owed by You is not paid within ten (10) business days after We deliver written notice of the alleged overdue amount.

5.5. Payment Disputes. We shall not exercise Our rights under Section 5.3 (Overdue Fees) or 5.4 (Suspension of Service and Acceleration) if the

applicable charges are under good-faith dispute made by you within fifteen (15) days of the invoice date of the applicable charges and You are cooperating diligently to resolve the dispute. If You fail to dispute a charge with the time frame specified above, any and all disputes related to such charges shall be waived and the Software and/or services deemed acceptable.

5.6. Taxes. Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees. We shall pay all contributions, taxes, and premiums payable under Federal, State, and local laws upon the payroll of Our employees engaged in the performance of Services under this Agreement.

6. PROPRIETARY RIGHTS

6.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Software, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

6.2. Restrictions. You shall not (i) permit any third party to access the Software except as permitted herein, (ii) create derivative works based on the Software, (iii) copy, frame or mirror any part or content of the Software, (iv) reverse engineer the Software, or (v) access the Software in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Software.

6.3. Ownership of Your Data. As between Us and You, You exclusively own all rights, title and interest in and to all of Your Data.

6.4. Suggestions. We shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Software any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Software. We shall not be required to pay You anything for such license.

6.5. Federal Government End Use Provisions. We provide the Software, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Software include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical

Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

7. CONFIDENTIALITY

7.1. Definition of Confidential Information. As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Software; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2. Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. In the event of a conflict between the provisions of a separate non-disclosure agreement signed between the parties and the terms and conditions of this Agreement, the terms and conditions of this Agreement will prevail.

7.3. Protection of Your Data. Without limiting the above, We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your

Data. We shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law in accordance with Section 7.4 (Compelled Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the Software or prevent or address service or technical problems, or at Your request in connection with customer support matters.

7.4. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

7.5. Security. We will use security methods similar to those employed to protect Our own information of a similar sensitive nature. We will notify you immediately if we become aware of any unauthorized access of Your Confidential Information. In such event, We will use commercially reasonable efforts, including but not limited to, removing the impacted Confidential Information until the situation is resolved.

8. WARRANTIES AND DISCLAIMERS

8.1. Our Warranties. We warrant that the Software shall perform materially in accordance with this Agreement and any documentation referenced in this Agreement. For any breach of such warranty, Your exclusive remedy shall be as provided in Section 11.3 (Termination for Cause) and Section 11.4 (Refund or Payment upon Termination) below.

8.2. Mutual Warranties. Each party represents and warrants that (i) it has the legal power to enter into this Agreement, and (ii) it will not transmit to the other party any Malicious Code (except for Malicious Code previously transmitted to the warranting party by the other party).

8.3. Exclusions and Disclaimers. The warranties contained in this Section 8 will not apply if: (i) You do not use the Software in accordance with this Agreement; (ii) You alter, modify or convert the Software; (iii) Your computer(s) malfunction and the malfunction causes the defect, error or problem; or (iv) the defect, error or problem results from any other cause within Your control. WE DO NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT THE SOFTWARE WILL OPERATE ERROR FREE, WITHOUT INTERRUPTION, OR IN COMBINATION WITH OTHER SOFTWARE OR SERVICES (EXCEPT AS PERMITTED BY THIS

AGREEMENT), OR THAT ALL PROGRAM DEFECTS ARE CORRECTABLE. WE DO NOT WARRANT THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. MUTUAL INDEMNIFICATION

9.1. Indemnification by Us. We shall defend You against any claim, demand, suit, or proceeding ("**Claim**") made or brought against You by a third party alleging that the use of the Software as permitted hereunder infringes or misappropriates the registered copyrights or issued patents of a third party, and shall indemnify You for any damages finally awarded against, and for reasonable attorney's fees incurred by, You in connection with any such Claim; provided, that You (a) promptly give Us written notice of the Claim; (b) give Us sole control of the defense and settlement of the Claim (provided that We may not settle any Claim unless the settlement unconditionally releases You of all liability); and (c) provide to Us all reasonable assistance, at Our expense. We shall have no liability regarding any infringement Claim arising out of: (i) use of other than a current unaltered release of the services unless the infringing portion is also in the then current release; (ii) use of the Software in combination with software, data or equipment that is not Ours if the infringement was caused by such use or combination; (iii) any modification or derivation of the Software not specifically authorized in writing by Us; or (iv) use of any Third-Party Applications. Subject to the limitations of this Agreement, in the event that an injunction is issued against Your use of the Software, or if in Our opinion all or any portions of the Software are likely to become the subject of a nonfrivolous claim for infringement or injunction or damages award, We may, at our option and expense, do one of the following: (i) procure for You the right to continue using the Software or such affected portions; (ii) replace or modify the Software or such affected portions, with noninfringing alternatives that reasonably accommodate Your needs with respect to the original replaced or modified portion; or (iii) terminate this Agreement and refund the license fee paid, less reasonable depreciation, upon return of the Software.

9.2. Indemnification by You. You shall defend Us against any Claim made or brought against Us by a third party (i) alleging that Your Data, or Your use of the Software in violation of this Agreement, infringes or misappropriates the registered copyrights or issued patents of a third party or violates applicable law, or (ii) arising on account of Your modification or enhancement of the Software, and shall indemnify Us for any damages finally awarded against, and for

reasonable attorney's fees incurred by, Us in connection with any such Claim; provided, that We (a) promptly give You written notice of the Claim; (b) give You sole control of the defense and settlement of the Claim (provided that You may not settle any Claim unless the settlement unconditionally release Us of all liability); and (c) provide to You all reasonable assistance, at Our expense.

9.3. Exclusive Remedy. This Section 9 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this Section 9.

10. LIMITATION OF LIABILITY

10.1. Limitation of Liability. EXCEPT FOR SECTIONS 7 AND 9, NEITHER OUR NOR YOUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, SHALL EXCEED THE TOTAL AMOUNT PAID BY YOU TO US HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE LESSER OF \$100,000 OR THE AMOUNT PAID BY YOU HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT FOR SOFTWARE AND/OR SERVICES).

10.2. Exclusion of Consequential and Related Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

11. TERM AND TERMINATION

11.1. Term of Agreement. This Agreement commences on the date You accept it and continues for an initial term for the period set forth in the Order Form ("Initial Term") and any renewal terms for the period set forth in the Order Form ("Renewal Term") (collectively, the Initial Term and all Renewal Terms are referred to as the "Term") in accordance with this Agreement until terminated.

11.2. Term of Software. Except as otherwise specified in the applicable Order Form, all software terms shall automatically renew for additional periods equal to the expiring Initial Term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant Initial Term or Renewal Term. The per-unit pricing during any such renewal term shall be the same as that during the

prior term unless We have given You written notice of a pricing increase at least sixty (60) days before the end of such prior Initial Term or Renewal Term in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed four percent (5%) over the pricing for the relevant Software in the immediately prior Initial Term or Renewal Term, unless the pricing in such prior Initial Term or Renewal Term was designated in the relevant Order Form as promotional, one-time, or discounted.

11.3. Termination for Cause. A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

11.4. Refund or Payment upon Termination. Upon any termination for cause by You, We shall refund You any prepaid fees that cover the remainder of the software terms after the effective date of termination. Upon any termination for cause by Us, We shall have no obligation to refund any amounts paid by You and You shall forfeit any additional subscription terms provided under an Order Form. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.

11.5. Destruction of Software. Immediately upon the date this Agreement is terminated pursuant to the terms herein, We shall be given access to the server on which the Software is installed to completely remove and destroy the Software, provided that We have made available to You for download a file of Your Data in XML format along with non-XML files in their native format.

12. MAINTENANCE AND SUPPORT

12.1. Maintenance and Support. During the Term of this Agreement, We, directly or through a third party supplier, will render the maintenance and support services detailed in Schedule A for the current release of the Software. Such support services will be provided at no additional charge. Deployed Maintenance services will be provided for on a time and materials basis or at a fixed fee ("Annual Maintenance Fee") as set forth in an Order Form. You will pay a portion of the Annual Maintenance Fee annually as a non-refundable, advanced maintenance fee retainer as set forth in an Order Form. Upon non-renewal of the Maintenance and Support Agreement set forth in Schedule A or nonpayment of any Annual Maintenance Fee, Our maintenance and support obligations and the license to the Software granted under this Agreement will automatically terminate.

13. TRAINING AND CONSULTING

13.1. Training and Consulting. At Your request, We, directly or through a third party supplier, will provide training and consulting services related to the Software at Our then-current rates, which as of the date of this Agreement are as set forth in Schedule A. You will reimburse Us for all reasonable lodging and travel expenses incurred in connection with providing training and consulting services in connection with this Agreement, as well as for classroom guides and training materials used by Us in providing training services, including shipping costs for such materials, and out-of-pocket expenses associated with the provision of such services. All expenses will conform to Your expense policy as presented in Schedule C. Travel includes the cost of flights, car rental (including gas), parking, train fares, taxi fares and other forms of transportation to Your location. Accommodations include the cost of hotels and related hotel charges which comply with Your reimbursement policies. In lieu of individual food and sundry costs, We will charge a US \$75 per diem per person for each night that Our resource stays overnight at Your location outside of a travel day. A US \$57 per diem per person will be charged for the first and last day of travel.

14. NON-SOLICITATION

14.1. Non-Solicitation. Each party agrees to refrain from soliciting from employment or hiring, directly, without the prior written consent of the other, any of the other party's employees during the term of this Agreement and for one (1) year following the date of its termination. In the event You in any way hire any of Our employees within such period, You agree to pay Us, in consideration of its lost business and the expense of training and recruiting qualified personnel having the requisite unique and technical expertise to service Our clients,

as liquidated damages, an amount equal to eighteen (18) months' salary of that employee at Our then-current rate of compensation for such employee's position.

15. ADVERTISING AND MARKETING

15.1 Publicity. Upon signing this Agreement, both parties will have authority to issue press releases and announcements describing the license and the parties' relationship. We will also have the right to use Your name as a customer of Ours in promotional materials, including Our filings with public agencies. If You authorize in the applicable Order Form or otherwise in writing to Us any use of any of Your trademarks and trade names owned by You ("Your Trademarks"), such use shall be the subject of a nonexclusive, nontransferable license, without the right to sublicense, Your Trademarks in connection with mutually acceptable advertising, marketing and promotional activities. Our use of Your Trademarks shall be in accordance with this Agreement and any trademark usage guidelines or other reasonable instructions that You may provide to Us from time to time. All benefit and goodwill from the use of Your Trademarks shall inure to the benefit of You. Neither party will issue any press releases or engage in any other promotional activities, other than the foregoing, that identify the other party without obtaining such other party's prior written approval; provided, that either party may at any time reiterate any information contained in any jointly issued or previously approved press release or promotional material.

16. MISCELLANEOUS

16.1. Notices. Any notice required or permitted hereunder shall be in writing and shall be deemed to have been duly given (i) upon hand delivery, (ii) on the third day following delivery to the U.S. Postal Service as certified mail, return receipt requested and postage prepaid, (iii) on the first day following delivery to a recognized overnight courier service, fee prepaid and return receipt or other confirmation of delivery requested, (iv) upon confirmation of receipt by the party to receive such notice, of a fax sent to the fax number of such party, or (v) upon confirmation of receipt by the party to receive such notice, of an email sent to the email address of such party.

16.2. Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of New York, excluding its conflict of laws principles. In the event that any legal proceedings are commenced with respect to any matter arising under this Agreement, the parties specifically consent and agree that the courts of the State of New York and/or the Federal Courts located in the State of New York will have exclusive

jurisdiction over each of the parties and over the subject matter of any such proceedings, and that the venue of any such action will be in Monroe County, New York and/or the U.S. District Court for the Western District of New York. Additionally, the party that loses any such proceeding will pay all costs and expenses incurred by the other party(s) in connection therewith, including all attorneys' and other professional fees and expenses.

16.3. Assignment. You may not assign this Agreement without Our prior written consent and any such attempted assignment or delegation without Our prior written consent shall be null and void. Notwithstanding the foregoing, We may assign this Agreement in connection with any merger, acquisition or reorganization.

16.4. Partial Invalidity. If any provision of this Agreement is held invalid or unenforceable by competent authority, that provision will be construed so as to be limited or reduced to be enforceable to the maximum extent compatible with the law as it shall then appear. The total invalidity or unenforceability of any particular provision of this Agreement will not affect its other provisions and this Agreement will be construed in all respects as if the invalid or unenforceable provision were omitted.

16.4. Force Majeure. Neither party will be liable for any costs or damages due to nonperformance under this Agreement arising out of any cause not within the reasonable control of such party and without its fault or negligence. Neither party will be liable for any delay or failure in the performance of its obligations under this Agreement that directly results from any failure of

the other party to perform its obligations as set forth in this Agreement.

16.5 Waiver. No waiver of a breach of any term of this Agreement will be effective unless in writing and duly executed by the waiving party. No such waiver will constitute a waiver of any subsequent breach of the same or any other term of this Agreement. No failure on the part of a party to exercise, and no delay in exercising, any of its rights hereunder will operate as a waiver thereof, nor will any single or partial exercise by a party of any right preclude any other or future exercise thereof or the exercise of any other right. No course of dealing between the parties will be deemed effective to modify, amend or discharge any part of this Agreement or the rights or obligations of any party hereunder.

16.6 Entire Agreement. This Agreement, together with all its Order Forms, contains the entire understanding of the parties with respect to the transactions contemplated and supersedes any prior agreements or understandings among the parties with respect to the subject matter hereof. Any additional terms found in purchase orders issued by You are null and void and are not incorporated into this Agreement. This Agreement may only be amended by a written document signed by all parties. There are no representations, warranties, or obligations of any party not expressly contained herein. In the event of any conflict between the terms of this Agreement and any of its Order Forms, the terms of this Agreement will control.

16.7 Survival. The provisions of this Agreement that by their nature would survive its termination will survive indefinitely.

JORSEK, LLC

By

Name:

Title:

Fax:

Email:

Date:

[CUSTOMER LEGAL ENTITY NAME]

By

Name:

Title:

Fax:

Email:

Date:

SCHEDULE A

TO SOFTWARE LICENSE AGREEMENT

MAINTENANCE AND SUPPORT AGREEMENT

1. Telephone Support. We will provide reasonable technical telephone consultation relating to the operation of the Software at the level of support services selected by You. You shall appoint individuals within Your organization to serve as registered primary contacts between Us to receive support through Our support center. All of Your support inquiries shall occur through these contacts.

2. Error Correction. We will use commercially reasonable diligence to correct verifiable and reproducible errors, bugs or defects, provided that You report such errors, bugs or defects to Us, in writing, within 15 days of their initial occurrence. We will not be responsible for correcting any error, bug or defect in any version of the Software other than one version behind the most recent generally available release. We will be relieved from any obligations under this paragraph if You do not give Us written notice within 15 days of the occurrence of any error, bug or defect claimed hereunder and if such delay causes additional degradation of the Software. We may update Your copy of the Software to correct any such error, bug or defect and install such corrections according to Section 5 (Installation, Configuration, and Maintenance Services). We will not correct errors arising out of or related to installation or configuration of the Software or any new version of the Software by any party other than Us. You agree to provide Us reasonable access to all necessary personnel to answer questions about any problems reported by You regarding the Software.

3. New Releases, Enhancements. We will, from time to time, issue new releases of the Software containing error corrections, bug fixes, patches, updates and enhancements. We will evaluate the development of enhancements, features or modifications requested by and for Your use, and install such enhancements, features, or modifications according to Section 5 (Installation and Configuration). All such error corrections, bug fixes, patches, updates and new releases are and will be the sole property of Us. New releases of the Software developed and owned by Us and containing updates and enhancements will be made available to You promptly at no cost, to be installed at Your discretion. You shall be responsible for purchasing services related to installation or configuration of updates and enhancements as provided for in Schedule A, Section 5.

4. Exclusions. We will have no obligation to provide support and maintenance to You for the Software as contemplated by this Schedule if: (i) the Software was not used in accordance with the this Agreement; (ii) the Software was altered, modified or converted by You without our prior written consent; (iii) Your computer malfunctioned and the malfunction caused a defect in the Software; or (iv) any other cause within Your control caused a defect in the Software. Further, in the event that You alter, modify or convert the Software without Our prior written consent, paragraphs 8.1, 8.2, 8.3, and 9.1 of the Agreement will immediately be of no force or effect. Notwithstanding any termination of Our support and maintenance obligations under the Agreement, You will not be entitled to any refund of any fees paid to Us.

5. Installation, Configuration, and Maintenance Services. Support does not include the installation or configuration of (i) the initial installation of the Software on your servers; (ii) any updates to an existing version of the Software containing error corrections; or (iii) a new version of the Software containing updates and enhancements. We will provide any services in connection with the installation or configuration of such initial versions, or new versions containing error corrections, updates and enhancements (collectively "Deployed Maintenance") on a time and materials basis or at a fixed fee as set forth in an Order Form pursuant to Our Professional Services Agreement. You shall provide Us with necessary remote access to Your server containing the Software so that We may provide maintenance and support services.

Attachment A

User Guide

SCHEDULE B

TO SOFTWARE LICENSE AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement sets forth the additional terms and conditions under which We, either directly or through a third party supplier, will provide professional services in connection with the Software provided pursuant to this Agreement.

1. PROFESSIONAL SERVICES.

(a) Order Form. Each professional services project We undertake shall be described in Order Forms setting forth the agreed upon specifications, project schedules, delivery dates, Services Deliverables, pricing and payment terms. "Services Deliverables" shall mean the items to be delivered to You in connection with services performed by Us, such as consulting reports, on-site training, Software integration work or Software modifications, but does not include the Software licensed hereunder. Both parties shall execute each Order Form and each is incorporated herein by this reference. The terms of this Professional Services Agreement will control over any conflicting terms in the Statements of Work.

(b) Delivery and Cooperation. We will provide the Services Deliverables according to the agreed delivery schedule set forth in the applicable Order Form. You acknowledge that Your cooperation is essential to the timely performance of Our services. You will, to the extent required in connection with the performance of Our services: (i) provide Us with any necessary Customer Materials; (ii) provide Us with any necessary access to Your personnel, facilities, or data; (iii) cause the appropriate personnel to cooperate with Us as required for Us to provide the services, including responding promptly to questions or issues; and (iv) make any payments when due. Your delay or failure to do so shall excuse any of Our resulting failures to meet the delivery schedules set forth in the Order Form. If You fail to do any of the foregoing, both parties will cooperate in good faith to develop a revised written delivery schedule and written Order Form or change the order signed by both parties with new pricing.

(c) Ownership. The Software and Service Deliverables and any modifications, translations, adaptations, upgrades, results and enhancements thereto are and shall at all times remain Our sole and exclusive property, including all intellectual property rights therein. The Software and Service Deliverables are protected by copyright and other intellectual property laws and international treaties. You shall neither own nor hereby acquire any claim or right of ownership in or to the Software or Service Deliverables.

(d) Place of Performance. If Our personnel, agents or representatives are required to travel to a location other than one of Our facilities, You will pay or reimburse Us upon invoice for all reasonable travel expenses including airfare, ground transportation, and lodging for personnel required to travel. Further, You will pay seventy-five dollars (\$75) per diem per person for meals. We will adhere to Our corporate travel policies and provide a copy, unless other agreements are made prior to undertaking a project. Services to be provided on-site at Your facilities will be scheduled in advance by agreement of each party. We will use reasonable efforts to accommodate any requested change in the scheduled dates for on-site services, subject to the availability of appropriate personnel. You will also reimburse Us upon invoice for Our out-of-pocket expenses in connection with the performance of services as set forth in the applicable Order Form. At Your request, We will provide receipts or other reasonably satisfactory evidence of such expenses.

2. CHANGES TO SERVICES DELIVERABLES.

(a) Changes to Project Scope. You may request changes to the scope of an Order Form. We will use commercially reasonable efforts to accommodate requested scope changes, subject to this Section. Any scope changes shall be subject to mutual agreement and shall be set forth in a new Order Form or a written change order setting forth the changes to the Services Deliverables and any modifications to the delivery dates, payment terms and agreed pricing.

(b) Changes to Non-functional Elements. You acknowledge that certain non-functional or aesthetic elements of the Services Deliverables such as screen displays and user interface design can vary greatly without affecting the functional or performance specifications. We will incorporate any nonfunctional or aesthetic elements specified in the Order Form into the Services Deliverables, and will work together with You in the design of such nonfunctional or aesthetic elements. If You want to change the nonfunctional or aesthetic elements of any Services Deliverable which meets the functional and performance specifications and otherwise complies with the Statements of Work, then You agree to compensate Us at a mutually agreed price set forth in a change order or at Our then current hourly rates for any additional time required to make

the nonfunctional or aesthetic elements of the Services Deliverables satisfactory.

3. SERVICES PAYMENT TERMS. Unless otherwise stated in the Order Form, You will pay Licensor at the then-current hourly rate for Our employee or subcontractor who is performing the work. Rates are subject to change. We will invoice You at the end of each month at the billing rates set forth in the Statements of Work for work performed on each Order Form during the previous month. Invoices will include a summary of all time expended for each personnel classification providing services during the month.

4. TERMINATION OF PROJECTS.

(a) For Convenience. You may terminate any Order Form for any reason upon thirty (30) days prior written notice. If any particular Order Form is terminated for any reason other than an uncured

breach by Us, then We shall deliver the work completed on the Services Deliverables then in process and be paid for all services performed through the Effective Date of termination based on the actual time expended for time and materials projects. You will not be entitled to any refund of amounts previously paid under an Order Form if You elected such early termination.

(b) With Breach. If You terminate this Professional Services Agreement or any particular Order Form following an uncured breach by Us, then You shall, at Your option, be entitled to either: (i) receive the work completed on the Services Deliverables then in process and pay Us for all services performed through termination in accordance with Section 4(a) or (ii) forgo receiving the Services Deliverables then in process and have no further obligation to pay Us for such Services Deliverables.