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- i) Section 1(a) above of **Limited Right to Use**
- ii) Section 1(d) of **Limited Right to Use**
- iii) Section 3 regarding Akana standard support and maintenance
- iv) Section 4 - **Limited Warranty; Disclaimer of Warranty**
- v) Section 5 – **Infringement Indemnity**
- vi) Section 6 – **Limitation of Liability**
- vii) Section 8 (a) – **Term**

(c) Licensee may make the number of copies of the Software and Documentation corresponding to the indicated quantities and licensing restrictions contained in the Licensed Product Exhibit.

(d) Licensee may make a reasonable number of archival copies of the Software and Documentation, provided that all copies include Akana's copyright and any other proprietary notices as included in the delivery of the Software and Documentation. Any copy of the Software and Documentation made by Licensee is the exclusive property of Akana.

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3. Fees and Payment

In consideration for the licenses granted by Akana under this Agreement, Licensee shall pay Akana the applicable license and professional services fee amounts set forth in the Licensed Product Exhibit in accordance with the terms therein. In consideration for any standard support and maintenance (http://akana.com/solutions/product_support_terms) provided by Akana, Licensee shall pay any applicable maintenance and support fees as set forth in the Licensed Product Exhibit. All payments must be made by check or wire transfer in accordance with the instructions set forth in the Licensed Product Exhibit, or as otherwise notified in writing by Akana to Licensee. Late payments shall accrue interest at a rate of the lesser of 1.5% per month or the maximum legal rate. In the event that any fees due under this Agreement are more than thirty (30) days late, Akana shall have the right to suspend performance under this Agreement until all fees are current. Unless otherwise stated in the Licensed Product Exhibit, all payments made hereunder shall be in US Dollars. Licensee shall, in addition to all other amounts payable under this Agreement, pay all applicable fees, duties, withholdings, sales, use, value added or other taxes, federal, state, local or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement, excluding only taxes based on Akana's net income. Licensee shall hold Akana harmless from all claims and liability arising from Licensee's failure to report or pay any such taxes, duties and assessments.

4. Limited Warranty; Disclaimer of Warranty

Akana warrants to Licensee that for a period of ninety (90) days from the date of shipment (or delivery if done electronically) of the Software, the Software will substantially conform to its Documentation. Licensee's sole and exclusive remedy under the foregoing warranty shall be for Licensee to use commercially reasonable efforts to correct any substantial non-conformity of the Software reported to Akana in writing during the period of warranty. The warranty herein shall not apply to any defect in the Software that is caused by (i) the use or operation of the Software with an application or in an environment other than that intended or recommended by Licensee, (ii) modification to the Software not made by Akana, (iii) third party hardware or software or (iv) Licensee's failure to implement all error corrections which are issued by Akana.

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AKANA'S TOTAL AND CUMULATIVE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE LICENSE FEES RECEIVED BY AKANA HEREUNDER. LICENSEE FURTHER AGREES THAT AKANA WILL NOT BE LIABLE FOR ANY LOST PROFITS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES. IN NO EVENT WILL AKANA BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSEE ACKNOWLEDGES THAT THE AMOUNTS PAYABLE HEREUNDER ARE BASED IN PART ON THESE

LIMITATIONS, AND FURTHER AGREES THAT THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

7. Protection and Security

Licensee is solely responsible for any authorized or unauthorized access to the Software. Licensee agrees to comply with all laws and regulations applicable to the gathering, processing, storing, transmitting and dissemination of business or personal information.

8. Term and Termination

(a) **Term**. This Agreement and the licenses granted hereunder shall be effective as of the date of acceptance of this Agreement and the licenses granted herein shall continue in perpetuity unless otherwise stated in the Licensed Product Exhibit and unless terminated as set forth in this Section or as otherwise agreed between the parties in writing.

(b) **Termination**. Either party shall have the right to terminate this Agreement and the licenses granted herein if: (i) the other party fails to comply with any of the terms and conditions of this Agreement and such default has not been cured within thirty (30) days after written notice of such default to the other party, or (ii) the other party (A) terminates or suspends its business, (B) has wound up or liquidated, voluntarily or otherwise, or (C) becomes the subject of a voluntary or involuntary petition in bankruptcy or any voluntary or involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors.

(c) **Effect of Termination**. The obligations of Akana and Licensee in Sections 2, 3, 4 (second paragraph), 6, 8, 9, 10, and all payment obligations accruing prior to termination, shall survive termination of this Agreement. Within five (5) days after termination of this Agreement, Licensee shall return to Akana or destroy, at Licensee's expense, the Software, Documentation and all copies thereof, and deliver to Akana a certification, in writing signed by an officer of Licensee, that the Software, Documentation and all copies thereof have been returned or destroyed, as requested by Akana, and their use discontinued. Nothing contained herein shall limit any other remedies that Akana may have for the default of Licensee under this Agreement nor relieve Licensee of any of its obligations incurred prior to such termination.

9. Confidential Information

For purposes of this Agreement, "Confidential Information" means all non-public information, trade secrets and know-how disclosed by Akana or Licensee pursuant to this Agreement which is either designated as proprietary and/or confidential, or by the nature of the circumstances surrounding disclosure, should reasonably be understood to be confidential. For the avoidance of doubt, "Confidential Information" includes the Software (both source and object code) and Documentation, algorithms, development techniques, the results of all evaluations, testing, benchmarking and the like of the Software by Licensee, support techniques, methodologies, formulae, business plans, research and development strategies, Akana's internal personnel, financial, marketing and other business information, and product and service prices, as well as know-how and proprietary

information related to the foregoing . Each party agrees to: (a) preserve and protect the confidentiality of the other party's Confidential Information; (b) refrain from using the other party's Confidential Information except as contemplated herein; and (c) not disclose such Confidential information to any third party except to employees as is reasonably required in connection with the exercise of its rights and obligations under this Agreement and only subject to use and disclosure restrictions at least as protective as those set forth herein executed in writing by such employees. Notwithstanding the foregoing, either party may disclose Confidential Information of the other party which is: (i) already publicly known; (ii) discovered or created by the receiving party without reference to the Confidential Information of the disclosing party; (iii) otherwise known to the receiving party through no wrongful conduct of the receiving party, or (iv) required to be disclosed by law or court order. The confidentiality obligations of this Agreement shall survive the termination of this Agreement for a period of five (5) years.

10. United States Federal Government Acquisitions

This Section applies to all acquisitions of this Software by or for the federal government of the United States, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the federal government of the United States. By accepting delivery of the Software, the government hereby agrees that the Software and related documentation qualifies as "commercial" computer software and "commercial" computer software documentation within the meaning of the acquisition regulation(s) applicable to this procurement. The terms and conditions of this Agreement shall pertain to the government's use and disclosure of this Software, and shall supersede any conflicting contractual terms or conditions. If this Agreement fails to meet the government's needs or is inconsistent in any respect with Federal law, the government agrees to return this Software, unused, to Akana and notify Akana in writing of any such failure or inconsistency.

11. No Export

Licensee acknowledges and agrees that the Software may be subject to restrictions and controls imposed by the United States Export Administration Act and the regulations there under. Licensee agrees that it will not export or re-export either the Software or any directly related materials to or into any country in violation of such controls or any other laws, rules or regulations of any country, state or jurisdiction.

12. Conflicting Documents

No terms, provisions or conditions of any purchase order, invoice or other business form or written authorization used by either party will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement or the Licensed Products Exhibit, regardless of any failure of either party to object to such terms, provisions, or conditions. Notwithstanding, the parties agree that if Licensee and Akana have entered into a written software license agreement covering the Software and signed by both parties, such written software license shall supersede this Agreement and that the written software license, not this Agreement, shall govern the terms and conditions of Licensee's use of the Software as of the effective date of the written software license.

13. Assignment

Neither party shall assign or transfer this Agreement or any rights or obligations under this Agreement, whether voluntary or by operation of law, without the prior written consent of the other, provided that Akana may assign or transfer this agreement to any successor by way of merger, acquisition or sale of all or substantially all of the assets relating to this agreement. Any assignment or transfer of this Agreement made in contravention of the terms hereof shall be null and void. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the parties' respective successors and permitted assigns.

14. Audit Rights

Akana reserves the right to audit Licensee's use of the Software upon thirty (30) days' notice, but no more frequently than once every year. In the event that Akana finds that Licensee is not using the Software in accordance with the terms and conditions of this Agreement, then Licensee agrees to reimburse Akana for the cost of the audit without limiting Akana's other rights under this Agreement or in law or equity.

15. Force Majeure

Neither party shall be responsible for any delays or inability to perform any of its obligations under this Agreement due to any Act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection, material unavailability, or any other cause beyond the reasonable control of such party.

16. Miscellaneous

Each party will be and act as an independent contractor and not as an agent or partner of, or joint venturer with, the other party for any purpose, and neither party will have any right, power or authority to act or create any obligation, expressed or implied, on behalf of the other party. The terms of this Agreement shall be construed in accordance with the substantive laws of the State of California, without giving effect to the principles of conflicts or choice of law. The parties hereby agree that all disputes arising out of this Agreement shall be subject to the exclusive jurisdiction and venue in the federal and state courts within Los Angeles County, California. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act. If any provision of this Agreement is held to be unenforceable, such provision shall be constructed by limiting the law. This Agreement and the Licensed Products Exhibit represents the entire understanding between the parties with respect to its subject matter and supersedes all prior written and oral communications. This Agreement may not be modified except by a written agreement signed by both parties. No terms, provisions or conditions of any purchase order (including, without limitation, Licensee's own or form purchase order, if applicable), invoice, or other business form or written authorization used by either party will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of either party to object to such terms, provisions or conditions. A waiver by Akana of its rights hereunder shall not be binding unless contained in a written agreement signed by Akana. The non-enforcement or waiver of any provision hereunder

on one occasion shall not constitute a waiver of such provision or any other provision hereunder on any other occasions. All notices required or permitted under this Agreement will be in writing.

17. Professional Services. If requested by Licensee and agreed to by Akana, Akana will provide the professional services described on the Licensed Products Exhibit (the “Professional Services”). The Professional Services shall be subject to the terms and conditions of this Agreement and the terms and fees set forth on the Licensed Products Exhibit. If no professional services are described on the Licensed Products Exhibit, then Akana is not obligated to provide any professional services. In addition, the following terms and conditions apply to any Professional Services:

- (a) The Professional Services described on the Licensed Products Exhibit shall be the first SOW under the Agreement with respect to Professional Services. A separate SOW will be required for each additional project, assignment or task requested by Licensee. Neither party shall be obligated or required to enter into or execute any additional SOWs. Each SOW shall expire upon the completion of the services under the SOW. Other than the first SOW, each subsequent SOW will become part of this Agreement by this reference when executed by authorized representatives of Akana and Licensee and shall include: (a) a detailed description of Akana’s and Licensee’s respective responsibilities; (b) an estimated performance schedule including milestones, if applicable; (c) the deliverables, if any, to be provided to Licensee; and (d) pricing and payment terms. A SOW may only be amended or modified by a written document signed by authorized representatives of Akana and Licensee. Akana will retain the sole and exclusive ownership of all deliverables, and the sole and exclusive right to control or direct the manner or means by which the Professional Services are performed and may subcontract any or all of the Professional Services.
- (b) Data and Information. Licensee shall make available in a timely manner at no charge to Akana all technical data, computer facilities, programs, files, documentation or other information and resources reasonably required by Akana for the performance of the Professional Services. Licensee reasonably will be responsible for, and assumes the risk of any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by Licensee.
- (c) Contact Person. Each party will appoint, in writing, an employee or agent of such party to act as the “Contact Person” for all communication between the parties related to the Professional Services. The Contact Person will be responsible for monitoring the status of the Professional Services and will schedule regular meetings with both technical and management personnel of each party to review the status of the Professional Services.

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CANCEL