

SEMARCHY
SOFTWARE LICENSE AGREEMENT – ADD NUMBER

This Software License Agreement (the “**Agreement**”) is being entered into between Customer and Supplier as set forth in an Order Form.

In consideration of the mutual promises and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

- 1.1. “**Affiliate**” means any entity, now or hereafter existing (so long as such entity does not have its own agreement with Supplier for use of the Software or access and use of the Supplier’s Services) that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the subject entity. For purposes of this definition, “control” means direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.
- 1.2. “**Authorized Purposes**” means Customer’s internal business purposes if the Subscription Term is not for an Evaluation License. If the Subscription Term is for an Evaluation License, then “Authorized Purposes” means Customer’s internal testing and evaluation use only.
- 1.3. “**Customer Content**” means electronic data, files or information owned by Customer and such information used by Customer in connection with the Software or inputted by Customer into Semarchy’s SaaS Services.
- 1.4. “**Delivery Date**” means the date, set forth in the applicable Order Form, on which the Software is scheduled to be made available to Customer.
- 1.5. “**Documentation**” means the electronic or online user instructions and help files made available by Semarchy for use with the Software, as may be updated from time to time by Semarchy. Documentation may be accessed online at <https://www.semarchy.com/documentation>.
- 1.6. “**Evaluation License**” means a non-production license granted to Customer with respect to the Software for the limited period of time specified in the Order Form.
- 1.7. “**Intellectual Property Rights**” means all intellectual property rights or similar proprietary rights, including (a) patent rights and utility models, (b) copyrights and database rights, (c) trademarks, trade names, domain names and trade dress and the goodwill associated therewith, (d) trade secrets, and (e) industrial design rights; in each case, including any registrations of, applications to register, and renewals and extensions of, any of the foregoing in any jurisdiction in the world.
- 1.8. “**Subscription Term**” means the license period for Customer’s use of the Software set forth in an Order Form. Unless otherwise specified in the applicable Order Form, the Subscription Term for an Evaluation License is limited to thirty (30) days from the Delivery Date.
- 1.9. “**Open Source Software**” means all software that is available under any license approved by the Open Source Initiative (www.opensource.org). Open Source Software components are licensed under the terms of their respective license agreements and not under the terms of this Agreement.
- 1.10. “**Order Form**” means the ordering documents for Services and licenses for Software purchased from Semarchy that are executed by the parties from time to time pursuant to this Agreement, including modifications, supplements, and addenda thereto.
- 1.11. “**Semarchy Technology**” means the Software and all technology, information, trade secrets, patent rights, copyrights, know-how, processes, algorithms, inventions, Feedback and Documentation associated with the foregoing including the SaaS Services as may be provided or otherwise made available by Semarchy to Customer hereunder (if any), as licensed by Semarchy hereunder on a subscription basis, including all Intellectual Property Rights and Derivative Works therein, on a worldwide basis. As used herein, “Feedback” means bug reports, suggestions, comments or other feedback provided by Customer to Semarchy with respect to the Software or SaaS Services, excluding any Customer Confidential Information, and “Derivative Works” means for this purpose any modification or extension of any invention, process, algorithm, software program, trade secret, work of authorship or other Intellectual Property Right.

- 1.12. **“Software”** means the version of the software product specified in the Order Form and any updates, upgrades and any other software that Semarchy licenses to Customer hereunder and in accordance with Support Services that Customer is entitled to receive pursuant to this Agreement.
- 1.13. **“Support Services”** means the support and maintenance services offered by Semarchy and purchased by Customer separately pursuant to an Order Form for an annual subscription thereof.
- 1.14. **“Users”** means Customer’s or its Affiliates’ employees, and its and their consultants, contractors and agents: (a) for whom access to the Software during a Subscription Term has been purchased pursuant to an Order Form; (b) who have been specifically designated and authorized by Customer to access and use the Software, on behalf of and for the benefit Customer only for Authorized Purposes; and (c) who have been supplied with user identifications and passwords for such purposes by Customer.

2. ORDERS, LICENSES AND RESTRICTIONS

- 2.1. **Orders.** Subject to the terms and conditions contained in this Agreement, Customer may enter subscriptions with Semarchy for Users to use the Software in object code form only pursuant to Order Form(s). Customer agrees that its subscriptions hereunder are not contingent on the delivery of any future functionality or features. If there is any inconsistency between an Order Form and this Agreement, the Order Form controls.
- 2.2. **License Grant.** Subject to Customer’s compliance with the terms and conditions contained in this Agreement, Semarchy hereby grants to Customer, during the relevant Subscription Term, a limited, non-exclusive, non-transferable, non-sublicensable right to use the Software as further defined and set forth in the Order Form, solely for Customer’s Authorized Purposes and benefit and not for the benefit of any other person or entity for the number of Base Objects or Golden Records as defined and set forth in the Order Form. Customer’s use of the Software may be subject to certain limitations as specified in the Order Form or in the Documentation. Customer acknowledges that Software includes third parties Open Source Software which is licensed under the terms of their respective license agreements, and not under the terms of this Agreement.
- 2.3. **Restrictions.** Customer shall not, directly or indirectly, and Customer shall not permit any User or third party to:
 - (a) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Software;
 - (b) modify, translate, or create derivative works based on any element of the Software or any related Documentation;
 - (c) rent, lease, distribute, sell, resell, assign, or otherwise transfer its rights to use the Software or SaaS Services; or
 - (d) remove any proprietary notices from the Documentation.
- 2.4. **Reservation of Rights.** Except as expressly granted in this Agreement, there are no other rights or licenses granted to Customer. All rights not granted in this Agreement are reserved by Semarchy.

3. DELIVERY AND ACCEPTANCE

Delivery. The Supplier shall electronically deliver one copy of the Software upon the Effective Date. Within Seven (7) days from the date of activation of any software license, the Customer must register such license with Supplier’s license server. The Software will be deemed accepted upon delivery.

4. PROPRIETARY RIGHTS.

- 4.1. **SaaS Services and Software.** As between Semarchy and Customer, all right, title and interest in the SaaS Services, Software, Semarchy Technology and any other Semarchy materials or information furnished or made available hereunder, and all modifications and enhancements thereof, including all copyright rights, patent and trade secret rights and all other Intellectual Property Rights in each of the foregoing, belong to and are retained solely by Semarchy and Semarchy’s licensors and providers, as applicable.
- 4.2. **Customer Content.** Other than the limited license rights granted to Semarchy hereunder in connection with

its performance and operation of the SaaS Services, Customer retains all right title and interest in and to all Customer Content.

5. CUSTOMER OBLIGATIONS

5.1. **Customer Systems.** Customer is responsible for:

- (a) obtaining, deploying, and maintaining all computer hardware, software, modems, routers and other communications equipment necessary for Customer, its Affiliates and their respective Users to use the Software;
- (b) paying all third-party fees and access charges incurred in connection with the foregoing; and
- (c) isolating and securing the Software and Semarchy Technology on the Customer systems and network to prevent unauthorized access, use, disclosure and loss using at a minimum industry standard security practices and technologies.

Except for the express subscription to the Software set forth herein and as specifically set forth in this Agreement, or an Order Form, Semarchy shall not be responsible for supplying any software, hardware, or other equipment to Customer under this Agreement.

6. MAINTENANCE AND SUPPORT SERVICES

6.1. **Maintenance and Support Services Term.** When a Customer has a valid, active and renewed maintenance or subscription, Semarchy will provide Support Services, Software patches, and upgrades during each applicable Subscription Term in accordance with published support policies (the “**Support Documentation**”) found at: <https://www.semarchy.com/global-support-policy/>.

6.2. **Evaluation.** No maintenance or support services are offered or made in connection with this Agreement if the Subscription Term is for an Evaluation License. Semarchy has no obligation to support or maintain the Software during the License Term of any Evaluation License in any way, correct any errors or deficiencies in the Software or provide updates, new builds, or error corrections.

7. CONSULTING SERVICES AND TRAINING

The Order Form describes any applicable training or consulting services that may be included alongside or in connection with the Software subscription.

8. FEES AND PAYMENT

8.1. **Fees.** Customer agrees to pay all fees specified in all Order Forms using one of the payment methods Semarchy supports. Except as otherwise specified in this Agreement or in an Order Form, payment obligations are non-cancelable, and fees paid are non-refundable. User subscription fees are based on the Subscription Term specified in the Order Form beginning on the Delivery Date. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding. Unpaid fees may result in Termination for Cause as described in Section 13 (Term and Termination) if not disputed in good-faith and with Customer’s diligent cooperation to resolve such dispute.

8.2. **Invoices and Payment.** All fees for the Software subscription, Support Services and Other Services will be invoiced as set forth the applicable Order Form. Except as otherwise set forth in the applicable Order Form, Customer agrees to pay all invoiced amounts within thirty (30) calendar days of the invoice date.

8.3. **Taxes.** “Taxes” means all taxes, such as sales, value-added or other similar taxes, imposed by applicable law by any jurisdiction, in any way connected with this Agreement, and all interest, penalties or similar liabilities with respect thereto, except such taxes imposed on or measured by a party’s net income. Customer shall be responsible for all of such Taxes.

9. REPRESENTATIONS AND WARRANTIES

9.1. **Mutual Representations and Warranties.** Each party represents, warrants and covenants that:

- (a) it has the full power and authority to enter into this Agreement and to perform its obligations hereunder, without the need for any consents, approvals or immunities not yet obtained; and

- (b) its acceptance of and performance under this Agreement shall not breach any oral or written agreement with any third party or any obligation owed by it to any third party to keep any information or materials in confidence or in trust.

9.2. **Software Warranty.** Unless otherwise set forth in the applicable Order Form, Semarchy warrants that during the period of ninety (90) days after the Delivery Date (the “**Warranty Period**”), the Software will function substantially in conformance with the Documentation. If Customer becomes aware of the Software not functioning in substantial conformance with the Documentation (a “**Defect**”), Customer must provide Semarchy with written explanation of the Defect within the Warranty Period. Semarchy will use commercially reasonable efforts to promptly correct the Defect or provide a replacement software product to Customer with substantially similar functionality, or at Supplier’s option, terminate the Subscription Term for the defective Software and refund to Customer any prepaid amounts attributable to the date Customer was unable to use the Software due to such Defect and the remaining days in the then-current Subscription Term (as well as any fees prepaid for any Support Services or Other Services not received). THE FOREGOING SETS FORTH SEMARCHY’S SOLE AND EXCLUSIVE REMEDY FOR ANY DEFECTIVE SERVICES.

10. INDEMNIFICATION

10.1. Semarchy Indemnity.

- (a) **General.** During the Subscription Term (other than with respect to an Evaluation License), Semarchy, at its expense, shall defend Customer and its Affiliates and their respective officers, directors and employees from and against all actions, proceedings, claims and demands by a third party (a “Claim”) alleging that the Software infringes any copyright or misappropriates any trade secret and shall pay all damages, costs and expenses, including attorneys’ fees and costs (whether by settlement or award of by a final judicial judgment) paid to the third party bringing any such Claim. Semarchy’s obligations under this Section are conditioned upon (i) Semarchy being promptly notified in writing of any Claim under this Section, (ii) Semarchy having the sole and exclusive right to control the defense and settlement of the Claim, and (iii) Customer providing all reasonable assistance (at Semarchy’s expense and reasonable request) in the defense of such Claim. In no event shall Customer settle any Claim without Semarchy’s prior written approval. Customer may, at its own expense, engage separate counsel to advise Customer regarding a Claim and to participate in the defense of the Claim, subject to Semarchy’s right to control the defense and settlement.
- (b) **Mitigation.** If any Claim which Semarchy is obligated to defend has occurred, or in Semarchy’s determination is likely to occur, Semarchy may, in its sole discretion and at its option and expense (a) obtain for Customer the right to use the Software, (b) substitute a functionality equivalent, non-infringing replacement for such the Software, (c) modify Software to make it non-infringing and functionally equivalent, or (d) terminate this Agreement and refund to Customer any prepaid amounts attributable to the period of time between the date Customer was unable to use the Software due to such Claim and the remaining days in the then-current Subscription Term.
- (c) **Exclusions.** Notwithstanding anything to the contrary in this Agreement, the foregoing obligations shall not apply with respect to a Claim of infringement if such Claim arises out of (i) use of the Software in combination with any software, hardware, network or system not supplied by Semarchy where the alleged infringement relates to such combination, (ii) any modification or alteration of the Software other than by Semarchy, and (iii) Customer’s continued use of the Software after Semarchy notifies Customer to discontinue use because of an infringement Claim.
- (d) **Sole Remedy.** THE FOREGOING STATES THE ENTIRE LIABILITY OF SEMARCHY WITH RESPECT TO THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS BY THE SOFTWARE OR OTHERWISE, AND CUSTOMER HEREBY EXPRESSLY WAIVES ANY OTHER LIABILITIES OR OBLIGATIONS OF SEMARCHY WITH RESPECT THERETO. NO INDEMNITIES OF ANY KIND WHATSOEVER ARE MADE FOR CUSTOMER’S BENEFIT DURING THE SUBSCRIPTION TERM OF ANY EVALUATION LICENSE.

10.2. **Customer Indemnity.** Customer shall defend Semarchy and its Affiliates, licensors and their respective officers, directors, and employees from and against any and all Claims which arise out of or relate to:

- (a) Customer’s use or alleged use of the Software other than as permitted under this Agreement, or
- (b) arising from the occurrence of any of the exclusions set forth in Section 9.1(c) above.

Customer shall pay all damages, costs, and expenses, including attorneys' fees and costs (whether by settlement or award of by a final judicial judgment) paid to the third party bringing any such Claim. Customer's obligations under this Section are conditioned upon:

- (c) Customer being promptly notified in writing of any Claim under this Section;
- (d) Customer having the sole and exclusive right to control the defense and settlement of the Claim; and
- (e) Semarchy providing all reasonable assistance (at Customer's expense and reasonable request) in the defense of such Claim.

In no event shall Semarchy settle any Claim without Customer's prior written approval. Semarchy may, at its own expense, engage separate counsel to advise Semarchy regarding a Claim and to participate in the defense of the Claim, subject to Customer's right to control the defense and settlement.

11. CONFIDENTIALITY AND DATA PROTECTION

11.1. **Confidential Information.** "Confidential Information" means any and all non-public technical and non-technical information disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") in any form or medium, whether oral, written, graphical or electronic, pursuant to this Agreement, that (i) is disclosed in a tangible or visual form and clearly labeled as "Confidential" or "Proprietary"; (ii) is disclosed in an oral, non-tangible or visual form, identified at the time of disclosure as confidential and confirmed in writing within thirty (30) days; or (iii) is identified and treated as confidential by Disclosing Party and given the circumstances of disclosure, and/or the nature of the information, the Receiving Party knew or should reasonably have known the information was confidential, including but not limited to:

- (a) techniques, sketches, drawings, models, inventions (whether or not patented or patentable), know-how, processes, apparatus, formulae, equipment, algorithms, software programs, software source documents, APIs, and other creative works (whether or not copyrighted or copyrightable);
- (b) information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising and marketing plans and information;
- (c) proprietary or confidential information of any third party who may disclose such information to Disclosing Party or Receiving Party in the course of Disclosing Party's business;
- (d) the non-public names, contact information and other personal information of Semarchy's employees and contractors that is disclosed to or learned by Customer under this Agreement;
- (e) and
- (f) the terms of this Agreement and any Order Form.

Confidential Information of Semarchy shall include the Software, the Semarchy Technology, the Documentation, the pricing, and the terms and conditions of this Agreement and any Order Form. Confidential Information also includes all summaries and abstracts of Confidential Information.

11.2. **Non-Disclosure.** Each party acknowledges that in the course of the performance of this Agreement, it may obtain the Confidential Information of the other party. The Receiving Party shall, at all times, both during the Term and thereafter, keep in confidence and trust all of the Disclosing Party's Confidential Information received by it. The Receiving Party shall not use the Confidential Information of the Disclosing Party other than as necessary to fulfill the Receiving Party's obligations or to exercise the Receiving Party's rights under this Agreement. Each party agrees to secure and protect the other party's Confidential Information with the same degree of care and in a manner consistent with the maintenance of such party's own Confidential Information (but in no event less than reasonable care), and to take appropriate action by instruction or agreement with its employees, Affiliates or other agents who are permitted access to the other party's Confidential Information to satisfy its obligations under this Section. The Receiving Party shall not disclose Confidential Information of the Disclosing Party to any person or entity other than its officers, employees, affiliates and agents who need access to such Confidential Information in order to effect the intent of this Agreement and who are subject to confidentiality obligations at least as stringent as the obligations set forth in this Agreement.

11.3. **Exceptions to Confidential Information.** The obligations set forth in Section 11.2 (Non-Disclosure) shall not

apply to the extent that Confidential Information includes information which:

- (a) was known by the Receiving Party prior to receipt from the Disclosing Party either itself or through receipt directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party;
- (b) was developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; or
- (c) becomes publicly known or otherwise ceases to be secret or confidential, except as a result of a breach of this Agreement or any obligation of confidentiality by the Receiving Party.

Nothing in this Agreement shall prevent the Receiving Party from disclosing Confidential Information to the extent the Receiving Party is legally compelled to do so by any governmental investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, the Receiving Party shall:

- (d) assert the confidential nature of the Confidential Information to the agency;
- (e) immediately notify the Disclosing Party in writing of the agency's order or request to disclose; and
- (f) cooperate fully with the Disclosing Party in protecting against any such disclosure and in obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality.

Additionally, Semarchy may collect and use data and information relating to Customer's use and performance of the Services and related systems and technologies, and will be free during and after the term hereof to (1) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (2) disclose such data solely in anonymized, aggregate or other de-identified form in connection with its business.

- 11.4. **Injunctive Relief.** The Parties agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury to the Disclosing Party and that, in the event of such breach, the Disclosing Party will be entitled, in addition to any other available remedies, to seek immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages.
- 11.5. **Data Protection Legislation.** Each Party is responsible for compliance with any applicable data protection legislation governing the processing of personal data as defined by applicable personal data protection laws and regulations. For the avoidance of doubt, Customer is and will at all times remain the data controller for the purpose of this Agreement. Customer is responsible for compliance with its obligations as data controller under applicable data protection laws and retains full responsibility for the Customers data processed in the SaaS Services. In the event Customer Content contains "personal data" (which is broadly defined as any information that identifies or is linked or reasonably linkable to an individual), Customer shall inform Semarchy in writing prior to input, processing or storage of the same through the SaaS Services.
12. **SECURITY.** Each party will be responsible for maintaining an information security program throughout the Term of this Agreement that is designed to: (i) ensure the security and confidentiality of the Software, Semarchy Technology, Customer Content and Confidential Information, and protect against anticipated threats or hazards and the unauthorized access to or use of the same; (ii) ensure the proper disposal of Customer Content; and (iii) comply with Semarchy's policy for responding to any Security Incident. If either party knows, or suspects the occurrence, of any unauthorized destruction, loss, alteration of or access to the SaaS Services or Customer Content, or any breach or potential breach of the Service (each a "**Security Incident**"), they will notify the other party of the same promptly after learning of the Security Incident. The parties will cooperate to remedy or mitigate the impact of any Security Incident and to manage any and all reporting regarding the same.

13. DISCLAIMERS AND LIMITATION OF LIABILITY

13.1. Disclaimers.

- (a) EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 8 (Representations and Warranties), THE SAAS SERVICES, SUPPORT SERVICES AND OTHER SERVICES ARE PROVIDED ON AN AS-IS BASIS AND CUSTOMER'S USE OF THE SAME IS AT ITS OWN RISK.

SEMARCHY DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS, STATUTORY AND IMPLIED REPRESENTATIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, QUALITY, SUITABILITY, OPERABILITY, CONDITION, SYSTEM INTEGRATION, NON-INTERFERENCE, WORKMANSHIP, TRUTH, ACCURACY (OF DATA OR ANY OTHER INFORMATION OR CONTENT), ABSENCE OF DEFECTS, WHETHER LATENT OR PATENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. THE EXPRESS WARRANTIES MADE BY SEMARCHY IN SECTION 8 (REPRESENTATIONS AND WARRANTIES) ARE FOR THE BENEFIT OF THE CUSTOMER ONLY AND NOT FOR THE BENEFIT OF ANY THIRD PARTY. THE SAAS SERVICES AND ANCILLARY SOFTWARE ARE LICENSED AND NOT SOLD. NO WARRANTIES OF ANY KIND WHATSOEVER ARE MADE FOR CUSTOMER'S BENEFIT DURING THE LICENSE TERM OF ANY EVALUATION LICENSE.

- (b) NO AGENT OF SEMARCHY IS AUTHORIZED TO ALTER OR EXPAND THE WARRANTIES OF SEMARCHY AS SET FORTH HEREIN. SEMARCHY DOES NOT WARRANT: (A) THAT THE USE OF THE SAAS SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (B) THAT THE SAAS SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; OR (C) THAT ERRORS OR DEFECTS IN THE SAAS SERVICES WILL BE CORRECTED OTHER THAN AS SET FORTH IN THE SUPPORT DOCUMENTATION.

13.2. **No Consequential Damages.** NEITHER SEMARCHY NOR ITS LICENSORS OR SUPPLIERS SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOST DATA, BUSINESS INTERRUPTION, LOST PROFITS, LOST REVENUE OR LOST BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE LICENSING, PROVISION OR USE OF THE SAAS SERVICES, SUPPORT SERVICES, OTHER SERVICES OR THE RESULTS THEREOF, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13.3. **Limits on Liability.**

- (a) NEITHER SEMARCHY NOR ITS LICENSORS OR SUPPLIERS SHALL BE LIABLE FOR ANY CUMULATIVE, AGGREGATE LIABILITY UNDER THIS AGREEMENT GREATER THAN AN AMOUNT EQUAL TO THE TOTAL FEES PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED WITH RESPECT TO THE PARTICULAR SERVICE GIVING RISE TO LIABILITY UNDER THE MOST APPLICABLE ORDER FORM.
- (b) **Exclusions.** THE FOREGOING SENTENCE SHALL NOT APPLY TO LIMIT DAMAGES ARISING OUT OF (i) EITHER PARTY'S INFRINGEMENT, VIOLATION OR MISAPPROPRIATION OF THE OTHER PARTIES INTELLECTUAL PROPERTY RIGHTS, (ii) CUSTOMER'S BREACH OF SECTION 2.3 (RESTRICTIONS), OR (iii) A PARTY'S BREACH OF SECTION 10 (CONFIDENTIALITY AND DATA PROTECTION), OR (iv) FOR FRAUD OR WILFULL MISCONDUCT.

13.4. **Essential Purpose.** CUSTOMER ACKNOWLEDGES THAT THE TERMS IN THIS SECTION 13 (DISCLAIMERS AND LIMITATION OF LIABILITY) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SHALL APPLY EVEN IF AN EXCLUSIVE OR LIMITED REMEDY STATED HEREIN FAILS OF ITS ESSENTIAL PURPOSE AND WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, PRODUCT LIABILITY OR OTHERWISE.

14. TERM AND TERMINATION

14.1. **Term.** The term of this Agreement commences on the Effective Date and continues until the expiration or termination of all Subscription Terms (the "**Term**"), unless earlier terminated as provided in this Agreement. Subscription Terms (other than for Evaluation Licenses) for all Users shall automatically renew for additional periods equal to the expiring Subscription Term, unless either party gives written notice of non-renewal at least thirty (30) days prior to the expiration of the then current Subscription Term. However, if the then-current Order Form includes a minimum commitment term agreed by the parties and fulfilling such minimum term requires renewal, such non-renewal is not permitted until expiration of such minimum commitment term.

Evaluation Licenses will terminate at the end of their respective Subscription Term unless the parties enter into an Order Form for a new Subscription Term.

- 14.2. **Termination for Cause.** A party may terminate this Agreement (and all Subscription Term(s)) upon written notice to the other party in the event the other party:
- (a) files a petition for bankruptcy or has a petition for bankruptcy filed against it that is not dismissed within sixty (60) days after filing or admits its inability to pay its debts as they mature, makes an assignment for the benefit of its creditors or ceases to function as a going concern or to conduct its operations in the normal course of business and such termination shall occur immediately upon notice; or
 - (b) commits a material breach of any provision of this Agreement and does not remedy such breach within thirty (30) days after receipt of notice from the other party or such other period as the parties may agree.
- 14.3. **Termination for Convenience.** Unless otherwise set forth in the Order Form, Customer may terminate this Agreement for convenience on sixty (60) days' notice; provided, however, that (i) such termination will not affect Order Forms entered or Subscription Terms, which by their nature are entered on a time-bound basis and the responsibility of Customer to pay for therefore will continue for the duration of such period(s) specified in the applicable Order Form; and (ii) Semarchy will not provide refunds or credits for any partial subscription or maintenance period(s) if the Agreement or an Order Form is terminated prior to its expiration. Additionally, notwithstanding the foregoing, if the Order Form references a commitment period, neither the Agreement nor the applicable Order Form is terminable for convenience during such commitment period.
- 14.4. **Effects of Termination.** In addition, upon expiration or termination of this Agreement:
- (a) Customer's use of and access to the Software and Semarchy's performance of all Support Services shall cease;
 - (b) all fees and other amounts owed to Semarchy throughout the remainder of the Subscription Term shall be immediately due and payable by Customer, including without limitation, all fees incurred by Consulting Services or Training completed; and
- Within ten (10) business days of the effective date of termination, each Receiving Party shall:
- (c) return to the Disclosing Party or destroy, all items of Confidential Information then in the Receiving Party's possession or control, including any copies, extracts or portions thereof; and
 - (d) upon request shall certify in writing to Disclosing Party that it has complied with the foregoing.
- 14.5. **Survival.** This Section and Sections 1 (Definitions), 2.3 (Restrictions), 2.4 (Reservation of Rights), 4 (Proprietary Rights), 8 (Fees and Payment) (surviving until all fees owed are paid), 10 (Indemnification), 11 (Confidentiality and Data Protection), 13 (Disclaimers and Limitation of Liability), 14.4 (Effects of Termination), 14.5 (Survival) and 15 (Miscellaneous) shall survive any termination or expiration of this Agreement.

15. MISCELLANEOUS

- 15.1. **Notices.** All notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier confirmation of delivery. Notices to Semarchy must be sent to the address or email stated in this Agreement or associated Order Form. Notices to Customer will be sent to the address and designated person Customer identifies on its account as its contact for notices.
- 15.2. **Governing Law, Dispute Resolution.** This Agreement shall be construed in accordance with the laws of applicable jurisdiction referenced in the table below, excluding its conflict of laws rules, and except for injunctive relief actions, the parties hereby consent to the exclusive jurisdiction of the applicable courts set forth below:

Semarchy Entity	Jurisdiction	Courts
Semarchy, Inc.	State of Delaware USA	County of New Castle, Delaware, USA
Semarchy Ltd	England and Wales	England and Wales

Semarchy SAS	France	France
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Any dispute arising out of or in connection with this Agreement, including but not limited to any question regarding its existence, interpretation, validity, performance, enforcement or termination, or any dispute between the parties arising from the parties' relationship created by this Agreement, shall be referred to and finally resolved by the aforementioned courts.

- 15.3. **Export.** Software and technical data are subject to U.S. export control laws, including the U.S. Export Administration Regulations, the U.S. International Traffic in Arms Regulations and all applicable U.S. sanctions and embargoes administered by the U.S. Department of Treasury. Software and technical data also may be subject to export or import regulations in other countries. Customer agrees to comply strictly with all applicable rules and regulations, not to export or re-export the Semarchy Software, SaaS Services, Semarchy Technology or technical data in violation of any such laws or this Agreement, nor export or re-export the foregoing to any country, region, organization or individual that is named as a restricted area or person on any applicable export laws, regulations or sanctions or regulations.
- 15.4. **Non-Solicitation.** During the Term of this Agreement and for a period of one (1) year thereafter, Customer agrees not to solicit to take away employees, consultants or contractors of Semarchy ("Service Providers") for Customer's own benefit or for the benefit of any other person or entity. The foregoing shall not prohibit Customer from hiring or engaging with a person who applies to a generally available position posted which does not target Semarchy's Service Providers.
- 15.5. **Publicity.** Semarchy has the right to reference and use Customer's name and trademarks and disclose the SaaS Services provided hereunder in each case in Semarchy business development and marketing efforts, including without limitation on Semarchy's web site.
- 15.6. **License Compliance.** Semarchy, at its own cost, may verify Customer's license compliance throughout the term of the Agreement and Customer agrees to cooperate and provide reasonable assistance and access to information. Customer agrees to pay, within thirty (30) days of written notice, any fees applicable to Customer use of the programs in excess of existing license rights, otherwise Semarchy can end Customer's technical support, licenses and/or this Agreement. Customer agrees that Semarchy shall not be responsible for any Customer costs related to such compliance review.
- 15.7. **Waiver.** No term or provision of this Agreement shall be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in a writing signed on behalf of the party against whom the waiver is asserted. No consent or waiver to a breach by either party, whether express or implied, shall constitute consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.
- 15.8. **Severability.** If any provision of this Agreement is held invalid or unenforceable for any reason, the remainder of the provision shall be amended to achieve as closely as possible the economic effect of the original term and all other provisions shall continue in full force and effect.
- 15.9. **Assignment.** Neither party may assign any of its rights or obligations hereunder without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, Semarchy may assign this Agreement without consent to an Affiliate, provided the assignee accepts full responsibility for Semarchy's obligations hereunder, and may assign this Agreement without the consent of Customer in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of its assets. Any other proposed assignment of this Agreement must be approved by the non-assigning party in writing. Assignment will not relieve the assigning party of its obligations under the assigned Agreement. Any attempted assignment without required approval will be void.
- 15.10. **Relationship of the Parties.** Semarchy is an independent contractor to Customer. There is no relationship of agency, partnership, joint venture, employment, or franchise between the parties. Neither party has the authority to bind the other or to incur any obligation on its behalf.
- 15.11. **Force Majeure.** Except for Customer's payment obligations, neither party shall be liable for any failure or delay in performance under this Agreement due to fire, explosion, earthquake, storm, flood or other weather; unavailability of necessary utilities or raw materials; Internet service provider failures or delays, or denial of service or other malicious attacks; war, civil unrest, acts of terror, insurrection, riot, epidemic, pandemic, acts of God or the public enemy; strikes or other labor problems; any law, act, order, proclamation, decree, regulation, ordinance, or instructions of government or other public authorities, or judgment or decree of a

court of competent jurisdiction (not arising out of breach by such party of this Agreement); or any other event beyond the reasonable control of the party whose performance is to be excused.

15.12. **Entire Agreement.** This Agreement, including all applicable Order Forms, constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous understandings, representations, discussions, negotiations, and agreements, whether written or oral , and may only be amended by a writing signed by the authorized representatives of the parties. In the event of any conflict or inconsistency between the provisions of this Agreement and any Order Form, the same shall be resolved by giving precedence to the Order Form.

[Signature page to follow]

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement as of the date last set forth below:

Semarchy, Inc., a Delaware corporation maintaining offices at 4742 N 24th St., Suite 350, Phoenix, AZ 85016 ("Supplier")

Customer Name and address ("Customer")

By:

By:

—

Printed Name:

Printed Name:

—

Title:

Title:

—

Date:

Date:

—