Quote

D DNN

Prepared Date	1/10/2020
Quote#	16538

Quote Expires	3/20/2020
Billing Schedule	*100% Upon Signature
Payment Terms	Net 30
Term Start Date	3/21/2020
Term End Date	3/20/2021

Service Provider

DNN Corp.
401 CONGRESS AVE STE 2650
AUSTIN TX 78701-3708
United States

Customer

Williamson County

Bill To

Williamson County
301 SE Inner Loop-Suite 105
Georgetown TX 78626
United States

End User

Williamson County

Ship To

Williamson County
301 SE Inner Loop-Suite 105
Georgetown TX 78626
United States

Item	Qty	Item Description
Evoq Content OnPrem - Production Licenses	1	Evoq Content OnPrem Production Licenses
Evoq OnPrem Platinum Support	1	Evoq On-Prem Platinum Support

Total Fees Due   **$16,333.32**

For Customer:

CUSTOMER SIGNATURE   *Bill Mannelly*

For Service Provider:

Andrew S Price
Andrew S Price (Jan 23, 2020)

SERVICE PROVIDER SIGNATURE

Does your company require a PO number indicated on the invoice?

☐ NO. PO IS NOT REQUIRED

☐ YES. PO IS REQUIRED. PO NUMBER (If PO is not yet available, please type "TO FOLLOW"):

Is the bill to address above correct or not?

☐ YES

☐ NO, Indicate the complete address:

Is the ship to address above correct or not?

☐ YES

☐ NO, Indicate the complete address:

Please provide the email address of the contact who needs to receive the invoice:

Please provide the email address of the accounts payable contact for Invoice Status Inquiry:

Quote

Prepared Date	1/10/2020
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Special Terms

This Quote is governed by the terms of the Software License Terms and Conditions attached hereto and all online and other terms and conditions referenced therein (the "Master Agreement"). Notwithstanding anything contained in the Master Agreement, the parties agree as follows:

1. Customer agrees to pay the Total Fees Due in accordance with the Billing Schedule and Payment Terms indicated above. Invoices will be sent by electronic delivery unless Customer requests otherwise; in which case, additional fees will apply. Customer's obligations may not be canceled or reduced prior to expiration of the Term.

2. The provisions of this Quote and the Master Agreement constitute the entire agreement between the parties regarding the subject matter hereof and supersede all proposals, prior agreements, oral or written, and all other communications with respect thereto. No terms and conditions on any purchase order or other document exchanged by the parties will be deemed to modify or amend this Quote and the Master Agreement.

3. SUBJECT TO EARLY TERMINATION IN ACCORDANCE WITH THE MASTER AGREEMENT, THE TERM WILL AUTOMATICALLY RENEW FOR THE SAME TERM PERIOD AS THE TERM INDICATED ABOVE AT SERVICE PROVIDER'S THEN-CURRENT RATES, UNLESS CUSTOMER NOTIFIES SERVICE PROVIDER IN WRITING OF CUSTOMER'S INTENT NOT TO RENEW AT LEAST SIXTY (60) DAYS PRIOR TO THE EXPIRATION OF THE THEN-CURRENT TERM.

4. This Quote may be executed in counterparts, each of which will be deemed an original but all of which together constitute one and the same instrument. An electronic signature of such will constitute execution by such signatory. In the event of any conflict between the terms of this Quote and the terms of the Master Agreement, the terms of this Quote shall control.

BY AFFIXING THE SIGNATURE OF THE AUTHORIZED REPRESENTATIVE OF CUSTOMER TO THIS QUOTE, BY HAND OR ELECTRONICALLY, CUSTOMER IS AGREEING TO BE BOUND BY THE TERMS OF THIS **QUOTE** AND THE **MASTER AGREEMENT**.

The following Software License Terms and Conditions (the "**License Agreement**") apply to the agreement entered into by and between the Customer (as identified on the Quote) and the Service Provider (as identified on the Quote) ("**Master Agreement**").

This License Agreement sets forth the terms and conditions under which Customer may (i) use Service Provider's proprietary software that is specifically licensed to Customer pursuant to the Quote; and (ii) use the user documentation that Service Provider makes generally available in hard copy or electronic form to its general customer base in conjunction with the licensing of such software (the "**Documentation**").

For purposes of this License Agreement, the term "**Software**" means the software listed in an applicable Quote, the Documentation, and any Updates (as defined in the Maintenance and Support Addendum located at http://maintenanceandsupportaddendum.trilogy.com ("**Support Terms**")).

Customer acknowledges and agrees that it is not relying on any agreement, representation, statement, or warranty (whether or not in writing) made or given prior to the "**Term Start Date**" (as identified on the Quote), except as expressly provided herein with respect to the Software provided hereunder or any maintenance and support services under the applicable Quote which shall be subject to the Support Terms.

By signing/agreeing to a Quote, each party acknowledges that it has read, understands, and agrees to the terms of this License Agreement.

1. LICENSE GRANT AND RIGHT OF USE

1.1. **Perpetual License Grant.** The following Section applies if Customer has purchased perpetual licenses. Any Software licensed hereunder shall be licensed pursuant to a separate Quote and shall be so licensed upon full payment of applicable fees hereunder. As specifically stated in the Quote, each such license will be a perpetual, worldwide, nonexclusive, and nontransferable license to use only the object code version of the Software, solely to perform those functions defined in the Documentation, and subject to all limitations and restrictions contained herein ("**Use**"). Web access for permitted third parties' Use will be defined in the applicable Quote if such access is to be permitted under this License Agreement. The Software may only be Used on the hardware and software components, including client machines, servers, and internetworking devices within Customer's internal computer network at Customer's location.

1.2. **Subscription Grant.** The following Section applies if Customer has purchased subscription licenses. Any Software licensed hereunder shall be licensed pursuant to a separate Quote. As specifically stated in the Quote, each such license shall be a fixed term, worldwide, nonexclusive, royalty free (upon full payment of subscription fees), and nontransferable license to use only the object code version of the Software, solely to perform those functions defined in the Documentation, and subject to all limitations and restrictions contained herein ("**Use**"). Web access for permitted third parties' Use will be defined in the applicable Quote if such access is to be permitted under this License Agreement. The Software may only be Used on the hardware and software components, including client machines, servers, and internetworking devices within Customer's internal computer network at Customer's location. The subscription license will expire upon expiration of the term set forth in the Quote unless and until it is renewed as per the terms and conditions of renewal set forth in the Quote.

1.3. License Type. The license model for the Software is set forth in the Quote and described in the Licensing Addendum located at http://softwarelicensingaddendumonpremise.trilogy.com (the "Licensing Addendum"). Unless otherwise specifically stated in the Quote, the type of license granted will either be a Named User License (as defined below) or a Site License (as defined below). A "**Named User License**" means that the Software licensed pursuant to the Quote may be Used by a limited number of individual users, each identified by a unique user Id (the "**Named User**"), the maximum number of which is specified in the Quote. Customer may designate different Named Users at any time without notice to Service Provider so long as the permitted number of Named Users is not exceeded. A "**Site License**" means that the Software licensed pursuant to the Quote may be Used by an unlimited number of individual users, subject to the terms of this License Agreement and the scope of Use defined on the applicable Quote.

1.4. **Authorized Users.** Unless otherwise specifically provided in the Quote, "**Authorized Users**" are defined as:

1.4.1. employees of Customer;

1.4.2. a non-human operated device, or a process accessing the Software on behalf of the Customer;

1.4.3. third party individuals or non-human operated devices, or processes that are accessing the Software: (a) on behalf of Customer, or (b) are authorized by Customer and who do not compete with Service Provider ("**Third-Party Users**"). Third-Party Users may Use the Software only subject to Section 6 (Confidentiality). Customer is fully liable for the acts and omissions of Third Party Users under this License Agreement and applicable Quote. Customer shall not permit any parent, subsidiaries, affiliated entities, or third parties to access the Software.

1.5. **Authorized Use.** Authorized Users may access and use the Software in the operating software environment specified in the applicable Quote; such environment is further described in the Licensing Addendum. Authorized Users shall not (i) access the Software to process, or permit to be processed, the data of any other party; or (ii) access the Software for service bureau or commercial time-sharing use.

1.6. **Additional Restrictions.** In no event shall Customer disassemble, decompile, or reverse engineer the

Software or Confidential Information (as defined in Section 6) or permit others to do so. Disassembling, decompiling and reverse engineering include, without limitation: (i) converting the Software from a machine-readable form into a human-readable form; (ii) disassembling or decompiling the Software by using any means or methods to translate machine-dependent or machine-independent object code into the original human-readable source code or any approximation thereof; (iii) examining the machine- readable object code that controls the Software's operation and creating the original source code or any approximation thereof by, for example, studying the Software's behavior in response to a variety of inputs; or (iv) performing any other activity related to the Software that could be construed to be reverse engineering, disassembling, or decompiling. To the extent any such activity may be permitted pursuant to written agreement, the results thereof will be deemed Confidential Information subject to the requirements of this License Agreement. Customer may use Service Provider's Confidential Information solely in connection with the Software and pursuant to the terms of this License Agreement.

2. PAYMENT

2.1. License Fees. Unless otherwise provided in the Quote, Service Provider may invoice Customer for all license fees, other fees, and charges due thereunder immediately following the Quote Effective Date.

2.2. Payment Due Date. All invoices shall be payable by Customer in United States dollars and payment will be due thirty (30) days after the invoice date. Notwithstanding any provision to the contrary, any and all payments required to be made hereunder shall be timely made, and no payments to Service Provider will be withheld, delayed, reduced or refunded if Service Provider's inability to meet any schedule or delivery requirements is caused by Customer's failure to provide certain of its facilities, computer resources, software programs, project management activities, personnel, and business information as are required to perform any of Service Provider's obligations hereunder. Invoices will be sent by electronic delivery unless Customer requests otherwise; in which case, additional fees will apply.

2.3. Purchase Orders. Customer may provide Service Provider with a valid purchase order, upon execution of a Quote. Notwithstanding anything to the contrary herein, purchase orders are to be used solely for Customer's accounting purposes and any terms and conditions contained therein will be deemed null and void with respect to the parties' relationship and this License Agreement. Any such purchase order provided to Service Provider will in no way relieve Customer of any obligation entered into pursuant to this License Agreement including, but not limited to, its obligation to pay Service Provider in a timely fashion.

2.4. Late Payment. Any late payment will be subject to any costs of collection (including reasonable legal fees) and will bear interest at the rate of one and one-half percent (1.5%) per month (prorated for partial periods) or at the maximum rate permitted by law, whichever is less.

2.5. Invoice Dispute Resolution. Without limiting any rights or obligations under the License Agreement, including Section 2.4 above, the following steps will be taken if an invoice becomes past due. Service Provider's accounts receivable and Customer's accounts payable representatives shall use all reasonable efforts to facilitate immediate payment of the invoice. In the event Service Provider does not receive a commitment for prompt payment, each party shall escalate the matter to Service Provider's Vice President of Sales or designated financial officer and Customer's Vice President (the "**Final Escalation**") for investigation and resolution. Notwithstanding anything to the contrary, the initial contact with Customer's Vice President pursuant to such Final Escalation will constitute "notice of default" pursuant to Section 10.2.

2.6. Taxes. The Customer will pay all import duties, levies or imposts, and all goods and services sales, use, value added or property taxes of any nature, assessed upon or with respect to the License Agreement. In the event that Customer is tax exempt, it shall furnish appropriate documentation to Service Provider to demonstrate such tax exempt status. If the Customer is required by law to make any deduction or to withhold from any sum payable to the Service Provider by the Customer hereunder, then the sum payable by the Customer upon which the deduction or withholding is based shall be increased to the extent necessary to ensure that, after such deduction or withholding, the Service Provider receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount the Service Provider would have received and retained in the absence of such required deduction or withholding. If the Customer is required by law to make any such deduction or withholding, the Customer shall promptly effect payment thereof to the applicable tax authorities. The Customer shall also promptly provide the Service Provider with official tax receipts or other evidence issued by the applicable tax authorities sufficient to enable the Service Provider to support a claim (if applicable) for income tax credits in the Service Provider's applicable taxable country.

3. DELIVERY/VERIFICATION

3.1. Delivery. Unless otherwise specifically provided in the Quote, Service Provider shall deliver to Customer one master copy of the licensed Software (each a "**Master Copy**") solely for the purpose of allowing Customer to make one copy of the Master Copy for Use by each Authorized User. Customer's right to reproduce the Master Copy is limited to the "**Authorized Reproduction Location**", defined as the Customer's address on the applicable Quote. Customer assumes all responsibility for the quality of the copies made by Customer. For purposes of this License Agreement, delivery will be deemed complete when Service Provider physically delivers, or causes a third party to deliver, a Master Copy to Customer, or makes the Master Copy available to Customer for downloading from Service Provider's File Transfer Protocol ("FTP") site and has provided Customer with the appropriate authorization to access the FTP site. Service Provider will provide Customer with a license key that is required to activate and use the Software. The license key will be provided via email or other like method at Service Provider's discretion. The license key is used to ensure that the Software operates in accordance with the license granted to the Customer in this License Agreement. As such, the Software may

contain time-out devices, counter devices, or other similar devices intended to prevent the Software from being used beyond the bounds of the license. Customer consents to such activity and agrees not to disable, attempt to disable, or tamper with the license key system or any other such license enforcement technology.

3.1. **Archival and Backup Copies.** Subject to the restrictions set forth herein, Customer may make a reasonable number of copies of the Master Copy solely for archival purposes and backup use in accordance with Customer's standard backup processes in emergency situations.

3.2. **Marking.** Customer shall not delete any copyright notices, proprietary legends, any trademark and service mark attributions, any patent markings, and other indicia of ownership and confidential markings on all copies of the Software and any other Service Provider materials provided to Customer, in the content and format contained on the Master Copy and such Service Provider materials. Customer shall pay all duplication and distribution costs incurred by Customer in making copies of the Software, and shall also pay all custom duties and fees if applicable. Subject only to the license granted herein, all copies of the Software and any other Service Provider materials provided to Customer are the property of Service Provider or its third party licensors from whom Service Provider has obtained marketing rights (the "**Third Party Service Providers**").

3.3. **Records.** Customer shall keep and maintain complete and accurate records of each copy of the Software including any and all pertinent usage information. Customer shall, upon Service Provider's request, provide reports to Service Provider specifying the cumulative total of copies, and all other reasonably pertinent usage information. All reports are to be delivered to Service Provider within thirty (30) days of such request.

3.4. **Verification.** During the Term (as defined below) of this License Agreement and for a period of two (2) years following any termination or expiration of this License Agreement, Customer shall maintain written records related to the Use of the Software by Customer, as reasonably necessary to verify compliance with the licensing and usage terms of this License Agreement. Such records will be kept in accordance with Customer's records retention policy and records retention schedule applicable thereto. Not more than once annually, and with notice of not less than twenty (20) business days, Service Provider may (or may engage a third-party, which will be subject to a confidentiality obligation), to verify compliance ("**Verification**"). Verification will take place during normal business hours and in a manner that does not interfere unreasonably with Customer's operations. At Service Provider's option, Service Provider may request, and Customer hereby agrees to complete, a self-audit questionnaire relating to Customer's usage under the rights granted by Supplier to Customer in this Agreement. If Verification or self-audit reveals unlicensed use of the Software, Customer agrees to compensate Service Provider for such usage. All costs of the Verification will be borne by Service Provider, unless unlicensed usage of 5% or more is found ("**Material Unlicensed Usage**".) If Material Unlicensed Usage is found during Verification, Customer shall reimburse Service Provider for the actual costs

associated with performance of the Verification. Service Provider and any third-party involved in the Verification will use the information obtained in compliance review only to enforce Service Provider's rights and to determine Customer's compliance with the terms of the licenses granted in this License Agreement. By invoking the rights and procedures described in this Section 3.5, Service Provider does not waive its rights to enforce other terms of this License Agreement, including, but not limited to, any intellectual property rights by other means as permitted by law.

4. **AFFILIATES AND THIRD PARTIES**

4.1. **Affiliates and Third Parties.** At the direction and sole discretion of Service Provider, affiliates of Service Provider (the "**Service Provider Affiliates**") may perform certain tasks related to Service Provider's obligations and rights under the Quote and the Master Agreement, including, but not limited to, invoicing, payment, technical support, project management and/or sales support. Customer hereby consents to the Service Provider Affiliates' role. Customer further agrees and acknowledges that Service Provider and Customer are the only parties to the Quote and the Master Agreement, and that any action taken by Service Provider Affiliates in connection with the performance of Service Provider's obligations under the Quote and the Master Agreement will not give rise to any cause of action against the Service Provider Affiliates, regardless of the theory of recovery. Service Provider shall at all times retain full responsibility for Service Provider Affiliates' compliance with the applicable terms and conditions of the Quote and the Master Agreement. Service Provider will have the right to use third parties, including offshore entities who employ foreign nationals, as well as employees and contractors of Service Provider Affiliates and subsidiaries, who may also be foreign nationals (collectively, "**Subcontractors**") in the performance of its obligations hereunder and, for purposes of this License Agreement, all references to Service Provider or its employees will be deemed to include such Subcontractors. Service Provider will have the right to disclose Customer Confidential Information to such third parties provided such third parties are subject to confidentiality obligations similar to those between Service Provider and Customer.

5. **OWNERSHIP**

5.1. **Reservation of Rights.** By signing the applicable Quote, Customer irrevocably acknowledges that, subject to the licenses granted herein, Customer has no ownership interest in the Software or Service Provider materials provided to Customer. Service Provider owns all right, title, and interest in such Software or Service Provider materials, subject to any limitations associated with intellectual property rights of third parties. Service Provider reserves all rights not specifically granted herein.

5.2. **Marks and Publicity.** Service Provider and Customer trademarks, trade names, service marks, and logos, whether or not registered ("**Marks**"), will be the sole and exclusive property of the respective owning party, whom owns all right, title and interest therein. Service Provider may: (i) use the Customer's name and/or logo within product literature, press release(s), social media, and other marketing materials; (ii) quote the Customer's statements in one or more press releases; and/or (iii) make such other use of the Customer's name and/or logo as may be agreed between the parties. Additionally,

Service Provider may include Customer's name and/or logo within its list of customers for general promotional purposes. Service Provider shall comply with Customer's trademark use guidelines when they are communicated to the Service Provider in writing and Service Provider will use the Customer's Marks in a manner which is consistent with industry practice. Neither party grants to the other any title, interest or other right in any Marks except as provided in this Section.

6. **CONFIDENTIALITY**

6.1 **Definition.** All information which is defined as Confidential Information hereunder in tangible form will be marked as "Confidential" or the like or, if intangible (e.g. visually or orally disclosed), will be designated as being "Confidential" at the time of disclosure and will be confirmed as such in writing within thirty (30) days of the initial disclosure. "**Confidential Information**" may include all technical, product, business, financial, and other information regarding the business and software programs of either party, its customers, employees, investors, contractors, vendors and suppliers, including, but not limited to, programming techniques and methods, research and development, computer programs, documentation, marketing plans, customer identity, and business methods. Without limiting the generality of the foregoing, Confidential Information includes all information and materials disclosed orally or in any other form, regarding Service Provider's software products or software product development, including, but not limited to, the configuration techniques, data classification techniques, user interface, applications programming interfaces, data modeling and management techniques, data structures, and other information of or relating to Service Provider's software products or derived from testing or other use thereof. Confidential Information includes all such Confidential Information that may have been disclosed by either party to the other party, before or after the first Quote Term Start Date. Confidential Information includes information generally not publicly known, whether tangible or intangible and in whatever form or medium provided, as well as any information generated by a party that contains, reflects, or is derived from such information. For clarity, the term 'Confidential Information' does not include any personally identifiable information. Obligations with respect to personally identifiable information (if any) will be set forth in a separate written agreement between the parties. For the purpose of this entire Section 6, the term 'Service Provider' includes all its Service Provider Affiliates.

6.2. **Confidentiality of Software.** The following is deemed Service Provider Confidential Information with or without marking or written confirmation: (i) the Software and other related materials furnished by Service Provider; (ii) the oral and visual information relating to the Software and provided in Service Provider's training classes; and (iii) Service Provider's representation methods of modeled data.

6.3. **Exceptions.** Without granting any right or license, the obligations of the parties hereunder shall not apply to any material or information that: (i) is or becomes a part of the public domain through no act or omission by the receiving party; (ii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (iii) is rightfully obtained from a third party without any obligation of confidentiality to the receiving party; or (iv) is already known by the receiving party without

any obligation of confidentiality prior to obtaining the Confidential Information from the disclosing party. In addition, neither party will be liable for disclosure of Confidential Information if made in response to a valid order of a court or authorized agency of government, provided that notice is promptly given to the party whose Confidential Information is to be disclosed so that such party may seek a protective order and engage in other efforts to minimize the required disclosure. The parties shall cooperate fully in seeking such protective order and in engaging in such other efforts.

6.4. **Ownership of Confidential Information.** Nothing in this License Agreement will be construed to convey any title or ownership rights to the Software or other Service Provider Confidential Information or to any patent, copyright, trademark, or trade secret embodied therein, or to grant any other right, title, or ownership interest in Service Provider Confidential Information to the Customer. Nothing in this License Agreement will be construed to convey any title or ownership rights to Customer's Confidential Information or to any patent, copyright, trademark, or trade secret embodied therein, or to grant any other right, title, or ownership interest in the Customer Confidential Information to Service Provider. Neither party shall, in whole or in part, sell, lease, license, assign, transfer, or disclose the Confidential Information to any third party and shall not copy, reproduce, or distribute the Confidential Information except as expressly permitted in this License Agreement. Each party shall take every reasonable precaution, but no less than those precautions used to protect its own Confidential Information, to prevent the theft, disclosure, and the unauthorized copying, reproduction, or distribution of the Confidential Information.

6.5. **Non-Disclosure.** Each party agrees at all times to use all reasonable efforts, but in any case no less than the efforts that each party uses in the protection of its own Confidential Information of like value, to protect Confidential Information belonging to the other party. Each party agrees to restrict access to the other party's Confidential Information only to those employees, who (i) require access in the course of their assigned duties and responsibilities, and (ii) have agreed in writing to be bound by provisions no less restrictive than those set forth in this Section 6. Notwithstanding anything contained hereunder and subject to the confidentiality obligations set forth under this Section 6, all references to Service Provider or its employees under this Section 6 will be deemed to include such employees of Service Provider Affiliates and Subcontractors and Service Provider will ensure that its Subcontractors abide by the applicable terms of the License Agreement.

6.6. **Injunctive Relief.** Each party acknowledges that any unauthorized disclosure or use of the Confidential Information would cause the other party imminent irreparable injury and that such party will be entitled to, in addition to any other remedies available at law or in equity, temporary, preliminary, and permanent injunctive relief in the event the other party does not fulfill its obligations under this Section 6.

6.7. **Suggestions/Improvements to Software.** Notwithstanding this Section 6, unless otherwise expressly agreed in writing, all suggestions, solutions, improvements, corrections, and other contributions provided by Customer

regarding the Software or other Service Provider materials provided to Customer will be owned by Service Provider, and Customer hereby agrees to assign any such rights to Service Provider. Nothing in this License Agreement or the applicable Quote will preclude Service Provider from using in any manner or for any purpose it deems necessary, the know-how, techniques, or procedures acquired or used by Service Provider in the performance of any services hereunder.

6.8. **Return of Confidential Information.** Upon the written request of disclosing party, receiving party shall return or destroy (and certify such destruction in a signed writing) all Confidential Information of disclosing party, including all copies thereof and materials incorporating such Confidential Information, whether in physical or electronic form. Each party may retain a copy of the other party's Confidential Information solely for archival purposes. To the extent that it is impracticable to return or destroy any Confidential Information, and with respect to any copies retained for archival purposes, receiving party shall continue to maintain the Confidential Information in accordance with this License Agreement. The confidentiality obligations set forth in this License Agreement will survive the termination of this License Agreement and remain in full force and effect until such Confidential Information, through no act or omission of receiving party, ceases to be Confidential Information as defined hereunder.

7. WARRANTY

7.1. **Software Warranty.** Service Provider warrants that for a period of ninety (90) days from the applicable Quote Effective Date (the "**Warranty Period**"), the Software will materially conform to the functional specifications set forth in the Documentation (the "**Specifications**"). Should the Software fail to materially conform to such Specifications during the Warranty Period, Customer shall promptly notify Service Provider in writing on or before the last day of the Warranty Period and identify with specificity the nonconformance. To the extent that the nonconformance exists in a current, unaltered release of the Software, Service Provider shall, at its option (and cost and expense), either (i) correct the nonconformance or, (ii) replace the nonconforming Software or, (iii) if neither of the foregoing options is commercially reasonable, terminate the license for the Software. Upon such termination of the license and Customer's return of the Software pursuant to Section 10 below, Service Provider will refund to Customer, as Customer's sole remedy for such Software, all license fees paid by Customer for such Software.

7.2. **Authorized Representative.** Customer and Service Provider warrant that each has the right to enter into this License Agreement and that the License Agreement and all Quotes executed hereunder will be executed by an authorized representative of each entity.

7.3. **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE, DOCUMENTATION, CONFIDENTIAL INFORMATION AND ANY OTHER TECHNOLOGY OR MATERIALS PROVIDED BY SERVICE PROVIDER TO CUSTOMER ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. EXCEPT AS OTHERWISE STATED IN THIS LICENSE AGREEMENT, SERVICE PROVIDER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

7.4. **No Modifications.** Notwithstanding anything to the contrary in this Section 7, any and all warranties under this License Agreement are void if Customer has made changes to the Software or has permitted any changes to be made other than by or with the express, written approval of Service Provider.

8. INFRINGEMENT

8.1. **Indemnity.** Service Provider will defend at its expense any cause of action brought against Customer, to the extent that such cause of action is based on a claim that the Software, as delivered by Service Provider to Customer, infringes a United States patent, copyright, or trade secret of a third party. Service Provider will pay those costs and damages finally awarded by a court of final jurisdiction (with no further appeals being possible) against Customer pursuant to any such claim or paid in settlement of any such claim if such settlement was approved in advance and in writing by Service Provider. Customer may retain its own counsel at Customer's own expense.

8.2. **Customer Obligations.** Service Provider will have no liability under this Section 8 unless:

8.2.1. Customer notifies Service Provider in writing immediately after Customer becomes aware of a claim or the possibility thereof; and

8.2.2. Service Provider has sole control of the settlement, compromise, negotiation, and defense of any such action; and

8.2.3. Customer cooperates, in good faith, in the defense of any such legal action.

8.3. **No Liability.** Service Provider will have no liability for any claim of infringement based on: (i) Software which has been modified by parties other than Service Provider; (ii) Customer's Use of the Software in conjunction with data where Use with such data gave rise to the infringement claim; (iii) Customer's Use of the Software with non- Service Provider software or hardware, where Use with such other software or hardware gave rise to the infringement claim or (vi) Customer's Use of the Software in a manner not consistent with this Agreement.

8.4. **Remedies.** Should the Software become, or in Service Provider's opinion is likely to become, the subject of a claim of infringement, Service Provider may, at its option: (i) obtain the right for Customer to continue using the Software; (ii) replace or modify the Software so it is no longer infringing or reduces the likelihood that it will be determined to be infringing; or (iii) if neither of the foregoing options is commercially reasonable, terminate the license for the Software. Upon such termination of the licenses and Customer's return of the Software pursuant to Section 10 below, Service Provider will refund to Customer, as Customer's sole remedy for such license termination, (i) with respect to perpetual licenses, all license fees paid by Customer for the terminated license, less an amount equal to one-thirty-sixth (1/36th) of the license fees for each month or any portion thereof which has elapsed since the "**Term Start Date**" (as described in the Quote) of such terminated license or (ii) with respect to subscription licenses, the subscription fees paid by Customer for the terminated

license for the past twelve (12) months. THIS <u>SECTION 8</u> STATES THE ENTIRE LIABILITY OF SERVICE PROVIDER WITH RESPECT TO ANY CLAIM OF INFRINGEMENT REGARDING THE SOFTWARE.

9. LIMITATION OF LIABILITY

9.1. **Liability Cap.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SERVICE PROVIDER, SERVICE PROVIDER'S LICENSORS, SERVICE PROVIDER AFFILIATES, OR SUBCONTRACTORS BE LIABLE UNDER ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), ATTORNEYS FEES AND COSTS, OR OTHERWISE, FOR DAMAGES WHICH, IN THE AGGREGATE, EXCEED THE AMOUNT OF THE FEES PAID BY CUSTOMER FOR THE SOFTWARE OR SERVICES WHICH GAVE RISE TO SUCH DAMAGES DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF SUCH CLAIM.

9.2. **Disclaimer of Damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SERVICE PROVIDER, SERVICE PROVIDER'S LICENSORS, SERVICE PROVIDER AFFILIATES, OR SUBCONTRACTORS BE LIABLE UNDER ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND AND HOWEVER CAUSED INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES AND COSTS, BUSINESS INTERRUPTION OR LOSS OF PROFITS, BUSINESS OPPORTUNITIES, OR GOODWILL ARISING HEREUNDER.

9.3. THE FOREGOING LIMITATIONS APPLY EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

10. TERM AND TERMINATION

10.1. **Term.** The term of this License Agreement will continue for the license term set forth in the Quote (the "**Term**") unless terminated as provided herein. For subscription licenses and maintenance and support, the Term will automatically renew for the same term period as the term indicated in the Quote at Service Provider's then-current rates, unless Customer notifies Service Provider in writing of Customer's intent not to renew at least sixty (60) days prior to the expiration of the then-current term.

10.2. **Termination by Service Provider.** This License Agreement and any license under an applicable Quote hereunder may be terminated by Service Provider: (i) if Customer fails to make any payments due hereunder within fifteen (15) days after Service Provider delivers notice of default to Customer; (ii) by giving prior written notice to Customer if Customer fails to perform any material obligation required of it hereunder, and such failure is not cured within thirty (30) days from Customer's receipt of Service Provider's notice to cure such non-performance of material obligation; or (iii) if Customer files a petition for bankruptcy or insolvency, has an involuntary petition filed against it, commences an action providing for

relief under bankruptcy laws, files for the appointment of a receiver, or is adjudicated a bankrupt concern.

10.3. **Termination by Customer.** This License Agreement may be terminated by Customer by giving prior written notice to Service Provider if Service Provider fails to perform any material obligation required of it hereunder, and such failure is not cured within thirty (30) days from Service Provider's receipt of Customer's notice to cure such non-performance of material obligation. Such notice will describe, in detail, Service Provider's alleged non-performance and will describe, in detail, the steps Customer believes Service Provider must take to remedy such alleged non-performance.

10.4. **Termination of Perpetual Licenses.** The following Section applies if Customer has purchased perpetual licenses. Upon termination of this License Agreement or any license hereunder, Customer's rights to the affected Software, Service Provider Confidential Information and other Service Provider materials (collectively "**Materials**") will cease. Customer shall immediately stop using such Materials and shall return such Materials to Service Provider, or destroy all copies thereof (except for the copies retained for archival purposes as described in <u>Section 6.8</u>). In addition, Customer shall provide Service Provider with written certification signed by an officer of Customer, that all copies of the Materials have been returned or destroyed and that no copies have been retained by Customer. Following termination, any use of the Materials by Customer will be an infringement and/or misappropriation of Service Provider's proprietary rights in the Materials. Upon termination of this License Agreement by Customer, Service Provider will have no further obligation or liability hereunder and all fees due under the License Agreement will become due and payable to Service Provider immediately upon such termination.

10.5. **Termination of Subscriptions.** The following Section applies if Customer has purchased subscription licenses. Upon expiration of the Term set forth in the Quote or upon termination of this License Agreement or any license hereunder, Customer's rights to the affected Software, Service Provider Confidential Information, and other Service Provider materials (collectively "**Materials**") will cease. Customer shall immediately stop using such Materials and shall return such Materials to Service Provider, or destroy all copies thereof (except for the copies retained for archival purposes as described in <u>Section 6.8</u>). In addition, Customer shall provide Service Provider with written certification signed by an officer of Customer, that all copies of the Materials have been returned or destroyed and that no copies have been retained by Customer. Following termination, any use of the Materials by Customer will be an infringement and/or misappropriation of Service Provider's proprietary rights in the Materials. Upon termination of this License Agreement by Customer, Service Provider will have no further obligation or liability hereunder and all fees due under the License Agreement will become due and payable to Service Provider immediately upon such termination.

10.6. **Other Remedies.** Termination of this License Agreement or any license created hereunder will not limit either party from pursuing other remedies available to it, including injunctive relief, nor will such termination relieve Customer's obligation to pay all fees that have accrued or are otherwise owed by Customer under this License

Agreement including, but not limited to, any Quote.

11. CUSTOMER'S FACILITIES

To the extent required by Service Provider, Customer will, upon request, promptly make available to Service Provider certain of its facilities, computer resources, software programs, networks, personnel, and business information as are required to perform any obligation hereunder. Service Provider agrees to comply with Customer's rules and regulations regarding safety, security, and conduct, provided Service Provider has been made aware of such rules and regulations in writing.

12. MISCELLANEOUS

12.1 **Import/Export.** The Software, its related technology and services, and Customer's Use of the Software and its related technology and services are subject to U.S. export control and sanctions laws and regulations, including, but not limited to, the Export Administration Regulations, 15 C.F.R. Parts 730-774 (the "**EAR**"), and sanctions imposed or administered by the Department of the Treasury, Office of Foreign Assets Control ("**OFAC**"), and the Department of State and may be subject to export or import regulations in other countries. Customer warrants and certifies that: (i) Customer is not a citizen, national, permanent resident of, or incorporated or organized to do business in, and is not under the control of the governments of Cuba, Iran, North Korea, Syria and the Crimea region of Ukraine, or any country to which the United States embargoes goods; (ii) Customer is eligible under U.S. law to receive exports of the Software, in that it is not included on any list of sanctioned or ineligible parties maintained by the U.S. government, including, but not limited to, OFAC's lists of Specially Designated Nationals and Blocked Persons ("**SDN List**"), U.S. Department of Commerce's Table of Denial Orders, the Entity List, or the Unverified List; (iii) Customer will not sell, export, re-export, transfer, use, or enable the use of the Software, its related technology and services, or any other items that may be provided by Service Provider, directly or indirectly: (a) to or for end-use in or by the countries listed in (i) above or any citizens, nationals or permanent residents of such countries; (b) to or for end-use by any person or entity determined by any U.S. government agency to be ineligible to receive exports, including but not limited to persons and entities designated on the lists described in (ii) above; and (c) to or for end-uses prohibited by U.S. export or sanctions laws and regulations, including, but not limited to, activities involving the proliferation of chemical, biological or nuclear weapons, weapons of mass destruction or the missiles capable of delivering such weapons and their related technology.

12.2. **Compliance with Laws.** Both parties agree to comply with all applicable laws, regulations, and ordinances relating to such party's performance under this License Agreement.

12.3. **Assignment.** Customer may not assign this License Agreement or transfer any license created hereunder, by operation of law, change of control or otherwise without the prior written consent of Service Provider. Any purported assignment of this License Agreement, or any license or rights in violation of this Section will be deemed void. Service Provider may assign this License Agreement, sub-contract or otherwise transfer any right or obligation under this License Agreement to a third party without the Customer's prior written consent.

12.4. **Survival.** The provisions set forth in Sections 2, 3.3, 3.4, 3.5, 5, 6, 7.4, 9, 10.4, 10.5, and 12 of this License Agreement will survive termination or expiration of this License Agreement and any applicable license hereunder.

12.5. **Notices.** Any notice required under this License Agreement will be given in writing and will be deemed effective upon delivery to the party addressed. All notices will be sent to the applicable address specified on the Quote or to such other address as the parties may designate in writing. Unless otherwise specified, all notices to Service Provider will be sent to the attention of the Contracts Manager. Any notice of material breach by Customer to Service Provider hereunder, will include a detailed description of any alleged breach and a description of the steps that Customer understands must be taken by Service Provider to resolve the failure. Service Provider shall have thirty (30) days from Service Provider's receipt of such notice to complete the cure.

12.6. **Technical Data.** Customer shall not provide to Service Provider any "Technical Data" as that term is defined in the International Traffic in Arms Regulations ("ITAR") at 22 CFR 120.10. Customer shall certify that all information provided to Service Provider has been reviewed and scrubbed so that all Technical Data and other sensitive information relevant to Customer's ITAR regulated projects has been removed and the information provided is only relevant to bug reports on Service Provider products.

12.7. **Force Majeure.** Service Provider will not be liable to Customer for any delay or failure of Service Provider to perform its obligations hereunder if such delay or failure arises from any cause or causes beyond the reasonable control of Service Provider. Such causes will include, but are not limited to, acts of God, floods, fires, loss of electricity or other utilities, or delays by Customer in providing required resources or support or performing any other requirements hereunder.

12.8. **Conflict.** In the event of a conflict between the terms and conditions of this License Agreement and a Quote, the terms and conditions of the Quote will prevail over the License Agreement.

12.9. **Restricted Rights.** Use of the Software by or for the United States Government is conditioned upon the United States Government agreeing that the Software is subject to "**Restricted Rights**" as provided under the provisions set forth in FAR 52.227-19. Customer shall be responsible for ensuring that this provision is included in all agreements with the United States Government and that the Software, when delivered to the United States Government, is correctly marked as required by applicable United States Government regulations governing such Restricted Rights as of such delivery.

12.10. **Entire Agreement.** This License Agreement together with the documents referenced herein constitute the entire agreement between the parties regarding the subject matter hereof and supersedes all proposals and prior discussions and writings between the parties with respect thereto. All terms respecting the subject matter of the License Agreement and contained in purchase orders, invoices, acknowledgments, shipping instructions, or other forms exchanged between the parties will be void and of no effect.

12.11. **Modifications.** The parties agree that this License Agreement cannot be altered, amended or modified, except by a writing signed by an authorized representative of each party.

12.12. **Non-solicitation.** During the Term of this License Agreement and for a period of two (2) years thereafter, Customer agrees not to hire, solicit, nor attempt to solicit the services of any employee or Subcontractor of Service Provider without the prior written consent of Service Provider. Customer further agrees not to hire, solicit, nor attempt to solicit, the services of any former employee or Subcontractor of Service Provider for a period of one (1) year from such former employee's or Subcontractor's last date of service with Service Provider. Violation of this provision will entitle Service Provider to liquidated damages against Customer equal to two hundred percent (200%) of the solicited person's gross annual compensation.

12.13. **Headings.** Headings are for reference purposes only, have no substantive effect, and will not enter into the interpretation hereof.

12.14. **No Waiver.** No failure or delay in enforcing any right or exercising any remedy will be deemed a waiver of any right or remedy.

12.15. **Severability and Reformation.** Each provision of this License Agreement is a separately enforceable provision. If any provision of this License Agreement is determined to be or becomes unenforceable or illegal, such provision will be reformed to the minimum extent necessary in order for this License Agreement to remain in effect in accordance with its terms as modified by such reformation.

12.16. **Independent Contractor.** Service Provider is an independent contractor and nothing in this License Agreement will be deemed to make Service Provider an agent, employee, partner, or joint venturer of Customer. Neither party will have any authority to bind, commit, or otherwise obligate the other party in any manner whatsoever.

12.17. **Governing Law; Venue.** The laws of the State of Texas, USA govern the interpretation of this License Agreement, regardless of conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods (1980) and the Uniform Computer Information Transactions Act (UCITA) are hereby excluded in their entirety from application to this License Agreement. The parties agree that the federal and state courts located in Travis County, Texas, USA will have exclusive jurisdiction for any dispute arising under, out of, or relating to this License Agreement. Mediation will be held in Austin, Texas, USA.

12.18. **Dispute Resolution.**

Negotiations. Where there is a dispute, controversy, or claim arising under, out of or relating to this License Agreement, the aggrieved party shall notify the other party in writing of the nature of such dispute with as much detail as possible about the alleged deficient performance of the other party. A representative from senior management of each of the parties shall meet in person or communicate by telephone within five (5) business days of the date of the written notification in order to reach an agreement about the nature of the alleged deficiency and the corrective action to be taken by the respective parties.

Mediation. Any dispute, controversy, or claim arising under, out of, or relating to this License Agreement and any subsequent amendments of this License Agreement, including its formation, validity, binding effect, interpretation, performance, breach, or termination, as well as non-contractual claims, and any claims with respect to the validity of this mediation agreement (hereinafter the **"Dispute"**), shall be submitted to mediation in accordance with the then-current WIPO Mediation Rules. The language to be used in the mediation will be English.

Opportunity to Cure. Notwithstanding anything contained hereunder, Customer agrees and acknowledges that no dispute resolution or litigation will be pursued by Customer for any breach of this License Agreement until and unless Service Provider has had an opportunity to cure any alleged breach. Customer agrees to provide Service Provider with a detailed description of any alleged failure and a description of the steps that Customer understands must be taken by Service Provider to resolve the failure. Service Provider shall have sixty (60) days from Service Provider's receipt of Customer's notice to complete the cure.

Injunctive Relief. The parties agree that it will not be inconsistent with their duty to mediate to seek injunctive or other interim relief from a competent court. The parties, in addition to all other available remedies, will each have the right to initiate an action in any court of competent jurisdiction in order to request injunctive or other interim relief with respect to a violation of intellectual property rights or confidentiality obligations. The choice of venue does not prevent a party from seeking injunctive or any interim relief in any appropriate jurisdiction.

12.19. **Country-Specific Terms.** The country-specific provisions described in the Country-Specific Terms Addendum http://countryspecifictermsaddendum.trilogy.com replace or supplement the equivalent provisions above as noted therein where the Customer is located in one of the countries identified in the Country-Specific Terms Addendum and in any case where the law of the jurisdiction listed in the Country-Specific Terms Addendum gets applied.