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19. **Audit Rights.** During the term of the Agreement and for three (3) years after termination or expiration, both Parties will maintain complete records of the number of unique Named Users, storage allocated, and any other information reasonably required to calculate and track the fees (including Usage-Based Additional Fees) and Services to be provided hereunder. Upon reasonable notice to Licensee, PDF may audit the applicable records and accounts of Licensee during Licensee’s normal business hours and in such a manner as to avoid unreasonable interference with Licensee’s business operations. PDF shall bear costs and expenses associated with the exercise of its right to audit except that in the event of an underpayment of more than ten percent (10%) of the amount due for the period audited, Licensee shall pay all costs associated with such audit. In the event that PDF determines that Licensee has underpaid any payment due under this Agreement, PDF shall notify Licensee in writing of the alleged discrepancy. If there has been a shortfall, such shortfall shall be due and payable (plus a late charge equal to one and one-half percent (1.5 %) per month, or the highest rate permitted by law, applied until full payment is made) within thirty (30) days of such shortfall.
20. **Independent Contractors.** PDF and Licensee shall perform their obligations under the Agreement as independent contractors, and nothing contained in the Agreement shall be construed to create or imply a joint venture, partnership, principal-agent, or employment relationship between the Parties. Neither Party shall take any action or permit any action to be taken on its behalf which purports to be done in the name of or on behalf of the other Party and shall have no power or authority to bind the other Party to assume or create any obligation or responsibility express or implied on the other Party’s behalf or in its name, nor shall such Party represent to any one that it has such power or authority.
21. **Non-Solicit.** During the term of the Agreement and, in the event of termination, for one year following such termination, Licensee agrees not to solicit, canvass, induce, or encourage directly or indirectly any employee or contractor of PDF to leave the employment of PDF or, in the case of a contractor, to

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23. **Effect of Termination.** Absent the other Party's material breach, no Party has the right to terminate or cancel an Order once committed. In the event of no current Order subject to the terms and conditions of an Agreement, either Party may terminate the Agreement. Termination of such Agreement by either Party shall not act as a waiver of any breach of the Agreement and shall not act as a release of either Party from any liability for breach of such Party's obligations under the Agreement. Neither Party shall be liable to the other Party for damages of any kind solely as a result of terminating the Agreement, and termination of the Agreement by a Party shall be without prejudice to any other right or remedy of such Party under the Agreement or applicable law. In any event, liabilities that have accrued prior to termination survive.
24. **Entire Agreement.** The Agreement contains the entire agreement between the Parties with respect to the subject matter covered therein and supersedes any and all prior and contemporaneous communications, representations, agreements and/or undertakings, either verbal or written, between the Parties in respect of the said subject matter. For the avoidance of doubt, statements in emails are not binding PDF unless stated in an Order.
25. **Severability and Limitations of Actions.** In the event that any provision of the Agreement or the application thereof to any person or in any circumstances shall be determined to be invalid, unlawful, or unenforceable to any extent, the remainder of the Agreement and its application to other persons shall not be affected thereby, and the remaining provisions of the Agreement shall continue to be valid and may be enforced to the fullest extent permitted by law and the Parties agree in such event to substitute forthwith the invalid, unlawful or unenforceable provision by such effective provision as will most closely correspond with the legal and economic contents of the provision(s) so voided.
26. **Notices.** All formal notices and other communications required or permitted under the Agreement shall be in writing and shall be mailed by certified or registered mail, postage prepaid, delivered either by hand or by messenger, or transmitted by e-mail to the address on the signature page of the Agreement, or at such other address as either Party shall have furnished to the other in writing (including on an Order). All such notices and other written communications shall be effective (i) if mailed, seven (7) days after mailing, (ii) if delivered, upon delivery, or (iii) if e-mailed, on the day transmitted if by 5:00 pm in California (USA) on a Business Day or otherwise on the next Business Day, provided that the notifying Party has verification of receipt.
27. **Waiver.** The waiver by any Party of a breach or default by the other Party of any provision of the Agreement shall not be construed as a waiver by such Party of any succeeding breach or default by the other Party in the same or other provision, nor shall any delay or omission on the part of either Party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any such right or remedy.
28. **Assignment.** Licensee shall not assign, delegate, or otherwise transfer (whether voluntarily, by operation of law or otherwise) the Agreement, or any of its rights or obligations under the Agreement, without the prior written consent of PDF. A Change of Control shall be deemed an assignment by operation of law for the purposes of this provision. Any attempted or purported assignment, delegation, or other transfer not in conformance with this provision shall be void and have no effect. Subject to the foregoing, the Agreement shall be binding on the Parties' successors and assigns.
29. **Force Majeure.** Except with respect to the Parties' payment obligations, neither Party shall be responsible for any delay or failure in performance to the extent that such delay or failure is caused

by a Force Majeure.

30. **Attorneys' Fees.** If any legal action, including, without limitation, an action for arbitration or injunctive relief, is brought relating to the Agreement or the breach thereof, the prevailing Party in any final judgment or arbitration award, or the non-dismissed Party in the event of a dismissal without prejudice, shall be entitled to the full amount of all reasonable expenses, including all court costs, arbitration fees, and actual attorneys' fees paid or incurred in good faith.
31. **Language.** Any action brought under the Agreement shall be conducted in the English language.
32. **Electronic Signatures.** The Agreement, Amendments thereto, and Order thereunder may be executed electronically, which is deemed an original.

## C. THIRD-PARTY PROGRAMS

### ALL THIRD-PARTY PROGRAMS:

1. Licensee shall only use Third-Party Programs for Licensee's internal business operation, and only in conjunction with the Software. Licensee shall not use the Third-Party Programs as essential equipment in the operation of any nuclear facility, aircraft navigation or communication systems or air traffic control machines, or any other use in which failure of software could lead to death, personal injury or severe physical or environmental damage.
2. Licensee shall only allow access to the Third-Party Programs to that number of named or concurrent users set forth with respect to the Third-Party Programs for which Licensor already made the applicable payments.
3. To the extent applicable, the Third-Party Programs shall not be accessed by a person who is not an employee of Licensee (or its Affiliate) or an Authorized Contractor.
4. Licensee shall only make that number of copies of the Third-Party Programs that is sufficient for the licensed use and one copy of each program media for archival purposes, unless Licensee receives directly from such Third-Party Program's owner prior approval for additional copies. All such copies of any part of the Third-Party Programs made by the Licensee under these GTC shall include the proprietary rights notice appropriate to maintain such third-party owner's right in such copy. This obligation applies to copies, including without limitation to partial, merged, modified, archival, and back-up copies.
5. Licensee is prohibited directly or indirectly from (a) assigning, giving, or transferring the Third-Party Programs and/or any services ordered or an interest in them to another individual or entity, including, without limitation, any affiliate or subsidiary of Licensee (in the event Licensee grants a security interest in the Third-Party Programs and/or any services, the secured party has no right to use or transfer the Third-Party Programs and/or any services); (b) using the Third-Party Programs for rental, timesharing, providing subscription services, hosting or outsourcing; (c) removing, modifying or combining any Third-Party Program's markings or any notice of the third party owner's (or its licensor's) proprietary rights; (d) making the Third-Party Programs available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted by the Third-Party Program's owner); and (e) passing title of the Third-Party Programs to any other individual or entity.
6. Licensee shall not reverse engineer (unless required by law for interoperability), disassemble, or decompile the Third-Party Programs. The foregoing prohibition includes but is not limited to review of data structures or similar materials produced by the Third-Party Programs.
7. Licensee shall not to remove any proprietary, copyright, trade secret or warning legend from any Third-Party Programs, related documentation, or copies thereof.
8. Licensee shall, upon any termination or expiration of the Agreement, discontinue all use and (i) destroy and certify such destruction; or (ii) return to PDF all copies of Third-Party Programs and related documentation.

9. Licensee shall not publish any results of benchmark tests run on the Third-Party Programs.
10. Each Third-Party Program owner (or its licensor) retain all ownership and intellectual property rights to the Third-Party Programs and related documentation provided by such third party (including through PDF). All modifications, enhancement or changes to products and related materials are and shall remain the property of such Third-Party Program's owner (or its licensor) without regard to the origin of such modifications, enhancements, or changes. Licensee will not challenge ownership or rights in and to the Third-Party Programs and related materials, including without limitations all copyrights and other proprietary rights.
11. Third-party technology that may be appropriate or necessary for use with the Third-Party Programs is specified in the documentation or is otherwise notified by Licensor. Such third-party technology is licensed, if at all, to Licensee under the terms of a separate agreement and not under the terms of this Agreement.
12. Licensee agrees that Licensor shall have the right to (a) audit Licensee's use of the Third-Party Programs and report the audit results to such Third-Party Program's owner as applicable, or (b) to assign such audit right to the Third-Party Program's owner (or its licensor) (in the event of any such assignment, neither Licensor nor Third-Party Program's owner (or its licensor) shall be responsible for any of Licensee's costs incurred in cooperating with such audit). Licensee agrees to provide reasonable assistance and access to information in the course of such audit.
13. Licensee acknowledges and agrees that Third-Party Program's owner (and its licensor, if applicable) is not required to perform any obligation or incur any liability under the Agreement.
14. Licensee acknowledges that it has not relied on the future availability of any Third-Party Programs or services in entering into its payment obligations under this Agreement.
15. Licensee acknowledges and agrees that the Uniform Computer Information Transactions Act is excluded from application to this Agreement.
16. Each Third-Party Program's owner (and licensors thereof, if applicable) disclaims (to the fullest extent permitted by applicable law) such owner's liability to Licensee for (a) any damages, whether direct, indirect, incidental, special, punitive or consequential, or (b) any loss of profits, revenue, data or data use, arising from the use of the Third-Party Programs.
17. Each Third-Party Program's owner (and licensors thereof, if applicable) specifically makes no representation or warranties regarding such Third-Party Programs.
18. Licensee agrees that each Third-Party Program and related documentation is such Third-Party Program's owner's Confidential Information and shall not be used or disclosed to any other party other than as allowed under the Agreement.
19. Licensee agrees to promptly notify Licensor and the Third-Party Program's owner, if it believes or has been made aware that there has been an infringement or attempted infringement of any of Licensor's or such owner's proprietary marks and fully cooperate with Licensor and such owner against such claim.
20. Licensee acknowledges and agrees that the Third-Party Program's owner (and its licensors, if applicable) is a designated (intended) third-party beneficiary of the Agreement. Licensee acknowledges and agrees that Licensor may provide the Third-Party Program's owner with a copy of the Agreement (and/or excerpts thereof), additional agreements, including any addenda or amendments thereto, and any Order or other purchase agreements between Licensor and Licensee related to the Third-Party Programs, with any pricing information or any other information reasonably deemed confidential or proprietary removed. Without limiting the generality of the foregoing, Licensor may provide such owner information related to the Third-Party Programs and/or any services provided to Licensee, including but not limited to, Licensee's name, the Third-Party Programs and/or any services provided to Licensee, the number of permitted users, the license levels, the license grant to Licensee, any definitions related to licensing metrics, the date of Licensee's order, and any other

information reasonably requested by such owner.

**ORACLE THIRD-PARTY PROGRAMS:**

1. Third-Party Programs documentation is available online at <http://partner.oracle.com>.
2. If Licensee does not purchase technical support from Licensor for the Third-Party Programs, then Licensor shall have no obligation to provide such support to Licensee. Licensee may choose to purchase support services for the Third-Party Programs directly from Oracle, subject to the following terms and conditions:
  - a. In order to avoid reinstatement fees, Licensee must purchase support services from Oracle at the time Licensor distributes the Third-Party Programs to Licensee.
  - b. Licensee will be required to accept the terms of the then-current, standard Oracle License and Services Agreement in conjunction with any order for Oracle support services. Support services provided by Oracle directly to Licensee will be in accordance with Oracle's Technical Support Policies in effect at the time the services are provided.
  - c. The fees for support purchased by Licensee from Oracle shall be based on the list price found on Oracle's global price list for technical support for full use licenses of the Software, less the Oracle's standard E-Business customer discount (no other discounts shall apply). The price will be based upon the price list that was in place on the actual date the license was purchased from Licensor.
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