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5. Warranties.

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(b) Limitations on Warranties. You must report all warranted problems to Tungsten in writing within the warranty period. The Software warranty is excluded if You have modified or altered the Software, installed, operated, repaired or maintained the Software other than in accordance with the then-current documentation for such Software, subjected the Software to misuse, negligence, or accident, or if the error reported by You cannot reasonably be reproduced. The warranties for the Software do not extend to, and Tungsten's will not have any obligation to remedy, any interference with or failure or degradation of the performance of the Software arising from or caused by (a) Your failure to meet and comply with Tungsten's specifications and requirements for implementation and/or execution of the Software, including as provided in the Software Maintenance and Support Agreement, (b) Your violation of any restrictions upon the use of the Software, (c) Your installation, of any other software, hardware, product or apparatus in Your application environment following the installation of the Software, or (d) any Software implementation, support or other services not provided by Tungsten.

6. Intellectual Property Indemnification.

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(b) Limitations. The foregoing notwithstanding, Tungsten will have no liability for any claim of infringement arising as a result of (i) Your use of the Software in combination with any items not supplied by Tungsten, (ii) any modification of the Software by You or at Your request, (iii) use of other than the latest revision of the Software if use of the latest revision would avoid the infringement,

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(c) Conditions to Indemnification. Tungsten will have the sole right to control the defense of, and to settle or compromise, any claim of infringement concerning the Software, and Tungsten's indemnification obligations are conditioned upon You (i) giving Tungsten prompt written notice of any claim for which indemnity is sought, and (ii) fully cooperating in the defense or settlement of any such claim. Subject to the foregoing, however, You, at Your own expense, may participate, through its attorneys or otherwise, in the investigation, trial and defense of any such claim, demand or action and any appeal therefrom.

(d) Exclusive Remedy. The foregoing states Tungsten's entire liability and Your exclusive remedy concerning infringement of intellectual property rights, including but not limited to, patent, copyright and trade secret rights.

7. Limitation of Liability.

(a) Tungsten's contractual and statutory liability for damages caused by slight negligence shall, irrespective of its legal ground, be limited as follows:

(i) Tungsten shall be liable up to the amount of the foreseeable damages typical for this type of contract due to a breach of material contractual obligations limited to the amounts actually paid or payable by You for the affected Software during the eighteen (18) months preceding a claim;

(ii) Tungsten shall not be liable due to a breach of any non-material contractual obligations nor for the slightly negligent breach of any other applicable duty of care.

(b) None of the limitations of liability contained in this Section 7 or elsewhere in this License Agreement shall apply to any mandatory statutory liability, in particular to liability under the Austrian Product Liability Act (*Produkthaftungsgesetz*), liability for culpably caused personal injuries and Your breach of the license restrictions or Your payment obligations, each as set forth in this License Agreement or the respective Sales Order, as the case may be. In addition, such limitations of liability shall not apply if and to the extent Tungsten has assumed a specific guarantee.

(c) Tungsten will under no circumstances be for consequential and indirect damages and for loss of profits and other economic loss.

(d) This Section 7 shall apply analogously to Tungsten's liability for wasted expenditures (*Produkthaftungsgesetz*, i.e., investments made in reliance on this License Agreement).

(e) You shall be obliged to take adequate measures to avert and reduce damages.

8. Trademarks. You recognize Tungsten's ownership in and title to all trademarks and/or service marks owned by Tungsten and set forth in the Software, including any and all common law and registered rights throughout the world (hereinafter the "Trademarks"). No right, license or interest in or to any of the Trademarks is granted hereunder, and You agree that You will assert no such right, license or interest with respect to such Trademarks. Furthermore, You will not contest the validity of any of the Trademarks, claim adversely to Tungsten any right, title or interest in and to the Trademarks and will not use, register, apply to register or aid a third party in registering the Trademarks during the term of this License Agreement or any time thereafter.

9. Term and Termination.

(a) Term. The term of this License Agreement and Your licenses of the Software will commence as of the first to occur of the date of Your acceptance of this License Agreement or the date the Software is made available to You, and will continue until the termination of the licenses or the expiration of the term of the licenses of the Software, unless earlier terminated as specified in a Sales Order or as provided below. Any other terms of this License Agreement or a Sales Order to the contrary notwithstanding, if You license the Software on a term basis, you are required to pay all license fees for the entirety of such term and You will not be excused from such payment notwithstanding Your surrender or other or termination of such licenses during such term.

(b) Termination. Tungsten may terminate this License Agreement (i) effective ten (10) days after written notice to You in the event that You fail to pay when due any fees for the Software as provided in a Sales Order, or (ii) effective thirty (30) days after written notice to You in the event that You breach any other material provision of this License Agreement and You do not cure such failure to pay or breach within such thirty (30) day period.

(c) Early Termination Charges. If Tungsten terminates any licenses pursuant to Your failure to pay any fees or other breach of this License Agreement, then You will pay Tungsten early termination charges in an amount equal to any unpaid fees for the remaining term of such licenses, plus the balance of any unpaid non-recurring charges associated with such licenses. You agree that the actual damages in the event of such termination would be difficult or impossible to ascertain, and that such termination charges are intended, therefore, to establish liquidated damages for such early termination and are not intended as a penalty. To avoid doubt, nothing in this section prejudices other rights or remedies Tungsten may have.

(d) Rights and Obligations upon Termination or Expiration. Upon termination of this License Agreement, all rights granted to You hereunder will immediately cease and You will (i) immediately discontinue all use of the Software, (ii) destroy all copies of the Software and user documentation, and (iii) provide Tungsten reasonable evidence of Your discontinuance of use and destruction of the Software and user documentation. Termination of this License Agreement for any reason will not excuse Your obligation to pay in full any and all amounts due for the Software, nor will termination result in a refund of any fees paid by You for the Software.

(e) Continuing Obligations. The terms and conditions in this License Agreement that by their nature and context are intended to survive any termination of this License Agreement, including, without limitation, Sections 4 (Intellectual Property), 6 (Intellectual Property Indemnification), 7 (Limitation of Liability), 8 (Trademarks), 9 (Term and Termination), 10 (Confidentiality and Nondisclosure), 11 (Audit), and 12 (Miscellaneous), will survive such termination of this License Agreement for any reason and will be fully enforceable thereafter.

10. Confidentiality and Nondisclosure.

(a) Confidentiality and Nondisclosure. Tungsten will maintain the confidentiality of, and agrees to use the same care to prevent disclosure of, Your confidential information as it employs to avoid disclosure, publication or dissemination of its own information of a similar nature, but in no event less than a reasonable standard of care. Tungsten, however, may disclose confidential information to its employees, directors, officers, affiliates, agents, subcontractors, attorneys, accountants or professional advisors, who have a need to have access to the confidential information in providing the Subscription Services.

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11. Audit. The Software may include a telemetry feature to collect and remit to Tungsten data reflecting Your use of the Software. In the absence of such feature, You, from time to time upon Tungsten's request, will provide Tungsten access to Your servers upon which the Software runs to allow Tungsten to collect data reflecting the Your use of the Software. Furthermore, not more than once during each calendar year during the term of this License Agreement and once during the one (1) year period following the termination of this License Agreement, Tungsten may request by written notice Your currently available records regarding the use of the Software and You will provide Tungsten with such records within thirty (30) days from such request. If Tungsten does not receive the records reasonably necessary to assess Your compliance with the terms of the License Agreement or if You disputes the findings of an assessment of such records, then Tungsten, upon thirty (30) days written notice to You may enter upon Your premises during Your regular business hours to audit Your use of the Software. You agree to cooperate with Tungsten's audit and provide reasonable assistance and access to Your systems and information. If Tungsten discovers that You have exceeded any limitations upon Your rights to use the Software, including, without limitation, volume limitations, limitation to a specific type of function or transaction, or other use limitations, Tungsten will provide You written notice of such excess or unauthorized usage, and You will pay Tungsten within thirty (30) days of such notice an amount equal to the sum of (a) the license fees and associated maintenance and support fees for the additional licenses necessary to license such excess or unlicensed use of the Software at Tungsten's list pricing, (b) a fee, as reasonable determined by Tungsten, compensating Tungsten for Your excess or unauthorized use of the Software, (c) interest on such fees from the date such additional fees should have been paid at the rate of twelve percent (12%) per annum, or the maximum interest rate permitted by law, whichever is lower, and (d) if Your excess or unlicensed use of the Software exceeds 105% of the licensed use of the Software, all costs and expenses incurred by Tungsten in conducting any such audit. If You fails to pay such amounts within thirty (30) days of notification of such amounts, each as described above, Tungsten may immediately terminate this License Agreement, Your licenses of the Software, and any software maintenance and support of the Software. You will be responsible for all of Your costs incurred in cooperating with any such audit.

12. Miscellaneous.

(a) Notices. All notices, demands or other communications under this License Agreement must be in writing and reference this License Agreement, and will be deemed effectively delivered to the party when delivered at the address for such party as last provided to the other, subject to modification by giving notice as provided herein. Notices may be delivered: (a) by email using a method that positively establishes receipt of the email by the recipient; (b) by personal, same or next day delivery; or (c) by commercial overnight courier with written verification of delivery. All notices so given will be deemed given upon the earlier of receipt or three (3) days after dispatch.

(b) Governing Law; Place of Venue. This License Agreement will be construed and governed in accordance with the laws of Austria, without regard to any rules of conflicts or choice of law provisions that would require the application of the laws of any other jurisdiction. The parties hereby submit to the exclusive jurisdiction and venue of the courts of Vienna, Austria for any action or legal proceeding related to or arising under this License Agreement and waive any objections based on *forum non conveniens*; provided, however, that if for any reason said court does not have jurisdiction over the matter or a party, then Tungsten may elect to commence any such

action or proceeding in any court having jurisdiction over You. In each case, this License Agreement will be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

(c) Severability. If any one or more of the provisions of this License Agreement is determined to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of any of the remaining provisions or portions thereof will not be affected or impaired thereby and will nevertheless be binding between the parties. In the event any provision of this License Agreement is found to be invalid, illegal, or unenforceable, the parties will modify that provision in a manner that gives effect to the intent of the parties in entering into the License Agreement.

(d) Non-Transferability/Assignment Restrictions. Without Tungsten's prior written consent, You are restricted from assigning, sublicensing or otherwise transferring the license granted hereunder for the Software to any other person or entity, including pursuant to Your merger or consolidation with another entity, or further by any assignment or transfer by operation of law. Any such assignment, sublicense or transfer absent Tungsten's prior written consent will be void and of no force or effect and will cause the immediate termination of this License Agreement.

(e) Waiver or Delay. No failure to exercise or delay by a party in exercising any right, power, or remedy under this License Agreement operates as a waiver of such right, power, or remedy. A single or partial exercise of any right, power, or remedy does not preclude any other or further exercise of that or any other right, power, or remedy. A waiver is not valid or binding on the party granting the waiver unless made in writing.

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(g) Entire Agreement. This License Agreement (including the Tungsten Licensing Policies) constitutes the entire understanding and agreement between the parties with respect to the subject matter of this License Agreement and supersedes all previous agreements and communications between the parties concerning such subject matter. No modifications may be made to this License Agreement except in writing, signed by both parties, and any terms in Your purchase order or other purchasing documents provided by You which conflict with or are in addition to the terms of this License Agreement will not operate to modify or amend the terms of this License Agreement, any Sales Order, or other terms or pricing conditions provided in a quotation provided by Tungsten for the Software..

(h) Benefit of Agreement. This License Agreement will bind and inure to the benefit of the parties and their respective permitted successors and assigns.

(i) Cumulative Remedies. Except as otherwise provided in this License Agreement, all remedies of the parties hereunder are non-exclusive and are in addition to all other available legal and equitable remedies.

(j) Force Majeure. Neither party will be liable or deemed to be in default for any delay or failure in performance under this License Agreement (except for payment obligations) resulting, directly or indirectly, from acts of God, civil or military authority, acts of the public enemy, war, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, the elements, strikes, labor disputes or any causes beyond its reasonable control; provided that the party failing to perform in any such event will promptly resume or remedy, as the case may be, the performance of its obligations hereunder as soon as practicable.

(k) Construction of Agreement. Each party acknowledges that it has had the opportunity to review this License Agreement with legal counsel of its choice and agrees that in the event that this License Agreement or any other documents delivered in connection with the transactions contemplated by this License Agreement contain any ambiguity, such ambiguity will not be construed or interpreted against the drafting party. The titles and headings herein are for reference purposes only and will not in any manner limit the construction of this License Agreement, which will be considered as a whole.

(l) Choice of Language. The original of this License Agreement has been written in English, which will be the controlling language in all respects. Any translations into any other language are for reference only and will have no legal or other effect.

(m) Personal Data; Consent to Process and Transfer. You agree to comply with all applicable laws and regulations which may govern Your use of the Software, including, but not limited to, laws pertaining to the collection, use and disclosure of personal data and to the transfer of personal data over state or other jurisdictional lines. You agree that Tungsten, its affiliates, and agents may collect and use information You provide in relation to any support services performed with respect to the Software and requested by You. Tungsten agrees not to use this information in a form that personally identifies You, except to the extent necessary to provide such services. You agree that Tungsten may transfer Your information to the United States or other countries for use in accordance with this Section. In case Tungsten processes Your personal data, as a data processor within the meaning of the General Data Protection Regulation (EU) 2016/679, in the context of Your use of the Software, the Tungsten's Data Processing Addendum applies.

(n) Anonymized Data. Tungsten may remotely collect, modify, use, disclose and retain anonymized data and information generated from or based on Your use of the Software and from Tungsten's provision of services to You. Tungsten will own such data

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