

# NM MVD Order Form

COMPANY NAME		PRIMARY CONTACT NAME	
PRIMARY CONTACT PHONE		PRIMARY CONTACT EMAIL	
COMPANY BILLING ADDRESS 1		COMPANY BILLING ADDRESS 2	
CITY	STATE	ZIP	

**Only complete ship to if address is different from above - NO PO BOXES**

COMPANY SHIP ADDRESS 1		COMPANY SHIP ADDRESS 2	
CITY	STATE	ZIP	

## Captiva Software

The software subscription service is licensed per scan workstation that will be utilizing the subscription service. If you have a need to utilize this service on multiple scan workstations and/or locations, you are required to purchase the correct number of subscriptions to match your intended use. Please check the box next to the item you are interested and provide the quantity of subscription licenses needed:

**Subscription Options Per Scan Workstation - please check the box next to the item you wish to purchase (check only one box):**

- One (1) Year Subscription of Captiva Web Client - \$ 496.00
- Two (2) Year Subscription of Captiva Web Client - \$ 816.00
- Three (3) Year Subscription of Captiva Web Client - \$ 1099.00

**Number of subscription licenses requested:**

This must match the number of scan workstations being utilized for the service \_\_\_\_\_

**Confirm email address for license delivery:**

All licenses will be delivered electronically to the address provided \_\_\_\_\_

## Fujitsu Scanner

- NMMVD Certified & Compliant Fujitsu Scanner - \$ 1379.00          Quantity: \_\_\_\_\_

**By signing below you are hereby agreeing to the provided Captiva Web Client for Tapestry Terms and Conditions, PaperFree Product Support Disclaimer, and OpenText Software License Agreement associated with this annual software subscription purchase.**




DATE \_\_\_\_\_

## Payment Authorization

**Please complete the order form and this payment authorization form and either email, fax, or mail to:**

EMAIL	FAX	MAILING ADDRESS
NMMVD@paperfreecorp.com	1-760-446-9300	Attn: NMMVD PROGRAM PaperFree Corporation 3164 Lionshead Avenue Carlsbad, CA 92010

## Credit Card Information

INDICATE CARD TYPE	NAME (AS IT APPEARS ON YOUR CARD)	CARD NUMBER (NO DASHES OR SPACES)
<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/> 	_____	_____
EXPIRATION DATE	SECURITY CODE (3 DIGITS ON BACK OR 4 DIGITS ON FRONT IF AMEX)	BILLING ZIP CODE
_____	_____	_____

**\*\* PLEASE READ THE FOLLOWING CONCERNING SOFTWARE SUBSCRIPTION SUPPORT \*\***

**SYSTEM COMPATIBILITY:**

By agreeing to purchase the Captiva Web Client software subscription from PaperFree Corporation, you are agreeing that you have met all the minimum system requirements as outlined by the New Mexico Motor Vehicle Department for this program including but not limited to;

- **PC Hardware** - including all minimum requirements for PROCESSORS, RAM, HARD DRIVE SPACE, and OPERATING SYSTEM.
- **Scanner Hardware** – that you have purchased only AUTHORIZED FUJITSU SCANNERS per the requirements provided to you by the New Mexico Motor Vehicle Department

**SOFTWARE SUPPORT:**

**DO NOT CALL PAPERFREE FOR PRODUCT SUPPORT**

PaperFree is an authorized reseller of OpenText and has been chosen by New Mexico Motor Vehicle Department as the provider of the Captiva Web Client software subscription for the duration of the program.

PaperFree is responsible for selling and delivering the Captiva Web Client software application associated with the software subscription service you are purchasing, however, PaperFree is not responsible for any form of technical support including but not limited to;

- Software application installation related concerns or problems
- Software errors, bugs, crashes, connectivity issues, etc.
- Software help, training, advice, or anything else relating to the use of the product

For all support related concerns please check with New Mexico Motor Vehicle Department as they will be providing the ability to contract with any one of (5) five approved support vendors.

For more information, feel free to visit the following website link:

<http://www.mvd.newmexico.gov/mvd-related-businesses.aspx>

ALL SALES ARE FINAL - there are no refunds, credits, or any other compensation provided if subscriptions are not used or terminated before the expiration date for any reason.

# Captiva Web Client for Tapestry Terms & Conditions

## CONTRACT TERM

This agreement stipulates a minimum term period of 12 months.

### Contract Renewal Terms

Services will be automatically renewed for a rolling 12-month term and subsequent terms unless PaperFree Corporation is notified no less than 30 days prior to the contract expiration date. The contract expiration date is the date upon which your subscription was first initiated and your payment received in full.

### Termination

If the customer terminates this agreement before the end of the contract expiration date, the customer is liable to pay the remainder of months of service, for each service, until the contract expiry date.

### Licensing

By accepting and signing this agreement you also agree to abide by the Software licensing terms and conditions relating to this service.

### Support

Technical support is not included as part of this subscription service. Approved support providers are listed below in which separate support contracts can be purchased.

### Services

The contract outlines the services that we will provide to you. If at any time the services you require fall outside the contract, we will inform you about any major adjustments required.

### Payment

This service is billed in advance. For those customers choosing to pay by invoice, payments must be received at least 10 days prior to the contract renewal date to avoid service disruption, suspension, and/or termination. The preferred method of payment to avoid service disruption is Direct Debit to Credit Card or Bank Account. PaperFree Corporation reserves the right to discontinue, suspend or terminate your services in the event of non-payment; however, PaperFree Corporation cannot be held liable for damages, whether directly or indirectly caused by such actions.

### Limitation of Liability

All terms and conditions, warranties, undertakings, inducements, whether expressed or implied, statutory or otherwise relating to the provision of services by PaperFree Corporation not contained in the agreement are excluded and PaperFree Corporation will not accept liability for any loss or damage (including consequential loss or damage) however caused (whether by negligence or otherwise) which may be suffered or incurred or which may arise directly or indirectly with respect to the services.

### Suspension of Services

PaperFree Corporation reserves the right to suspend or discontinue services in any case where you fail to perform your obligations under this agreement. If payment for services is not received within the terms of payment as stipulated in this agreement, services may be disabled or suspended until payment is confirmed.

### Confidential Information

We will not disclose to other parties information identified by you as confidential except as required by law or as required to seek advice from professional advisors or where disclosure is required to our employees or sub consultants in order to perform the Services or if such information is already in the public domain.

### Indemnification

The customer shall indemnify, defend, protect and hold PaperFree Corporation and its staff and agents from and against any and all claims, liabilities, losses, costs, damages, expenses, including consultants and legal fees, demands, causes of action or judgments directly or in-directly arising out of or related to the services provided. This shall exclude any deliberate and/or negligent actions by a PaperFree Corporation Staff Member.

### Unauthorized Changes

If you or any third party initiate or approve any change to the contract or other deliverables of our Services which are not approved by us you accept that the changes and any resulting works shall not be our responsibility.

### Waiver of Rights

Any waiver under these terms shall be in writing signed by the relevant party. Any waiver shall not affect any future breach of our agreement.

### Binding Agreement

Our agreement shall be for the benefit of and binding on you and us and our respective successors but shall not be for the benefit of any other person. The provisions of our agreement which are capable of having effect after expiry or termination of our agreement shall remain in full force and effect following expiration or termination of our agreement.

### Multiple Parties

Where you comprise more than one legal person a reference to you in our agreement shall be a reference to each of you jointly or you separately.

### Use of the Service

The Customer shall be solely responsible for the content of any data or information which the Customer shall send or receive using the Services. The customer shall not use, nor permit any other person to use the Service in connection with any matter of an illegal nature. The customer acknowledges that access to or reliance upon third party information is done so at their own risk. The customer is responsible for all usage charges in respect to the use of the Services whether or not such usage was authorized. It is the Customer's responsibility to maintain the security of the means of access to the services and ensure unauthorized use does not occur. Without the prior written permission of PaperFree Corporation, under no circumstances may this service be resold to any other party or used to provide service to another provider. In the event of breach, PaperFree Corporation reserves the right to immediately disconnect the customers services with the remaining term of the contract becoming immediately due and payable and may seek compensation for the use of its services in a manner not permitted under this Agreement.

Below is a listing of TRD Approved Tapestry Support Vendors who can provide technical support services for the Captiva Web Client for Tapestry subscription service. You may contact any of the listed providers for service – do not contact PaperFree Corporation for technical support of any kind.

To ensure you are viewing the most recent update of this list, please follow this link:

<http://www.mvd.newmexico.gov/partners-trd-approved-tapestry-support-vendors.aspx>

# Partners TRD Approved Tapestry Support Vendors

Company Name	POC	Contact Phone
MVD Specialists, d/b/a MVD Now	Justin Baird	(505) 362-3789
New Mexico Interactive, LLC. d/d/a, NMI	Mireya Herrera	(505) 982-8307
NM Dealer Support Services Inc. d/b/a, NMDSS	James Zaniros	(505) 232-0809
MVD Express	Janice Lucero	(505) 259-6793
Safetynet Works, Inc. d/b/a, MVD Express	Mickey Flynn	(505) 750-9042

# SOFTWARE LICENSE AGREEMENT

**\*\*\* IMPORTANT INFORMATION – PLEASE READ CAREFULLY \*\*\***

The software subscription service is licensed per workstation that will be utilizing the subscription service. If you have a need to utilize this service on multiple workstations and/or locations, you are required to purchase the correct number of subscriptions to match your intended use.

For example;

**If you have three (3) locations where you have installed the application software on six (6) unique workstations you are required to purchase six (6) subscription licenses.**

This Software contains computer programs and other proprietary material and information, the use of which is subject to and expressly conditioned upon acceptance of this Software License and Maintenance Agreement (the “Agreement”).

This Agreement is a legally binding document between you (meaning the individual person or the entity that the individual represents that has obtained the Software for its internal productive use or for use in delivering a Service Offering to Clients, as defined below, and not for outright resale) (the “Customer”) and OpenText. Unless OpenText agrees otherwise in writing, this Agreement governs Customer's use of the Software except to the extent all or any portion of the Software is: (a) the subject of a separate written agreement; or (b) governed by a third party licensor's terms and conditions. Capitalized terms have meaning stated in the Agreement.

If Customer does not have a currently enforceable, written and separately signed software license agreement directly with OpenText or the Distributor from whom Customer obtained this Software, then by clicking on the “Agree” or “Accept” or similar button at the end of this Agreement, or proceeding with the installation, downloading, use or reproduction of this Software, or authorizing any other person to do so, you are representing to OpenText that you are (i) authorized to bind the Customer; and (ii) agreeing on behalf of the Customer that the terms of this Agreement shall govern the relationship of the parties with regard to the subject matter in this Agreement and are waiving any rights, to the maximum extent permitted by applicable law, to any claim anywhere in the world concerning the enforceability or validity of this Agreement.

If Customer has a currently enforceable, written and separately signed software license agreement directly with OpenText or the Distributor from whom Customer obtained this Software, then by clicking on the “Agree” or “Accept” or similar button at the end of this Agreement, or proceeding with the installation, downloading, use or reproduction of this Software, or authorizing any other person to do so, you are representing that you are (i) authorized to bind the Customer; and (ii) agreeing on behalf of the Customer that the terms of such written, signed agreement shall replace and supersede the terms of this Agreement and shall govern the relationship of the parties with regard to this Software, and are waiving any rights, to the maximum extent permitted by applicable law, to any claim anywhere in the world concerning the enforceability or validity of such written signed agreement.

*If you do not have authority to agree to the terms of this Agreement on behalf of the Customer, or do not accept the terms of this Agreement on behalf of the Customer, click on the “Cancel” or “Decline” or other similar button at the end of this Agreement and/or immediately cease any further attempt to install, download or use this Software for any purpose, and remove any partial or full copies made from this Software.*

## 1. DEFINITIONS.

**A. “Affiliate”** means a legal entity that is controlled by, controls, or is under common “control” of OpenText or Customer. “Control” means more than 50% of the voting power or ownership interests.

**B. “Confidential Information”** means and includes the terms of this Agreement, Software, and Support Tools and all confidential and proprietary information of OpenText or Customer, including without limitation, all business plans, product plans, financial information, software, designs, and technical, business and financial data of any nature whatsoever, provided that such information is marked or designated in writing as “confidential,” “proprietary,” or any other similar term or designation. Confidential Information does not

include information that is (i) rightfully in the receiving party's possession without obligation of confidentiality prior to receipt from the disclosing party, (ii) a matter of public knowledge through no fault of the receiving party, (iii) rightfully furnished to the receiving party by a third party without restriction on disclosure or use; or (iv) independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.

**C. "Distributor"** means a reseller, distributor, system integrator, service provider, independent software vendor, value-added reseller, OEM or other partner that is authorized by OpenText to license Software to end users. The term shall also refer to any third party duly authorized by a Distributor to license Software to end users.

**D. "Documentation"** means the then-current, generally available, written user manuals and online help and guides for Software provided by OpenText.

**E. "Product Notice"** means the notice by which OpenText informs Customer of product-specific use rights and restrictions, unit of measure (if any), warranty periods, warranty upgrades and maintenance (support) terms. Product Notices may be delivered in an OpenText quote, otherwise in writing and/or a posting on the applicable OpenText website. The terms of the Product Notice shall be deemed to be incorporated into and made a part of the OpenText quote and/or related Customer purchase order. Each Product Notice is dated and is archived when it is superseded by a newer version. OpenText shall not change any Product Notice retroactively with regard to any Software or Support Services listed on an OpenText quote issued prior to the date of the applicable Product Notice. At Customer's request, OpenText shall without undue delay provide Customer with a copy of the applicable Product Notice and/or attach it to the relevant OpenText quote.

**F. "Software"** means the OpenText software product which requires acceptance of this Agreement, and any copies made by or on behalf of Customer, Software Releases, and all Documentation for the foregoing.

**G. "Software Release"** means any subsequent version of Software provided by OpenText after initial delivery of Software but does not mean a new item of Software.

**H. "Support Services"** means the annual service available from OpenText or its designee which provides Software Releases and support services for Software as set forth in the Product Notice.

**I. "Support Tools"** means any hardware, software and other tools and/or utilities used by OpenText to perform diagnostic or remedial activities in connection with Software including any software or other tools made available by OpenText to Customer to enable Customer to perform various self-maintenance activities.

**J. "Client"** means a third party who procures and receives the Service Offering, if any, from Customer.

**K. "Service Offering"** means Customer's service offering offered on a software-as-a-service ("SaaS"), infrastructure as a service ("IaaS"), platform as a service ("PaaS") hosted, turn-key, on-demand, service bureau, or similar basis.

## **2. DELIVERY AND INSTALLATION.**

**A. Delivery.** Title and risk of loss to the physical media, if any, which has been sold to Customer and contains Software shall transfer to Customer upon OpenText's delivery to a carrier at OpenText's designated point of shipment ("**Delivery**"). Unless otherwise agreed, a common carrier shall be specified by OpenText. Software may be provided by (i) Delivery of physical media; or (ii) electronic means (where available from OpenText). If the physical media containing Software has not been sold (for example - a lease or rental transaction), then risk of loss thereto transfers at Delivery, but title does not.

**B. Installation and Acceptance.** OpenText's obligation, if any, to install Software as part of the Software's licensing fee, is set forth in the Product Notice. All Software will be deemed to be delivered and accepted, meaning that Software operates in substantial conformity to the Software's Documentation upon (i) Delivery of the physical media; or (ii) transmission of a notice of availability for download (accompanied by the license key when required by OpenText). Notwithstanding such acceptance, Customer retains all rights and remedies set forth in the Section entitled "Warranty And Disclaimer."

## **3. LICENSE TERMS.**

**A. General License Grant.** OpenText grants to Customer a non-exclusive, non-transferable (except as specified in this Agreement) license to use the Software and the Documentation during the period of the license solely for Customer's internal business operations or use in connection with a Service Offering, and subject to the provisions of this Agreement. Unless otherwise indicated in this Agreement or the applicable OpenText quote, licenses granted to Customer will be perpetual, will be for use of object code only, and will commence on either Delivery of the physical media or the date Customer is notified of availability for electronic download. Use of Software may require Customer to complete OpenText's then current product registration process, if any, to obtain and input an authorization key or license file.

**B. Licensing Models.** Software is licensed for use only in accordance with the commercial terms and restrictions of the Software's relevant licensing model, which are stated in the Product Notice and/or OpenText quote. For example, the licensing model may provide that Software is licensed for use solely (i) for a certain number of licensing units; (ii) on or in connection with a certain piece equipment, CPU, network or other hardware environment; and/or (iii) for a specified amount of storage capacity. Microcode, firmware or operating system software needed by the equipment with which it is shipped to perform its basic functions, is licensed for use solely on such equipment.

**C. Copying Permitted.** Customer may copy the Software and Documentation as necessary to install and run the quantity of copies licensed, but otherwise for archival purposes only.

**D. License Restrictions.** Without OpenText's prior written consent, Customer must not, and must not allow any third party to: (i) disclose to any third party the results of any benchmarking testing or comparative or competitive analyses of OpenText's Software done by or on

behalf of Customer; (ii) make available Software in any form to anyone other than Customer's employees or contractors reasonably acceptable to OpenText and which require access to use Software on behalf of Customer in a matter permitted by this Agreement; (iii) transfer or sublicense Software or Documentation to an Affiliate or any third party; (iv) use Software in conflict with the terms and restrictions of the Software's licensing model and other requirements specified in the Product Notice and/or OpenText quote; (v) except to the extent permitted by applicable mandatory law, modify, translate, enhance, or create derivative works from the Software, or reverse assemble or disassemble, reverse engineer, decompile, or otherwise attempt to derive source code from the Software; (vi) remove any copyright or other proprietary notices on or in any copies of Software; or (vii) violate or circumvent any technological restrictions within the Software or specified in this Agreement, such as via software or services.

**E. Software Releases.** Software Releases shall be subject to the license terms applicable to Software.

**F. Records and Audit.** During the license term for Software and for two (2) years after its expiration or termination, Customer will maintain accurate records of its use of the Software sufficient to show compliance with the terms of this Agreement. During this period, OpenText will have the right to audit Customer's use of the Software to confirm compliance with the terms of this Agreement. That audit is subject to reasonable notice by OpenText and will not unreasonably interfere with Customer's business activities. OpenText may conduct no more than one (1) audit in any twelve (12) month period, and only during normal business hours. Customer will reasonably cooperate with OpenText and any third party auditor and will, without prejudice to other rights of OpenText, address any non-compliance identified by the audit by promptly procuring additional licenses. Customer will promptly reimburse OpenText for all reasonable costs of the audit if the audit reveals either underpayment of more than five (5%) percent of the Software fees payable by Customer for the period audited, or that Customer has materially failed to maintain accurate records of Software use.

**G. Termination of license.** OpenText may terminate licenses for cause if Customer breaches the terms governing use of Software and fails to cure within thirty (30) days after receipt of OpenText's written notice thereof. Upon termination of a license, Customer shall cease all use and return or certify destruction of applicable Software (including copies) to OpenText.

**H. Reserved Rights.** OpenText reserves all rights not expressly granted to Customer and does not transfer any ownership rights in any Software.

#### **4. WARRANTY AND DISCLAIMER.**

**A. Software Media Warranty, Duration and Remedy.** OpenText warrants that the physical media, if any, on which software is provided by OpenText, shall be free from material defects in materials and workmanship until the expiration of the warranty period. The warranty for physical media for Software provided by OpenText, if any, is ninety (90) days and commences upon Delivery. OpenText's entire liability and Customer's exclusive remedies under the physical media for Software warranties described in this Section 4 shall be for OpenText, at its option, to remedy the non-compliance or to replace the affected physical media. OpenText shall have no liability hereunder after expiration of the applicable warranty period.

**B. Software Warranty, Duration and Remedy.** OpenText warrants to Customer that the Software will, for a period of ninety (90) days following Delivery or notice of availability for electronic download ("Warranty Period"), substantially conform to the applicable Documentation, provided that the Software: (i) has been properly installed and used at all times in accordance with the applicable Documentation; and (ii) has not been modified or added to by persons other than OpenText or its authorized representative. OpenText will, at its own expense and as its sole obligation and Customer's exclusive remedy for any breach of this warranty, either replace that Software or correct any reproducible error in that Software reported to OpenText by Customer in writing during the Warranty Period. If OpenText determines that it is unable to correct the error or replace the Software, OpenText will refund to Customer the amount paid by Customer for that Software, in which case the license for that Software will terminate.

**C. Exclusions.** Warranty does not cover problems that arise from (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Software is used or other causes beyond OpenText's control; (iii) installation, operation or use not in accordance with OpenText's instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for which the Software was not designed; or (v) modification, alteration or repair by anyone other than OpenText or its authorized representatives. OpenText has no obligation whatsoever for Software installed or used beyond the licensed use.

**D. Disclaimer of Warranty.** OTHER THAN THE WARRANTIES SET FORTH IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OPENTEXT AND ITS SUPPLIERS MAKE NO OTHER EXPRESS WARRANTIES, AND DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. OPENTEXT AND ITS SUPPLIERS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT IT WILL MEET CUSTOMER'S REQUIREMENTS.

**E. Software Releases.** Upon use of a Software Release, Customer shall remove and make no further use of all prior Software Releases, and protect such prior Software Releases from disclosure or use by any third party. Customer is authorized to retain a copy of each Software Release properly obtained by Customer for Customer's archive purposes and use such as a temporary back-up if the current Software Release becomes inoperable. Customer shall use and deploy Software Releases strictly in accordance with terms of the original license for the Software.

**6. INDEMNITY.** OpenText shall (i) at its own expense, defend Customer against any third party claim that Software or Support Services as provided by OpenText to Customer infringes a patent or copyright enforceable in a country that is a signatory to the Berne Convention; and (ii) pay the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction to the extent that such are the result of the third party claim, or pay the amounts stated in a written settlement negotiated and approved by OpenText. The foregoing obligations are subject to the following: Customer (a) notifies OpenText promptly in writing of such claim; (b) grants OpenText sole control over the defense and settlement thereof; (c) reasonably cooperates in response to an OpenText request for assistance and information; and (d) is not in material breach of this Agreement. Should any such Software or Support Services become, or in OpenText's opinion be likely to become, the subject of such a claim, OpenText may, at its option and expense, (1) procure for Customer the right to make continued use thereof; (2) replace or modify such so that it becomes non-infringing; or (3) if, in OpenText's opinion, neither of the foregoing are reasonably available, OpenText shall notify Customer to return the Software and, upon receipt thereof, OpenText shall refund the price paid by Customer, less straight-line depreciation based on a five (5) year useful life for the Software. OpenText shall have no obligation or liability to the extent that the alleged infringement arises out of or relates to: (A) combination, operation or use of Software or Support Services as provided by OpenText to Customer with any products, services, items, or technology that (i) were not provided by OpenText to Customer; or (ii) were provided by OpenText to Customer but were obtained by OpenText from a third party, except if provided by OpenText to Customer as an embedded component of Software; (B) use for a purpose or in a manner for which the Software was not designed or use after OpenText notifies Customer to cease such use due to a possible or pending claim of infringement; (C) any modification made by any person other than OpenText or its authorized representatives; (D) any modifications to Software made by OpenText pursuant to instructions, designs, specifications or any other information provided to OpenText by or on behalf of Customer; (E) use of any version of Software when an upgrade or newer iteration of the Software made available by OpenText would have avoided the infringement; (F) services provided by Customer and/or any revenue Customer derives therefrom; or (G) any data or information which Customer or a third party records on or utilizes in connection with Software. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND OPENTEXT'S ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS PERTAINING TO SOFTWARE AND SUPPORT SERVICES.

**7. LIMITATION OF LIABILITY.**

**A. Limitation on Direct Damages.** EXCEPT WITH RESPECT TO CLAIMS ARISING UNDER SECTION 6 ABOVE, OPENTEXT'S TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF SOFTWARE OR SERVICE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY OPENTEXT'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED (i) US\$1,000,000, FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (ii) THE PRICE PAID BY CUSTOMER TO OPENTEXT FOR THE SPECIFIC SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) OR SOFTWARE FROM WHICH SUCH CLAIM ARISES, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE OR OTHERWISE EXCLUDED HEREUNDER.



**B. No Indirect Damages.** EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF OPENTEXT'S INTELLECTUAL PROPERTY RIGHTS OR CLAIMS ARISING UNDER SECTION 6 ABOVE, NEITHER CUSTOMER NOR OPENTEXT SHALL HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

**C. Special Exclusion.** IN JURISDICTIONS THAT DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, ALL OR A PORTION OF SECTION 7.A AND/OR 7.B ABOVE MAY NOT APPLY.

**D. Regular Back-ups.** As part of its obligation to mitigate damages, Customer shall take reasonable data back-up measures. In particular, Customer shall back-up the relevant data before OpenText performs any remedial, upgrade, new Software Release or other works on Customer's production systems. To the extent OpenText's liability for loss of data is not anyway excluded under this Agreement, OpenText shall in case of data losses only be liable for the typical effort to recover the data which would have accrued if Customer had appropriately backed up its data.

**E. Limitation Period.** Unless otherwise required by applicable law, the limitation period for claims for damages shall be eighteen (18) months after the cause of action accrues, unless statutory law provides for a shorter limitation period.

**F. Suppliers.** The foregoing limitations shall also apply in favor of OpenText's suppliers.

## **8. EVALUATION AND LOANED SOFTWARE.**

**A.** This Agreement shall also apply to (i) "Evaluation Software" (meaning the copy of Software which contains this Agreement, including any copies made by or on behalf of Customer, and all Documentation for the foregoing, which are licensed for a limited duration for the specific purpose of evaluation prior to making a final decision on procurement; and (ii) "Loaned Software" (meaning the copy of Software which contains this Agreement, including any copies made by or on behalf of Customer, and all Documentation for the foregoing, which are licensed for a limited duration directly to Customer for a limited period of time at no charge), subject to the following:

**B.** The particular Evaluation or Loaned Software, period of use, Installation Site and other transaction-specific conditions shall be as mutually agreed between OpenText and Customer and recorded in the form of an evaluation or loan schedule.

**C.** Notwithstanding any deviating terms in this Agreement, all licenses for Evaluation and Loaned Software expire at the end of the evaluation or loan period.

**D.** Customer shall return Evaluation and Loaned Software at the end of the evaluation or loan period or when sooner terminated by OpenText for convenience by giving thirty (30) days' written notice, whichever occurs first. Customer shall bear the risk of loss and damage for return of physical media, if any, and de-installation.

**E.** Customer may use Evaluation and Loaned Software free of charge, but, in the case of Evaluation Software, solely for the purpose of evaluation and not in a production environment.

**F.** Without prejudice to any other limitations on OpenText's liability set forth in this Agreement (which shall also apply to Evaluation and Loaned Software), Evaluation and Loaned Software are provided "AS IS" and any warranty or damage claims against OpenText in connection with Evaluation and Loaned Software are hereby excluded, except in the event of fraud or willful misconduct of OpenText.

**G.** Unless otherwise specifically agreed in writing by OpenText, OpenText does not provide maintenance or support for any Evaluation Software. CUSTOMER RECOGNIZES THAT EVALUATION SOFTWARE MAY HAVE DEFECTS OR DEFICIENCIES WHICH CANNOT OR MAY NOT BE CORRECTED BY OPENTEXT. OpenText shall have no liability to Customer for any action (or any prior related claims) brought by or against Customer alleging that Customer's sale, use or other disposition of any Evaluation Software infringes any patent, copyright, trade secret or other intellectual property right. In event of such an action, OpenText retains the right to terminate this Agreement and take possession of the Evaluation Software.

**9. CONFIDENTIALITY.** Each party shall (i) use Confidential Information of the other party only for the purposes of exercising rights or performing obligations in connection with this Agreement; and (ii) use at least reasonable care to protect from disclosure to any third parties any Confidential Information disclosed by the other party for a period commencing upon the date of disclosure until three (3) years thereafter, except with respect to Customer data to which OpenText may have access in connection with the provision of Services, which shall remain Confidential Information until one of the exceptions stated in the above definition of Confidential Information applies. Notwithstanding the foregoing, either party may disclose Confidential Information (a) to an Affiliate for the purpose of fulfilling its obligations or exercising its rights hereunder as long as such Affiliate complies with the foregoing; and (b) if required by law provided the receiving party has given the disclosing party prompt notice.

**10. TRADE COMPLIANCE.** All Software and Support Services and the technology included therein (collectively the "Materials") provided under this Agreement are subject to governmental restrictions on exports and imports including without limitation (i) exports from the U.S and the European Union as well as re-export from third countries in the form received; (ii) exports from other countries in which the Materials may be produced or located; (iii) disclosures of technology to non-U.S persons; (iv) exports from other countries of the same or products derivative of Materials; and (v) the importation and/or use the Materials outside of the U.S. or other countries (collectively, "Trade Laws"). Customer must comply with all Trade Laws. Diversion contrary to U.S. law or other Trade Laws is expressly prohibited. In addition, Customer shall not send or deliver to OpenText any data controlled by the International Traffic in Arms ("ITAR"), and shall not request Materials or Service from OpenText where an ITAR license is required in order for OpenText to provide such Materials or Service, unless the OpenText Global Trade Compliance Group Office has signed a specific agreement consenting to provide

ITAR controlled Materials or Service to Customer. Customer represents and warrants that it is not (a) listed on any of the lists of restricted parties found at <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>; (b) located in any country subject to embargo by the U.S. (identified as an E:1 country in Supplement 1 to Part 740 of the United States Export Administration Regulations (“EAR”), as shown here and updated from time to time: <http://www.ecfr.gov/cgi-bin/text-idx?SID=7f51b38428b0614519eea4b4fdc8640e&node=15:2.1.3.4.25.0.1.21.28&rgn=div9>; or (c) engaged in the proliferation of weapons of mass destruction (i.e., nuclear, chemical or biological weapons or missiles). Customer will not participate or ask OpenText to participate in any illegal boycott.

**11. TERMINATION.** Customer may terminate this Agreement for its convenience upon thirty (30) days’ notice to OpenText. Either Customer or OpenText may terminate this Agreement upon written notice due to the other party’s material breach of the terms governing use of the Software; provided that such breach is not cured within thirty (30) days after the provision of written notice to the breaching party specifying the nature of such breach. Upon termination of this Agreement, Customer shall cease all use and return or certify destruction of the applicable Software (including copies) to OpenText. Any provision that by its nature or context is intended to survive any termination or expiration, including but not limited to provisions relating to payment of outstanding fees, confidentiality and liability, shall so survive.

## **12. MISCELLANEOUS.**

**A. References.** OpenText may identify Customer as a user of OpenText’s Software and/or Support Services. Each party shall not, and shall not authorize or assist another to, originate, produce, issue or release any written publicity, news release, marketing collateral or other publication or public announcement, relating in any way to this Agreement, without the prior written approval of the other, which approval shall not be unreasonably withheld.

**B. Notices and Language.** Any notices permitted or required under this Agreement shall be in writing, and shall be deemed given when delivered (i) in person, (ii) by overnight courier, upon written confirmation of receipt, (iii) by certified or registered mail, with proof of delivery, (iv) by facsimile transmission with confirmation of receipt, or (v) by email, with confirmation of receipt (except for routine business communications issued by OpenText, which shall not require confirmation from Customer). Notices shall be sent to the address, facsimile number or email address set forth below, or at such other address, facsimile number or email address as provided to the other party in writing. The parties agree that this Agreement has been written in the English language, that the English language version shall govern and that all notices shall be in the English language.

**C. Entire Agreement.** This Agreement (i) is the complete statement of the agreement of the parties with regard to the subject matter hereof; and (ii) may be modified only by a writing signed by both parties. All terms of any purchase order or similar document provided by Customer, including but not limited to any pre-printed terms thereon and any terms that are inconsistent or conflict with this Agreement, shall be null and void and of no legal force or effect.

**D. Force Majeure.** Except for payment of fees, neither party will be liable for failure to perform its obligations during any period if performance is delayed or rendered impracticable or impossible due to circumstances beyond that party’s reasonable control.

**E. Assignment.** Customer will not assign this Agreement or a purchase order or any right or obligation herein or delegate any performance without OpenText’s prior written consent, which consent will not be unreasonably withheld. Any other attempted assignment or transfer by Customer will be void. OpenText may use its Affiliates or other sufficiently qualified subcontractors to provide Support Services to Customer, provided that OpenText remains responsible to Customer for the Support Services’ performance.

**F. Governing Law.** This Agreement is governed by the laws of the Commonwealth of Massachusetts (excluding its conflict of law rules) and the federal laws of the United States. To the extent permitted by law, the state and federal courts located in the Commonwealth of Massachusetts will be the exclusive jurisdiction for disputes arising out of or in connection with this Agreement. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

**G. Waiver.** Failure to enforce a provision of this Agreement will not constitute a waiver.

**H. Severability.** If any part of this Agreement, purchase order, or quote or is held unenforceable, the validity of all remaining parts will not be affected.

**I. Independent Contractors.** The parties shall act as independent contractors for all purposes under this Agreement. Nothing contained herein shall be deemed to constitute either party as an agent or representative of the other party, or both parties as joint venturers or partners for any purpose. Neither party shall be responsible for the acts or omissions of the other party, and neither party shall have authority to speak for, represent or obligate the other party in any way without the prior written approval of the other party.