

# End-User License Agreement for KingswaySoft Integration Gateway Software

Version 1.1, last updated on June 12, 2024

**IMPORTANT – READ CAREFULLY: THIS IS A LEGAL AGREEMENT. BY DOWNLOADING, INSTALLING, COPYING, SAVING THIS SOFTWARE ON YOUR COMPUTER, OR OTHERWISE USING THIS SOFTWARE, YOU (LICENSEE, AS DEFINED BELOW) ARE BECOMING A PARTY TO THIS AGREEMENT AND YOU ARE CONSENTING TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT.**

Note: If Licensee has accepted multiple versions of the Agreement, the most current version that Licensee accepted is the Agreement between Licensee and Licensor and supersedes and replaces all prior versions.

## 1. PARTIES

- 1.1 "Licensor" means KingswaySoft Inc., a company incorporated according to the laws of the Province of Ontario, Canada.
- 1.2 "Licensee" means an individual or a legal entity exercising rights under, and complying with all of the terms of, this Agreement. For legal entities, "Licensee" includes any entity which controls, is controlled by, or is under common control with Licensee. For purposes of this definition, "control" means (a) the power, direct or indirect, to cause the direction or management of such entity, whether by contract or otherwise, or (b) ownership of fifty percent (50%) or more of the outstanding shares or beneficial ownership of such entity.

## 2. DEFINITIONS

- 2.1 "**Activation**" means the process of entering a License Key or installing a License File to activate and enable some or all Software features.
- 2.2 "**Agreement Effective Date**" is the date that Licensee downloads and/or installs the Software, or the date that Licensee first clicks the "I Agree" link or button in the Software to agree to the terms and conditions of this Agreement, or the date that Licensee first places an order for the Software, whichever comes first.
- 2.3 "**Authorized Third Party Agent**" means a third party delivering information technology services to Licensee pursuant to a written contract with Licensee.
- 2.4 "**Deactivation Code**" means a code provided by Licensor, which enables Licensee to deactivate a license from where it is currently installed and activated.
- 2.5 "**Developer Workstation**" means a developer's workstation, laptop and/or home computer used to perform the development work using the Software.
- 2.6 "**Documentation**" means the manuals and other published material in hard copy or electronic form delivered with the Software or provided to Licensee by Licensor which include information about the Software and its functional specifications.
- 2.7 "**Evaluation Period**" means a limited length of time, usually 14 (fourteen) days or less, in which Licensee is granted a temporary license to execute and evaluate the Software under activated mode.
- 2.8 "**Intellectual Property Rights**" mean any and all current and future (a) rights associated with works of authorship; including but not limited to copyrights, moral rights, and mask-work rights; (b) patent rights, rights of priority, and design rights; (c) trade secret rights; (d) trademark rights (including service mark rights) and trade dress rights; (e) all other intellectual and industrial property rights of every kind and nature which may exist anywhere in the world, whether registered or unregistered and (f) any and all applications and registrations, renewals, extensions, provisionals, continuations, continuations-in-part, divisions, reissues or re-examinations of any of the foregoing.
- 2.9 "**License**" means a license granted under Section 4 of this Agreement.

- 2.10 "License File"** means a file issued to Licensee by Licensor, which enables the Software to operate under activated mode. This file is generated and provided by Licensor upon the activation of a license key, and can be installed in the License Manager program shipped with the Software.
- 2.11 "License Key"** means a unique serial number that enables a Licensee to activate and use the Software in activated mode. Only Licensor and/or its representatives are permitted to produce License Keys for the Software.
- 2.12 "Parties"** means references to Licensor and Licensee collectively. Each may be referred to individually as a **"Party"**.
- 2.13 "Pre-release Build"** means any beta version of the Software made available to Licensee for preview prior to full release.
- 2.14 "Server"** is defined as a server owned, leased or rented by the Licensee with Integration Gateway software installed. In the case that the server is leased or rented, the Licensee must be the sole tenant of a written leasing or rental agreement or contract, and the server shall not be shared with, or used by any third party.
- 2.15 "Software"** means the software programs in binary form provided under the terms of this Agreement, including its documentation, upgrades provided pursuant to Section 6 of this Agreement, and any third party software programs that are owned and licensed pursuant to Section 9 of this Agreement by parties other than Licensor and that either integrated with or made part of the Software (collectively, "Third Party Software").
- 2.16 "User"** means any employee, independent contractor or other temporary worker authorized by Licensee to use Software while performing duties within the scope of their employment or assignment.

### **3. OWNERSHIP**

- 3.1** Software is the property of Licensor or its suppliers. Notwithstanding any references to "purchase", the Software is licensed and not sold pursuant to this Agreement. This Agreement confers a limited license to the Software only and does not constitute a transfer of title to, or sale of, all or a portion of the Software or the underlying intellectual property. Title and copyrights to Software, in whole and in part and all copies thereof, and all modifications, enhancements, derivatives and other alterations of Software regardless of who made any modifications, if any, are, and will remain, the sole and exclusive property of Licensor and its suppliers.
- 3.2** Software is protected by Canadian copyright laws and International Treaty provisions. Further, the structure, organization, and code embodied in Software are the valuable and confidential trade secrets of Licensor and its suppliers and are protected by intellectual property laws and treaties. Licensee agrees to abide by the copyright laws and all other applicable laws including, but not limited to, export control laws.

### **4. LICENSE**

- 4.1 Grant of License.** Subject to the terms, conditions, and limitations set forth in this Agreement including any amendments thereto, Licensor hereby grants to Licensee a limited, non-exclusive, nonsublicensable, non-transferable license to install and use the Software. For purposes of this Agreement, the "Software" includes any updates, enhancements, modifications, revisions, or additions to the Software made by Licensor and made available to end-users through Licensor's web site. Notwithstanding the foregoing, Licensor shall be under no obligation to provide any updates, enhancements, modifications, revisions, or additions to the Software.
- 4.2 Scope of Use.** Licensee may use the Software activated by a License Key on a single server designated by Licensee as the Integration Gateway. If Licensee has multiple License Keys for the

Software each key will be activated on a different server. For purposes of this Agreement, "use" of the Software means loading the Software into the temporary or permanent memory of a computer. The Software may not be used on or distributed to a greater number of servers than the total number of License Keys owned by the Licensee. There is no restriction on the number of users who may access the designated servers and use the Software.

### 4.3 Term of License.

- (a) **Perpetual License:** When the Software is activated using a perpetual License Key or a perpetual License File, the term of the license granted herein should be perpetual unless terminated under Section 14.
- (b) **Subscription License.** When the Software is activated using a subscription License Key or subscription License File, the term of the license granted herein is limited to the period of time (the "Subscription Term" or the "Term") for which Licensee subscribed as indicated on Licensee's invoice or order receipt for the Software. Using a Subscription License, Licensee acknowledges that (i) Licensee's right to install and use the Software in the activated mode is limited to the term of Licensee's subscription, commencing on the date on which Licensor accepts Licensee's order by issuing the License Key(s) or the date on which the License Key is activated, whichever comes first, (ii) before the end of the Subscription Term, Licensee may renew the Subscription for the same Term or a different Term at the Licensor's then-current rate, (iii) on the expiry date of the Subscription Term, Licensor may automatically renew the Subscription under the terms of section 8, if the License has not been renewed by Licensee, and (iv) the Software may be programmed to stop operating at the expiration of the Subscription Term (by a programmed determination and not through external communication or intervention). Any attempt to defeat the time-control disabling function in the Software is a material breach of this Agreement and a violation of intellectual property law. Upon the expiration of the Subscription Term, the license and all associated rights, such as technical support, if any, will expire automatically.
- (c) **Time-Limited Trial License.** Licensee may request a free trial license which can be used to activate the Software on a Single Server for an Evaluation Period of fourteen (14) days. Licensee's use of the Software during the Evaluation Period shall be limited to evaluation purposes only. The Software contains a feature that will automatically cease functioning upon expiration of the Evaluation Period. Licensor will have no liability to Licensee if the Software produces incorrect results because of these features. Licensee must not disable, destroy, or remove this feature of the Software. Any attempt to do so will be in violation of this Agreement and will terminate Licensee's rights to use the Software. Licensee may request an extension of the Evaluation Period. However, it is at the Licensor's sole discretion as to whether such an extension is granted and is subject to approval on a case by case basis.

### 4.4 General Restrictions, Copies and Modifications. Licensee shall not and shall not allow any third party to:

- (a) sell, redistribute, encumber, give, lend, rent, lease, sublicense, or otherwise transfer Licensee's rights in the Software, Documentation, License Keys, License Files, as granted by this Agreement, to any party without prior written consent of Licensor;
- (b) reverse engineer, decompile, disassemble, modify, translate, embed into any other product, make any attempt to discover the source code of Software, or create derivative works from Software;
- (c) remove, alter or obscure any proprietary notices on the Software, or the applicable documentation therefore;
- (d) allow third parties (except Authorized Third Party Agent as permitted under Section 4.5) to access or use the Software, including without limitation any use in any application service provider

environment, service bureau, or time-sharing arrangements.

(e) in case of a Single Server License, use the same License key for running multiple Servers.

- 4.5 Authorized Third Party Use.** Licensee may allow Authorized Third Party Agent to access and use the Software on Licensee's behalf provided: (a) the use is solely for Licensee's internal business purposes; (b) each Authorized Third Party Agent is under written confidentiality obligations with Licensee protecting Licensor's intellectual property and confidential information with terms no less stringent than this Agreement; (c) Licensee ensures that the Authorized Third Party Agent's use of the Software complies with the terms of this Agreement; and (d) upon completion of the Authorized Third Party Agent's services requiring use of the Software, Licensee ensures that the Software are immediately and completely uninstalled from Authorized Third Part Agent's equipment and/or premises, as applicable.
- 4.6 Confidentiality of Licensing Details.** Licensing details, such as License Keys, License Files, deactivation code, activation records, etc., that Licensee has access as a result of various processes or tools provided by the Licensor, are considered confidential information for the Licensee. Licensee shall permit only authorized users to access, process such licensing information. Licensee agrees to use its best effort to prevent misuse, and/or unauthorized access of such licensing details. In the event that any license key information has been misused, mishandled or disclosed to unauthorized third parties which renders the key inappropriate for continued use, Licensor has the right to terminate the concerned License Key, and Licensee shall be responsible for procuring new replacement license keys at the Licensee's cost if needed.
- 4.7 Permitted Copies.** Licensee may make a reasonable number of copies of the Software as backup copies as long as each copy contains all proprietary notices that appear on the Software and the backup copies are used only for archival purposes.
- 4.8 Benchmarking.** Licensee may use the Software to conduct internal performance testing and benchmarking studies. Licensee may only publish or otherwise distribute the results of such studies to third parties if Licensor has reviewed and approved of the methodology, assumptions and other parameters of the study (please contact Licensor at [info@kingswaysoft.com](mailto:info@kingswaysoft.com) to request such review and approval) prior to such publication and distribution.
- 4.9 Transfer of License Keys.**
- (a) License Keys are non-transferable between parties except by written permission in advance from Licensor.
- (b) A Single Server License may be transferred from one server to another within the Licensee's organization, provided Licensee has a current, valid Maintenance & Upgrade (as defined in Section 6) plan for the concerned License Key and Licensee agrees to follow the procedure by first removing the License from the original system, using the "Deactivate License" feature within the Software. A Deactivation Code, which can be requested from Licensor, is required to deactivate a license. Licensee understands that it is at the Licensor's sole discretion as to whether such a deactivation code is granted based on its review of the information that Licensee provides. Licensee understands that Licensor limits the number of such system transfers per single License Key to two (2) per maintenance term (year) or subscription period (year). Licensee further agrees to not make any attempts to restore a License that has been deactivated on the original server once the License Transfer is completed.
- 4.10 Information Exchange During License Activation Process.** Depending upon the specific Software License acquired by Licensee, pursuant to the Order Invoice or Receipt, the license rights granted herein may be conditional upon Licensee supplying correct and accurate information required to activate the Software in the manner described during the installation process. If required by Licensor, Licensee will need to activate the Software through the use of the Internet or by means other than

through the use of the Internet, such as by email. The Activation may require a one-time exchange of information between the Licensee's computer or server system, and the Licensor's licensing server to conduct an authentication process and confirm that Licensee has a licensed copy of the Software. The information that Licensee needs to provide includes, but not limited to, the License Key (if available), the licensee's name, one or more system hash values derived from the Server's hardware configuration, an email address, and the computer name (if needed). Licensor will use the information received only for activation and authentication of the Software including issuing back a License File to be installed on the Server, tracking the License installation as needed in the future. By using the License Activation feature, Licensee consents to the transmission of such information to KingswaySoft for this authentication process. Licensor's privacy policy is available for review at Licensor's website: <https://www.kingswaysoft.com/privacy-policy>.

**4.11 Automatic License Update and Expiration.** The License may include an expiration date that can result in the termination of the License itself (for Subscription License) or its Maintenance (for Perpetual License). To minimize any service interruptions, the Software contains procedures that would check for any updates of the installed License during the Software's runtime by communicating with the Licensor's licensing server upon the expiration of the License itself or its Maintenance. When an update is found available, a new License File will be downloaded and installed automatically which would overwrite any existing License installation for the same product. Should the automatic license update procedure fail and no new license be installed, the Software may stop operating. It is Licensee's responsibility to contact Licensor regarding any potential license expiration as deemed appropriate. Licensor shall not be liable for any damages or costs incurred in connection with an expired License.

## **5. CONFIDENTIALITY**

- 5.1** The structure, organization, and source code of the Software are proprietary confidential information of the Licensor. Licensee agrees not to provide or disclose any such confidential information (including relating to or derived from the Software) to any third party, including where such confidential information is derived under any applicable law as set out in clause 4.5.
- 5.2** Other than the disclosures referred to in Licensor's Privacy Policy, Licensor agrees not to provide or disclose to any third party any information of a confidential nature in any form whatsoever which is disclosed to Licensor by Licensee or its Authorized Third Party Agent.
- 5.3** The provisions of clauses 5.1 and 5.2 will not apply to the extent that:
- 5.3.1** such information is in the receiving Party's possession free from any restriction as to its use or disclosure; or
  - 5.3.2** the receiving Party can demonstrate that such information is in the public domain (other than as a result of an unauthorized disclosure); or
  - 5.3.3** such information is required to be disclosed by law.
- 5.4** No information to which clause 5.3.3 applies shall be disclosed to a third party unless and until the receiving Party has (unless prevented from doing so by law) (i) given the disclosing Party reasonable written notice of such proposed disclosure, (ii) consulted with the disclosing Party, and (iii) agreed with the disclosing Party the content of the disclosure, provided that it shall not limit the disclosure in a manner which would prevent the receiving Party from complying with a statutory or regulatory obligation or court order.

## **6. SOFTWARE MAINTENANCE & UPGRADE**

Licensor will provide generally available Software upgrades to Licensee through a "Maintenance & Upgrade" ("M&U" or "Maintenance") program as described below:

- (a) Under Perpetual License, Licensee receives an initial one (1) year Maintenance & Upgrade, commencing on the date on which Licensor accepts Licensee's order by issuing the License Key or the date on which the License Key is activated, whichever comes first. Licensee may purchase additional software Maintenance & Upgrade at the then-current rate for one or more years, before or after expiration of the software Maintenance & Upgrade term. Each Maintenance & Upgrade term will start on the date following expiration of the previous Maintenance & Upgrade term regardless of when it is purchased. When operating under the Perpetual License, the Software contains a feature that checks the Software's release date against the expiry date of the Maintenance & Upgrade associated with the License Key, and determines whether activated License is entitled to use the particular release of the Software. If the Maintenance & Upgrade has expired before the Software's release date, the Software will cease certain functions. To rectify the problem, Licensee must purchase additional Maintenance & Upgrade to extend the Software maintenance, or downgrade to an older release of the Software.
- (b) Under Subscription License, Licensee receives free Maintenance & Upgrade during the entire subscription term.

## **7. COMPLIMENTARY SUPPORT SERVICE**

- 7.1** Under the Maintenance & Upgrade program, Licensor offers a complimentary support service which entitles Licensee to raise up to, three (3) support requests per licensed server for each Maintenance & Upgrade term (Year) or subscription term (Year). Any additional support requests are subject to charges at Licensor's then current standard rates.
- 7.2** Licensee shall designate one (1) primary support contact who shall act as the conduit for all support requests from Licensee.
- 7.3** Licensor does not provide guaranteed response time but will make good faith effort to answer emails and voice mails within twenty-four (24) hours or less during weekdays, excluding holidays.
- 7.4** Licensee acknowledges that the complimentary support service is limited to the assistance in regard to the use of the Software only. Any issues beyond this scope are excluded, or otherwise subject to charge at Licensor's then current standard rates only if agreed by Licensor.
- 7.5** Licensee agrees to provide adequate information to assist in the investigation and to confirm that any problems have been resolved.
- 7.6** Licensee acknowledges that the support service is only provided for the current version of the Software and the immediately preceding version released within the last twelve (12) months, or otherwise specifically agreed in writing.

## **8. MAINTENANCE AND SUBSCRIPTION AUTO RENEWAL PROGRAM**

- 8.1** Licensee agrees that Licensor may automatically renew the Subscription License or the Perpetual License's Maintenance at the end of the Subscription or Maintenance Term, for the same or equivalent Term, unless Licensee opts out of such auto-renewal in accordance with clause 8.4. Licensee agrees that the Licensee's payment method on file, if available, will get charged automatically on the date when the renewal is due (the "Renewal Date"). If no payment method is on file, Licensee will be billed with a renewal invoice.
- 8.2** Prior to each Renewal Date, Licensor shall send Licensee not less than two reminder emails to advise that the Licensee's License is approaching auto-renewal to the contact email address as provided by Licensee in accordance with clause 18.2. The first reminder email will be sent not less than forty-five (45) days prior to the relevant License Renewal Date. The second reminder email will be sent not less than fifteen (15) days prior to the relevant License Renewal Date.
- 8.3** Licensor reserves the right to increase the License Renewal Fee from time to time.

- 8.4** Opting Out of Auto-renewal. If Licensee wishes to opt out of auto-renewal then Licensee must either: (i) turn off automatic renewal by accessing its online account page on KingswaySoft website; or (ii) contact Licensor's customer services at email address [license@kingswaysoft.com](mailto:license@kingswaysoft.com) by providing details of the relevant Licenses that need to be opted out not less than seventy-two (72) hours prior to the relevant License Renewal Date. Provided that Licensee notifies Licensor in accordance with the provisions of this clause 8.4 then the License or its Maintenance will not auto-renew and shall expire at the end of the then-current Maintenance or Subscription Term.
- 8.5** Licensee acknowledges all payments for License Renewals are not refundable, once the renewal order has been approved and/or processed.

## **9. FEEDBACK**

Licensee has no obligation to provide Licensor with ideas, suggestions, or proposals ("Feedback"). However, if Licensee or Users submit Feedback to Licensor, then Licensee grants Licensor a nonexclusive, worldwide, royalty-free license that is sub-licensable and transferable, to make, use, sell, have made, offer to sell, import, reproduce, publicly display, distribute, modify, and publicly perform the Feedback in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise.

## **10. THIRD PARTY SOFTWARE**

- 10.1** Licensee acknowledges that the Software may include or require the use of software libraries or programs created by third parties, and the Licensee acknowledges that its use of such third party software programs and libraries shall be governed exclusively by the third party's applicable license agreement.
- 10.2** Licensor provides no warranty, express or implied, including but not limited to, the implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement, with respect to any third party software.

## **11. LIMITED WARRANTY**

- 11.1** Subject to clause 11.3, Licensor warrants that:
- 11.1.1** Licensor owns the Intellectual Property Rights in the Software and/or have the right to grant a License to Licensee;
  - 11.1.2** in creating the Licensed Software, Licensor has not knowingly infringed the intellectual property rights of third parties; and
  - 11.1.3** for a period of 30 days from the first installation of the Licensed Software (or, if applicable, 30 days from the end of the Evaluation Period if Licensee continues to use the Licensed Software) the Licensed Software shall operate substantially in accordance with its description. However, Licensee acknowledges that the Licensed Software is of such a complexity that there will be inherent defects and that therefore Licensor can give no warranty that the Licensed Software is free from error or defect or that operation of the Licensed Software shall be uninterrupted.
- 11.2** Other than as provided for in clause 11.1 above, Licensor does not offer any warranty related to the Licensed Software and/or the support services provided, either express or implied, including but not limited to implied warranties of fitness for purpose or satisfactory quality. The Licensed Software has been developed as a standard product for use by a wide variety of customers and so Licensor is unable to warrant that the Licensed Software will meet any particular customer needs. Licensee shall take full responsibility for ensuring that the Licensed Software is suitable for Licensee's intended purposes and to facilitate investigation into such suitability by using the Time-Limited Trial License offered by Licensor. Furthermore, Licensee acknowledges that the Software is not fault-tolerant and is not

designed, manufactured, or intended for use or resale as on-line control equipment in hazardous environments requiring fail safe performance in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Accordingly, Licensor and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities. Licensee agrees that Licensor and its suppliers and Third Party Licensors will not be liable for any claims or damages arising from the use of the Software in such applications.

- 11.3** When the Software is provided in the form of a Pre-release Build, or if it is provided without charge including the use of Time-Limited Trial license, Licensor makes no warranty, representation, or guarantee of any kind as to their functionality, quality, performance, suitability or fitness for purpose. All other terms, conditions, representations and warranties expressed or implied whether by statute or otherwise are hereby expressly excluded.

## **12. LIMITATION OF LIABILITY**

- 12.1** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR OR ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, LICENSORS, SUPPLIERS OR RESELLERS BE LIABLE TO LICENSEE UNDER ANY THEORY FOR ANY DAMAGES SUFFERED BY LICENSEE OR ANY USER OF SOFTWARE, OR FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR SIMILAR DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF THE USE OR INABILITY TO USE SOFTWARE, OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.
- 12.2** IN ANY CASE, LICENSOR'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT IS LIMITED TO THE AGGREGATE AMOUNT THAT LICENSEE PAID FOR THE SOFTWARE DURING THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. IF THE SOFTWARE IS PROVIDED WITHOUT CHARGE INCLUDING THE USE OF THE FREE TIME-LIMITED TRIAL LICENSE, THEN LICENSOR SHALL HAVE NO LIABILITY TO LICENSEE WHATSOEVER. THIS LIMITATION WILL APPLY EVEN IF THE LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF THE LIABILITY EXCEEDING THE AMOUNT AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## **13. INDEMNIFICATION OF THIRD PARTY CLAIMS**

- 13.1** Licensee agrees to indemnify Licensor from any loss or damage whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise, if a third party claims that Licensee's use of the Licensed Software causes any such loss or damage, except in the circumstances in clause 13.2 below.
- 13.2** If any claim is brought against Licensee alleging that Licensee's use of the intellectual property associated with the Licensed Software in accordance with this Agreement infringes the rights of any third party, Licensee shall promptly notify Licensor and supply full details of the claim. The two parties shall consult together on an appropriate course of action and seek to minimize the effect of any claim on the respective businesses. Licensor shall have the right, but not the obligation, to take control of all negotiations and litigation arising out of the claim. Licensor will pay any damages and



costs awarded against Licensee in connection with any claim subject to a maximum of the aggregate sum of License Fees paid to Licensor by Licensee in the 12 months prior to the claim. Licensor shall have the right, at the Licensor's sole choice, to either: (i) use reasonable endeavors to negotiate terms for continued use by Licensee of the claimed infringing software; or (ii) use reasonable endeavors to amend the Licensed Software to make it non-infringing; or (iii) terminate this Agreement with immediate effect and in such event, Licensor shall refund to Licensee the aforesaid License Fees paid.

## **14. TERM AND TERMINATION**

- 14.1 Agreement Term.** The Agreement shall enter into force on the Agreement Effective Date and remain in force until terminated in accordance with the provisions below (“the Term”).
- 14.2 Automatic Termination.** The Agreement terminates automatically when Licensee is no longer in possession of any valid License Keys or any of the Software's downloads, installations and documentations, and furthermore three (3) months after Licensor has provided notice to Licensee that the Licensed Software will gain an "end of life" status.
- 14.3 Termination in the Event of Default.** The Agreement terminates automatically in the event (i) Licensee becomes insolvent; (ii) Licensee makes an assignment for the benefit of creditors; (iii) Licensee files or has filed against it a petition in bankruptcy or seeking reorganization; (iv) Licensee has a receiver appointed; or (v) Licensee institutes any proceedings for liquidation or winding up or has such proceedings instituted against it. In addition, Licensor may terminate the Agreement and all related rights that Licensee may have immediately and without notice if Licensor has reasonable grounds to suspect that Licensee is using the Licensed Software for any purpose which contravenes any applicable law.
- 14.4 Termination for Convenience.** Licensee may terminate the Agreement at any time by providing written notice of termination to Licensor, provided that in the event of such termination, Licensee shall not be entitled to a refund of any license fees or other amounts paid.
- 14.5 Termination for Cause.** In the event that either Party believes that the other Party materially has breached any obligations under this Agreement, or if Licensor believes that Licensee has exceeded the scope of the intended use of the License and/or the Software, such Party shall so notify the breaching Party in writing. The breaching Party shall have thirty (30) days from the receipt of notice to cure the alleged breach and to notify the non-breaching Party in writing that cure has been effected. If the breach is not cured within this time period, the non-breaching Party shall have the right to terminate the Agreement without further notice.
- 14.6 Effect of Termination.** Upon expiration or termination of this Agreement, regardless of cause and regardless of who initiated the termination, (i) Licensee shall no longer have the right to use the Software, and any License Keys issued or granted to the Licensee under the Agreement will be revoked or disabled in Licensor's system as of the date of termination or expiration; (ii) if any outstanding fees were owed prior to termination, Licensee must pay those fees immediately; (iii) Licensee must destroy all copies of the Software in its possession or control, and certify in writing to Licensor that it has done so; and (iv) each Party will promptly return to the other (or, if the other Party requests it, destroy) all Confidential Information belonging to the other. LICENSEE AGREES THAT UPON TERMINATION OF THIS AGREEMENT FOR ANY REASON, LICENSOR MAY TAKE ACTIONS SO THAT SOFTWARE NO LONGER OPERATES. UNDER NO CIRCUMSTANCES WILL LICENSOR BE LIABLE FOR REIMBURSING THE PRICE OF THE SOFTWARE OR ANY OTHER DAMAGES.
- 14.7 Survival.** Notwithstanding any termination of this Agreement, Sections 3, 4.4, 6, 8, 10, 11, 12, 13, 15, 16, and 18 shall survive termination of this Agreement.

## **15. GOVERNMENT RESTRICTED RIGHTS**

This provision applies to Software acquired directly or indirectly by or on behalf of any Government. The Software is a commercial product, licensed on the open market at market prices. Any use, modification, reproduction, release, performance, display or disclosure of the Software and any related documentation by any Government or its contractors is subject to the restrictions set forth in this Agreement. All other use is prohibited, and no license to the Software is granted to any Government requiring different terms.

The Government hereby irrevocably and unconditionally waives any immunity, whether characterized as sovereign immunity or otherwise, from any suit, judgement, service of process, execution on judgement to which it or its assets may be entitled in any legal action or proceedings with respect to this Agreement or any of the transactions contemplated in this Agreement.

## **16. EXPORT REGULATIONS**

Licensee shall comply with all applicable laws and regulations with regards to: economic sanctions; export controls; import regulations; and trade embargoes ("Sanctions"), including those of the Canada, European Union and United States (specifically the Export Administration Regulations (EAR)). Licensee represents and warrants that it is not a person targeted by Sanctions nor is it otherwise owned or controlled by or acting on behalf of any person targeted by Sanctions. Further, Licensee acknowledges that it will not download or otherwise export or re-export the Software or any related technical data directly or indirectly to any person targeted by Sanctions or download or otherwise use the Software for any end-use prohibited or restricted by Sanctions or export control policies issued by competent authority.

## **17. MARKETING**

Licensee agrees to be identified as a customer of Licensor and that Licensor may refer to Licensee by name, trade name and trademark, if applicable, and may briefly describe Licensee's business in Licensor's marketing materials and on Licensor's web site. Licensee hereby grants Licensor a license to use Licensee's name and any of Licensee's trade names and trademarks solely in connection with the rights granted to Licensor pursuant to this marketing section.

## **18. GENERAL CONDITIONS**

- 18.1** Entire Agreement. This Agreement, including the Third Party Software agreements, constitutes the entire agreement between the parties concerning Licensee's use of Software, and supersedes any and all prior or contemporaneous oral or written representations, communications, or advertising with respect to Software. No purchase order, other ordering document or any handwritten or typewritten text which purports to modify or supplement the printed text of this Agreement or any schedule will add to or vary the terms of this Agreement unless signed by both Licensee and Licensor.
- 18.2** Email Address for Notices. At the time of new License activation, Licensee shall provide Licensor a valid email address for the provision of any notices and correspondence in connection with this Agreement and shall notify Licensor via [license@kingswaysoft.com](mailto:license@kingswaysoft.com) of any change(s) to that email address thereafter. It is important to note, the email address provided by Licensee is important for the provision of such notices, including in relation to the autorenewal of the License Terms (if applicable). It is Licensee's responsibility to provide and maintain an up to date email address. Licensee agrees that Licensor may store such contact details and use the provided email address to notify Licensee in accordance with the terms of this Agreement.
- 18.3** Reservation of Rights. Licensor reserves the right at any time to cease the support of the Software and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the Software.

- 18.4** Opportunity to Review. Licensee hereby declares that Licensee has had sufficient opportunity to review this Agreement, understand the content of all of its clauses, negotiate its terms, and seek independent professional legal advice in that respect before entering into it. Consequently, any statutory "form contracts" ("adhesion contracts") regulations shall not be applicable to this Agreement.
- 18.5** Severability. If a particular term is not enforceable, the unenforceability of that term will not affect any other terms.
- 18.6** No Waiver. The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.
- 18.7** Governing Law. This agreement shall be governed, construed, and enforced in accordance with the laws of the Province of Ontario, Canada, without regard to its conflicts of laws principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any legal action or proceeding related to this Agreement shall be instituted in a provincial or federal court located in the Province of Ontario, Canada. Licensor and Licensee agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such legal action or proceeding. Notwithstanding the foregoing, Licensor is entitled to seek immediate injunctive relief in any jurisdiction in the event of any alleged breach of Section 4 and/or to otherwise protect its intellectual property.