

## DENIM GROUP END USER LICENSE AGREEMENT

This Agreement (“**Agreement**”) is made and entered into by and between Denim Group, Ltd. (“**Denim Group**”) and the Customer Entity identified on an order form referencing this Agreement and relating to Software, (“**Customer**”). Denim Group and Customer are each referred to herein as a “party” and collectively as the “parties.”

IMPORTANT: THIS AGREEMENT IS A LEGAL AGREEMENT BETWEEN CUSTOMER AND DENIM GROUP. PLEASE READ IT CAREFULLY BEFORE COMPLETING THE INSTALLATION PROCESS AND ACCESSING OR USING THE SOFTWARE. THIS AGREEMENT PROVIDES A LICENSE TO USE THE SOFTWARE AND CONTAINS WARRANTY INFORMATION AND LIABILITY DISCLAIMERS.

**BY INSTALLING OR USING THE SOFTWARE, CUSTOMER IS CONFIRMING CUSTOMER’S ACCEPTANCE OF THE SOFTWARE AND AGREEMENT TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF CUSTOMER DOES NOT AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS, THEN DO NOT INSTALL OR USE THE SOFTWARE.**

Each order form, including but not limited to a trial Order Form, shall be either an order form or statement of work in a form, whether electronic or written, provided by Denim Group and mutually agreed to and entered into by Customer and Denim Group (“Order Form”). Each Order Form shall be deemed to be incorporated herein by reference. Each Order Form shall specify, as applicable, the quantity of Software ordered, the Licensed Entity, the fees for Software, and the term of the Order Form.

### 1. DEFINITIONS.

**DEFINITIONS.** The following terms shall have the meaning specified: “**Affiliate**” means, with respect to a party, an entity that is controlled by such party. With respect to an entity, control means the ability, whether by ownership of equity interests, voting rights, contract, or otherwise, to direct the management, policy, or affairs of such entity. An entity will be considered an Affiliate only for such time as such control is maintained. “**Application**” means a computer software application under management by the Software. The number of authorized Applications and installations shall be defined by the applicable Order Form(s).

“**Confidential Information**” (as it relates to Denim Group) shall mean the Software and all content, drawings, diagrams, specifications, customer and supplier lists, accounting and financial information, inventions, trade secrets, business and technical “know how,” processes, formulas, procedures, technology, strategies, data processing procedures, and other information or data provided to Customer by Denim Group. “**Confidential Information**” (as it relates to Customer) shall mean all confidential business and technical information of Customer provided to Denim Group. “**Disabling Code**” means computer instructions that alter, destroy, shut down, or inhibit the Software and/or Customer’s processing environment, including but not limited to other programs’ data storage and computer libraries, programs that self-replicate without manual intervention, instructions programmed to activate at a predetermined time upon a specified event, programs that permit unauthorized access to the Software or other software or hardware, and/or programs purporting to do a meaningful function but designed for a different function or programs that perform no function other than to utilize substantial computer, telecommunications, or memory resources, including without limitation viruses, Trojan horses, time bombs, protect codes, data destruction keys, trap doors, and similar codes or devices. Pop-up windows that notify Customer of Application or installation restrictions or other requirements but that do not prevent or inhibit authorized Use of the Software under this Agreement are not considered Disabling Code. It is agreed that this definition does not include screen lock-out features for: (i) unauthorized use of the Software, including use of the Software after any expiration or termination of this Agreement or any breach of this Agreement by Customer; (ii) Applications or installations in excess of the number of authorized Applications or installations licensed under this Agreement and through the applicable Order Form(s); (iii) Use of an unauthorized copy of the Software; or (iv) unauthorized modifications of the Software, provided that such screen lock-out features do not prevent or inhibit Use of the Software as authorized in this Agreement. “**Documentation**” means Denim Group’s documentation for the Software, in any medium, including that which is currently published and delivered (whether physically with the Software or on a Denim Group

web site) to Customer by Denim Group under this Agreement, which describes the content and functionality of the Software and how to use the Software. “**Including**” means “including but not limited to” (whether or not capitalized). “**Intellectual Property Rights**” means all trademark, trade dress, copyright, patent, trade secret, and other intellectual property rights, and all rights to protect the foregoing worldwide. “**License Term**” shall be defined in the applicable Order Form(s). “**Licensed User**” means a Representative of Customer or an Affiliate of Customer who is authorized to Use the Software pursuant to this Agreement and the applicable Order Form(s). “**Recommended Database**” “**Recommended Hardware**”, and “**Recommend Application Server**” mean the system requirements contained at <http://www.threadfix.it/faqs/>, which may be updated from time to time. “**Release**” means each issuance of the Software, excluding all third party software whether licensed through Denim Group or not, that involves a significant change in functionality over a previous issuance of the Software, which may or may not be identified by an alphanumeric identifier to the left of a decimal point (e.g., 3.0). “**Representative**” means a director, officer, employee, or agent of a party. “**Source Code**” shall mean all necessary instructions, tools, documents, computer programs or code in human readable language from which machine readable, executable code can be derived. “**Support**” means the support services set forth in the attached Support Schedule. “**Territory**” shall mean worldwide. “**Use**” means to activate the processing capabilities of the Software, or to load, install, configure, execute, access, or employ the Software, or display information using the processing capabilities of the Software. “**Version**” means each issuance of the Software generally available through Support that does not involve a significant change in functionality over a previous issuance of the Software, excluding third party software whether licensed through Denim Group or not, which may or may not be identified by a numeric identifier to the right of a decimal point (e.g., 3.1).

### 2. LICENSE.

**2.1** Subject to the terms and conditions of this Agreement and the applicable Order Form(s), Denim Group hereby grants Customer a limited, non-exclusive, nontransferable license to Use one installation of an executable versions of the Software on the Recommended Hardware with the Recommended Database and the Recommended Application Server for Customer’s internal business purposes only in the Territory during the License Term for monitoring security issues associated with the number of software Applications stated in the applicable Order Form(s).

**2.2 No Right to Transfer.** The license granted herein is personal to the Customer and does not extend to any other individuals or entities, except for Affiliates of Customer as expressly authorized in this Agreement. Affiliates of Customer may Use the Software only on behalf of Customer and subject to the same restrictions and conditions as Customer; any other Use of the Software by Affiliates of Customer is strictly prohibited. Customer shall be responsible for compliance with this Agreement by its Affiliates, including compliance with the number of authorized Applications and installations. Except as provided in Section 11, Customer shall not assign or transfer its rights or obligations under this Agreement without the prior written consent from Denim Group, and any purported assignment or transfer without such prior written consent shall be null and void.

**2.3 No Right to Sublicense.** Customer shall not have any right to sublicense the rights granted herein or use the Software in a service bureau capacity or any other manner except as expressly authorized in this Agreement.

**2.4 Limited Right to Copy.** Customer may make a reasonable number of copies of the Software and Documentation to facilitate Customer’s Use of the Software as authorized under this Agreement and for back-up and archival purposes only. Customer shall have no right to copy or reproduce or distribute Denim Group’s Software or Documentation except as expressly authorized in this Agreement. Customer shall not alter or delete any copyright notice that may be included in the Software or Documentation and shall include such notice in all copies of the Software or Documentation. The inclusion of a copyright notice in the Software or Documentation shall not cause or be construed to cause the Software or Documentation to be a published work.

**2.5 Reservation of Rights.** Denim Group reserves all rights not expressly granted herein. Except as otherwise agreed by Denim Group in writing, no express or implied license or right of any kind is granted to Customer regarding the Denim Group’s Software, including any right to reproduce, copy, market, sell, distribute, transfer, translate, modify, or adapt the Software or create any derivative works based on the Denim Group’s Software or any portion thereof. Customer understands that no license is granted by this Agreement to the Source Code of Denim Group’s Software. Customer shall not decompile, disassemble, reverse engineer, or otherwise seek to ascertain

the Source Code of the Denim Group's Software in any manner, except as may be expressly permitted by law.

**2.6 Title.** Denim Group shall retain title to the Software and Documentation and all Intellectual Property Rights therein. Customer agrees that, except for Customer's license described in this Agreement, Customer has no right, title or interest in the Denim Group's Software or Documentation, in any form, or in any copies thereof, including all worldwide Intellectual Property Rights and Confidential Information rights therein. In connection therewith, Customer agrees at all times hereafter to keep the Denim Group's Software and Documentation free of all security interests, liens, encumbrances, mortgages and claims whatsoever, and Customer agrees that neither it nor anyone at its direction shall file a financing statement, mortgage, notice of lien, deed of trust, security agreement or any other agreement or instrument creating or giving notice of an encumbrance or charge against the Denim Group's Software or Documentation.

**2.7 Verification.** Denim Group shall be permitted to audit the usage of the Software and Documentation by Customer to verify compliance with this Agreement, provided that such audit must be during Customer's regular business hours and upon reasonable advance notice to Customer, and further provided that such audit shall be no more than once annually unless a discrepancy is found, in which event Denim Group may conduct further audits until compliance is verified. Customer will promptly correct any discrepancies identified by Denim Group so as to comply with this Agreement. In the event an audit reveals that Customer underpaid any fees payable to Denim Group, Customer shall promptly pay such underpaid fees based on Denim Group's list of prices and conditions in effect at the time of the audit, and if such underpayment is more than 5% of the amount owed to Denim Group, Customer shall pay to Denim Group the reasonable costs of such audit.

**2.8 No Tampering.** Customer understands that Use of the Software as authorized in this Agreement may be subject to certain activation keys, passwords, or other protections issued or controlled by Denim Group. Customer shall not disable, tamper with, or seek to circumvent any such protections. In addition to any other remedy that may be available, Denim Group shall have the right to suspend or prevent Customer's access to and Use of the Software if Customer fails to abide by the terms and conditions of this Agreement.

**2.9 Third Party Products.** Customer understands that Use of the Software as authorized in this Agreement requires the Recommended Hardware, Recommended Database, and Recommended Application Server as set forth in this Agreement. Customer further understands that the Recommended Hardware, Recommended Database, and Recommended Application Server are third party products that are not included in this Agreement, and Customer bears the sole responsibility for the procurement, installation, operation, and maintenance of such third party products, including any and all costs associated with the same.

**2.10 Government Rights.** To the extent the United States Government or any agency thereof acquires any right to use the Software and Documentation pursuant to this Agreement or applicable law or regulation, such Software and Documentation shall be considered "commercial computer software" and "commercial computer software documentation," respectively, under the Defense Federal Acquisition Regulation Supplement ("DFARS") subpart 227.72, and the Government's right to use, modify, reproduce, release, perform, display, or disclose such Software and Documentation shall be the same as set forth for Customer in this Agreement pursuant to DFARS 227.7202-3 & 4. If and to the extent the immediately preceding sentence is held to be invalid or void by a court of competent jurisdiction, then to the greatest extent allowed by applicable law the Government's rights to use the Software and Documentation shall not exceed those restricted rights set forth in Federal Acquisition Regulation 52.227-19(b)(2) (DEC 2007).

**2.11 Open Source Software.** Some portions of the Software are open source software subject to the Mozilla Public License, Version 2.0, which is available at [www.mozilla.org/MPL/2.0/](http://www.mozilla.org/MPL/2.0/). The source code of such open source software is available at <http://www.threadfix.it/third-party-licenses>.

**2.12 Third Party Hosting.** Customer may have a third party host the Software on behalf of Customer, provided that such third party complies with this Agreement. Such third party shall not have any right to Use the Software except to the extent reasonably necessary to facilitate Customer's Use of the Software in accordance with this Agreement. Customer shall be responsible for any failure of such third party to comply with this Agreement. Any such hosting and any losses or damages in connection therewith, including without limitation any loss or corruption of data, will be at Customer's sole risk and expense. Denim Group shall have no responsibility or liability whatsoever for

such hosting or any action or omission by such third party. CUSTOMER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS DENIM GROUP, ITS LICENSORS AND AFFILIATES, AND EACH OF THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (COLLECTIVELY, THE "DENIM GROUP INDEMNIFIED PARTIES") AGAINST ALL EXPENSES, CLAIMS, DEMANDS, DAMAGES, CAUSES OF ACTION, LIABILITIES, LOSSES, JUDGMENTS, AWARDS, LAWSUITS, ARBITRATIONS OR OTHER LITIGATION AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES, REASONABLY INCURRED IN THE DEFENSE OF ANY CLAIM BROUGHT AGAINST ANY DENIM GROUP INDEMNIFIED PARTY ARISING OUT OF OR RELATED TO SUCH HOSTING OR ANY ACTION OR OMISSION BY SUCH THIRD PARTY.

### **3. LIMITED WARRANTIES.**

**3.1 Authority.** Denim Group warrants and represents that Denim Group owns or has sufficient rights from its licensors in the Software and Documentation as are necessary to grant the license granted to Customer in accordance with the terms of this Agreement.

**3.2 Software Performance.** Denim Group warrants that the Software will materially conform to the Documentation during the License Term when Used without alteration to the Source Code of the Software and in accordance with the Documentation on Authorized Hardware. The warranty set forth in this Section 3.2 shall not apply if (i) the Software is not used materially in accordance with the Documentation, or (ii) the failure to operate consistent with the Documentation is caused by Customer or a third party, an alteration of the Software, or any third-party software or database not prescribed for Use with the Software in the Documentation. Denim Group does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect such performance, or that the Software will meet all of Customer's business requirements.

**3.3 Disabling Code.** Denim Group represents and warrants that it has taken reasonable steps to test the Software licensed pursuant to this Agreement for Disabling Code and to the best of its knowledge the Software is free from Disabling Code as of the date of delivery to Customer by Denim Group, whether initially or pursuant to the Support services. Denim Group will take commercially reasonable steps to have future Releases and Versions of the Software, if any, delivered to Customer pursuant to Support free of Disabling Code. Reasonable steps shall mean that Denim Group has used then-current industry standard tools which are designed to prevent inclusion of Disabling Code in the Software.

**3.4 Customer's Representations and Warranties.** Customer represents and warrants that (i) it has the right, title and/or interest to perform its obligations as provided for herein; and (ii) warrants and agrees Customer will not use the Software or Documentation for any unlawful or offensive purpose, including but not limited to acts that violate or promote the violation of any rights of any third party, including any Intellectual Property Rights or other personal or proprietary rights, or conduct that is libelous, defamatory, disparaging, or obscene, or use of any device, software, or routine that interferes or attempts to interfere with the normal operation of the Software or circumvents the Software security.

**3.5 Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 3, DENIM GROUP DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. THE WARRANTIES SET FORTH IN THIS AGREEMENT DO NOT APPLY TO ANY OPEN SOURCE PORTION OF THE SOFTWARE, WHICH IS LICENSED ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND.

### **4. INDEMNIFICATION.**

**4.1 Indemnity.** DENIM GROUP SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CUSTOMER, ITS AFFILIATES, AND EACH OF THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (THE "INDEMNIFIED PARTIES") AGAINST ALL EXPENSES, CLAIMS, DEMANDS, CAUSES OF ACTION, LIABILITIES, LOSSES, JUDGMENTS, AWARDS, LAWSUITS, ARBITRATIONS OR OTHER LITIGATION AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES, REASONABLY INCURRED IN THE DEFENSE OF ANY CLAIM BROUGHT AGAINST AN INDEMNIFIED PARTY IN THE TERRITORY BY ANY THIRD PARTY ALLEGING THAT CUSTOMER'S USE OF THE

SOFTWARE OR DOCUMENTATION INFRINGES UPON OR MISAPPROPRIATES ANY INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY IN THE TERRITORY, PROVIDED THAT SUCH INDEMNITY SHALL NOT APPLY IF AND TO THE EXTENT THE ALLEGED INFRINGEMENT OR MISAPPROPRIATION RESULTS FROM USE OF THE SOFTWARE IN CONJUNCTION WITH ANY OTHER SOFTWARE, AN APPARATUS OTHER THAN RECOMMENDED HARDWARE, A DATABASE OTHER THAN THE RECOMMENDED DATABASE, AN APPLICATION SERVER OTHER THAN THE RECOMMENDED APPLICATION SERVER, AN ALTERATION OF THE SOFTWARE, OR UNLICENSED ACTIVITIES, SO LONG AS CUSTOMER PROMPTLY NOTIFIES DENIM GROUP IN WRITING OF ANY SUCH CLAIM AND DENIM GROUP IS PERMITTED TO CONTROL FULLY THE DEFENSE AND ANY SETTLEMENT OF SUCH CLAIM, PROVIDED SUCH SETTLEMENT SHALL NOT INCLUDE A FINANCIAL OBLIGATION OR ADMISSION OF LIABILITY ON CUSTOMER OR ANY INDEMNIFIED PARTY, AND PROVIDED THAT ANY FAILURE OR DELAY IN PROVIDING SUCH NOTICE SHALL NOT RELIEVE DENIM GROUP OF ITS DUTY TO INDEMNIFY HEREUNDER EXCEPT TO THE EXTENT DENIM GROUP IS MATERIALLY PREJUDICED BY SUCH FAILURE OR DELAY. CUSTOMER SHALL REASONABLY COOPERATE IN THE DEFENSE OF SUCH CLAIM AND MAY APPEAR AT ITS OWN EXPENSE THROUGH ITS OWN COUNSEL. DENIM GROUP MAY SETTLE ANY CLAIM ON A BASIS OF REQUIRING DENIM GROUP TO SUBSTITUTE FOR THE SOFTWARE AND DOCUMENTATION ALTERNATIVE SUBSTANTIALLY EQUIVALENT NON-INFRINGEMENT PROGRAMS AND SUPPORTING DOCUMENTATION. CUSTOMER SHALL NOT UNDERTAKE ANY LEGAL ACTION IN RESPONSE TO ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF THE SOFTWARE OR DOCUMENTATION WITHOUT THE WRITTEN CONSENT OF DENIM GROUP.

**4.2 Remedy.** In the event of any claim by any third party alleging that Customer's use of the Software or Documentation infringes or misappropriates any Intellectual Property Right, and such claim results in an order for injunctive relief or settlement that restrains Customer's Use of the Software or Documentation, Denim Group will at Denim Group's option promptly (i) secure for Customer the lawful right to continue Use of the Software and Documentation at no additional charge to Customer; (ii) modify the Software and Documentation so as not to infringe or misappropriate any rights of such third party and yet maintain substantially the same functionality; (iii) substitute the infringing Software and Documentation with alternative equivalent software and supporting documentation; or (iv) if none of the foregoing options is reasonably possible on a commercially reasonable basis, terminate this Agreement and refund to Customer the license fees paid to Denim Group on a pro-rata basis for the remaining portion of the then current License Term. Denim Group may perform any of the foregoing options in Denim Group's discretion if the Software or Documentation becomes, or Denim Group reasonably believes the Software or Documentation will become, subject to such a claim of infringement or misappropriation.

**4.3 Limitation.** THE PROVISIONS OF THIS SECTION 4 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF DENIM GROUP AND ITS LICENSORS TO CUSTOMER, AND ARE CUSTOMER'S SOLE REMEDY, WITH RESPECT TO THE INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

## **5. LIMITATION OF LIABILITY.**

**5.1 Software and Support.** Except as provided in Section 4.1 above, Customer's sole and exclusive remedies for any damages or losses in any way connected with the operation of the Software or performance of the Support services under this Agreement shall be for Denim Group to: (i) bring the performance of the Software into material compliance with the Documentation; (ii) re-perform the Support services; or (iii) if (i) or (ii) is not reasonably possible on a commercially reasonable basis, return to Customer an appropriate pro-rata portion of the license fee paid by Customer to Denim Group for the then current License Term with respect to the applicable portion of the Software or Support services.

**5.2 Support Schedule.** Denim Group will provide Support to Customer as follows: (a) Denim Group shall provide Support to Customer with respect to Customer's Use of the Software as authorized in the Agreement Monday through Friday excluding U.S. federal holidays ("**Business Days**") between the hours of 8:30 AM and 5:30 PM North American Central Time ("**Business Hours**") via telephone (210-572-4400) and email

([support@threadfix.it](mailto:support@threadfix.it)). Denim Group shall provide an initial response to a request for Support from Customer within one Business Day of Denim Group's receipt of such request. (b) The Support shall consist of (i) answering questions regarding proper Use of the Software; (ii) giving advice on system-related issues concerning Use of the Software such as Recommended Hardware, Recommended Database, Recommended Application Server, and related operating systems; (iii) troubleshooting relating to the Software; (iv) assisting Customer in diagnosing material errors in the Software that cause the Software not to operate materially in accordance with the Documentation ("**Errors**"); and (v) providing technical assistance to Customer to attempt to correct diagnosed Errors. (c) Denim Group will use commercially reasonable efforts to attempt to fix Errors in the Software identified by Customer that Denim Group is able to diagnose and reproduce, but Denim Group makes no guarantee that any such Errors will be fixed. Denim Group shall have no obligation to attempt to fix any Error if any of the following shall occur: (i) Customer does not notify Denim Group in writing within ten (10) days of Customer's identification of any Error, (ii) any modifications are made to the Software by someone other than Denim Group, (iii) the Software is used improperly or not in accordance with the Documentation, (iv) the Software is used by Customer in violation of this Agreement, (v) Customer fails to provide any item required to be provided by Customer under the Agreement, (vi) the Error has resulted from Customer's abuse or misapplication of the Software, or (vii) the Error is caused by any Recommended Hardware, Recommended Database, Recommended Application Server, or related operating systems. (d) Denim Group shall make available to Customer each new Version of the Software that is made generally available to Denim Group's Customers of the Software. Except for the foregoing Support, no services are included in this Agreement. Any other services that Customer may wish to obtain from Denim Group (e.g., installation services, training services, or other professional services) will be subject to a separate written agreement between Denim Group and Customer.

**5.3 Documentation.** Except as provided in Section 6.1 above, Customer's sole and exclusive remedies for any damages or losses in any way connected with the Documentation furnished by Denim Group under this Agreement shall be for Denim Group to: (i) correct any material inaccuracy of the Documentation, or (ii) deliver to Customer any Documentation for the Software licensed under this Agreement that was not previously delivered to Customer.

**5.4 Exclusions.** Denim Group will not be responsible under this Agreement if and to the extent (i) the Software is not used in accordance with the Documentation, or (ii) a defect in the Software is caused by Customer, a third party, an alteration of the Software, or any third-party software or database not prescribed in the Documentation. DENIM GROUP AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM INHERENTLY DANGEROUS USE OF THE SOFTWARE AND/OR ANY THIRD-PARTY SOFTWARE LICENSED HEREUNDER.

**5.5 Limitations.** NEITHER DENIM GROUP NOR ANY OF DENIM GROUP'S AFFILIATES OR REPRESENTATIVES SHALL BE LIABLE HEREUNDER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, WORK STOPPAGE, OVERHEAD COSTS, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, EXEMPLARY OR PUNITIVE DAMAGES, AND DAMAGES ARISING OUT OF COMMITMENTS TO SUBCONTRACTORS OR PERSONAL SERVICE CONTRACTS, EVEN IF DENIM GROUP HAS BEEN APPRISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL CUMULATIVE LIABILITY OF DENIM GROUP, IF ANY, ARISING OUT OF THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE LICENSE FEES RECEIVED BY DENIM GROUP FROM CUSTOMER UNDER THIS AGREEMENT AND THE APPLICABLE ORDER FORM(S) DURING THE ONE YEAR PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE.

**5.6 Severability of Provisions.** IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED BY THE PARTIES TO BE SEVERABLE AND



INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH.

## **6. CONFIDENTIALITY.**

**6.1** Each party understands that during the term of the Agreement, each party may have access to and may learn Confidential Information of the other party, including technical information, Source Codes, computer programs, ideas, and other trade secrets of the other party. Each party understands that it has no title to or rights to use the other party's Confidential Information except as expressly set forth in this Agreement.

**6.2** Each party agrees to hold in confidence all Confidential Information of the other party and use such Confidential Information only for the purpose of this Agreement. Each party further agrees not to reproduce, distribute, or disclose the other party's Confidential Information to a third party without first obtaining the other party's express written consent. Each party will not disclose the other party's Confidential Information to anyone except its authorized Representatives who have a need to know such Confidential Information to fulfill the purpose of this Agreement.

**6.3** These restrictions shall not apply to information: (i) that is or becomes generally known through no fault of the receiving party, (ii) that the receiving party can show was in its possession prior to its receipt from the disclosing party, (iii) that the receiving party can show was received by it from a third party not prohibited from disclosing the information, or (iv) that was developed independently by the receiving party without the use of the other party's Confidential Information or (in the case of the Customer) Denim Group's Software.

**6.4** If disclosure of Confidential Information is required by law, subpoena or a government authority, the receiving party may make such disclosure provided that the other party is notified in writing prior to the disclosure and every reasonable effort is made to protect the other party's proprietary interests in such Confidential Information.

**7. NOTICES.** All written notices from one party to the other shall be deemed to have been given if sent by facsimile transmission, certified mail or registered or express mail or by hand delivery to the corresponding address stated on page 1 of this Agreement. All address changes shall be communicated to the other party by notice in accordance with this section.

## **8. TERMINATION.**

**8.1 Termination for Breach.** Either party may terminate this Agreement by delivering written notice of termination to the other party if the other party fails to cure any breach of this Agreement within 30 days after receiving written notice of such breach; provided, however, that Denim Group may terminate this Agreement immediately upon notice to Customer if Customer breaches its confidentiality obligations under this Agreement or otherwise commits a breach that is not curable.

**8.2 Termination for Insolvency.** Either party may terminate this Agreement by delivering written notice of termination to the other party in the event of the insolvency of the other party. As used herein, "insolvency" means the filing by a party of a petition in bankruptcy or the adjudication of a party as a debtor, or the filing by or against a party of any petition seeking any liquidation, arrangement, or other similar relief under the present or any future Bankruptcy Act or any other present or future statute or law regarding bankruptcy, insolvency, or other relief for debtors, or a party seeking, or consenting to, or acquiescing in the appointment of any trustee, receiver, conservator, or liquidator of it or of all or any substantial portion of its property, if such petition or any order, judgment or decree issued subsequent thereto appointing a trustee, receiver, conservator, or liquidator of a party or of all or any substantial portion of its property shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the entry thereof. Until the effective date of termination, a notice of termination by Customer shall not affect the rights and obligations under this Agreement.

**8.3 Effect of Termination.** Upon any expiration or termination of this Agreement, Customer will immediately cease any and all use of the Software, Documentation, and the Confidential Information of Denim Group, and Customer will promptly and permanently delete all electronic copies, and return to Denim Group or destroy, at Denim Group's option, all tangible copies, of the Software, Documentation, and Confidential Information then in Customer's possession and shall certify the same in writing to Denim Group within 10 days after such expiration or termination. In the event of any termination hereunder, Customer shall not be entitled to any refund of any payments made by Customer, except if termination is due to a breach of this Agreement by Denim Group. Sections 1, 2.5, 2.6, 2.7, 2.12 (the indemnity portion only), 3.5, 4, 5, 6, 7, 8.3, 9, 10, 12, 13, 14, 17, 18, and 19 of this Agreement shall survive any such expiration or termination.

**9. SEVERABILITY.** It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

**10. NO WAIVER.** The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant or right as to further performance. Any waiver by either party of any breach of any provision of this Agreement must be in writing signed by the waiving party; provided, however, no such waiver shall be construed as a waiver of any continuing or succeeding breach of such provisions, a waiver or modification of the provision itself, or a waiver or modification of any right under this Agreement, unless the instrument constituting the waiver so states.

**11. ASSIGNMENT.** Customer may not, without Denim Group's prior written consent, assign, delegate, pledge or otherwise transfer this Agreement or any of its rights or obligations under this Agreement to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation, except to an Affiliate of Customer or a successor to all or substantially all of the business or assets of Customer; provided that in no event may Customer assign this Agreement or any of its rights or obligations under this Agreement to a competitor of Denim Group. Any attempt to assign this Agreement, or any rights or obligations under this Agreement, in violation of this Section 11 shall be void and of no effect.

**12. EXPORT CONTROL NOTICE.** The Software and Documentation are being released or transferred to Customer in the United States and are therefore subject to the U.S. export control laws. Customer acknowledges its obligation to ensure that its exports from the United States are in compliance with the U.S. export control laws. Customer shall also be responsible for complying with all applicable governmental regulations of any foreign countries with respect to the use of the Software and Documentation outside of the United States. Customer agrees that it will not submit the Software or Documentation to any government agency for licensing consideration or other regulatory approval without the prior written consent of Denim Group.

**13. CONFIDENTIAL TERMS AND CONDITIONS.** Neither party shall disclose the terms and conditions of this Agreement or the pricing contained herein to any third party, except as may be required by law, regulation, or other governmental authority, and except that each party may disclose such information to its attorneys, accountants, and business advisors who are obligated to keep such information confidential. Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other.

**14. CHOICE OF LAW AND FORUM.** This Agreement shall be governed by the laws of the State of Texas without giving effect to any rules pertaining to conflicts of laws, and exclusive jurisdiction and venue for its enforcement shall be in the courts of Bexar County, Texas. In the event of any conflicts between foreign law, rules, and regulations, and United States of America law, rules, and regulations, United States of America law, rules, and regulations shall prevail and govern. The United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods shall not apply to this Agreement. The Uniform Computer Information Transactions Act shall not apply to this Agreement.

**15. PERMITS AND AUTHORIZATIONS.** Each party shall be responsible for securing and maintaining its own permits, licenses, and governmental authorizations as may be required for the respective party to perform its obligations or exercise its rights under this Agreement. Each party shall provide copies of any such permits, licenses, or authorizations to the other party upon request by that party.

**16. FORCE MAJEURE.** Performance of the Agreement by each party shall be pursued with due diligence; however, neither party shall be liable for any loss or damage for delay or for nonperformance due to causes not reasonably within its control, such as acts of God, strikes, unavailability of material or transportation, natural casualties, governmental regulations, war, fire, flood, disasters, terrorist acts, or civil unrest, for so long as such condition exists; provided that such party shall use its best reasonable effort to avoid and remove such cause and continue performance whenever the cause is removed. In the event of any delay resulting from such causes, the time for performance of the parties (excluding the payment of monies) shall be extended for a period

of time equal to the duration of conditions preventing performance. No further modification to other terms and conditions of the Agreement shall occur.

**17. NO THIRD PARTY BENEFIT.** Unless otherwise expressly stated in this Agreement, no provision of the Agreement is intended, nor shall be construed, to be for the benefit of any individual or entity other than the parties to this Agreement. In the event of any ambiguity regarding the interpretation of the Agreement, the parties expressly agree that the Agreement shall not be construed against or in favor of one party over the other party.

**18. HEADINGS.** The headings used in this Agreement are for convenience of reference only and shall not be used to interpret the provisions of this Agreement.

**19. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all other prior or contemporaneous understandings or agreements with respect to the subject matter hereof. This Agreement cannot be modified or amended except by a written agreement signed by an authorized representative of each party.