



END USER LICENSE AGREEMENT

1. SOFTWARE LICENSE TERMS AND CONDITIONS

- 1.1 Rights Granted to Customer: Subject to Customer's compliance with the terms of this Agreement including, without limitation, purchase of the Software, Customer is granted a non-exclusive, non-transferable, perpetual license to install, use and execute the Software in object code form on a per-license basis at the location specified ("Software License") as may be changed by Customer from time to time with written notice. Such Software License limited to the site(s), number of seats, concurrent users, agents, servers, ports, devices, managed applications, and/or copies as applicable to the Software obtained, not to exceed the number of licenses set forth on applicable orders. The Software License shall become effective upon delivery of the Software and shall remain in force unless terminated due to expiration or breach of these license grant terms or confidentiality. This right does not include permission to grant sub-licenses or otherwise transfer such rights. Customer may make copies of the Software for archival purposes only. Customer may not reverse engineer, disassemble, modify or otherwise translate the Software License provided pursuant to this Agreement. Notwithstanding the previous sentence, Customer may configure Software to meet Customer's needs and user preferences. To verify proper license amount and use, Customer hereby authorizes a Supplier representative, with prior notice, to physically or electronically, and inspect the software license.
- 1.2 Governmental Use: All Software and Documentation furnished pursuant to this Agreement were developed at private expense and are provided with RESTRICTED RIGHTS. Any use, duplication or disclosure by or for any governmental agency of the United States Government or any other jurisdiction shall be subject to the restricted rights applicable to commercial computer software under FAR Clauses 12.211, 12.212, 52.227-19 or DFARS 227.7202, 252.227-7013 as applicable or any successor provision or any other legal provisions respective of restricted rights for commercial software. You may not use or export the Software except as authorized by law. In particular, but without limitation, the Software or Documentation may not be exported to any U.S. embargoed country.
- 1.3 Software Title: Customer acknowledges that the Software Documentation and copies of derivative works are the property of Supplier and that the only right Customer obtains is the right of use in accordance with the terms of this Agreement. No title to or ownership of the Software, Documentation, or any of its parts, the information it contains or in any applicable rights therein, such as patents, copyrights and trade secrets, is transferred to Customer. Any reference to "sale" or "purchase" of the Software shall be deemed to mean, "License on the terms contained in this Agreement." Supplier considers the information contained in the Supplier Software owned or created by Supplier to be trade secrets of Supplier and any third-party software licenses which Supplier may resell to Customer to be trade secrets of such third-party licensor. Customer agrees to treat Software as Confidential Information and shall use the same degree of care used by Customer to protect its own Confidential Information.
- 1.4 Restrictions: You may not publish, display, disclose, sell, rent, lease, loan, distribute, or create derivative works of the Software, or any part thereof. You may not assign, sublicense, convey or otherwise transfer, pledge as security or otherwise encumber the rights and licenses granted hereunder with respect to the Software. You may not copy (except as provided in Section 2 hereof), reverse engineer, decompile, reverse compile, derive source code, translate, adapt, or disassemble the Software, or any part thereof, except and only to the extent that it is expressly permitted by applicable law notwithstanding these restrictions. You may not market, co-brand, private label or otherwise permit third parties to link to the Software, or any part thereof. You may not use the Software, or any part thereof, in the operation of a service bureau or for the benefit of any other person or entity. You may not cause, assist or permit any third party to do any of the foregoing
- 1.5 Third Party Software: Some third party software (including some imbedded software) are exclusively licensed pursuant to express end user license terms made available at

<http://www.enghouse.com/legal/agreements.html> ("Third Party EULA"). To the extent applicable, Customer agrees to be bound by these end-user terms respective of the applicable Third Party EULA provisions. Third party software licenses provided to Customer which are not expressly provided for in the Third Party EULA provisions are provided to Customer pursuant to the terms of this agreement including without limitation this Section 1. All Third Party Products are restricted for use solely in conjunction with the particular Software intended by Licensor to be used therewith or with which Supplier provides the Third Party Product, and may not be used with any other products, or on a standalone basis.

2. EXPORT RESTRICTIONS

This EULA is expressly made subject to any applicable laws, regulations, orders, or other restrictions on the export of the Software or information about such Software which may be imposed from time to time. You shall not export the Software, Documentation or information about the Software and Documentation without complying with such laws, regulations, orders, or other restrictions. You agree to indemnify Supplier and its licensors against all claims, losses, damages, liabilities, costs and expenses, including reasonable attorneys' fees, to the extent such claims arise out of any breach of this section.

3. ACCEPTANCE

- 3.1 Products: Making Software or Hardware available to Customer for electronic download shall constitute Delivery.
- 3.2 Services: A statement of work will accompany any order containing Services. The statement of work document will encompass the scope, price, and parameters of the application engagement. Any terms and conditions contained in the statement of work will apply only to the related order and will take precedence over the terms and conditions in this Agreement. When Supplier completes the custom development, installation and remote functional testing, Supplier will provide Customer with written notification to commence with User Acceptance Testing ("UAT"). The UAT period will be pre-defined and agreed to by both parties in the Functional Specification document, failing which it shall be ten (10) days from the date of written notice by Supplier. These Services are deemed accepted upon the earliest of (i) signed Customer acceptance of the application, (ii) expiration of the pre-defined UAT period, or (iii) upon Customer placing the Services into production. Training and consulting or professional services are deemed accepted upon expiration or completion of the Service.

4. WARRANTIES

- 4.1 Limited Warranty: Supplier warrants, for a period of thirty (30) days from date of delivery, that Supplier Software will substantially conform to the published specifications prevailing at the time of purchase or delivery, and Services will operate in accordance with the functional specification document for a period of thirty (30) days from the date of Acceptance. Supplier's sole obligation and liability hereunder will be to use reasonable efforts to remedy any such non-conformance which is reported to Supplier in writing within the warranty period. The exclusive remedy for any breach of the foregoing warranties is for Supplier to repair, modify, replace or re-perform (each as applicable). The warranties specified above are subject to the exclusions specified in Section 4.2, and are subject to applicable law, and Supplier shall provide you with additional warranty rights with respect to the Products and Services to the extent those rights cannot be excluded by those laws.
- 4.2 Disclaimer of Warranty: EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS SECTION 4, PRODUCTS ARE PROVIDED BY SUPPLIER AND ACCEPTED BY THE CUSTOMER "AS IS" AND SUPPLIER GIVES TO THE CUSTOMER NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO PRODUCTS OR THE PERFORMANCE OR RESULTS OF USE THEREOF. WITHOUT LIMITING THE FOREGOING, SUPPLIER DOES NOT WARRANT THAT PRODUCTS OR THE OPERATION THEREOF IS OR WILL BE ERROR-FREE OR UNINTERRUPTED OR MEETS OR WILL MEET THE CUSTOMER'S REQUIREMENTS, AND SUPPLIER GIVES NO IMPLIED WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, WITH REGARD TO MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE AND WHETHER ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

5. SUPPORT

Subject to payment to Supplier of all annual support fees, Supplier shall use commercially reasonable efforts to provide: (i) direct telephone access to Supplier support desk during applicable support hours, (ii) error corrections for Software errors to allow the Software to operate substantially in accordance with the specifications, and (iii) updates and upgrades that Supplier, in its sole discretion, generally offers to its customers. Supplier reserves the right to charge for new functionality that may be offered by Supplier from time to time. Support shall be provided by Supplier only for the then-current Software version and one version back. Notwithstanding Supplier's support obligations hereunder, Supplier shall have no responsibility or liability of any kind arising or resulting from: (a) a failure by a party other than Supplier to (1) correctly install any error corrections, updates, or upgrades (2) prepare and maintain the Customer Environment, (3) grant Supplier access and security authorization and provide necessary communications mechanisms for remote access; (b) errors resulting from misuse, abuse, negligence, or improper use of all or any part of the Software, or problems to or caused by products or services not provided by Supplier; (c) Software modification, amendment, revision, or change by any party other than Supplier; or (d) Internet connection problems, or data or data input, output, integrity, storage, and back-up, which shall be deemed under your exclusive control, and your sole responsibility. If Supplier provides support services as a result of any of the foregoing conditions, Supplier may charge you for such services.

6. INFRINGEMENT INDEMNITY

- 6.1 Subject to the limitations below, Supplier will indemnify Customer against any judgment, including costs and direct damages, rendered by a court of competent jurisdiction, against Customer which definitively concludes that the Software infringes an existing patent, trademark, copyright or trade secret. Customer agrees to provide written notice to Supplier of the initiation of any such suit or proceeding, provide full authority, information, and assistance for defense, and permit Supplier to assume defense upon Supplier's request. Customer agrees that Supplier shall be relieved of its obligations under this Section 11.1, unless Customer notifies Supplier of such Claim within ten (10) days after Customer's receipt thereof and gives Supplier the authority to proceed as contemplated herein and, at Supplier's expense (except as provided below), gives Supplier the relevant information then in its possession and reasonable assistance for Supplier, in Supplier's discretion, to settle and/or defend any such Claim.
- 6.2 If the Software becomes the subject of such an infringement Claim, or if it is determined by adjudication that the Software infringes same or if the sale or use of the Software is enjoined, then Supplier may, at its option and expense either (a) procure for Customer the right to continue to use the Software; (b) replace the Software with other suitable and reasonably equivalent Software or parts thereof so that the Software becomes non-infringing; (c) suitably modify the Software so that the Software becomes non-infringing, or (d) if it is not commercially reasonable to take the actions specified in items (a), (b), or (c), terminate this Agreement and refund all associated license fees previously paid to Supplier by Customer, subject to a three (3) year straight line depreciation.
- 6.3 Supplier shall not be liable for any compromise entered or settlement made by Customer without Supplier's prior written consent. In addition, Supplier shall not be liable for any losses, costs, or damages, and Customer will indemnify, defend, and hold Supplier harmless from any expenses, damages, costs, or losses resulting from any suit or proceeding based upon a claim arising from (1) compliance with Customer's or End-User's supplied designs, specifications, or instructions; (2) a modification of the Software by a party other than Supplier; (3) the combination, operation, or use of the Software with any other product, data, or apparatus not provided by Supplier; (4) the use of a superseded release of the Software if the infringement would have been avoided by the use of a current release of the Software provided or made available to Customer; (5) the use of such Supplier Software to practice any method or process which does not occur wholly within the Supplier Software; or (6) use of the Software in a manner otherwise as provided for in this Agreement. The license of any Software pursuant to this Agreement does not confer upon End User any license under any patent rights or copyrights.

7. LIMITATION OF LIABILITY

IN NO EVENT SHALL SUPPLIER BE LIABLE FOR ANY DAMAGES RESULTING FROM LOSS OF USE, DATA, PROFIT OR BUSINESS OR FOR ANY PUNITIVE, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN CONTRACT, TORT OR OTHER LEGAL THEORY. SUPPLIER'S LIABILITY FOR DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, SHALL BE LIMITED TO THE PURCHASE PRICE PAID BY THE CUSTOMER FOR THE PRODUCTS UNDER THE SPECIFIC ORDER RELATING TO THE CLAIM IN THE PRIOR TWELVE (12) MONTH PERIOD. NO ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION HEREUNDER MAY BE BROUGHT BY EITHER PARTY MORE THAN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION HAS ARISEN, EXCEPT FOR AN ACTION FOR NON-PAYMENT.

8. CONFIDENTIAL INFORMATION

Each party acknowledges that, in the course of performing its duties under this Agreement, it may obtain information relating to the other party, which is of a confidential and proprietary nature ("Confidential Information"). Such Confidential Information may include, but is not limited to, this Agreement, pricing and proposals, computer software, trade secrets, know-how, inventions, techniques, processes, programs, schematics, data, customer lists, financial information and sales and marketing plans. Each party shall at all times maintain in the strictest confidence and trust all such Confidential Information, which shall not be less than those measures employed by each party in protecting its own Confidential Information of equivalent value. Customer and its employees agree not to disclose such information to any third party.

The commitments set forth above shall not apply to any Confidential Information which:

- A. is now generally known or available or which hereafter through no act or failure on the part of the receiving party becomes generally known or available;
- B. is legally known to the receiving party at the time of receiving such information;
- C. is hereafter furnished to the receiving party by a third party without restriction on disclosure, where such third party legally obtained such information and the right to disclose it to the receiving party; or
- D. is independently developed by the receiving party without violation of any legal rights which the disclosing party may have in such information.

Both parties agree that all Confidential Information disclosed hereunder shall remain the property of the disclosing party and may only be copied or reproduced as expressly permitted herein. Upon expiration or termination of this Agreement, Recipient shall return all Confidential Information to the disclosing party along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. No license, express or implied, in the Confidential Information is granted other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. All Confidential Information disclosed hereunder is provided by the disclosing party without representation or warranty of any kind.

9. GENERAL

- 9.1 Assignment: The interests of Customer in this Agreement are personal and shall not be assigned, transferred, shared or divided in any manner by Customer without the prior written consent of Supplier. Supplier shall be entitled to assign this Agreement and the rights granted hereunder to any affiliate, subsidiary or successor in interest to Supplier's business.
- 9.2 Force Majeure: Neither party shall be liable for any failure or delay (other than failure to make payment) caused by events beyond its control, including, without limitation, sabotage, failures or delays in transportation or communications, labor disputes, accidents, shortages of labor, fuel, raw materials or equipment, terrorist act, other actions or inactions of third-parties or technical failures. If Supplier should fail to make any Delivery provided for herein as a result of any such event or circumstance beyond its own direct control, Supplier shall have the right to make Delivery within a reasonable time after the cause of such delay has been removed, and Customer shall be obligated to accept deferred Delivery, it being agreed that upon the occurrence of any such circumstance or event beyond Supplier's direct control, the time for Delivery by Supplier shall be extended by the number of days of delay attributable to any such circumstance or event.

- 9.3 Termination: This EULA is effective until it is terminated. You may terminate this EULA at any time by destroying or returning all copies of the Software and Documentation in your possession or under your control. This EULA will terminate automatically if you fail to comply with any term hereof. Upon termination, you agree to destroy or return all copies of the Software and Documentation and to certify in writing that all known copies, including archived copies, have been destroyed. All provisions relating to confidentiality, proprietary rights and indemnity shall survive the termination of this EULA.
- 9.4 Governing Law: The laws of the State of Arizona, excluding its conflict of laws provisions, shall govern this Agreement. State and Federal Courts in Phoenix, Arizona shall have exclusive jurisdiction under this Agreement. In the event either party hereto institutes an action or other proceeding to enforce any rights arising under this Agreement, the party prevailing in such action or proceeding shall be paid all reasonable costs and attorney's fees by the other party. In the event that the parties are domiciled in different countries, the following terms shall apply. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution ("ICDR") in accordance with its International Arbitration Rules and judgment on the award rendered by the arbitrator shall be binding and may be entered in any court having jurisdiction thereof. The place of arbitration shall be the city in the country closest in location to the Enghouse legal entity executing this Agreement. The arbitration shall be conducted in English by one arbitrator mutually acceptable to the parties and selected in accordance with the ICDR International Arbitration Rules. The arbitrator shall not have the power to award any punitive damages or any damages excluded by this Agreement.
- 9.5 Injunctive Relief: Customer acknowledges that remedies at law may be inadequate to provide Supplier with full compensation in the event of Customer's material breach of any: (i) license grant hereunder, (ii) confidentiality and nondisclosure obligations herein, or (iii) intellectual property rights of Supplier, and that Supplier shall therefore be entitled, without bond or other security obligation, to seek injunctive relief in the event of any such material breach.
- 9.6 Full Agreement: This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to Supplier licensing the Software to Customer and contains all the covenants and agreements between the parties with respect to the licensing of such Software. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.