

EMPIRIX INC.
INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION

All capitalized terms not defined in this document shall have the meaning ascribed to them in the NACR Sales Agreement.

Infringement Indemnity. NACR, at its own expense, shall indemnify CUSTOMER and its officers, agents and employees from and against any action brought against CUSTOMER to the extent that such action is solely based on a claim that the unmodified Product, when used in accordance with this Agreement, infringes any (i) copyright; (ii) trade secret rights; or (iii) patent right recognized in country that is a signatory to the Berne Convention for the Protection of Literary and Artistic Works (as amended); of any third party (“Infringement”) and NACR shall pay all costs, settlements and damages finally awarded, provided: (a) NACR shall have sole control of the defense and/or settlement of such claim or suit; (b) CUSTOMER will notify NACR promptly in writing of each such claim or suit and shall give NACR all information known to the CUSTOMER relating thereto; and (c) CUSTOMER will cooperate with any reasonable request of NACR in the settlement or defense of any such claim or suit. CUSTOMER shall be reimbursed for all reasonable expenses incurred in providing any cooperation requested by NACR.

Remedial Measures. If all or any part of the Product is, or in the opinion of NACR may become, the subject of any claim or suit for Infringement, or in the event of any adjudication that the Product or any part thereof does infringe, or if the use of the Product or any part thereof is enjoined, NACR may, at its expense and discretion do one or more of the following things: (a) procure for CUSTOMER the right to use the Product or the affected part of the Product; (b) replace the Product or the affected part of the Product with other Product providing substantially similar functionality; (c) modify the Product or the affected part of the Product to make it non-infringing; or (d) if none of the foregoing remedies are, in the sole discretion of NACR, commercially feasible, refund the aggregate payments paid by CUSTOMER for the Product or the affected part of the Product less a reasonable amount for the prior use thereof by CUSTOMER (based on a five (5) year straight line life). If remedial measure (d) is selected, NACR will be responsible for refunding End User amounts paid by such End User to NACR for the affected Products.

Exceptions. NACR shall have no obligations under this Section to the extent that a claim is based upon: (a) the use of any prior version of the Product if such infringement would have been avoided by the use of the then-current version, which version has been provided by NACR to CUSTOMER; (b) the combination, operation or use of the Product with software or data that was not provided by NACR, if such infringement would have been avoided in the absence of such combination, operation or use; or (c) the use of the Product on or in connection with a computer system other than as specified in the Product documentation.

This Section states the entire liability of NACR and the exclusive remedy of the CUSTOMER with respect to any alleged infringement of any third party rights.