

## **RADISH SYSTEMS, LLC**

### **End User License and Warranty**

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The terms and conditions set forth herein may be amended in our sole and absolute discretion from time to time, and such amended terms and conditions shall be effective immediately upon posting to the Radish Website.

**The terms of this License Agreement do not apply if this Software has been furnished to You pursuant to a separate, written license agreement executed by You and Radish.**

#### **A. Terms and Conditions Applicable to Single-User Licenses**

A.1 You are granted a non-exclusive, personal, limited, non-transferable, non-sublicenseable license to use this Software, subject to the terms, fees, conditions, restrictions, and limitations contained herein and on the applicable current Radish Price List, for a period of months, according to the length of the Term Single-User License you have purchased.

A.2 This Software may be loaded on only one computer for use with one specific password. If the computer on which this Software is loaded is attached to a network, this Software must not be simultaneously accessible by any other user on such network.

A.3 If your sales agent is unable to provide sufficient support to resolve an issue, Radish will provide to You, at no additional charge, reasonable amounts of online technical support and software maintenance updates as they become available, for so long as this current Software release is widely distributed by Radish, and for one (1) year thereafter.

A.4 Radish Software is designed for use with a Windows operating system. Single-user licenses may not be used in a virtualized environment.

#### **B. Terms and Conditions Applicable to Multi-User Licenses**

B.1 You are granted a non-exclusive, personal, limited, non-transferable, non-sublicenseable license to use this Software for either: (i) a period of one (1) year which is subject to the terms, fees, conditions, restrictions and limitations contained herein and on the applicable Radish Price List.

B.2 The license fee You pay according to Our then-current Price List, or as set forth on any invoice You receive regarding this Software, governs the maximum number of licensed simultaneous users permitted to use this Software. The maximum number of licensed simultaneous users of the Software may be increased during the term(s) of this license by paying additional user fees for the time remaining in Your then-current license term.

B.3 The Annual Multi-User license may be renewed for additional one-year terms by paying the then-current annual license fee for the current maximum number of licensed simultaneous users of the Software. This Software will

cease to function after a period of one (1) year and You will only receive the renewal activation password upon Our receipt of Your payment of the then-current annual license fee, or upon Our receipt of a written purchase order or other written or electronic confirmation of Your intent to renew and to pay the then-current annual license fee. All terms and conditions of this License Agreement will apply during the renewal term(s).

B.4 If your sales agent is unable to provide sufficient support to resolve an issue, Radish will provide to You, at no additional charge, reasonable amounts of online technical support and software maintenance updates as they become available for so long as this current Software version is widely distributed by Radish, and for one (1) year thereafter.

B.5 For Annual Multi-User Licenses, Radish will also provide to You, at no additional charge, updates of the Software as they become available during the term(s) of the license so long as You are in compliance with sections B.2 and/or B.3 above, subject to reasonable additional terms which may be necessary to address any new and/or added functionality in the operation of the Software.

B.6 Radish Software is designed for use with a Windows operating system. Multi-user licenses are capable of being used in some virtualized environments, but not all virtualization methods may be supported. The use of licenses with virtualized environments will be at the Licensee's own risk.

### **C. Terms and Conditions Applicable to Both Single-User and Multi-User Licenses**

C.1 This Software is protected by copyright, trademark, and other Radish and third party intellectual property rights. Your rights to use the Software are only as specified in this Agreement, and We reserve all rights not expressly granted to You in this Agreement. Nothing in this Agreement constitutes a waiver of Our rights under U.S. or international copyright laws or any other international, federal, or state law.

C.2 This Agreement authorizes You to use the Software only on a computer owned, leased, or otherwise controlled by You. Use of the Software on a computer owned by a third party is prohibited. Installation of this Software on a server that allows access to this Software via a public network or the Internet without the use of a password-protected secure portal is prohibited.

C.3 You may make a single copy of the Software for each licensed user and for archival and back-up purposes only.

C.4 You may not disassemble, de-compile, or reverse engineer this Software or otherwise attempt to recreate this Software or any functionality or capability of this Software, except to the extent applicable laws specifically prohibit such restriction.

C.5 You may not make any derivative works of the Radish Software.

C.6 We have obtained all appropriate licenses for any third party software which may be distributed with or included in the software.

C.8 This Agreement and Software license may not be resold, assigned, or otherwise transferred to another person or entity without Our written permission.

C.7 If You elect to terminate Your use of the Software, You will not be entitled to a refund of any portion of the license fee.

C.8 Radish may terminate this Agreement and Your Software license for any material breach of this Agreement by You. Upon such termination, You agree to immediately stop using, and to destroy all copies of, the Software licensed hereunder, and upon request from Radish, provide Us with written certification of such action.

C.9 It is expressly understood that in addition to any other remedies available to Us, if this Agreement is breached in any fashion that would cause immediate irreparable harm to Us, We shall be allowed to seek immediate injunctive relief as We would have no adequate remedy at law through monetary damages. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its costs and reasonable expenses including attorney's fees.

C.10 You may not knowingly accept this Agreement or use this Software if doing so would be in violation of any current U.S. embargo as listed with the United States Office of Foreign Assets Control. You may not knowingly transmit or ship, directly or indirectly, this Software to any Country, entity or individual or foreign national of any country, prohibited by U.S. export law, or in violation of any then-current U.S. embargo as listed with the United States Office of Foreign Assets Control. This Software may not be exported without the appropriate export license as may be applicable.

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C.12 Governmental use, duplication, or disclosure of this Software is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 et seq. and DFARS 252.227-7015, and subparagraphs (a) through (d) of the Commercial Computer Software Restricted Rights at FAR 52.227- 19, as applicable, and other similar clauses as may be applicable.

Manufacturer/Contractor/Licenser is: Radish Systems, LLC., 1107 12<sup>th</sup> Street #184, Boulder, CO 80302, USA.

C.13 This Agreement will be governed by and construed in accordance with the laws of the State of Colorado without giving effect to principles of conflict laws. Any dispute relating to the terms, interpretation, or performance of this Agreement, including breach thereof, (other than claims for preliminary or permanent injunctive relief of pre-judgment remedies) shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted in the USA under the rules and procedures of the American Arbitration Association (“AAA”) by a single arbitrator and in a location chosen by the parties from a list of three arbitrators and locations submitted by such Association with each party having the right to reject one of the three names and locations. Any award of such arbitrator shall be final, binding upon both parties, and enforceable in any court having jurisdiction. However, in no event shall punitive damages be awarded as a result of the arbitration decision.

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

C.14 Any additional or conflicting terms contained in a purchase order for the Software submitted by You which has not been accepted and agreed to in writing by Radish Systems, LLC. or its subsidiaries are expressly rejected.

C.15 The Radish Software is not designed or intended for use in any environment requiring fail-safe performance, such as in medical or hospital services, police or fire services, or other environments in which the failure of the Radish Software could lead to death, personal injury, or severe physical or environmental harm and You agree to not use the Radish Software for any such purpose

C.16 You are prohibited from accessing or using (or facilitating access or use) of the Radish Software and the Radish Service from outside of the Territory designated to mean countries that Radish has approved operation.

C.17 You consent to Us to use the End User Data in accordance with Our privacy policy and to provide the Radish Service, which is provided on a best-efforts basis.

C18. You represent and warrant that You are not under 18 years old, You are otherwise legally competent to enter into this Agreement, You have the right, power, and authority necessary to enter into this Agreement and to perform your obligations hereunder, and You will comply fully with all terms of this Agreement.

C19. You agree that Radish may communicate with you in connection to the Radish Software and Service, electronically and in other Media, and you consent to such communications.

#### **INDEMNIFICATION**

Radish warrants that We have the right to grant You this license to use this Software and, provided You are in compliance with the terms of this Agreement, Radish shall defend or settle at Our expense any third party claim brought against You alleging that this Software infringes such third party’s copyright, patent, or other intellectual property right; provided that You immediately notify Us of such claim, allow Us to control the litigation or settlement of such claim, and cooperate with Us in the investigation, defense, and/or settlement of such claim. This indemnification does not extend to any claim of infringement resulting from Your unauthorized modification of this Software or from use or incorporation of this Software in any manner for which it is not designed or permitted. You agree to indemnify, defend, and hold Radish harmless against claims, liabilities, damages, and expenses (including, without limitation, reasonable attorney’s fees and expenses) arising from your breach of this Agreement.

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#### **NO LIABILITY**

In no event will We become liable to You, Your Third-Party Representatives, or to any other third-party for any form of special, incidental, indirect, consequential, or punitive damages of any kind, whether under this Agreement or related to the use of the Radish Offerings or otherwise, under all causes of action of any kind, even if We have been advised in advance of the possibility of such damage. Our aggregate liability for all damages arising out of or related to this Agreement shall not exceed the aggregate amount of fees paid by You under this agreement in the prior six month period.

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