

END USER LICENSE AGREEMENT

- 1.0 License and Ownership.** Pursuant to the terms and conditions specified in this Agreement, Starfish hereby grants to End-User, and End-User hereby accepts from Starfish, a nontransferable, nonexclusive right and license to use the software identified in **Exhibit A** (the "Solution"), for End-User's benefit. Unless specified otherwise in the specific order, the Solution, including any patents, copyrights, trade secrets, procedures, techniques, data and other intellectual property rights and technology herein, shall be owned by Starfish, and nothing herein shall be deemed to transfer any ownership interest therein to End-User, or to any of End-User's end users. Without the prior written consent of Starfish, End-User shall refrain from copying, reverse engineering, disassembling, decompiling, translating or modifying the Solution, or granting any other person or entity the right to do so.
- 1.1 Other Licenses.** Unless specified or provided otherwise in the specific order, End-User shall be solely responsible for procuring all rights and licenses for any systems the Solution will connect to, including, without limitation, any proprietary hardware and software systems that may be required to utilize the Solution.
- 2.0 Payment.** Unless specified or provided otherwise in a separate order, fees for the license granted under this Agreement, including all delivery, installation, implementation and labor charges are set forth in **Exhibit A** to this Agreement.
- 3.0 Installation and Acceptance.** Unless specified or provided otherwise in a separate statement of work or proposal, Starfish will install and test the Solution on End-User's Application Server. Starfish shall notify End-User when Starfish's installation and preliminary testing has been completed and the Solution is conforming to the specifications. A fifteen (15) day test acceptance period shall commence on the date of notification to the End-User. End-User's acceptance of the Solution shall occur automatically at the end of the fifteen (15) day test period unless, within that period, End-User notifies Starfish in writing of a non-conformity between the Solution and its specifications. Starfish will replace or repair the non-conforming Solution and notify End-User of the replacement or repair. Following the replacement or repair and notification, the Solution shall be deemed to be accepted on the later of five (5) days after the date of notification of such correction or the expiration of the fifteen day test acceptance period (the "Acceptance Date").
- 4.0 Warranty.** Subject to the terms and conditions of this Agreement, Starfish warrants to End-User that the Solution shall conform to their specifications as set forth in the Solution Design Document that will be prepared by Starfish and accepted by End-User prior to installation.
- 4.1 End-User Rights and Responsibilities.** Starfish will provide support to End-User by remote access control of End-User's Application Server. End-User and/or its end user are responsible for confirming and ensuring that this access is available when making a support request. Starfish shall make corrective action commitments only if and when access to the Application Server is available. End-User and/or its end user shall notify Starfish in writing of any changes in the information systems environment that may impact the Application Server. The end user is responsible for normal backup procedures of the Application Server pursuant to normal and customary server backup protocol. Excluded from Starfish's warranty are defects discovered in any Solution that has been modified, altered or enhanced without Starfish's prior consent.
- 4.2 Support.** Unless specified or provided otherwise in a separate support document, technical support is offered through Starfish Software Support Plan (the "SSP") as set forth in **Exhibit B** to this Agreement.
- 4.3 DISCLAIMER.** THE WARRANTIES STATED IN THIS SECTION 4 ARE END-USER'S SOLE AND EXCLUSIVE WARRANTIES PERTAINING TO THE SOLUTION, AND STARFISH HEREBY

DISCLAIMS ANY OTHER WARRANTY, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4.4 EXCLUSION OF CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL STARFISH BE LIABLE TO END-USER FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COST OF DELAY, ANY FAILURE OF DELIVERY, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE.

4.5 LIMITATION OF LIABILITY. IN THE EVENT THAT, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 4, STARFISH IS FOUND LIABLE FOR DAMAGES BASED ON ANY DEFECT OR NONCONFIRMITY IN THE SOLUTION, STARFISH'S TOTAL LIABILITY FOR EACH DEFECTIVE SOLUTION SHALL NOT EXCEED THE PRICE OF SUCH DEFECTIVE SOLUTION AS SPECIFIED IN THE SPECIFIC ORDER THAT GIVES RISE TO SUCH LIABILITY.

5.0 Consequences and Survival. Upon termination of this Agreement, End-User shall immediately discontinue all further use of the Solution. Upon termination of this Agreement, the fees associated with any work to date performed by Starfish (including pro-rated amounts for work performed but not invoiced through the date of termination, as well as all outstanding invoices for work already invoiced) shall automatically be accelerated and all such invoices shall become due and payable. Notwithstanding any termination of this Agreement, the provisions of Sections 1, 2, 3, 4 and 5 shall remain in full force and effect.

6.0 General Terms. The Agreement may not be modified or amended except by an instrument in writing signed by duly authorized officers of both parties hereto. Unless otherwise specifically provided, all notices required or permitted by this Agreement shall be in writing and may be delivered personally, or may be sent by facsimile, or certified mail, return receipt requested, to the address designated by each party. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

This Agreement shall be governed by the law of the State of New Jersey, exclusive of its choice of law rules.

6.1 Severability. In the event that any provision hereof is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to the terms. WITHOUT LIMITING THE FOREGOING, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EVERY PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMERS 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.

6.2 Entire Agreement. This Agreement constitutes the entire understanding and contract between the parties and supersedes any and all prior and contemporaneous, oral or written representations, communications, understandings, and agreements between the parties with respect to the subject matter hereof. The parties acknowledge and agree that neither of the parties is entering into this Agreement on the basis of any representations or promises not expressly contained herein.