



**SCHEDULE F**  
**SOFTWARE LICENSE TERMS AND CONDITIONS**

IMPORTANT: THESE SOFTWARE LICENSE TERMS AND CONDITIONS ARE INCORPORATED INTO ANY STEMMONS ORDER FORM OR AGREEMENT THAT REFERENCES IT, AND FORMS PART OF THE BINDING AGREEMENT BETWEEN STEMMONS AND CUSTOMER.

STEMMONS PROVIDES THE PRODUCTS SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THESE TERMS AND CONDITIONS AND ON THE CONDITION THAT CUSTOMER ACCEPTS AND COMPLIES WITH THEM. CUSTOMER AGREES TO BE BOUND BY THE TERMS HEREOF BY EXECUTING AN ORDER FORM OR OTHER AGREEMENT THAT REFERENCES THIS AGREEMENT. THE INDIVIDUAL ACTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY REPRESENTS AND WARRANTS THAT THEY HAVE THE RIGHT, POWER, AND AUTHORITY TO AGREE ON BEHALF OF CUSTOMER AND BIND CUSTOMER TO ITS TERMS. IF CUSTOMER DOES NOT AGREE TO THE TERMS AND CONDITIONS, STEMMONS WILL NOT AND DOES NOT LICENSE THE PRODUCT OR SOFTWARE TO CUSTOMER AND YOU MUST NOT DOWNLOAD OR INSTALL THE SOFTWARE OR DOCUMENTATION.

Version: Software License Terms and Conditions, last updated on 4/2/2025.

**1. DEFINITIONS.**

"Acceptable Use Policy" means Stemmons' Acceptable Use Policy, as in effect from time to time, and located at <https://stemmons.com/legal-notices/>.

"Affiliate" means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

"Agreement" means these Software License Terms and Conditions, as modified by any Order Form that references these Software License Terms and Conditions, and any Statement of Work, schedule, attachment, or appendix incorporated by or included with any Order Form. In the event of a conflict, the terms of this Agreement shall be determined by giving preference in descending order of control to (1) the Order Form; (2) any Statement of Work, schedule, attachment, or appendix thereto; and (3) these Software License Terms and Conditions.

"Confidential Information" has the meaning set forth in Section 6.1.

"Customer" means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement by executing/entering an Order Form, and/or Statement of Work or other agreement that references this Agreement.

"Customer Content" means information, data, and other content, in any form or medium, that is processed, transmitted, or stored, directly or indirectly from Customer or a Designated User by or through the Product.

"Designated Users" means solely those individuals authorized to use the Software pursuant to the license granted under this Agreement.

"Documentation" means user manuals, technical manuals, and any other materials provided by Stemmons, in printed, electronic, or other form, that describe the installation, operation, use, or technical specifications of the Software.

"Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"Law" and "Laws" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

"License" has the meaning set forth in Section 2.

"Maintenance Release" means any update, upgrade, release, or other adaptation or modification of the Software, including any updated Documentation, that Stemmons may provide to Customer from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Software, but does not include any New Version.

"New Version" means any new version of the Software that Stemmons may from time to time introduce and market generally as a distinct licensed product (as may be indicated by Stemmons' designation of a new version number), and which Stemmons may make available to Customer at an additional cost under a separate written agreement.

"Open Source Components" means any software component that is subject to any open source license agreement, including any software available under the GNU Affero General Public License (AGPL), GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache License, BSD licenses, or any other license that is approved by the Open Source Initiative.

"Open Source License" has the meaning set forth in Section 2.3.

"Order Form" means an ordering document or online order specifying the Products to be provided hereunder that is entered into between Customer and Stemmons or any of their Affiliates, including any schedules and/or addenda thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

"Party" or "Parties" means Stemmons and Customer, individually or collectively.

"Person" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

"Product" means the Software and Services that are ordered by Customer under an Order Form or online purchasing portal, or provided to Customer free of charge (as applicable) or under a free trial, and made available online by Stemmons.

"Professional Services Terms and Conditions" means Stemmons' Professional Services Terms and Conditions, referenced in the Order Form, Statement of Work, or similar agreement between Stemmons and Customer, as in effect from time to time and located at <https://stemmons.com/legal-notices/>.

"Services" means certain services provided by Stemmons as specified in an Order Form, subject to the Professional Services Terms and Conditions.

"Service Level Terms" means Stemmons' Service Level Terms, as in effect from time to time and located at <https://stemmons.com/legal-notices/>.

"Software" means the executable, object code version of the Stemmons Enterprise, any Maintenance Releases provided to Customer pursuant to this Agreement, and related Documentation.

"Stemmons" means Stemmons Enterprise, L.L.C., a Texas limited liability company, including any successors or assigns, 7324 SW Freeway, Suite 1900, Houston, TX 77074.

"Taxes" means any taxes, levies, duties or similar governmental assessments.

"Term" and "License Term" have the meanings set forth in Section 10.

"Warranty Period" has the meaning set forth in Section 7.2.

## **2. LICENSE AND RESTRICTIONS.**

2.1 License Grant. Subject to and conditioned upon Customer's strict compliance with all terms and conditions set forth in this Agreement, Stemmons hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable, limited license during the License Term to: (a) install the Software on a designated server owned or leased, and controlled by, Customer; (b) access, and use the Software (in object code format only) solely by and through its Designated Users; and (c) access, use, and reasonably reproduce the Documentation.

2.2 Scope of Licensed Access and Use. Customer shall: (a) exercise the rights granted in this Agreement solely for Customer's internal business use, in accordance with the Documentation, and subject to all other restrictions and limitations applicable to each Product; (b) be responsible for ensuring that Designated Users use of the Software complies with this Agreement; (c) be responsible for all aspects of Customer Content; and (d) use the Software only in accordance with the Agreement and applicable Laws and government regulations. Subject to the foregoing, the specific Software licensed and/or made available to Customer under this Agreement, including the number of licenses issued and the License Term of any applicable license or subscription, as applicable, will be identified on the applicable Order Form. Without granting any additional licenses or usage rights hereunder, Customer may make a copy of the configuration of the Software solely for backup, archival, and/or disaster recovery purposes, subject to Customer's established data and document retention policies and so long as Customer maintains the same or higher level of confidentiality for the Software that it does for its own Confidential Information (defined in Section 6).

2.3 Open Source Licenses. The Software includes Open Source Components, the details of which are available at <https://stemmons.com/legal-notices/> (each, an "Open Source License"). Any use of the Open Source Components by Customer is governed by, and subject to, the terms and conditions of the Open Source License(s).

2.4 License Restrictions. Except as this Agreement expressly permits, and subject to Section 2.3 with respect to Open Source Components, Customer shall not, and shall not permit any other person to: (a) copy the Software, in whole or in part; (b) modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improvements of the Software; (c) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software to any third party; (d) reverse engineer, disassemble, decompile, decode, or adapt the Software, or otherwise attempt to derive or gain access to the Software source code, in whole or in part; (e) bypass or breach any security device or protection used for or contained in the Software; (f) remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any trademarks, terms of the Documentation, warranties, disclaimers, or Intellectual Property Rights, proprietary rights or other symbols, notices, marks, or serial numbers on or relating to any copy of the Software or Documentation; (g) use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any person, or that violates any applicable Law; (h) use the Software for purposes of: (I) benchmarking or competitive analysis of the Software; (II) developing, using or providing a competing software product or service; or (III) any other purpose that is to Stemmons' detriment or commercial disadvantage; (i) use the Software in or in connection with the design, construction, maintenance, operation, or use of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Software could lead to personal injury or severe physical or property damage; (j) use the Software other than as expressly permitted by this Agreement; (k) fail to use commercially reasonable efforts to not interfere with or disrupt the integrity, operation, or performance of the Software or interfere with the use or enjoyment of it by others; or (l) use the login credentials of any other person in order to access the Software.

2.5 Acceptable Use. Customer agrees that its use of the Product will comply with Stemmons' Acceptable Use Policy.

### **3. MAINTENANCE AND SERVICE LEVELS.**

3.1 Maintenance Releases. During the Term, Stemmons will provide Customer with all Maintenance Releases (including updated Documentation) that Stemmons may, in its sole discretion, make generally available to its customers at no additional charge. All Maintenance Releases provided by Stemmons to Customer are deemed Software. Customer will install all Maintenance Releases as soon as practicable after receipt. Customer does not have any right hereunder to receive any New Versions of the Product that Stemmons may, in its sole discretion, release from time to time.

3.2 Service Levels. During the Term, Stemmons agrees to maintain the service levels provided by its Service Level Terms.

### **4. FEES AND PAYMENTS.**

4.1 Annual License Fee. Unless otherwise provided in the Order Form, Customer is obtaining a license to use the Product for a limited Term, and will pay an annual license fee for the License Term stated in the Order Form. Customer agrees that its order for the Product is not contingent on the delivery of any future functionality or feature, or dependent on any oral or written comment made by Stemmons regarding any future functionality or feature. Customer will pay all fees specified in the Order Form. Unless otherwise provided in the Order Form, (a) fees are not based on actual usage, (b) payment obligations are non-cancelable and fees paid are not refundable, and (c) quantities purchased cannot be decreased during the subscription term.

4.2 Invoicing and Payment. Customer is responsible for providing complete and accurate billing and contact information to Stemmons and notifying Stemmons of any changes to such information. Unless otherwise provided in the Order Form, (a) invoiced fees are due net 30 days from the invoice date, (b) prior to any payment due date, Customer shall notify Stemmons and provide details of any disputed fees, and (c) Customer shall pay undisputed fee amounts when due.

4.3 Taxes. Stemmons' fees do not include Taxes. Customer is responsible for paying all Taxes assessed in connection with its acquisition or use of the Product. If Stemmons is obligated to collect or remit taxes for which Customer is responsible, Stemmons will invoice Customer and Customer will pay that amount or provide a valid tax exempt certificate issued by the appropriate taxing authority. Stemmons is solely responsible for taxes assessable against it based on its income, property, or employees.

4.4 Overdue Charges; Defaults. If Customer fails to pay an amount due to Stemmons by its due date, then without limiting Stemmons' rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower. In addition, Stemmons may give notice to Customer of its failure to pay fees or comply with any other obligation required of Customer, and if Customer does not cure the failure within 15 days after notice by Stemmons, then Stemmons may, in addition or in the alternative to exercising any other right or remedy available under this Agreement or by law, (1) accelerate any unpaid fee amounts owed by Customer so that all become immediately due and payable, and (2) terminate Customer's license to use or access the Product. Stemmons will not exercise its rights under this Section 4.4 for any fee amounts which Customer is reasonably disputing and cooperating diligently and in good faith to resolve the dispute; if the dispute is not resolved within thirty (30) days, Customer shall pay any disputed amount.

### **5. INTELLECTUAL PROPERTY RIGHTS.**

5.1 Intellectual Property Ownership. Customer acknowledges and agrees that the Product is licensed, not sold. Customer does not have any ownership interest in the Product in connection with this Agreement, or in any related Intellectual Property Rights. Stemmons or its licensors and supplier(s), as applicable, is the sole and exclusive owner of all right, title, and interest in and to the Product, including all Intellectual Property Rights relating thereto, subject only to the rights of third parties in Open Source Components.

5.2 Except for the limited license expressly granted to Customer under this Agreement, all rights are reserved by and to Stemmons.

5.3 Customer Content. Customer hereby grants to Stemmons a limited, non-transferable, non-sublicensable, royalty-free, and non-exclusive license during the Term to reproduce, use and display its names, trademarks, trade names, logos and/or services marks ("Marks") for purposes of press releases, publicity, branding, marketing and distribution of identifying software products of Stemmons as set forth in this Agreement and for no other purpose. Stemmons acknowledges that such Marks remain the proprietary property of Customer and Stemmons shall have no right to use any such Marks outside the scope of this Agreement. To enable Stemmons to perform its obligations under this Agreement, Customer grants to Stemmons a non-exclusive license to copy, modify, display, store, use, transmit and display (including on and via the Internet) the Customer Content, solely to the extent necessary to provide the Product to Customer in accordance with this Agreement (for purposes such as collection of product keys, CPU usage, and count of active users), and Stemmons shall have no right to use any such Customer Content outside the scope of this Agreement. Stemmons will not claim ownership of any Customer Content, and Customer is solely responsible for the Customer Content. Customer and its Designated Users may only use the Product to process, transmit, or store Customer Content.

## **6. CONFIDENTIALITY.**

6.1 Confidential Information. In connection with this Agreement, each Party may disclose or make available (i.e., a Disclosing Party) certain Confidential Information to the other Party (i.e., a Receiving Party). Subject to Section 6.2, "Confidential Information" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, whether or not marked, designated, or otherwise identified as "confidential." Without limiting the foregoing, the Software, Documentation, and financial terms of this Agreement are the Confidential Information of Stemmons.

6.2 Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

6.3 Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall: (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (b) except as may be permitted under the terms and conditions of Section 6.4, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 6; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 6; (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its [most/similarly] sensitive information and in no event less than a reasonable degree of care; (d) promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps/use its best efforts/cooperate with Disclosing Party to prevent further unauthorized use or disclosure; and (e) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 6. Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 6 with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

6.4 Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party will: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective

order or other remedy or waive its rights under Section 6.3; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 6.4, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party will disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

6.5 Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by the Receiving Party of any of its obligations under Section 6.3 of this Agreement would cause the Disclosing Party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the Disclosing Party will be entitled to equitable relief, including in a restraining order, an injunction, specific performance, and any other relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

## **7. REPRESENTATIONS AND WARRANTIES.**

7.1 Mutual Representations and Warranties. Each Party represents, warrants and covenants to the other Party that: (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses and authorizations it grants and is required to grant under this Agreement; (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such Party; and (d) when executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

7.2 Limited Warranty. Subject to the limitations and conditions set forth in Section 7.3 and Section 7.4, Stemmons warrants to Customer that during the License Term (the "Warranty Period"): (a) the Product licensed under a purchased license, will substantially conform in all material respects to the Documentation, when installed, operated and used as recommended in the Documentation and in accordance with this Agreement; (b) no Maintenance Release, when correctly installed by Customer in accordance with the Documentation and this Agreement, will have a material adverse effect on the functionality of the Software; and (c) the Product as delivered does not infringe any valid copyright or trade secret right, nor so far as Stemmons knows, any patent right or other intellectual-property right, of any third party.

7.3 Customer Requirements. The limited warranties set forth in Section 7.2 apply only if Customer: (a) notifies Stemmons in writing of the warranty breach before the expiration of the Warranty Period; (b) has promptly installed all Maintenance Releases to the Software that Stemmons previously made available to Customer; and (c) as of the date of notification, is in compliance with all terms and conditions of this Agreement (including the payment of all license fees then due and owing).

7.4 Exceptions. Notwithstanding any provisions to the contrary in this Agreement, the limited warranty set forth in Section 7.2 does not apply to problems arising out of or relating to: (a) Product, or the media on which it is provided, that is modified or damaged by Customer or its Representatives; (b) any operation or use of, or other activity relating to, the Product other than as specified in the Documentation, including any incorporation in the Product of, or combination, operation or use of the Product in or with, any technology (including any software, hardware, firmware, system or network) or service not specified for Customer's use in the Documentation; (c) Customer's or any third party's negligence, abuse, misapplication or misuse of the Product, including any use of the Product other than as specified in the Documentation; (d) Customer's failure to promptly install all Maintenance Releases that Customer has previously made available to Customer; (e) the operation of, or access to, Customer's or a third party's system or network; (f) any Open Source Components, beta software, software that Stemmons makes available for testing or demonstration purposes, temporary software modules or software for which Stemmons does not receive a license fee; (g) Customer's breach of any material provision of this Agreement; or (h) any other circumstances or causes outside of the reasonable control of Stemmons (including abnormal physical or electrical stress).

7.5 Remedial Efforts. If Stemmons breaches, or is alleged to have breached, any of the warranties set forth in Section 7.2, Stemmons may, at its sole option and expense, take any of the following steps to remedy such breach: (a) replace any damaged or defective media on which Stemmons supplied the Software; (b) amend, supplement or replace any incomplete

or inaccurate Documentation; (c) repair the Software; (d) replace the Software with functionally equivalent software (which software will, on its replacement of the Software, constitute Software hereunder); and/or (e) refund the license fee(s) paid for the failed Product for the then-current License Term, prorated as of the date of Customer's failure notice to Stemmons, and Customer's license will be terminated. Customer's exclusive remedy for any breach or alleged breach of Section 7.2(c) will be to invoke the provisions of the "Infringement Indemnity" (Section 8.2) of this Agreement. The remedies set forth in this Section 7.5 are Customer's sole remedies and Stemmons' sole liability under the limited warranty set forth in Section 7.2.

**7.6 DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTION 7.2, ALL LICENSED SOFTWARE, DOCUMENTATION AND OTHER PRODUCTS, INFORMATION, MATERIALS AND SERVICES PROVIDED BY STEMMONS ARE PROVIDED "AS IS." STEMMONS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, STEMMONS MAKES NO WARRANTY OF ANY KIND THAT THE LICENSED SOFTWARE OR DOCUMENTATION, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEMS, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE.

**7.7** Except for the limited warranty and exclusive remedies provided in section 7.2, Customer agrees that Stemmons makes no representation or warranty as to the Product.

## **8. INDEMNIFICATION.**

**8.1** Any supplemental third-party software that Customer uses in conjunction with the Product, whether provided by Stemmons or otherwise, may only be so used so long as Customer's use of the supplemental software complies with applicable third-party software licensing terms and conditions, if any.

**8.2** Infringement Indemnity. If a third party (other than Customer's affiliate) makes a claim that, if successful, would constitute a breach of the non-infringement warranty of Section 7.2(c), then Stemmons will defend Customer against the claim, at Stemmons' expense, and indemnify Customer against any resulting monetary awards by the court, subject to the conditions and limitations stated in this Section 8.

**8.3** For Customer to be entitled to defense and indemnity under Section 8.2, Customer must: (a) promptly notify Stemmons in writing of the third-party claim; (b) not make any non-factual admissions in respect of the claim without Stemmons' prior written consent; (c) give Stemmons sole control of the defense; (d) not settle the claim without Stemmons' consent; and (e) assist Stemmons in the defense at Stemmons' request and expense.

**8.4** Stemmons' maximum aggregate liability for defense and indemnity under Section 8.2 will be the aggregate amount of the applicable license fees paid by Customer for the Software during the preceding twelve (12) months of License Term prior to the date of the claim for defense an indemnity pursuant to this Agreement.

**8.5** At Customer's option, Customer may engage separate counsel, at Customer's own non-reimbursable expense, to monitor the defense; if Customer advises Stemmons that Licensee has done so, Stemmons will instruct Stemmons' counsel to provide all reasonable cooperation with Customer's counsel for that purpose.

**8.6** If Stemmons determines that defense (or continued defense) of the claim is not practical and that Customer must cease using one or more aspect of the Product , then Stemmons will, at Stemmons' option and expense: (a) replace or modify the relevant aspect(s) of the Product to make it non-infringing while still performing the same or substantially the same functions; (b) procure the right for Customer to continue using the relevant aspects of the Product; or (c) advise Customer to stop using the relevant aspect(s) of the Product and Stemmons will refund the unused portion of the license fee that Customer paid for the then-current License Term, computed pro-rata on a monthly basis as of the date Stemmons directed Customer to stop using the relevant aspect(s) of the Product.

**8.7** Stemmons will not be responsible for any infringing use that Customer may make of the Product after Stemmons advises Customer to stop using the Product under Section 8.6(c).

8.8 Stemmons' obligations under this Infringement Indemnity section are Customer's exclusive remedy for any alleged or actual infringement by the Product or Customer's use of any aspect of the Product.

8.9 One or more items of Software may include Open Source Components or third-party software code that is licensed, or sublicensed, to the user under the GNU General Public License (GPL) or other similar software licenses, which may provide for certain rights to Customer relating specifically to such code. Stemmons' indemnity obligations under Section 8 do not apply to the extent that the alleged infringement arises from Open Source Components or other third party materials identified in this Section 8.9.

## **9. LIMITATIONS OF LIABILITY.**

9.1 Limitation of Remedies. Each remedy limitation in this Section 9 is to be enforced to the maximum extent permitted by law, independently of any other applicable remedy limitation, even if any particular remedy is held to have failed of its essential purpose, and also independently of the warranty-disclaimer provisions of this Agreement. Customer acknowledges that otherwise Stemmons would not have granted the license on the economic terms associated with such grant.

9.2 To the greatest extent permitted by law, except as set out below, neither Stemmons nor its subsidiaries, parent company, or affiliates, nor the employees, officers, directors, shareholders, or members of any of them, if any, will be liable to Customer or any person claiming through Customer, in contract, tort, strict liability, or otherwise, for any indirect, consequential, incidental, special, punitive, exemplary, or similar damages, arising from or relating to any alleged or actual breach of this Agreement or from the use of, the results of the use of, or the inability to use the Product, including, as examples but not limitations, lost profits or other economic loss, loss of privacy, loss of confidential information, arising from the use of, the results of the use of, or the inability to use the Product.

9.3 Other than Stemmons' obligation, where applicable, to defend and indemnify Customer against third-party infringement claims in Section 8.2, to the greatest extent not prohibited by law, the maximum aggregate liability of Stemmons to Customer, or to any person claiming rights through Customer, in respect of any and all claims arising from or related to this Agreement, in contract, tort, or otherwise, will be the aggregate amount of the applicable License Fees paid by Customer for the Product during the then-current License Term.

## **10. TERM AND TERMINATION**

10.1 Initial Term. The initial Term of this Agreement and any License commences as of the Effective Date as defined in an Order Form and continues in effect for the term specified in the Order Form (if no term is specified, then for a period of one (1) year), unless terminated earlier pursuant to any of the Agreement's express provisions.

10.2 Renewal Term. This Agreement will automatically renew for successive periods equal to the initial Term unless either Party provides written notice of non-renewal at least sixty (60) days before the expiration of the then-current term.

10.3 The initial Term and each renewal Term are a "License Term", and collectively, all constitute the "Term" of this Agreement.

10.4 Fees are subject to modification; Stemmons will make reasonable effort to give written notice of any fee increase to Customer at least thirty (30) days prior to any Renewal Term.

10.5 Following termination, Customer's access to the Software will be suspended; Customer is responsible for backing-up Customer Content prior to termination of access to the Software.

## **11. AUDITS.**

11.1 Audit Procedure. Stemmons or its nominee (including its accountants and auditors) may, in Stemmons' sole discretion and upon written request with at least 10 days' notice, inspect and audit Customer's installation and use of the Product under this Agreement at any time during the Term and for one (1) year following the termination or expiration of this Agreement.



All audits will be conducted during regular business hours, no more frequently than once in any twelve (12) month period, and in a manner that does not unreasonably interfere with Customer's business operations. Customer shall make available all such books, records, equipment, information, and personnel, and provide all such cooperation and assistance, as may reasonably be requested by or on behalf of Stemmons with respect to such audit.

**11.2 Cost and Results of Audit.** If the audit determines that Customer's use of the Product exceeded the usage permitted by this Agreement, Customer shall pay to Stemmons all amounts due for such excess use of the Product, plus interest on such amounts, as calculated pursuant to Section 4.5. If the audit determines that such excess use equals or exceeds fifteen percent (15%) of Customer's permitted level of use, Customer shall also pay to Stemmons all reasonable costs incurred by Stemmons in conducting the audit. Customer shall make all payments required under this Section 11.2 within thirty (30) days of the date of written notification of the audit results.

## **12. MISCELLANEOUS**

**12.1 Governing Law / Forum.** All disputes arising out of or relating to this Agreement or the interpretation, validity, or enforceability thereof will be governed by the laws of the United States of America and the State of Texas as though this Agreement had been made and performed in that state by its residents, without regard to conflicts of law rules. The parties exclude the application of (i) the United Nations Convention on Contracts for the International Sale of Goods; (ii) the Uniform Computer Information Transactions Act ("UCITA"); and (iii) the American Law Institute's Principles of the Law of Software Contracts. The state and federal courts having subject-matter jurisdiction in Houston, Harris County, Texas will have exclusive jurisdiction of any action or proceeding arising out of or relating to this Agreement or any transaction or relationship resulting from it. Each party consents to personal jurisdiction in such court(s), agrees not to contest the same, and agrees not to assert any claim of inconvenient venue. Each party consents to service of process by certified mail, return receipt requested, or by established overnight courier with proof of delivery or refusal (e.g., FedEx or UPS).

**12.2 Export Controls.** Customer agrees that it will not transfer any aspect of the Product, nor any other software or documentation provided by Stemmons, except in compliance with U.S. export-control regulations or other applicable export laws. (NOTE: transfer or disclosure to a non-U.S. citizen may constitute an 'export' even if occurring within the U.S.) For example, Customer will not export or re-export to any person on a government-promulgated export restriction list or to any U.S.-embargoed countries. Customer represents and warrants that: (a) Customer is not listed in any export restriction list; (b) Customer is not a citizen or resident of any U.S.-embargoed country; and (c) Customer has not had its export privileges suspended, revoked, or denied by a governmental authority having jurisdiction. If Stemmons so requests, Customer will sign written assurances and other export-related documents as may be required to comply with applicable export laws.

**12.3 U.S. Government.** The Software and Documentation are "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government are to be governed solely by the terms of this Agreement and is prohibited except to the extent expressly permitted by the terms of this Agreement. The Manufacturer / Contractor is Stemmons Enterprise LLC, 7324 SW Freeway, Suite 1900, Houston, TX 77074.

**12.4 Savings Clause.** If any provision of this Agreement is held to be invalid, void, unenforceable, or otherwise defective by a court or other tribunal of competent jurisdiction, then (a) all other provisions will remain enforceable, and (b) such provision will be deemed modified to the minimum extent necessary to cure the defect.

**12.5 Exclusive Agreement / Amendments.** (a) This Agreement is the Parties' final, complete, exclusive, and binding statement of the terms and conditions of their agreement concerning its subject matter. (b) Each Party represents and warrants that it is sophisticated in the subject matter hereof and that, in entering into this Agreement, that party is not relying on any promises, warranties, or representations by the other party that are not stated in (or expressly incorporated by reference into) this Agreement. (c) This Agreement may be amended only by a writing that so states and is signed by the parties; each party agrees not to assert otherwise in any forum. (d) If Customer provides Stemmons (or previously provided Stemmons) with a purchase order or similar document, any terms, conditions, or provisions appearing therein (other than as to identification of the Software and of the number and types of licenses, and optionally of any maintenance or any training or consulting services being purchased) will be given effect if and only if the purchase order meets the amendment

requirements of this Section 12.5. No vendor, distributor, reseller, dealer, retailer, or other person (other than an authorized officer of Stemmons) is authorized to modify this Agreement nor to make any warranty, representation or promise that is different than, or in addition to, the representations and promises of this Agreement.

**12.6 Product Modifications.** Stemmons reserves the right to modify the Product; to offer new service plans and discontinue existing ones; and to modify its pricing. Stemmons will not discontinue Customer's access to a service plan during Customer's then-current License Term, however, Stemmons may elect in its sole discretion to upgrade Customer to a higher-level service plan for the remainder of the License Term at no extra charge.

**12.7 Assignment.** Customer may assign this Agreement only (a) with Stemmons' prior written consent, or (b) without Stemmons' prior consent and upon notice to a wholly owned subsidiary, or in connection with any merger, acquisition, or reorganization involving Stemmons, subject to the following conditions: (i) Customer, or Customer's successor, continuing in the same type of business that Customer was conducting at the time of this Agreement's execution, and (ii) Customer or Customer's successor providing to Stemmons a written ratification and assumption of this Agreement (in a form reasonably satisfactory to Stemmons) concurrent with the assignment. Any other attempted or actual assignment by Licensee will be void. Customer's attempt to assign this Agreement, unless otherwise expressly permitted or agreed-to in writing by Stemmons, shall constitute a material breach of this Agreement and Stemmons may elect to immediately terminate this Agreement. Any assignee of this Agreement is to be deemed to have assumed the assigning party's obligations under, and to have undertaken to be bound by the terms and conditions of, this Agreement. The assignment will not relieve the assigning party of liability for any pre-assignment breach of this Agreement. Stemmons may assign this Agreement, Order Form, Scope of Work, or other agreement, at any time, including but not limited to, as part of a corporate reorganization, consolidation, merger, or sale of all or substantially all of its assets or business to which this Agreement relates. Any change of control or acquisition event that occurs for Stemmons will not affect the terms of this Agreement including the Annual License Fee or the Renewal Term. In the event Stemmons sunsets the Product, Customer may request a then-current copy of the source code and support services will be suspended.

**12.8 Relationship of the Parties.** The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

**12.9 Force Majeure.** Neither Party will be liable for any failure to perform its obligations where such failure is as a result of Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telecommunications service (for example, Internet failures).

**12.10 Early Neutral Evaluation (Non-Binding).** In any dispute, at either Party's request, the Parties will jointly consult an experienced, knowledgeable, neutral individual, informally and in confidence, for non-binding advice as to what would constitute a responsible resolution of the dispute. Any procedural disagreement concerning the consultation will be resolved by reference to the Early Neutral Evaluation Procedures of the American Arbitration Association (AAA) then in effect, to the extent not inconsistent with this Agreement.

**12.11 Language.** By express agreement of the Parties, this Agreement is written in and shall be interpreted for all purposes in accordance with the English language as used in the United States of America. (French translation of the previous sentence: Les parties conviennent expressément que le présent Accord ainsi que toutes ses annexes seront rédigés en langue Anglaise et interprétés par référence à la terminologie utilisée aux Etats-Unis.)

**12.12 Notices.** Except as otherwise expressly set forth in this Agreement, any notice, request, consent, claim, demand, waiver, or other communication under this Agreement have legal effect only if in writing and addressed to a Party at the address designated herein (or to such other address or such other person that such addressee Party may designate from time to time in accordance with this Section 12.12). Notices to Customer shall be delivered as set forth in any applicable Order Form. Notices shall be delivered to Stemmons as set forth in Section 1. Notices sent in accordance with this Section 12.11 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received,

if sent by a nationally recognized overnight courier, signature required; and (c) on the fifth (5th) day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

12.13 Privacy. Customer agrees that Stemmons may collect, store, use, compile, modify, translate, and/or disclose information that Customer processes, transmits, or stores using the Product as stated in the applicable version of Stemmons's Privacy Statement (currently available at <https://stemmons.com/privacy-policy/>) or as required by law, for the purpose of developing, servicing or maintaining the Product and to monitor the use of the Product.

12.14 Waivers. Except as expressly provided otherwise herein, waivers concerning this Agreement must be in express, signed writings. Each party agrees not to assert a waiver that does not comply with the previous sentence.

12.15 Interpretation. For purposes of this Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices [attached] to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

12.16 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

**THIS CONCLUDES THE STEMMONS MASTER LICENSING AGREEMENT.**