

CHERWELL END-USER LICENSE AGREEMENT

THIS END-USER LICENSE AGREEMENT ("EULA"), TOGETHER WITH ANY APPLICABLE CHERWELL ORDER CONFIRMATION FORM THAT REFERENCES THIS EULA (COLLECTIVELY, THE "AGREEMENT"), IS BETWEEN CHERWELL SOFTWARE, LLC, A DELAWARE LIMITED LIABILITY COMPANY ("CHERWELL"), AND THE CUSTOMER IDENTIFIED ON THE ORDER CONFIRMATION FORM ("CUSTOMER"). THIS AGREEMENT, ALONG WITH THE RELEVANT GENERAL SERVICES ADMINISTRATION SCHEDULE CONTRACT ("SCHEDULE CONTRACT"), SETS FORTH THE TERMS AND CONDITIONS BETWEEN CUSTOMER AND CHERWELL REGARDING THE CHERWELL SOFTWARE PRODUCTS ("LICENSED SOFTWARE") AND THE MAINTENANCE AND SUPPORT AND PROFESSIONAL SERVICES THAT ARE LISTED ON THE ORDER CONFIRMATION FORM. . SHOULD A CONFLICT EXIST BETWEEN THIS EULA AND THE SCHEDULE CONTRACT, THEN THE SCHEDULE CONTRACT SHALL PREVAIL.

1. GRANT OF LICENSE

1.1 Terms of License. The Licensed Software, which includes all configurable and executable application

content or "Blueprints," is licensed to Customer for use subject to the terms of this Agreement and the Schedule Contract. Cherwell hereby grants to Customer and Customer fully accepts, upon delivery, a nonexclusive, nontransferable right to use only the executable version (no source code) of the Licensed Software. Customer is allowed only the number of concurrent users of the Licensed Software as shown on the Cherwell Order Confirmation Form. If Customer wishes to expand the number of authorized concurrent users covered by the license, Customer can purchase additional user licenses. Customer's authorized concurrent users of the Licensed Software can include Customer, its subsidiaries and affiliates, and their employees and authorized representatives, agents and contractors. Customer may install copies of the Licensed Software in non-production environments, for purposes of testing, development or disaster recovery, provided, however, that such copies cannot be used for production purposes and there cannot be more than one installation of the Licensed Software in a production environment. In no event shall the number of concurrent users in a production environment exceed the authorized concurrent users covered by the license.

1.2 Intellectual Property Rights. The Licensed Software is protected by copyright and other intellectual

property laws. Cherwell retains all rights, title and interest in and to the Licensed Software. Customer agrees that this is a license only and that no title passes to Customer. If Customer makes or installs copies of the Licensed Software as provided in this Agreement, the original and all copies of the Licensed Software may not leave Customer's control and are owned by Cherwell. Customer retains all rights to its data.**1.3**

Restrictions. To the maximum extent permitted by applicable law, Customer may not resell or

otherwise transfer for value the Licensed Software without the written consent of Cherwell. Customer may not export, ship, transmit, or re-export the Licensed Software in violation of any applicable law or regulation, including, without limitation, the Export Administration Regulations issued by the United States Department of Commerce and the United States trade embargoes and economic sanctions administered by the U.S. Treasury Department, Office of Foreign Assets Control, or any such similar law or regulation issued by such other governmental entity which may have jurisdiction over such export. Customer agrees not to: (i) modify, decompile, disassemble or reverse engineer the object code portions of the Licensed Software; (ii) distribute, rent, lease or lend the Licensed Software; or (iii) use the Licensed Software except as expressly permitted under this Agreement.

3. WARRANTIES AND DISCLAIMERS

3.1 Limited Warranties. Cherwell represents and warrants that: (a) it has the right to grant to Customer the license to use the Licensed Software as set forth in this Agreement without violating any rights of any third party and that, to the best of Cherwell's knowledge, the Licensed Software does not infringe or otherwise violate any intellectual property rights of any third party; (b) the Licensed Software shall operate in material compliance with Cherwell's user documentation; (c) all services provided by Cherwell pursuant to this Agreement relating to the Licensed Software will be performed in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Cherwell's industry; and (d) the Licensed Software shall be delivered free of any virus or otherwise malicious code, or any code or command intended to bring down the Licensed Software or Customer's computers/networks automatically or upon command or otherwise impair their use.

3.3 Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES SET FORTH IN SECTION 3 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, ORAL OR WRITTEN, EXPRESSED OR IMPLIED. CHERWELL DOES NOT WARRANT THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT AS SET FORTH IN THIS SECTION 3, CHERWELL MAKES NO

WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, WITH RESPECT TO THE LICENSED SOFTWARE, ITS QUALITY, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. THIS AGREEMENT DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 USC 7101-7109.

4. LIMITATION OF LIABILITY; EXCLUSION OF DAMAGES

4.1 Limitation of Liability. To the maximum extent permitted by applicable law and except for Customer's

payment obligations under this Agreement, each party's entire liability under this Agreement shall be limited to the amount paid by Customer for the Licensed Software, which does not include any amounts paid for related services. THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY FEDERAL FRAUD STATUTE. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE SCHEDULE CONTRACT (I.E. PRICE REDUCTIONS, PATENT INDEMNIFICATION, LIABILITY FOR INJURY OR DAMAGE, PRICE ADJUSTMENT, FAILURE TO PROVIDE ACCURATE INFORMATION.)

4.2 Exclusion of Consequential and Related Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS, LOSS OF USE OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT TO THE EXTENT THAT ANY THIRD PARTY CLAIM SUBJECT TO INDEMNIFICATION UNDER SECTION 2 INCLUDES SUCH DAMAGES. IN PARTICULAR, AND WITHOUT LIMITATION, CHERWELL SHALL HAVE NO LIABILITY FOR ANY DATA STORED OR PROCESSED WITH THE LICENSED SOFTWARE. THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY FEDERAL FRAUD STATUTE. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE SCHEDULE CONTRACT (I.E. PRICE REDUCTIONS, PATENT INDEMNIFICATION, LIABILITY FOR INJURY OR DAMAGE, PRICE ADJUSTMENT, FAILURE TO PROVIDE ACCURATE INFORMATION.)

5. MAINTENANCE AND SUPPORT AND SERVICES

5.1 General. Maintenance and Support is offered on no less than an annual basis and will commence and

be invoiced in accordance with the Order Confirmation Form. Cherwell will invoice Customer for Maintenance and Support renewal fees at least sixty (60) days prior to the end of each twelve (12) month period. Maintenance and Support fees increase as Customer adds additional concurrent user licenses. If Maintenance and Support is interrupted as a result of expiration or termination of the Agreement by Customer, Customer may be charged a reinstatement fee equal to the cost of Maintenance and Support for the period from the date of expiration or termination to the date of renewal.

5.2 Maintenance. "Maintenance" entitles Customer to receive updates, upgrades, patches, bug fixes and

new releases or versions of the Licensed Software, including updated documentation, as Cherwell may provide from time to time without requirement of a separate license agreement, and without additional charge other than payment of the annual Maintenance and Support fee.

5.3 Support. Where provided by and purchased from Cherwell, "Support" entitles Customer to technical

assistance with Customer's ongoing use of the Licensed Software, Monday through Friday, 6:00 a.m. to 6:00 p.m. (Mountain Standard Time). Cherwell will provide support for the most current version of the Licensed Software and one prior version, including interim releases between the two versions; for example, upon release of version 5.x Cherwell will support version 5.x and 4.x. Cherwell may

provide limited support for older versions. Cherwell will use its best efforts to answer Customer's specific questions and provide support in accordance with Cherwell's service and support guidelines. Support does not include any third party products that are not part of the Licensed Software.

5.4 Professional Services. Where provided by and purchased from Cherwell, "Professional Services" may include training, implementation, installation, on-site assistance, customization, and configuration of the Licensed Software. The total "Professional Services" fee quoted on the Cherwell Order Confirmation Form, if any, is an estimate of the number of days required based on Cherwell's current understanding of Customer's stated implementation requirements. A statement of work shall be mutually agreed upon prior to commencement of any Professional Services.

6.

EFFECTIVE DATE. This Agreement is effective as of the date this Agreement is fully executed by both parties, including a duly warranted contracting officer of the U.S. government. (the

“Effective Date”). Customer’s right to use the Licensed Software shall continue in perpetuity. . The parties acknowledge and agree that the license granted pursuant to Section 1 shall survive termination or expiration of Maintenance and Support Services.

7. CONFIDENTIALITY

7.1 Definition. As used in this Agreement, “Confidential Information” means any information, whether oral or written, designated by a party as confidential or that reasonably should be understood to be confidential or proprietary in nature. Customer’s Confidential Information shall include Customer data stored or processed with the Licensed Software. Cherwell’s Confidential Information shall include the Licensed Software. Confidential Information of each party shall include each party’s business and marketing plans, financial data, employee data, product plans and designs, and technical information. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public other than by breach of this Agreement; (ii) was known to the receiving party prior to its disclosure; (iii) becomes known to the receiving party after proper disclosure from a third party not under an obligation of confidentiality; or (iv) was disclosed to the minimum extent necessary to comply with a lawful court order or government law or regulation, provided that in the case of (iv) the disclosing party shall provide the other party with advance written notice thereof and reasonably cooperate with the other party to limit disclosure and obtain protective orders or other relief as appropriate.

7.2 Protection. Each party agrees to hold the other party’s Confidential Information in strict confidence and to treat such other party’s Confidential Information with at least the same degree of care employed with respect to its own Confidential Information (but in no event less than reasonable care). Unless otherwise required by law, n-either party shall (i) use the other party’s Confidential Information for its own account or in any manner not contemplated by this Agreement; nor (ii) disclose the other party’s Confidential Information to a third party without the prior written consent of the other party. Both parties shall limit access of each others’ Confidential Information to those of its employees, contractors and agents who have a need for such access and who are bound to confidentiality obligations substantially similar to those set forth in this Section. This Section shall survive termination or expiration of the Agreement (for any reason) for a period of three (3) years.

8. MISCELLANEOUS

8.1 Severability. If any of the terms, or portions thereof, of this Agreement are invalid or unenforceable under any applicable statute or rule of law, the court shall reform the Agreement to include an enforceable term as close to the intent of the original term as possible; all other terms shall remain unchanged.

8.2 Waiver. The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further or future right under this Agreement.

8.4 Assignment. This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective successors and permitted assigns. A party may not assign any of its rights, obligations, or responsibilities under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld, except that neither a change in control in the assigning party nor assignment to any entity (other than a competitor of the other party) that controls, is controlled by or is under common control with the assigning party, shall be deemed an assignment in violation of the foregoing; provided, however that the assigning party gives the other party thirty (30) days advance written notice of any such change in control or assignment.

8.5 Choice of Law. This Agreement is governed under the laws of the United States.

8.6 Third Parties. No person who is not a party to this Agreement has or shall have any right to enforce any term of this Agreement and no consent of any third party shall be required for any cancellation or variation of the Agreement, except as required by law. Cherwell may authorize certain third parties, such as value-added resellers or solutions partners (“Partners”), to distribute the Licensed Software and Maintenance and Support Services. Partners are not authorized to modify this Agreement or the rights granted to Customer with regard to the Licensed Software. If Customer purchases Support Services or Professional Services to be performed by the Partner, the terms of any agreement between Customer and Partner for such services shall govern, and Cherwell shall not be liable or responsible for Partner’s performance under such agreement.

8.7 Taxes. Unless otherwise stated on an Order form, Cherwell’s fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including without limitation value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, “Taxes”). Customer is responsible for paying all Taxes associated with its purchases under this Agreement, except as required by law. If Cherwell has the legal obligation to remit or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount shall be invoiced to, and paid by Customer, unless Customer provides Cherwell with a valid tax exemption certificate authorized by the appropriate taxing authority. For the avoidance of doubt, Cherwell is solely responsible for taxes assessable against Cherwell based on its income, property or employees.

Signature lines for the EULA are located on the Cherwell Order Confirmation form to which the EULA is incorporated by reference.