

IGRAF X SUBSCRIPTION SERVICES AGREEMENT

THIS SUBSCRIPTION SERVICES AGREEMENT (“AGREEMENT”) IS A LEGAL AGREEMENT BETWEEN YOU AND IGRAF X THAT GOVERNS YOUR ACQUISITION, ACCESS, AND USE OF IGRAF X’S SERVICES. THIS AGREEMENT IS ENTERED INTO EFFECTIVE AS OF THE DATE ON WHICH YOU ACCEPT THE AGREEMENT. BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE, EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT OR BY ACCESSING OR USING THE SERVICES YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH COMPANY OR ENTITY AND ITS AFFILIATES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU ARE A COMPETITOR OF IGRAF X OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

1. Definitions.

- a. “**Documentation**” means the online documentation for the Services as updated from time to time by iGraf x.
- b. “**iGraf x**” means iGraf x, LLC.
- c. “**iGraf x Affiliate**” means any legal entity which directly or indirectly owns or controls, is controlled by, or is under common control with iGraf x.
- d. “**Malicious Code**” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.
- e. “**Non-iGraf x Products**” means any applications, products and software not owned by iGraf x that interoperate with the Services. This includes any applications, products and software provided by You.
- f. “**Order Form**” means an iGraf x-provided document used to place orders under this Agreement, including iGraf x’s addenda to the Order Form, that is executed from time to time between iGraf x and You for the purchase of Services.
- g. “**Party**” means either iGraf x or You individually. Collectively, iGraf x and You may be referred to as the “Parties”.
- h. “**Services**” means the online, hosted version of iGraf x’s software product(s) described in the relevant Order Form that iGraf x makes available at a designated customer log-in link subject to this Agreement.
- i. “**Subscription Term**” means the period of the purchased Authorized User subscription(s) to the Services as stated in the relevant Order Form.
- j. “**Technical Support**” means technical support services provided by iGraf x pursuant to its then-current Services support policy located at <http://igraf x.com/services/>.
- k. “**Authorized Users**” means Your and Your Affiliates employees and independent contractors who are authorized by You to use the Services and Documentation in accordance with the Agreement, for whom subscriptions to Services have been ordered, and who have been notified of the obligations and restrictions of this Agreement and supplied with Authorized User identifications and passwords by You or by iGraf x at Your request.
- l. “**You**” or “**Your**” means the company or other legal entity for which you are accepting this Agreement.
- m. “**Your Affiliate**” means any legal entity which You directly or indirectly own or control greater than fifty percent (50%) of such entity’s shares or control the board of such entity by force of law or contract.
- n. “**Your Data**” means all electronic data or information that You submit to the Services.

2. **Services Obligations.**

- 2.1 During the applicable Subscription Term, iGraf x will provide Services to You in accordance to this Agreement and the relevant Order Form either directly or through a third party services provider.

- 2.2 Contingent on Your full compliance with the terms and conditions of the Agreement and the applicable Order Form, iGrafx grants You a non-exclusive, non-transferable, limited, revocable right to allow Authorized End Users to access and use the Services during the applicable Subscription Term for the Services specified in the relevant Order Form solely for Your internal business use. Use of the Services is purchased as Authorized User subscriptions and Services may be accessed by no more than the specific number of Authorized Users set forth in the relevant Order Form. Additional Authorized User subscriptions may be purchased during the applicable Subscription Term, prorated for the remainder of the Subscription Term in effect at the time the additional User subscriptions are purchased, and the added Authorized User subscriptions shall terminate on the same date as the pre-existing subscriptions. An Authorized User subscription is only for the designated Authorized User and cannot be accessed, shared or used by more than one Authorized User. A new Authorized User may replace former Authorized User who no longer requires access to or use of the Services. An Authorized User subscription may not be transferred between Authorized Users more frequently than every thirty (30) days.
- 2.3 Except as otherwise stated in the applicable Order Form, all Authorized User subscriptions shall automatically renew for additional periods equal to the expiring Subscription Term or one year (whichever is shorter), unless either Party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant Subscription Term.
- 2.4 At the end of a Subscription Term, iGrafx may with notice prior to any renewal, replace the Services specified in an Order Form with replacement underlying software that is generally available to customers and which has alternative, materially similar, functionality.
- 2.5 All rights not expressly granted herein are reserved by iGrafx.

3. Use of the Services

- 3.1 **iGrafx's Responsibilities.** iGrafx will: (i) provide Support for the purchased Services to You at no additional charge during the applicable Subscription Term, (ii) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which iGrafx shall give at least 8 hours notice and which iGrafx shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday Pacific Time), or (b) any Force Majeure event, and (iii) provide the Services in accordance with applicable laws and government regulations.
- 3.2 **Data Protection.** iGrafx has taken reasonable measures to protect and secure Your Data but does not guarantee the security of Your Data and will not be liable in any way for any unauthorized access or loss of Your Data. iGrafx shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law in accordance with Section 8.3 or as expressly permitted in writing by You, or (c) access Your Data except to provide the Services and prevent or address service or technical problems, or at Your request in connection with customer support matters.
- 3.3 **Your Responsibilities and Restrictions.**
- a. You shall be solely responsible for acquiring and maintaining all communication services and equipment necessary for You to access and use the Services, including but not limited to network equipment, broadband internet access, computer hardware and software and other equipment and services that are compatible with the Services. iGrafx reserves the right at any time and for any reason to modify the equipment, performance specifications or other services required to access or use the Services without liability to iGrafx for any cost to You as a result of such modification and You are responsible for making the necessary modifications in services and equipment necessary for You access and use the Services.
 - b. You shall be responsible for Your and Authorized Users' compliance with this Agreement and all activities that occur in or are related to the Authorized User subscriptions.
 - c. You shall be responsible for the accuracy, appropriateness, integrity, quality, reliability, and legality of Your Data and of the means by which You acquired Your Data.
 - d. You shall prevent unauthorized access to or use of the Services, and notify iGrafx promptly of any such unauthorized access or use.
 - e. You and Your Authorized Users shall use the Services only in accordance with the Agreement, Documentation and applicable laws and government regulations.
 - f. You shall not, nor shall any Authorized Users, (i) make the Services available to anyone other than Authorized Users, (ii) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, or time share the Services or use the Services to provide service bureau or hosted services or otherwise commercially exploit the Services, (iii) use the Services to store or transmit material that

is infringing, libelous, obscene, threatening or otherwise unlawful or tortious that violates third party privacy rights, (iv) use the Services to store or transmit Malicious Code, (v) interfere with or disrupt the integrity or performance of the Services or third party data contained therein, (vi) attempt to gain unauthorized access to the Services or their related systems or networks or to the accounts of any iGrafx customer, (vii) copy the Services or any design, features, functionality or graphics contained in the Services, (viii) alter, modify, or create derivative works of the Services or Documentation, (ix) reverse engineer, disassemble, or decompile the Services or use any other method or process to access or derive the source code of the Services. The license and rights granted to You in the Agreement are contingent upon the continuing compliance of Your and Your Authorized End Users with the terms and conditions of the Agreement.

- g. The Services, Documentation, and derivatives thereof are subject to export laws and regulations of the United States and other countries. You shall not allow Authorized Users to access or use Services in a U.S. embargoed country or in violation of any U.S. export law or regulations. You and Your Authorized Users shall comply with (i) applicable export laws and regulations of any agency of the U.S. Government; (ii) the United States Foreign Corrupt Practices Act and (iii) any other current applicable laws, regulations and other legal requirements in its licensing and use of the Services hereunder. In particular, all Authorized Users certify by their access or use of the Services that: (a) they are not a citizen, national or resident of, and are not under the control of, the government of: Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria, Serbia, Taliban-controlled areas of Afghanistan, nor any other country to which the United States has prohibited export; (b) they will not download or otherwise export or re-export the Services, directly or indirectly, to the countries mentioned in clause (a) nor to citizens, nationals or residents of those countries; (c) they are not listed in the United States Department of Treasury lists of Specially Designated Nationals, Specially Designated Terrorists, and Specially designated Narcotic Traffickers, nor are they listed on the United States Department of Commerce Table of Denial Orders; (d) they will not provide access to or otherwise export or re-export the Services or related technology, directly or indirectly, to persons on the lists mentioned in clause (c); and (d) they will not access or use the Services for, and will not allow the Services to be used for any purposes prohibited by United States law, including, without limitation, for the development, design, manufacture or production of nuclear, chemical or biological weapons of mass destruction.
- h. The Services are not fault tolerant and are not designed or intended for use in any situation where failure or fault of any kind of the Services could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). You and the Authorized End Users are not authorized or licensed to use the Services for use in, or in conjunction with High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes by way of example but not limitation, the following: use in connection with aircraft or other modes of human transportation, nuclear or chemical facilities, and Class III medical devices under the Federal Food, Drug and Cosmetic Act.
- i. You shall have no right to receive object code or source code copies of any of the iGrafx software products that are part of the Services.

3.4 **Additional Usage Limitations.** The Services may be subject to other limitations which will be specified in the Documentation or the Order Form.

4. Non-iGrafx Providers.

4.1 **Non-iGrafx Products and Third Party Services.** iGrafx may make available to You third party services or Non-iGrafx Applications. Any acquisition or purchase by You of such Non-iGrafx Applications or third party services, and any exchange of data between You and any third party provider, is solely between You and the applicable third party provider. iGrafx does not warrant or support Non-iGrafx Products or services, whether or not they are made available by iGrafx. Subject to Section 4.2 (Integration with Non-iGrafx Services), no purchase of Non-iGrafx products or third party services is required to use the Services except a supported computing device, operating system, web browser and Internet connection. You agree that You and Your Authorized Users shall use such Non-iGrafx Products and third party services in your sole discretion and at your sole risk and iGrafx shall have no responsibility or liability with respect to such Non-iGrafx Products or third party services used by You or Your Authorized Users or for any act or omission of such third party provider. If You enable, install or link to Non-iGrafx Products for use with Services, You acknowledge that iGrafx may allow providers of those Non-iGrafx Products to access Your Data as required for the interoperation of such Non-iGrafx Products with the Services. iGrafx shall not be responsible or liable for any disclosure, modification or deletion of Your Data resulting from any such access by Non-iGrafx Application providers or that results from Your use of Non-iGrafx Products.

4.2 **Integrations with Non-iGrafx Products or Third Party Services.** The Services may contain features designed to interoperate with Non-iGrafx Products or third party Services. To use such features, You may be required to obtain access to such Non-iGrafx Products or third party services from their providers. If the provider of any such Non-iGrafx Products or third party services ceases to make the Non-iGrafx Products or third party services available for interoperation with the corresponding Services features on

terms acceptable to iGrafx, iGrafx may cease providing such Services features without entitling You to any notice, refund, credit, or other compensation.

5. Proprietary Rights.

- 5.1 Ownership/Proprietary Rights. iGrafx and its licensors shall retain all right, title, copyright, patent, trademark, trade secret and all other proprietary interests to the iGrafx software, the Services and to all iGrafx intellectual property and any enhancements, modifications or derivatives thereof. You may not distribute, promote, or otherwise use any information or materials relating to the iGrafx software or the Services for any external use without the express prior written consent of iGrafx or as otherwise specifically permitted herein. No title, copyright, patent, trademark, trade secret or other right of intellectual property not expressly granted hereunder is exchanged between the parties.
- 5.2 Restrictions. You shall not (i) permit any third party to access the Services except as permitted herein, (ii) modify or copy the Services or create derivate works based on the Services, (iii) frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes in accordance with the Agreement, (iv) reverse engineer the Services, or (v) access or use the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.
- 5.3 Your Data. Subject to the limited rights granted by You hereunder, iGrafx acquires no right, title or interest from You or Your licensors under this Agreement in or to Your Data, including any intellectual property rights therein.
- 5.4 Feedback/Suggestions. You hereby grant iGrafx a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Authorized Users, relating to the operation of the Services.
- 5.5 Government End Use Provision. iGrafx provides the Services, included related software and technology, for U.S. government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with iGrafx to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

6. Technical Support

- 6.1 Technical Support. During the applicable Subscription Term, You are entitled to receive Technical Support. You shall have the right to log support Services incidents via e-mail, and iGrafx will respond within a reasonable period of time via e-mail or phone. iGrafx will respond to Technical Support requests on a reasonable commercial efforts basis and to enable iGrafx to deliver Technical Support to You will submit to iGrafx a listing of output and such other data as iGrafx reasonably may request in order to reproduce operating conditions similar to those present when You detected an error. Technical Support is only available in selected countries and languages as specified by iGrafx. In North America Technical Support hours are 8:00 am to 5:00 PM PST excluding iGrafx holidays. Additional geographies may be covered by iGrafx or iGrafx authorized partners in their respective locations. Technical Support may be further described at www.igrafx.com and may be changed from time to time at iGrafx's sole discretion.
- 6.2 Contacts. You agree to designate no more than five (5) individuals at any one point in time who will be the direct contact points that communicate with iGrafx in order for iGrafx to deliver Technical Support. You may change any of these designated individuals by written notice to iGrafx.

7. Fees and Payment

- 7.1 Fees. You shall pay all fees specified the in the Order Forms. The fees are based on Services purchased pursuant to the relevant Order Form and not actual usage. Payment obligations are non-cancellable, fees paid are non-refundable, and the number of Authorized User subscriptions purchased cannot be decreased during the relevant Subscription Term stated on the applicable

Order Form. Authorized User subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for Authorized User subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the Subscription Term.

- 7.2 **Invoicing and Payment.** You will provide iGrafx with a valid purchase order or alternative purchase document reasonably acceptable to iGrafx. All Subs iGrafx will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due within thirty (30) days after the invoice date. You are responsible for providing complete and accurate billing and contact information to iGrafx and notifying iGrafx of any changes to such information.
- 7.3 **Taxes.** The fees for the Services do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases of Services . If iGrafx has the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide iGrafx with a valid tax exemption certificate authorized by the appropriate taxing authority.
- 7.4 **Overdue Charges/Suspension of Services/Acceleration.** If any fees or charges are not paid by the due date, iGrafx may charge late interest of 1.5% of the past due balance per month or the maximum rate allowed by law, whichever is lower, from the date when such payments are due and payable as provided herein to the date of payment. At its sole discretion, if any fees or charges are not paid by the due date, iGrafx may also condition future subscription renewals and Order Forms on shorter payment terms than those specified in Section 7.2. If any amount owing by You under this Agreement for iGrafx Services is thirty (30) or more days overdue, iGrafx may, without limiting its other rights and remedies, accelerate Your unpaid fee obligations under this Agreement so that all such obligations become immediately due and payable, and suspend, without liability on the part of iGrafx, the iGrafx Services to You until such amounts are paid in full. You shall pay on demand all of iGrafx's reasonable attorney fees and other costs incurred by iGrafx to collect any fees or charges due to iGrafx under this Agreement following Your breach of Section 7.2
- 7.5 **Audit.** iGrafx, or a third party designated by iGrafx, may audit Your and Your Authorized Users access and use of the Services to verify compliance with the provisions of this Agreement. Such audit will be conducted during normal business hours, on reasonable advance notice and in a manner that does not unreasonably interfere with Your business operations.

8. **Confidentiality.**

- 8.1 As used in this Agreement, the "Disclosing Party" means the party that discloses, transmits or otherwise communicates Confidential Information to the Receiving Party. The "Receiving Party" means the party that receives the Confidential Information from the Disclosing Party. "Confidential Information" means any information, maintained in confidence by the Disclosing Party, communicated in written or oral form, marked as proprietary, confidential or otherwise so identified, and/or any information that by its form, nature, content or mode of transmission would to a reasonable recipient be deemed confidential or proprietary, including, without limitation, iGrafx Services, Documentation, and any benchmark data and results produced, Your Data, the terms and conditions of this Agreement, and the Disclosing Party's business and marketing plans, technology and technical information, product plans and designs, and business processes. Confidential Information shall exclude: (i) information which the Receiving Party has been authorized in writing by the Disclosing Party to disclose without restriction; (ii) information which was rightfully in the Receiving Party's possession or rightfully known to the Receiving Party prior to receipt of such information from the Disclosing Party; (iii) information which was rightfully disclosed to the Receiving Party by a third party having proper possession of such information, without restriction; (iv) information which is part of or enters the public domain without any breach of the obligations of confidentiality by the Receiving Party; and (v) information which is independently developed by the Receiving Party without use or reference to the Disclosing Party's Confidential Information.
- 8.2 **Protection of Confidential Information.** The Receiving Party shall treat the Disclosing Party's Confidential Information confidentially and use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind which shall not be less than a reasonable standard of care. The Receiving Party shall (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed

confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates and their legal counsel and accountants without the other party's prior written consent. The Receiving Party agrees, at any time upon the request of the Disclosing Party or any termination or expiration of this Agreement, to return the Disclosing Party's Confidential Information or certify the destruction of such Confidential Information.

8.3 **Compelled Disclosure.** The Receiving Party shall be permitted to disclose Confidential Information in connection with a judicial or administrative proceeding to the extent that such disclosure is required under applicable law or court order, provided that the Receiving Party shall, where reasonably possible, give the Disclosing Party prompt and timely written notice of any such proceeding and shall offer reasonable cooperation in any effort of the Disclosing Party to obtain a protective order. If iGrafx is compelled by law or court order to disclose Your Confidential Information as part of a civil proceeding to which You are party, and You are not contesting the disclosure, then You will reimburse iGrafx for its reasonable costs of complying with such disclosure, including but not limited to costs of compiling and providing secure access to the Confidential Information.

8.4 **Remedies.** In the event of a breach of this Section 8, the Disclosing Party may not have an adequate remedy at law. The parties therefore agree that the Disclosing Party may be entitled to seek the remedies of temporary and permanent injunction, specific performance or any other form of equitable relief deemed appropriate by a court of competent jurisdiction. For iGrafx's Services, the underlying iGrafx software products, Documentation, and iGrafx or Your Confidential Information expressly designated in writing as perpetually confidential, the obligations of this section are perpetual and shall survive termination. For all other Confidential Information, the foregoing obligations shall continue for three (3) years from the date of initial disclosure.

9. **Limited Warranties/ Disclaimers.**

9.1 **iGrafx's Limited Warranties.** iGrafx warrants that it has the legal power to enter into this Agreement, and (ii) the Services shall perform substantially as described in the applicable Documentation. For breach of warranty by iGrafx, Your exclusive remedy shall be as provided in Section 12.2 (Termination for Cause) and Section 12.3 (Refund or Payment on Termination).

9.2 **DISCLAIMER.** EXCEPT AS OTHERWISE SET OUT IN SECTION 9.1, THE SERVICES ARE PROVIDED TO YOU ON AN "AS IS" BASIS. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 9.1, IGRAFX MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THIRD PARTY WARRANTIES, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY, NON INFRINGEMENT OF THIRD PARTY RIGHTS, SATISFACTORY QUALITY, MERCHANTABILITY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. IF IGRAFX IS PROVIDING THE SERVICES TO YOU ON A TRIAL BASIS, SUCH TRIAL SERVICES ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY.

9.3 **Your Warranties.** You warrant that (i) You have validly entered into this Agreement and that you have the legal power to do so; (ii) You are the rightful owner and copyright holder of, or that you have obtained all necessary and appropriate rights and licenses for all Your Data or data generated by You through the Services and for any Non-iGrafx Products and third party services you may use with the Services; and (iii) You shall comply with the Agreement and You will ensure compliance to the Agreement by the Authorized Users.

10. **Indemnification by You.** You shall defend iGrafx against any claim, demand, suit or proceeding made or brought against iGrafx by a third party alleging that Your Data, Your use of the Services in breach of this Agreement, or Your use of any third party services or Non-iGrafx Products infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a "Claim"), and shall indemnify iGrafx against any claims, damages, fees (including attorney fees, costs, fines, expenses, and judgments finally awarded against iGrafx as a result of, or for any amounts paid by iGrafx under an iGrafx-approved settlement of, a Claim Against iGrafx. iGrafx will (i) promptly give You written notice of the Claim; (b) give You sole control of the defense and settlement of the Claim (provided that You may not settle any Claim unless the settlement unconditionally releases iGrafx of all liability or that requires a payment by iGrafx); and (c) provide to You all reasonable assistance at Your expense.

11. **Limitation of Liability.**

11.1 IN NO EVENT WILL IGRAFX OR ITS LICENSORS BE LIABLE TO YOU OR ANY OTHER PARTY, FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF SERVICES,

DOCUMENTATION, OR OTHER IGRAFX PROVIDED MATERIAL WHETHER SUCH ACTION IS BASED IN CONTRACT, IN TORT, OR OTHERWISE INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND WHETHER OR NOT IGRAFX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE FORESEEABLE.

- 11.2 In no event shall iGrafx's total liability exceed the total fees paid in respect of Services by the You to iGrafx during the past calendar quarter.

12. TERM AND TERMINATION

- 12.1 Term of Agreement. This Agreement commences on the date You accept it and continues until all Authorized User subscriptions granted in accordance with this Agreement have expired or been terminated.
- 12.2 Termination for Cause. A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach of this Agreement if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. iGrafx may terminate this Agreement immediately for cause if You breach Section 3.3 or Section 5 of the Agreement.
- 12.3 Refund or Payment upon Termination. If You terminate the Agreement for cause in accordance with 12.2 above, iGrafx shall refund You any prepaid fees covering the remainder of the term of all unused Services subscriptions after the effective date of termination. If iGrafx terminates the Agreement for cause, You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to for the period prior to the effective date of termination.
- 12.4 Surviving Provisions. Section 5 (Proprietary Rights), Section 7 (Fees and Payment), Section 8 (Confidentiality), Section 9.2 (Disclaimer), Section 10 (Indemnification by You), Section 11 (Limitation of Liability), Section 12.3 (Refund or Payment upon Termination), Section 13.6 (Notices) and Section 13 (Miscellaneous) shall survive any termination or expiration of this Agreement.

13. Miscellaneous

- 13.1 Force Majeure. If iGrafx performance of any part of this Agreement is prevented or delayed or the Services are not available due to, including without limitation, an act of God, act of war, act of terrorism, civil unrest, fire, flood, governmental action, Internet service provider failures or delays, denial of service attack, labor dispute or other causes or circumstances beyond iGrafx's control ("Force Majeure Event"), then iGrafx will be excused from performance for the length of that prevention or delay.
- 13.2 Binding Effect/Assignment. This Agreement is binding upon the parties' respective representatives, successors and assigns; however, Customer shall not assign this Agreement or its rights or obligations under the Agreement, whether by operation of law or otherwise, without the prior written consent of iGrafx. iGrafx may assign this Agreement to any iGrafx affiliate or subsidiary or to any purchaser of iGrafx's rights to any of the Services or related software.
- 13.3 Remedies. Nothing in this Agreement is intended to waive or limit any remedy available to iGrafx at law or in equity, including without limitation any remedy available under International copyright laws.
- 13.4 Additional Provisions. If any portion of this Agreement is held to be unenforceable, the remainder of this Agreement shall be valid and enforceable. A delay or failure by a party in exercising its rights and remedies provided for in this Agreement is not and will not be a waiver of any right. No amendment or waiver of this Agreement will be binding unless it has been assented to in writing by both parties. Nonperformance is excused to the extent it is rendered impossible by fire, flood, acts of terrorism, earthquake, governmental acts or orders or restrictions, failure of suppliers, power failure, strikes or other circumstances in which failure to perform is beyond the control and not caused by the negligence of the nonperforming party.
- 13.5 Arbitration and Governing Law. All disputes, controversies, or claims between the parties arising out of or relating to this Agreement which cannot be settled by mutual agreement shall be submitted for determination by arbitration by a single arbitrator in accordance with the rules of the American Arbitration Association ("AAA"). The arbitration will be governed by the Commercial Arbitration Rules of the AAA. An award rendered by the arbitrator shall be final and binding on all parties in the proceeding. Except as provided below in this Section, the parties stipulate that the provisions of this Section shall be a complete defense to any

proceeding instituted in any federal, state or local court or before any administrative tribunal with respect to any dispute, controversy or claim arising out of or relating to this Agreement. The arbitrator has the right to award or include in any award such relief which the arbitrator deems proper in the circumstances including, without limitation, money damages, specific performance, injunctive relief and legal fees and costs. The award and decision of the arbitrator will be conclusive and binding upon all of the parties, and judgment upon the award may be entered in any court of competent jurisdiction. Each party reserves the right, exercisable only where such party reasonably believes the circumstances justify immediate relief, to obtain temporary restraining orders and temporary, preliminary or permanent injunctive relief from a court of competent jurisdiction, and such party is not required to submit such a dispute for arbitration. Unless the parties otherwise agree, the arbitration proceedings shall be conducted in English and shall take place in Portland, Oregon, at a location designated by the arbitrator. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is excluded from application to this Agreement. The governing law shall be that of the State of Oregon without regard to conflict of laws principles. This Section shall survive the termination or expiration of this Agreement.

- 13.6 Notices. All notices required or permitted under this Agreement shall be in writing and shall be delivered to the recipient party at the address identified in the Order Form or to such other addresses as the parties may advise each other of from time to time in writing. All notices under this Agreement will be deemed to have been duly given if delivered personally or by a nationally recognized courier service or, mailed by U.S. registered or certified mail, return receipt requested, postage prepaid. All notices under this Agreement that are addressed as provided in this Section, (a) if delivered personally or by a nationally recognized courier service, will be deemed given upon delivery, or (b) if delivered by mail in the manner described above, will be deemed given upon confirmation of delivery.
- 13.7 Independent Contractors. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 13.8 No third party beneficiaries. There are no third party beneficiaries to this Agreement.
- 13.9 Entire Agreement. This Agreement, including any addenda and exhibits and the referenced Order Forms, constitute the entire agreement between the Parties with respect to the Services and any other matter hereunder, and supersedes any and all prior and contemporaneous negotiations, proposals, representations and agreements, whether written or oral, between the Parties with respect to the Services or any subject matter hereunder. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.