

## IGRAF X SOFTWARE

### END USER LICENSE AGREEMENT

**IMPORTANT: THIS IS A LICENSE, NOT A SALE. THIS END USER LICENSE AGREEMENT ("AGREEMENT") IS A LEGAL AGREEMENT BETWEEN YOU (ALSO REFERRED TO AS THE "CUSTOMER") AND IGRAF X, LLC THAT GOVERNS THE USE OF AND YOUR OBLIGATIONS FOR THE SOFTWARE WHICH ACCOMPANIES THIS EULA. CAREFULLY READ THIS AGREEMENT BEFORE USING THIS SOFTWARE. INSTALLING, COPYING, OR OTHERWISE USING THIS SOFTWARE INDICATES YOUR ACKNOWLEDGMENT THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO BE BOUND BY AND COMPLY WITH ITS TERMS.**

1. **Definitions.** Capitalized terms, as used herein, are defined in Exhibit "A" annexed hereto.

2. **License Purchases.** Nothing contained in this Agreement shall be deemed to be considered as an offer to sell a Software License or a Maintenance License to Customer. Customer shall purchase from and pay to iGraf x the applicable Software Prices or to Reseller the applicable reseller price for any Software License or Maintenance License purchased by Customer from iGraf x or Reseller.

### 3. License

3.1 **License Terms and Conditions.** These terms and conditions shall apply to the Software Licenses and Maintenance Licenses purchased by Customer from iGraf x or Reseller. Any Software License or Maintenance License granted by iGraf x is conditional upon Customer's acceptance of these terms and conditions and Customer's continuing compliance herewith. This Agreement shall supersede any additional or inconsistent provision in any purchase order or elsewhere, and all such additional or inconsistent provisions are hereby expressly rejected and shall not be binding upon iGraf x. Customer hereby agrees that iGraf x's failure to specifically object to any such provision submitted by Customer shall not constitute an acceptance by iGraf x thereof nor shall it constitute an acceptance by iGraf x of any waiver of, or modification to, the provisions hereof.

3.2 **Prices.** iGraf x expressly reserves the right to modify the Software Prices and Maintenance Prices from time to time, and each purchase Customer makes shall be calculated according to prices current at time of purchase.

4. **Software License.** Subject to these terms and conditions and Customer's continuing compliance herewith, iGraf x hereby grants Customer the following non-exclusive and non-transferable rights to:

i) install and use as many copies of the Software as is authorized by the Software License purchased by Customer as evidenced by the License Certificate, provided that each such authorized copy may only be installed and used by a single named designated Authorized End User on a single primary computer and a single secondary computer (e.g., a laptop computer), provided further that the Software is not used on the primary and secondary computer simultaneously. The Authorized End User may also access and use the Software on either the primary or secondary computer remotely from any other computer or device, as long as the Software is not stored on these other computers or devices.

ii) transfer Software Licenses between Authorized End Users no more frequently than once every ninety (90) days and

iii) create one (1) back-up copy of the Software in support of each copy of the Software authorized by the Software License purchased by Customer as evidenced by the License Certificate.

All rights not specifically granted hereunder are expressly reserved by iGraf x.

5. **Ownership.** Save and except for the limited Software License granted to Customer, no title to, or ownership of, or any other proprietary rights in the Software, Documentation or any iGrafx intellectual property or technology are transferred to Customer.

## 6. Support.

6.1 **Basic Support.** Subject to these terms and conditions and Customer's continued compliance herewith, the purchase of a Software License shall entitle Customer to receive "Basic Support", as defined from time to time by iGrafx in its sole and absolute discretion. As of the date hereof, Basic Support is defined by iGrafx to entitle Customer to receive (i) free-of-charge access to electronic web-based self-help (i.e. Knowledge Base and other online tools) and (ii) Technical Support by email during the Warranty Period. Such support is only available in respect of the most current Major Version of the Software. iGrafx will address requests on a reasonable efforts basis only and may not be able to resolve all problems or requests. iGrafx agrees to support the Software only if it is used under appropriate operating conditions, and in conjunction with hardware systems, components and software operating systems for which it was designed. iGrafx reserves the right to change its Basic Support services at any time and from time to time, and without notice to Customer.

## 7. Maintenance.

7.1 **Maintenance License.** If iGrafx offers Maintenance Licenses for the Software, at the time of Software License purchase or at the end of each Maintenance Period, Customer has the option of purchasing a Maintenance License. During the Maintenance Period only, and subject to these terms and conditions and Customer's continuing compliance herewith, iGrafx shall provide and Customer shall be entitled to receive, the Maintenance, including Upgrades and premium Technical Support, set out in Sections 7.2 to 7.7 below. Maintenance shall only be available for those Software Licenses for which a Maintenance License is purchased. iGrafx reserves the right to stop selling new Maintenance Licenses for any Software at any time.

7.2 **Maintenance Period.** The Maintenance License shall expire on the last day of the Maintenance Period.

7.3 **Upgrades.** Only for those Software Licenses for which a Maintenance License is purchased, Customer shall be entitled:

- i) to receive Upgrades; and
- ii) to install copies of any such Upgrades to replace copies of prior releases of the Software.

7.4 **Limitation.** Upgrades may require Customer to agree to additional or alternative terms and conditions other than as set out in this Agreement. In the event iGrafx does not provide additional license terms for the relevant Upgrade, the license terms applicable to the Software shall apply to such Upgrade. Nothing in this Agreement shall be construed to warrant or imply that Upgrades will be developed for any iGrafx product or, if developed, when such Upgrades will be made commercially available.

7.5 **Premium Technical Support.** During the Maintenance Period, Customer is entitled to receive premium Technical Support. Customer shall have the right to log support incidents via e-mail or by calling the iGrafx support line, and iGrafx will respond within a reasonable period of time via e-mail or phone. iGrafx will respond to requests on a reasonable commercial efforts basis. Customer shall 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 Customer detected an error. Technical Support is only available in selected countries and languages as specified by iGrafx. In

North America Technical Support hours are Monday-Friday, 8:00 am to 5:00 PM PST excluding iGrafx holidays. In Europe Technical Support hours are Monday-Friday, 9:00 am to 5:00 PM CET (Central European time) 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](http://www.igrafx.com) and may be changed from time to time at iGrafx's sole discretion.

**7.6 Prior Versions.** Maintenance is available for the current Major Version of the Software and the previous Major Version thereof and any Major Version shall be supported for at least one (1) year. Any version will only run on such hardware and operating systems as are expressly certified by iGrafx.

**7.7 Contacts.** Customer agrees 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. Customer may change any of these designated individuals by written notice to iGrafx.

## 8. Updates.

**8.1 Updates.** iGrafx, in its sole discretion, may develop and make available at no charge to Customer one or more bug fixes, patches enhancements, replacement versions or other updates to the Software (collectively, "Updates"). Such Updates may require Customer to agree to additional or alternative terms and conditions other than as set out in this Agreement. In the event iGrafx does not provide additional license terms for the relevant Update, the license terms applicable to the Software shall apply to such Update. Nothing in this Agreement shall be construed to warrant or imply that Updates will be produced for any iGrafx product or, if so produced, when such Updates will be made commercially available. An Update is designated by an increment of the third component of the version number (for example, 6.1.0 to 6.1.1).

**8.2 Mandatory Updates.** In the event iGrafx provides Customer with an Update to address a threatened or actual security breach in the Software, to replace technologies that may infringe third party intellectual property rights or for any other reason of similar significance to iGrafx (such Updates hereinafter referred to as "Mandatory Updates"), Customer agrees to promptly, and in no event later than thirty (30) days after iGrafx provides such Mandatory Update to Customer, cease use of any Software that has not been updated with the Mandatory Update. If Customer fails to comply within the timeframe specified in this Section 8.2, iGrafx may terminate Customer's Software License and, if applicable, Maintenance License effective immediately upon notice to Customer.

## 9. Customer Obligations, Restrictions and Responsibilities.

**9.1 Protection.** Customer agrees to take reasonable steps to protect the Software and Documentation from unauthorized copying or use. Customer shall not disassemble, decompile or reverse engineer the Software. Where Customer has a statutory right to disassemble or decompile the Software for the purpose of obtaining information needed to achieve interoperability with other programs, Customer agrees that such right may not be exercised unless iGrafx fails to respond within sixty (60) days after receipt of a written request to provide the necessary information.

**9.2 Restrictions.** Except as expressly authorized in this Agreement, Customer shall not rent, lease, time share, sub-license, distribute, resell, sell, transfer, copy, reproduce, display, decompile, reverse engineer, disassemble, modify or separate the component parts of the Software. Customer shall not upload, host, use or access the Software via a timesharing, service bureau, virtualization, application hosting or other remote access arrangement and shall not use the Software to provide hosting, service bureau or application provider services. The following additional restrictions shall apply in the circumstances set out below, and in the event of any conflict between these restrictions and any other terms of this Agreement, the following terms shall prevail:

**9.2.1 Trial Software.** If the Software is identified by iGrafx as trial software (“Trial Software”), Customer’s use of the Software is restricted to evaluation only and is not for production use. Customer's license rights to such Software shall expire on the last day of the period specified within the Software. Upon the expiry of the trial period, Customer's license to use the Trial Software shall expire unless Customer purchases a non-trial version of the Software. Customer agrees not to attempt to circumvent any expiry date technology or time bomb mechanism or other use restricting mechanism contained within the trial Software, and any such attempt shall constitute a breach of the Agreement by Customer. Trial Software is provided “AS IS” WITHOUT ANY WARRANTIES, MAINTENANCE, OR TECHNICAL SUPPORT FOR THE TRIAL SOFTWARE. WITH RESPECT TO TRIAL SOFTWARE, IGRAFAX EXPRESSLY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. CUSTOMER ASSUMES ALL RISK FOR ITS USE OF THE TRIAL SOFTWARE.

### **9.2.2 iGrafx Platform Server Application**

9.2.2.1. If the software is the iGrafx Platform Server Application (the "Server Application"), Customer may deploy the Server Application either in (i) a standalone environment or (ii) in a clustered Java application server environment specified by iGrafx as compatible using a single iGrafx Administration Database Context in which any number of physical or virtual machines may be used. In either environment type, any number of server processors or server processor cores may be used. Non-production copies of the Server Application may be installed for backup recovery. Customer may install the iGrafx Migration Tool on any number of its computer systems. Customer may create one (1) back-up copy of the Server Application in support of each iGrafx Administration Database Context purchased by the Customer as evidenced by the License Certificate. All rights not specifically granted hereunder are expressly reserved by iGrafx. The duration of the Term of the Server Application license will be indicated on the relevant License Certificate.

### **9.2.3 Platform and User Extensions for Server Application**

9.2.3.1 iGrafx Architecture Platform Extension includes the use of iGrafx Enterprise Modeler Server. If Customer purchases a license for this platform extension, Customer may install and use iGrafx Enterprise Modeler Server on any number of its computer systems.

9.2.3.2 iGrafx Enterprise Architect User Extension includes the use of iGrafx Enterprise Modeler.

9.2.3.3 iGrafx SAP Architect User Extension includes the use of iGrafx Enterprise Modeler for SAP.

9.2.3.4 One (1) iGrafx SAP Platform Extension License is required for each instance of SAP Solution Manager that is interfaced with the iGrafx SAP Platform Extension.

9.2.3.5 iGrafx Performance Management Platform Extension includes the use of iGrafx Data Central Server.

9.2.3.6 **iGrafx Performance Management Designer User Extension** Licenses includes the use of the iGrafx Data Integration client tool for Authorized End Users.

9.2.4 **Limited Use Editions.** If the Software is a limited use edition, in addition to the terms in 9.2.2 and 9.2.3, the number of Authorized End Users allowed to access the Software is limited to the number of Authorized End Users as indicated on the License Certificate. If the limitation on the License Certificate is indicated as being a number of allowed Business Processes then the number of Business Processes that may be deployed is limited as indicated on the License Certificate.

9.2.5 **iGrafx Viewer.** If the Software is iGrafx Viewer, Customer may not modify, enhance or otherwise change such Software to create or save files in any manner not supported by iGrafx Viewer. Customer may install and use such Software on any number of its computer systems.

9.2.6 **iGrafx Campus and Academic Licenses.** If the Software is designated as a Campus License or Academic License, use of the Software is restricted to students and faculty at qualified academic institutions for research and teaching purposes. The license term is restricted to the term (e.g., 1 year) indicated on the license certificate. Campus Licenses allow any number of faculty and/or students at the licensed academic institution to use the Software for teaching and research purposes. Technical Support and Maintenance are not available for Campus and Academic Licenses.

9.2.7 **Term Licenses.** If the Software is licensed as a Term License, Customer's license for the Software (and Maintenance if applicable) shall expire at the end of the term as designated on the License Certificate.

9.2.8 **Upgrades licenses.** If the Software is an upgrade license the Software is a replacement for and not in addition to the Software License which was upgraded.

9.2.9 **Microsoft SQL Server Software.** If the Software is Microsoft SQL Server 2014 (or later versions) Standard Edition Run Time Restricted Use Software, then additional terms found at [www.igrafx.com/licensing/sql](http://www.igrafx.com/licensing/sql) apply. Customer agrees that iGrafx may disclose to Microsoft the number of SQL Server Software licenses purchased by Customer, and Customer's name and address as required by Microsoft.

9.3 **Audit Rights.** Customer shall maintain adequate records evidencing its use and licensing of the Software pursuant to this Agreement. Upon iGrafx's written request, Customer shall, within seven (7) days of the date of such request, provide iGrafx with a statement signed by an authorized officer or representative of Customer evidencing Customer's current use of Software. During the term of this Agreement, but no more often than once per annual period or more frequently if iGrafx has reason to believe that Customer is not in compliance with the licensing or reporting provisions of this Agreement, iGrafx may, at its own expense and upon not less than forty-eight (48) hours prior written notice, audit Customer's use of the Software. If the audit shows that Customer has understated its use of the Software, Customer shall immediately purchase, from iGrafx or Reseller, sufficient licenses to support the actual use. If Customer has understated its use by more than five percent (5%), Customer shall also pay the reasonable expenses of the audit.

9.4 **Payment.** Customer shall pay all applicable iGrafx invoices within the payment terms indicated on the relevant sales quote issued by iGrafx and restated on the relevant invoices. Customer shall pay interest to iGrafx on any and all amounts that are at any time overdue and payable to iGrafx at the lower of (i) one and one-half percent (1.5%) per month from the date when such payments are due and payable as provided herein to the date of payment and (ii) the highest rate permitted by law.

**9.5 Compliance.** Customer 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 Software hereunder. In particular, all Authorized End Users certify by their use or download of the Software that : (i) you 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; (ii) you will not download or otherwise export or re-export the Software, directly or indirectly , to the countries mentioned in clause (i) nor to citizens, nationals or residents of those countries; (iii) you 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 you listed on the United States Department of Commerce Table of Denial Orders; (iv) you will not download or otherwise export or re-export the Software, directly or indirectly, to persons on the lists mentioned in clause (iii); and (v) you will not use the Software for, and will not allow the Software 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.

**9.6 Taxes.** The license fees charged by iGrafx do not include, and all payments to iGrafx by Customer must be free and clear of, and without reduction for, any excise, use, value-added or other taxes, duties or levies of any kind. Customer shall be responsible for any and all taxes of any kind, including, without limitation, sales and value added taxes.

**9.7 Confidentiality.** "Confidential Information" means all information, software, processes and materials relating to iGrafx, iGrafx's business activities and iGrafx's Software and Documentation, in whatever format. Customer shall treat as confidential all Confidential Information and shall not use such Confidential Information except to exercise its rights or perform its obligations under this Agreement and shall not disclose such Confidential Information to any third party or to any employee of Customer without a need to know. Information which is generally known, available or in the public domain through no fault of the receiver shall be deemed not to be Confidential Information. In the event of a breach of this section, iGrafx may not have an adequate remedy at law. iGrafx and Customer therefore agree that iGrafx 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.

**9.8 No High Risk Use.** The Software is not fault tolerant. The Software is not designed or intended for use in any situation where failure or fault of any kind of the Software could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). Customer is not licensed to use the Software for use in, or in conjunction with High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes for example, the following : aircraft or other modes of human transportation, nuclear or chemical facilities, and Class III medical devices under the Federal Food, Drug and Cosmetic Act unless: (i) use of the Software in Class III medical devices has been specifically reviewed and approved by the US Food and Drug Administration for marketing in the United States; or (ii) the medical device is intended for marketing outside the United States and is identical in technology and labeling to such approved United States version.

## 10. Term and Termination.

**10.1 Term.** This Agreement is effective as of the Order date set forth on the License Certificate and shall continue until the earlier of (a) the termination of this Agreement in accordance with its terms and conditions, and (b) Customer's destruction of all copies of the Software in Customer's possession or control.

**10.2 Termination of Agreement.** iGrafx has the right to terminate this Agreement immediately upon notice to Customer if Customer is in breach of this Agreement. Upon termination for breach, rights granted to each Authorized End User to use the Software shall also terminate and, at iGrafx's request, Customer shall promptly, at its own costs and expenses, return or destroy any iGrafx proprietary information and the Software, in all forms, including, without limitation, all summaries, copies and excerpts and those in the possession or control of its employees. At iGrafx's option and request, Customer shall provide written certification of its compliance with this section through its senior management. For greater certainty, failure of iGrafx to make such request shall not entitle Customer, or any Authorized End User, to make any further use of iGrafx proprietary information or Software, or otherwise extend Customer's or any Authorized End User's rights set out herein, after expiration or termination of this Agreement; and Customer specifically agrees to cease any further use, and to require each Software Authorized End User to cease any further use thereof unless iGrafx and Customer have signed a written license agreement for such use.

## **11. Limited Warranty/Liability Limitation.**

11.1 iGrafx warrants that for a period of thirty (30) days commencing upon the shipment of the Software by iGrafx or Reseller, as applicable, (the "Warranty Period"), the Software will perform substantially in accordance with the Documentation and iGrafx's published specifications for the Software. This limited warranty is valid only for the Customer and is the Customer's exclusive remedy and iGrafx's sole liability for breach of the limited warranty. If Customer properly makes a warranty claim during the Warranty Period, iGrafx shall use commercially reasonable efforts to, at its sole option, correct or replace the Software within a reasonable period of time, or if these options are not reasonably feasible in iGrafx's judgment, to refund the license fees Customer paid for the Software that does not conform to this limited warranty. Any replacement Software provided by iGrafx as a warranty replacement shall be warranted for the Warranty Period. The foregoing limited warranty is void if the failure of the Software is due to accident, abuse, misapplication, abnormal use or a virus or worm not introduced by iGrafx.

11.2 EXCEPT AS OTHERWISE SET OUT IN SECTION 11.1, THE SOFTWARE IS LICENSED TO CUSTOMER ON AN "AS IS" BASIS. MAINTENANCE IS PROVIDED ON AN "AS IS" BASIS. IF CUSTOMER RECEIVES FROM IGRAF X OR RESELLER DEFECTIVE MEDIA OR DOCUMENTATION RELATING TO THE SOFTWARE, CUSTOMER MAY RETURN THEM TO IGRAF X WITHIN 30 DAYS OF THE DATE OF PURCHASE, AND THEY WILL BE REPLACED AT NO CHARGE. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR SELECTION OF THE SOFTWARE TO ACHIEVE CUSTOMER'S INTENDED RESULTS AND FOR INSTALLATION, USE AND RESULTS OF THE SOFTWARE. THE ABOVE WARRANTIES ARE THE SOLE WARRANTIES PROVIDED BY IGRAF X AND ARE IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, SUITABILITY, SATISFACTORY QUALITY, MERCHANTABLE QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH IMPLIED WARRANTIES ARE EXPRESSLY EXCLUDED.

IN NO EVENT WILL IGRAF X OR ITS LICENSORS BE LIABLE TO CUSTOMER 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 IGRAF X, THE SOFTWARE, MAINTENANCE, STORAGE MEDIA, DOCUMENTATION, OR OTHER IGRAF X PROVIDED MATERIAL WHETHER SUCH ACTION IS BASED IN CONTRACT OR IN TORT INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND WHETHER OR NOT IGRAF X HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE FORESEEABLE.

In no event shall iGrafx's total liability exceed the total fees paid in respect of Software by the Customer to iGrafx or a Reseller during the past calendar quarter.

The Software Prices are set on the condition that the foregoing limitations are included in this Agreement.

**12. U.S. Government Rights.** The Software and all related computer software support documentation and technical data derived therefrom are "Commercial Computer Software" and "Commercial Items" that have been developed entirely at iGrafx's private expense. Any use, duplication, release, modification, disclosure or transfer of the Software by the U.S. government is restricted pursuant to the terms and conditions of this Agreement. In particular, if the Software is supplied to the Department of Defense (DOD), the applicable paragraphs under the applicable Department of Defense Federal Acquisition Regulation (DFAR) DFAR 252.227-7015 (for data) or DFAR 227.7202 (for software), and more generally 48 CFR 2.101 or 48 CFR 12.211 or 48 CFR 12.212, shall govern the DoD's rights to and any restrictions on the Software, and the DoD shall acquire only the rights to the Software as granted under the Agreement. If the Software is supplied to any unit or agency of the U.S. government other than the DoD, the Software and all related computer software support documentation and technical data derived therefrom shall be considered as being provided under the Agreement with Restricted Rights (with respect to the Software) and Limited Rights (with respect to data and documentation) under the applicable Federal Acquisition Regulation (FAR) FAR 52.227-14, and more generally FAR 12.211 or FAR 12.212, and such agencies or units shall acquire only the rights to the Software as recited under the terms of this Agreement. Without limiting the foregoing, iGrafx is expressly withholding all rights to modify the Software and the U.S. Government acquires no rights to modify the Software absent separate written agreement with iGrafx. Additionally, other U.S. government agency or unit regulations may be applicable to the Software but such regulations shall be consistent and equivalent with the rights and interests recited herein. The manufacturer of the Software is iGrafx, LLC, 7585 SW Mohawk Street, Tualatin, Oregon, 97062.

### 13. Miscellaneous.

**13.1 Binding Effect/Assignment.** This Agreement is binding upon the parties' respective representatives, successors and assigns; however, Customer shall not assign or transfer, whether by operation of law or otherwise, this Agreement, the use of the Software, or Customer's rights and obligations under this Agreement, without the prior written consent of iGrafx. iGrafx shall be entitled to assign this Agreement to any purchaser of iGrafx's rights to any of the Software.

**13.2 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.

**13.3 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. All notices must be addressed to the president of the party and either sent registered or certified mail, return receipt requested or by commercial courier service with signature verification of receipt, or served personally.

**13.4 Survival.** The provisions of Sections 1, 2, 4, 5, 9, 11, 12 and 13 shall survive termination or expiration of this Agreement, except that Customer's rights under Section 4 shall terminate in the event this Agreement is terminated by iGrafx for Customer's breach of the Agreement.

**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.

## EXHIBIT "A"

The following definitions shall apply to this Agreement:

**"Authorized End User"** means a) Customer if Customer is a person, or b) if Customer is a company Customer's employees and Customer's contractors working on behalf of, and only in the course of providing services to Customer, who a Software License has been assigned to, and who are authorized by Customer to use the Software in accordance with this Agreement.

**"Business Process"** means a collection of activities with the purpose of taking one or more business inputs and creating a specific business output. (e.g., employee onboarding process or expense reimbursement process).

**"Customer"** means the licensee as identified on the License Certificate.

**"Documentation"** means the documentation accompanying the Software.

**"iGraf X Administration Database Context"** means a database which sets forth and governs the license parameters for the Server Application.

**"License Certificate"** means the license certificate delivered by iGraf X to Customer evidencing Customer's Software License.

**"Maintenance"** means the support and services set out in Section 7.3 to 7.7.

**"Maintenance License"** means the right to receive Maintenance services and support as defined in Section 7 of this Agreement for the Maintenance Period.

**"Maintenance Period"** means the period beginning on the Start Date of the Maintenance License and which generally terminates on the first or second anniversary of the Start Date of such Maintenance License as determined by the term purchased by Customer in the applicable accepted purchase order.

**"Maintenance Price"** means the current suggested retail prices for Maintenance Licenses published by iGrafx or Reseller as amended from time to time.

**"Major Version"** means the first component of the Software version number.

**"New Product"** means either an entirely new Software product or a major revision of Software released by iGrafx that is consistently designated by iGrafx as a "new product" rather than as an Upgrade. If a question arises as to whether a major revision product offering is an Upgrade or a new product, iGrafx's opinion will prevail, provided that iGrafx treats the major revision product offering the same for its customers generally.

**"Reseller"** means a reseller authorized by iGrafx to sell and distribute Software and Maintenance.

**"Software"** means, collectively, iGrafx software and any Upgrades and Updates licensed by Customer under this Agreement.

**"Software License"** means a revocable, non-exclusive, non-transferable, limited license to use the Software.

**"Software Prices"** means the current suggested retail prices for Software Licenses published by iGrafx as amended from time to time.

**"Start Date"** means (a) for new Maintenance Licenses, the purchase date of the corresponding Software License intended to be covered by a Maintenance License; and (b) for Maintenance License renewals, the expiration date of the previous Maintenance Period.

**"Technical Support"** means responding to problems relating to correct functioning and recommended deployment of the Software as described in the Documentation. It excludes services to assist with the use of the Software and alternative methods of deployment, which may be purchased separately as professional services.

**"Term License"** means a Software license with a term limited to a specific period of time (e.g. 1 year).

**"Update(s)"** has the meaning as set out in Section 8.1.

**"Upgrade"** means a revision of Software released by iGrafx during the Maintenance Period that is consistently designated by iGrafx as an "Upgrade", rather than a New Product. In most instances an Upgrade will generally be designated by an increment to the first or second component of the version number of the Software (e.g. version 5.1 to 6.0 or version 6.0 to 6.1).

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