

ConEst®

Software Systems

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If, during (a) the Media Warranty Period, a defect in the media occurs and is reported to Licensor, the media may be returned to Licensor, and Licensor will replace the media without charge to you, or (b) the Software Warranty Period a failure of the Software to conform as warranted occurs and is reported to Licensor, Licensor, at its option, will use commercially reasonable efforts to repair or replace the non-conforming Software.

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THE FOREGOING LIMITS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT ARE CUMULATIVE AND ARE INTENDED AND YOU ACKNOWLEDGE THAT THEY ARE INTENDED TO BENEFIT LICENSOR AND ITS THIRD PARTY SUPPLIERS, IF ANY.

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11. No Assignment Without Licensor's Written Consent. You will not directly or indirectly sell, transfer, assign, or delegate in whole or in part this Agreement, or any rights, duties, obligations or liabilities under this Agreement, to any third party, including to any affiliated entity, without the prior written consent of Licensor, which may be withheld for any reason.

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(b) Pre-Released Product. From time to time, Licensor may agree to provide software which is not yet commercially available for Beta testing hereinafter ("Pre-Released Software"). If you receive Pre-Released Software, then it will be subject to the general terms of this Agreement as well as the specific terms of this Subsection 13(b) and the

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To the maximum extent permitted by applicable law, you hereby (a) release and waive all claims against Licensor and its subsidiaries, affiliates, officers, agents, licensors, and employees (collectively "Indemnitees") from liability for claims, damages (actual and consequential), and expenses (including litigation costs and attorneys' fees) arising from or in any way related to your use of any Unsupported Products; and (b) agree to hold harmless and indemnify Indemnitees from and against any third party claims arising from or in any way related to your use of the Unsupported Products, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs, and attorneys' fees.

(d) Licensor's ownership rights in **Section 2** apply to Unsupported Products, including any output and also including any improvements whether based on input from you or not.

(e) Prior to returning Unsupported Products to Licensor, you must remove any (i) confidential, proprietary, or personal information, including without limitation, personal health information or personally identifiable information (as such is defined under applicable local law, regulation or directive, including without limitation, in the U.S., the Gramm-Leach-Bliley Act, and Health Insurance Portability and Accountability Act, HITECH Act), and (ii) destroy any removable media such as floppy disks, CDs, or PC Cards which might contain copies of all or any portion of the Unsupported Products. In addition, you are responsible for backing up your data that you may have generated or use in connection with the Unsupported Products. Licensor is not responsible for any of your confidential, proprietary, or personal information or removal thereof; lost or corrupted data; or damaged or lost removable media.

14. General. This Agreement, any Software Maintenance and Support Agreement, and any Quote issued by Licensor, constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, arrangements, and understandings between the parties regarding such subject matter. Any maintenance, technical support or other obligations of Licensor shall be set forth in a separate written agreement. Any conflicting or additional terms in your purchase orders or in any of your other documentation are expressly rejected.

This Agreement may be modified only in writing, signed by authorized representatives of both parties. No use of trade, other regular practice, or course of dealing between the parties will be used to modify, interpret, supplement, or alter the terms of this Agreement.

No failure of either party to exercise any power or right hereunder or to insist upon strict compliance with the terms of this Agreement, and no custom or practice of the parties at variance with the terms hereof, will constitute a waiver of either party's right to demand compliance with the terms of this Agreement.

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, such provision will be severed from the Agreement, and the remainder of this Agreement will be valid and enforceable to the extent permitted by applicable law, provided that the intent of the parties is not materially impaired. The parties will use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by law, achieves the purposes intended under the invalid or unenforceable provision.

This Agreement is governed by the laws of the State of New Hampshire without regard to choice of law rules. You hereby agree that the federal and state courts located in said State shall be the exclusive forums in which any dispute arising hereunder may be litigated, and you further agree to submit to the jurisdiction of such courts and to accept service of process with respect to the same.

The parties agree that the United Nations Convention on International Sale of Goods Acts will not apply to this Agreement.

Except for the obligation to make payments, non-performance of either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, acts of God, governmental acts or orders or restrictions, act of terrorism, war, or any other reason where failure to perform is beyond the reasonable control of the non-performing party and not due to its fault or negligence.