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Flagship warrants that the Software will substantially perform the functions or generally conform to the Software’s specifications published by Flagship and included in this Package under normal use for a period of ninety (90) days from the date of delivery to you.

Flagship warrants that discs or DVDs on which the Software is provided will be free from defects in materials and workmanship under normal use for a period of ninety (90) days from date of delivery to you.

Flagship does not warrant that the functions contained in the Software will meet your requirements or that the operation of the Software will be entirely error free or appear precisely as described in the Documentation, or that Flagship will correct all Software errors.

You acknowledge that Flagship does not control the transfer of data over communications facilities, including the internet, and that the Software may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. This section sets forth the sole and exclusive warranty given by Flagship (express or implied) with respect to the subject matter of this Agreement. Neither Flagship nor any of its licensors or other suppliers warrant or guarantee that the operation of the Software will be uninterrupted, virus-free or error-free, nor shall Flagship or any of its service providers be liable for unauthorized alteration, theft or destruction of your or any user’s data, files, or programs.

Flagship's entire liability and your exclusive remedy for breach of this limited warranty shall be as provided in this section. At its discretion, Flagship may provide a replacement for the Software, within ninety (90) days of receiving your report and without charge, with a corrected version of the Software.

You agree and acknowledge that you are solely responsible for the determination of how to use the Software and its appropriateness for any intended usage. Furthermore, you agree to be solely responsible for the results achieved from the use of the Software.

To the maximum extent permitted by applicable law, Flagship shall not be liable for special, incidental, consequential, exemplary, or other indirect damages, even if Flagship is advised or is aware of the possibility of such damages. In no event shall the Flagship's liability exceed the purchase price of the package.

#### **INDEMNITY:**

You agree to fully indemnify and defend Flagship and any licensor, supplier, re-seller, or other representative of Flagship, at your own expense, against any claims from third parties: 1) resulting from your use of the Software; or 2) arising from you or your authorized user's failure to comply with the terms of this Agreement. For any such claims, you agree to fully defend Flagship and its directors, officers, and employees against the claim at your own expense and you agree to pay all losses, damages and expenses (including reasonable attorneys' fees) finally awarded against such parties or agreed to in a written settlement agreement, to the extent arising from the claim.

#### **COLLECTION OF DATA:**

You hereby acknowledge and agree that your use of the Software may require Flagship to process, transmit and/or store personal or address data such as that relating to you, your employees, customers, or affiliates ("Transaction Data"). By submitting Transaction Data to Flagship, you agree that Flagship and its authorized third-party suppliers may process, transmit and/or store Transaction Data only to the extent necessary for, and for the sole purpose of, enabling Flagship to perform its obligations to under this Agreement, which may include data processing, data migration, maintenance or troubleshooting services. You agree to obtain all necessary consents and make all necessary disclosures before providing any Transaction Data to Flagship. You are solely responsible for determining the purposes and means of processing Transaction Data by Flagship under this Agreement, including that such processing according to your instructions will not place Flagship in breach of applicable data protection laws. Prior to processing, you will inform Flagship of any special categories of data contained within the Transaction Data and any restrictions or special requirements in the processing of such special categories of data, including any cross-border transfer restrictions. You are responsible for ensuring that the Software meets such restrictions or special requirements prior to providing the Transaction Data to Flagship for processing. Flagship will process any Transaction Data that meets the requirements set forth in this Section according to the terms of this Agreement.

Any Transaction Data that you provide to Flagship or results of Transactions will be maintained on Flagship's servers for a period of seven (7) days if results files have been downloaded or thirty (30) days if results files have not been downloaded, after which it will be permanently

deleted. You are responsible for securing and downloading any Transaction Data or results of Transactions that you wish to keep beyond this period.

**GENERAL:**

This Agreement constitutes the entire understanding between Flagship and you with respect to subject matter hereof. Any change to this Agreement must be in writing, signed by Flagship and you. Terms and conditions as set forth in any purchase order which differ from, conflict with, or are not included in this Agreement shall not become part of this Agreement unless specifically accepted by Flagship in writing.

In the event you export the Software or Documentation from Canada, you assume responsibility for compliance with all applicable export and import regulations.

You acknowledge that the Software is provided on a non-exclusive basis. Nothing shall be deemed to prevent or restrict Flagship's ability to provide the Software or other technology, including any features or functionality first developed for you, to other parties.

No waiver shall be effective unless it is in writing and signed by the waiving party. The waiver by either party of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach.

Flagship will be excused from performance of any services for any period during which Flagship is prevented from performance, in whole or in part, as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of terrorism or war, disease, communication line failures, and power failures.

This Agreement will terminate one year from the expiry of the last purchased Transaction. However, the Restrictions and Responsibilities, Limited Warranty and Limitation of Liability, and Indemnity sections of this Agreement shall survive any expiration or termination of this Agreement.

If any term of this Agreement is held to be invalid or unenforceable, that term shall be reformed to achieve as nearly as possible the same effect as the original term, and the remainder of this Agreement shall remain in full force.

This Agreement shall be governed by, and any arbitration hereunder shall apply, the laws of the Province of Ontario, Canada.

Notwithstanding anything contained in the foregoing Paragraph to the contrary, Flagship shall have the right to institute judicial proceedings against you or anyone acting by, through or under you, in order to enforce Flagship's rights hereunder through reformation of contract, specific performance, injunction or similar equitable relief. For the purposes of this Paragraph, both parties shall submit to the jurisdiction of, and waive any objection to the venue of, the courts of the Province of Ontario, Canada.