

BLACKRAINBOW - END USER LICENSE AGREEMENT [EULA]

EULA Version 3.30 February, 2020.

1.0 EULA. THIS EULA IS A LEGALLY BINDING AGREEMENT BETWEEN BLACKRAINBOW AND THE LICENSEE FOR USE OF THE SOFTWARE. THE EULA CONSISTS OF THESE TERMS AND THE QUOTATION. BY INSTALLING THE SOFTWARE OR OTHERWISE USING THE SOFTWARE, LICENSEE ACKNOWLEDGES THAT LICENSEE HAS READ, UNDERSTANDS, AND AGREES TO BE BOUND BY THE TERMS OF THIS EULA. UNLESS LICENSEE AGREES WITH THE TERMS OF THIS EULA, LICENSEE IS NOT AUTHORIZED TO USE THE SOFTWARE. BY INSTALLING OR OTHERWISE USING ANY UPDATES AND/OR UPGRADES, LICENSEE AGREES TO BE BOUND BY ANY LICENSE TERMS FOR THE UPDATES AND/OR UPGRADES. IF LICENSEE DOES NOT AGREE TO THE LICENSE TERMS FOR UPDATES AND/OR UPGRADES, LICENSEE IS NOT AUTHORIZED TO USE THE UPDATES AND/OR UPGRADES.

1.1 Definitions. In this EULA: (a) “API” means a set of commands, functions, protocols, and/or objects that can be used to create software or interact with external systems; (b) “Commencement Date” means the earlier of the commencement date set out in the Quotation or the date on which Licensee first installs or uses the Software or otherwise agrees to be bound by the terms of this EULA; (c) “Confidential Information” means: (i) information, whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to BlackRainbow or any Related Body Corporate of BlackRainbow (including but not limited to any specifications, formulae, know how, concepts, inventions, ideas, software, designs, copyright, trade secrets or any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter); (ii) negotiations in relation to, and the terms of, this EULA; (iii) information designated as confidential by BlackRainbow; and (iv) information that is by its nature confidential; (d) “Documentation” means any documentation which accompanies the Software and is provided by BlackRainbow to Licensee; (e) “EULA” means this End User License Agreement and includes the Quotation; (f) “Expiry Date” means the expiry date set out in the Quotation; (g) “Initial Term” means the period from the Commencement Date to the Expiry Date; (h) “Intellectual Property Rights” means any present and future rights conferred by statute, common law or equity throughout the world including rights in respect of or in connection with any confidential information, copyright, trademarks, service marks, designs, patents, circuit layouts, business names, domain names, inventions or other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registered or registrable and includes any right to apply for the registration, renewal and extension of such rights; (i) “License Fee” means the license fee set out in the Quotation; (j) “Licensee” means the entity who acquires the license rights from BlackRainbow to use the Software pursuant to this EULA; (k) “Licensee Data” means all electronic data or information submitted to the Software by Licensee or any member of Licensee’s Personnel; (l) “BlackRainbow” is the owner of the Software and the IP; (m) “BlackRainbow License Key” is an encrypted file provided by BlackRainbow, which unlocks the Software and enables the use of the Software by a User; (n) “Person” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity; (o) “Personnel” means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party; (p) “Quotation” means the quotation(s) or other document(s) provided by BlackRainbow to Licensee from time to time setting out details in relation to Licensee’s use of the Software; (q) “Related Body Corporate” means a body corporate that is, in relation to another body corporate: (i) a holding company of that other body corporate; (ii) a subsidiary of that other body corporate; or (iii) a subsidiary of a holding company of that other body corporate; (r) “Renewal Term” means any further term granted by BlackRainbow; (s) “SDK” means a set of development tools that allows for the creation of any applications, including but not limited to, software package, software framework, hardware platform, computer system, operating system, or similar platform; (t) “Software” means the object code version of the software (including any upgrades or updates) supplied by BlackRainbow to Licensee; (u) “Taxes” means any present or future tax, fee, levy, duty, charge, withholding, penalty, fine, impost or interest imposed by any government or governmental, semi-governmental or administrative body, department, commission, authority, agency, minister, statutory corporation, instrumentality or entity (which is not the subject of a valid certificate of exemption) including but not limited to any tax in relation to sales, use, property, value added, goods and services, turnover, stamp duty, interest equalization, business, occupation, excise, income, profits or receipts; (v) “Term” means the Initial Term plus any Renewal Term(s); (w) “Territory” means the territory set out in the Agreement (or, in the absence of a territory in the Quotation, worldwide except for countries which are the subject of any United States trade restriction, export control or embargo); and (x) “User” means any person who uses the Software.

2. License.

2.1 Grant of License. Subject to the terms of this EULA, in consideration of payment of the License Fee by Licensee, BlackRainbow hereby grants to Licensee a non-exclusive, non-transferable, non-assignable, revocable, license to use the Software for Licensee’s internal use only in the Territory for the Term in accordance with the terms of this EULA.

2.2 Prohibitions. Licensee must not: (a) copy, modify, adapt, translate, create a derivative work of, clone, reverse engineer, reverse assemble, disassemble or decompile the Software or any part of the Software (or any accompanying hardware) or otherwise attempt to discover any part of the source code of the Software; (b) use any unauthorized modified version of the Software, including (without limitation) for the purpose of building similar or competitive software or for the purpose of obtaining unauthorized access to the Software; (c) use the Software in a manner that is contrary to any law or in violation of any Intellectual Property Rights or privacy rights; (d) publish, post, upload or otherwise transmit Licensee Data that contains any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with information or property of any person; (e) use or knowingly permit the use of any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Software; (f) not used; (g) permit or authorize any third party to use or copy the Software; (h) rent the use of the Software to any third parties; (i) gain revenue, profit or benefit from the use of any trial Software; (j) take any action that may compromise or jeopardize BlackRainbow's Intellectual Property Rights; (k) remove or deface any confidentiality, copyright or other proprietary notice placed on the Software or Documentation; (l) make any representations or warranties to any third parties that could be construed as being representations or warranties from BlackRainbow in relation to the Software or any other matter; (m) use the Software in any way that involves service bureau use, outsourcing, renting, SAAS or cloud services, reselling, sublicensing, or time-sharing of the Software; (n) duplicate the virtual environment where the Software resides, to the extent that such duplication would exceed the Licensee's authorized usage of the Software; or (o) do any other thing in relation to the Software specifically prohibited by BlackRainbow in the Documentation or otherwise communicated by BlackRainbow to Licensee in writing.

2.3 Fees. Licensee will pay the License Fee, and any other fees set forth in the Quotation, to BlackRainbow within 30 days of the date of each invoice. Compound interest will accrue on any outstanding amounts at a rate of 5% per month or the maximum rate allowed by law, whichever is lesser. Licensee will pay any Taxes, in relation to the Software or this EULA. BlackRainbow may issue Licensee a temporary license for the Software until the License Fee has been paid in full as described herein. Should Licensee not pay the applicable License Fee as set forth herein, BlackRainbow may suspend Licensee's use of the Software. All fees due hereunder are non-refundable.

2.4 Synchronization. If BlackRainbow has granted multiple licenses to Licensee that expire in a particular quarter, BlackRainbow may synchronize the invoicing dates for such licenses to the last day of that quarter.

2.5 Use of APIs and/or SDKs and/or Scripts and/or Bespoke Applications (ASSBs). At its sole and absolute discretion, BlackRainbow may provide BlackRainbow ASSBs to Licensee, which may be used in conjunction with the Software. BlackRainbow provides these ASSBs on an "AS IS" basis and may not provide support for the ASSBs. Licensee assumes all risk of use of the ASSBs in connection with the Software. The restrictions set forth in this EULA that apply to Software, also apply to ASSBs. As between BlackRainbow and Licensee, Licensee acknowledges that BlackRainbow owns title and all intellectual property rights to the ASSBs. BlackRainbow may terminate Licensee's use of the ASSBs on written notice to Licensee.

2.6 Confidential Information. Licensee acknowledges the Software and Documentation may contain Confidential Information. Licensee is not entitled to use, disclose or copy the Confidential Information other than strictly in accordance with this EULA and will keep the Confidential Information secure at all times.

2.7 Compliance. Licensee warrants that Licensee's use of the Software will comply with all laws, treaties, regulations, and conventions (including but not limited to laws in relation to privacy, electronic communications and anti-spam).

3. Intellectual Property Rights.

3.1 BlackRainbow's Intellectual Property. Licensee acknowledges BlackRainbow owns, or is an authorized licensee of, all rights, title and interest in all Intellectual Property Rights in the Software and the Documentation. The license granted to Licensee pursuant to this EULA does not convey any express or implied Intellectual Property Rights in the Software or the Documentation. BlackRainbow's marks, logos and product names are marks of BlackRainbow and Licensee agrees not to use such marks without BlackRainbow's prior written consent.

3.2 Restrictions. Licensee: (a) may make an unlimited number of copies of the Software and Documentation for internal use by the Licensee's Personnel and for backup and archival purposes only; (b) not used; (c) may, if BlackRainbow has granted multiple licenses to Licensee, use the Software contemporaneously on multiple computers up to the maximum number of licenses granted; (d) not used;

3.3 Unauthorized Use. If Licensee becomes aware of any unauthorized use of the Software, Licensee will immediately notify BlackRainbow. Licensee will, at Licensee's cost, comply with all reasonable directions of BlackRainbow and take all reasonable steps to prevent the unauthorized use or dissemination of the Software. Without derogating from Licensee's obligations under this EULA, BlackRainbow will own all Intellectual Property Rights in any copy, translation, modification, adaptation or derivation of the Software or Documentation including but not limited to any improvements or developments in the Software or Documentation.

3.4 Feedback. BlackRainbow will receive a royalty-free, worldwide, transferable, sub-licensable, irrevocable, and perpetual license to use or incorporate into the Software or Documentation any suggestions, enhancement requests, recommendations or other feedback provided by Licensee or Users.

3.5 Open Source and Third Party Intellectual Property. The Software may incorporate, be distributed with, or depend upon, certain software or other intellectual property that may be considered “open source,” “public use” or is otherwise subject to an open source license (“Open-Source Components”). Any use of the Open-Source Components by Licensee shall be governed by, and subject to, the terms and conditions of the Open-Source Components described in the Documentation. The Software may also contain third party software or other intellectual property (“Third Party Software”). Third Party Software is licensed for use solely with the Software and may not be used on a stand-alone basis or with any other third party products unless authorized by BlackRainbow in writing. Licensee agrees not to use any marks of third parties without the prior written consent of those third parties.

4. Terms of Service.

4.1 User Access. Licensee will authorize access to and assign unique passwords and usernames to each User. User logins are for designated Users and cannot be shared or used by more than one User, but any User login may be reassigned to another User. Licensee is responsible for all activities conducted under User logins.

4.2 Security. Licensee shall maintain and enforce technical and organizational safeguards against accidental, unlawful or unauthorized access to or use of the Software that ensures a level of security appropriate to the risks presented by the use of any software that handles sensitive data, consistent with best industry practice and standards. Licensee will be responsible for the security, confidentiality and use of usernames and passwords. Licensee must prevent unauthorized access to or use of usernames and passwords.

4.3 Support and Maintenance. The license grant is expressly subject to Licensee’s purchase of support and maintenance services for the Software (“SMS”). SMS will be provided pursuant to BlackRainbow’s Support and Maintenance Service Agreement

5. Suspension or Termination.

5.1 Infringement. BlackRainbow may suspend access to the Software or terminate this EULA if BlackRainbow reasonably considers that Licensee or any User has infringed, or threatens to infringe, BlackRainbow’s Intellectual Property Rights.

5.2 Non-payment. BlackRainbow may suspend access to the Software or terminate this EULA if any amount due and payable by Licensee is unpaid after BlackRainbow has sent two (2) notices to Licensee seeking payment and at least thirty (60) days have passed since the date of the first notice;

5.3 Breach. Without derogating from BlackRainbow’s rights under this EULA or otherwise, if Licensee is in breach of this EULA, BlackRainbow may provide a written notice to Licensee specifying the breach and requiring Licensee to remedy the breach within 7 days and if Licensee does not remedy the breach within 7 days after receiving such notice, BlackRainbow may suspend access to the Software or terminate this EULA.

5.4 Harm. BlackRainbow may suspend access to the Software if BlackRainbow reasonably considers that any part of the Software is being used for illegal activity or the use of the Software is causing material and ongoing harm to BlackRainbow or any third party. BlackRainbow will endeavor to provide reasonable notice of any such suspension to Licensee.

5.5 No Liability. Licensee agrees BlackRainbow will not be liable to Licensee or any third party for any loss, liability, cost, payment, damages, debt or expense arising directly or indirectly from any suspension or termination in accordance with this clause.

6. Consequences of Termination.

6.1 License Ends. Upon the expiration or termination of this EULA: (a) all rights granted to Licensee under this EULA will cease; (b) Licensee will have no rights to use the Software and must cease using the Software; (c) Licensee must take such action as reasonably directed by BlackRainbow for the protection and preservation of the Confidential Information, BlackRainbow’s Intellectual Property Rights and all other items of BlackRainbow’s property; and (d) not do any act or thing which may injure, impair or reduce the goodwill or reputation of BlackRainbow.

6.2 Payment. Upon the expiration or termination of this EULA, all amounts owing by Licensee to BlackRainbow will become immediately due and payable and Licensee will immediately pay all such amounts to BlackRainbow. If this EULA is

terminated for any reason set out in clause 5, BlackRainbow will, in addition to any other rights under this EULA or otherwise, be entitled to all of the License Fees payable under this EULA for the entire Term.

7. No Warranty.

7.1 WARRANTY DISCLAIMER. BLACKRAINBOW MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS WITH RESPECT TO THE SOFTWARE (INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR SUITABILITY FOR LICENSEE'S REQUIREMENTS). WITHOUT LIMITING THE FOREGOING, BLACKRAINBOW DOES NOT WARRANT THAT THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS OR THAT ANY USE OF THE SOFTWARE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT ANY ERRORS OR DEFECTS IN THE SOFTWARE WILL BE CORRECTED OR THAT THE SOFTWARE WILL DETECT OR CORRECT ANY THREATS OR HARMFUL COMPONENTS. THE SOFTWARE IS PROVIDED TO LICENSEE ON AN 'AS IS' AND 'AS AVAILABLE' BASIS AND FOR COMMERCIAL USE ONLY. LICENSEE IS RESPONSIBLE FOR DETERMINING WHETHER ANY INFORMATION GENERATED FROM USE OF THE SOFTWARE IS ACCURATE AND SUFFICIENT FOR LICENSEE'S PURPOSES.

7.2 Remedy. If the Software does not perform in accordance with any warranty implied by law that cannot be excluded (or BlackRainbow expressly provides a warranty to Licensee), and Licensee provides written notice to BlackRainbow during the warranty period, BlackRainbow's entire liability and Licensee's sole remedy will be for BlackRainbow to either (at BlackRainbow's option) correct, repair or replace the Software or affected part of the Software or issue a prorated refund of the License Fee. Any corrected, repaired or replaced Software will be warranted for the remainder of the original warranty period.

7.3 Exclusions. No warranty will apply if: (a) the use was pursuant to a demo or trial period; (b) Licensee has previously used the Software pursuant to a demo or trial period; (c) the issue relates to use of a pre-release alpha and beta version of the Software; (d) Licensee has used the Software other than in accordance with the Documentation; (e) the Software has been modified in any way without BlackRainbow's prior written consent; (f) the issue relates to the incorrect installation of the Software; (g) the issue relates to the unauthorized modification of the Software; (h) the issue relates to the nature, use or operation of hardware; (i) the issue relates to use of any third party software other than prescribed in the Documentation; (j) the issue relates to any other items not provided by BlackRainbow; (k) Licensee has used the Software in contravention of any law, treaty, regulation, or convention; (l) Licensee has infringed any Intellectual Property Rights; or (m) Licensee has breached any of the terms of this EULA.

8. Liability and Indemnity.

8.1 DISCLAIMER OF LIABILITY. EXCEPT FOR CLAIMS OF INTENTIONAL MISCONDUCT, GROSS NEGLIGENCE, DEATH OR PERSONAL INJURY, OR ANY CLAIM THAT CANNOT BE LIMITED BY LAW, BLACKRAINBOW WILL NOT BE LIABLE TO LICENSEE (UNDER STATUTE, CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) IN RELATION TO ANY (A) SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, OR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS (INCLUDING BUT NOT LIMITED TO ANY BUSINESS INTERRUPTION, OR ANY LOSS OR CORRUPTION OF DATA, OR ANY LOSS OF ACTUAL OR ANTICIPATED PROFITS, REVENUE, SAVINGS, PRODUCTION, BUSINESS, CONTRACTS, OPPORTUNITY, ACCESS TO MARKETS, GOODWILL, REPUTATION, PUBLICITY, INFORMATION, OR USE), OR ANY REMOTE, ABNORMAL, UNFORESEEABLE OR SIMILAR LOSS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES OR LOSSES WERE IN THE CONTEMPLATION OF EITHER PARTY; OR (B) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST BLACKRAINBOW MORE THAN ONE YEAR AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE. LICENSEE AGREES THAT THE CONSIDERATION PAYABLE BY LICENSEE UNDER THIS EULA DOES NOT INCLUDE CONSIDERATION FOR THE ASSUMPTION OF THE RISK OF ANY SUCH DAMAGES OR LOSSES. TO THE EXTENT PERMITTED BY LAW, LICENSEE USES THE SOFTWARE AT LICENSEE'S OWN RISK.

8.2 LIMITATION OF LIABILITY. EXCEPT FOR CLAIMS OF INTENTIONAL MISCONDUCT, GROSS NEGLIGENCE, DEATH OR PERSONAL INJURY, OR ANY CLAIM THAT CANNOT BE LIMITED BY LAW, BLACKRAINBOW'S LIABILITY TO LICENSEE IN RELATION TO THE SOFTWARE AND THIS EULA (WHETHER UNDER STATUTE, CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) WILL BE LIMITED TO THE AMOUNT OF THE LICENSE FEE PAID BY LICENSEE IN ACCORDANCE WITH THIS EULA. LICENSEE AGREES THAT THE CONSIDERATION PAYABLE BY LICENSEE UNDER THIS EULA DOES NOT INCLUDE CONSIDERATION FOR THE ASSUMPTION OF THE RISK OF ANY FURTHER POTENTIAL DAMAGES OR LOSSES.

8.3 Indemnity. Licensee will, at Licensee's expense, indemnify BlackRainbow in relation to any loss, liability, cost, payment, damages, debt or expense, or any claim, demand, action, suit or proceeding, arising directly or indirectly in relation to any use of the Software, negligence, infringement of Intellectual Property Rights, use or disclosure of any Confidential

Information, breach of this EULA or breach of any law, treaty, regulation, or convention by Licensee, any member of Licensee's Personnel or any Related Body Corporate of Licensee.

9. General.

9.1 Responsibility. Licensee is responsible and liable for each member of Licensee's Personnel and each Related Body Corporate of Licensee and any act, omission or breach by any member of Licensee's Personnel or any Related Body Corporate of Licensee will be deemed to be an act of Licensee.

9.2 Force Majeure. BlackRainbow will not be liable for any failure or delay in performing any obligation under this EULA where such failure or delay is due to any cause beyond BlackRainbow's reasonable control (including but not limited to any natural catastrophe, governmental act or omission, law or regulation, labor strike or difficulty, transportation stoppage or slowdowns or inability to procure personnel, parts or materials) and, if any such cause prevents or delays performance for more than thirty (30) days, BlackRainbow may terminate this EULA.

9.3 Audit. BlackRainbow may audit Licensee's compliance with the terms of this EULA at any time on reasonable notice to Licensee and Licensee will provide access to any hardware, software, systems, documents and Personnel of Licensee, and will provide all reasonable co-operation to BlackRainbow for the purposes of any such audit. Each party will bear its own costs of the audit, provided that should Licensee be found to be in breach of this Agreement, Licensee shall bear all the costs of the audit.

9.4 Disputes. If Licensee has any dispute or disagreement with BlackRainbow in relation to any matter relating to this EULA, Licensee will provide a written notice to BlackRainbow setting out all relevant details and background information in relation to the dispute and Licensee's proposal for resolution of the dispute. If the parties are unable to resolve any dispute or agreement within thirty (30) days of either party receiving written notice thereof, either party may initiate arbitration in accordance with the provisions set forth below in this EULA.

9.5 Relationship. This EULA does not create any partnership, joint venture, agency or relationship of employment between the parties

9.6 Third Party Beneficiaries; Rights. This EULA is entered into solely for the benefit of BlackRainbow and Licensee. No third party will have the right to make any claim or assert any right under it, and no third party will be deemed a beneficiary of this EULA. Solely in the event that the law of England and Wales applies to this Agreement, the Contracts (Rights of Third Parties) Act 1999 (the "Act") shall not apply to this Agreement and no Person other than the parties hereto (which term shall, for the purposes of this clause, include all permitted assignees) and BlackRainbow Affiliates shall have any rights under the Act, nor shall this Agreement be enforceable under the Act by any Person other than the parties to it.

9.7 Assignment. Licensee may not assign any of its rights under this EULA without the prior written consent of BlackRainbow. Any purported assignment or delegation in violation of this clause and the License shall be null and void. An amalgamation, merger, change in control, re-organisation or other similar transaction by the Licensee (including, but not limited to an asset sale, stock sale, reverse merger, reverse triangular merger) shall require consent pursuant to this Section.

9.8 Severability. If any provision, or the application of any provision, of this EULA is prohibited, invalid, void, illegal or unenforceable in any jurisdiction: (a) this will not affect the validity and enforceability of the provision or part in other jurisdictions; (b) the provision or part will only be ineffective to the extent of the prohibition, invalidity, voidness or illegality; and (c) the provision or part will be severed and will not affect the validity or enforceability of the remaining provisions or parts of this EULA.

9.9 Precedence. If there is any conflict or inconsistency between the terms of the body of this EULA and any other Terms and Conditions, the terms of this EULA will take precedence.

9.10 Entire Agreement. This EULA supersedes all prior undertakings, arrangements and agreements and constitutes the entire agreement between the parties.

9.11 Waiver. Any waiver, variation or amendment of a right or term under this EULA must be in writing and signed by the party granting the waiver and will not operate as a waiver in relation to any subsequent matter. Any failure, delay, forbearance or indulgence by a party in an exercise, or partial exercise, of a right arising under this EULA will not result in a waiver of that right or prejudice or restrict the rights of the party.

9.12 Cumulative Rights. The rights arising out of this EULA do not exclude any other rights of either party. Each indemnity in this EULA is a continuing obligation that is separate and independent from the other obligations under this EULA. BlackRainbow is not obliged to take any action, or incur any expense, before enforcing any indemnity under this EULA.

Each exclusion, limitation, indemnity or other benefit set out in this EULA for the benefit of BlackRainbow will also be held by BlackRainbow for the benefit of each member of BlackRainbow's Personnel.

9.13 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and in English language, and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Quotation (or to such other address that may be designated by a Party from time to time).

9.14 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS EULA IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS EULA, INCLUDING ANY EXHIBITS, SCHEDULES, ATTACHMENTS OR APPENDICES ATTACHED TO THIS EULA AND THERETO, THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, OR THE VALIDITY, PROTECTION, INTERPRETATION OR ENFORCEMENT THEREOF.

9.15 Arbitration. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY DISPUTE, CONTROVERSY OR CLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY (INCLUDING, BUT NOT LIMITED TO, ANY CLAIM OF FRAUD OR MISREPRESENTATION) ARISING OUT OF OR RELATING TO THIS EULA, THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, OR THE BREACH, TERMINATION, OR VALIDITY THEREOF, ("DISPUTE"), SHALL BE SUBMITTED TO MANDATORY, FINAL AND BINDING ARBITRATION BEFORE THE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION, IN ACCORDANCE WITH THE INTERNATIONAL ARBITRATION RULES IN EFFECT AT THE TIME OF FILING OF THE DEMAND FOR ARBITRATION.

The Arbitration will take place as follows:

(a) There shall be three (3) arbitrators. The Parties each will select one (1) arbitrator within thirty (30) days of the receipt by respondent of a copy of the demand for arbitration. The two (2) arbitrators so appointed shall nominate the third and presiding arbitrator (the "**Chair**") within thirty (30) days of the appointment of the second arbitrator (the three arbitrators shall be collectively referred to as the "**Tribunal**"). If either Party fails to appoint an arbitrator, or if the two-party appointed arbitrators fail to appoint the Chair, within the time periods specified herein, such arbitrator shall, at the request of either Party, be appointed by the International Centre for Dispute Resolution.

(b) The language of the arbitration shall be English. The place of arbitration shall be decided by the Tribunal

(c) The arbitration shall be the sole and exclusive forum for resolution of the Dispute, and the award shall be in writing, state the reasons for the award and be final and binding. Judgment thereon may be entered, registered or filed for enforcement in any court of competent jurisdiction and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(d) By agreeing to arbitration, the Parties do not intend to deprive any court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies as may be available under the jurisdiction of a court, the Tribunal shall have full authority to grant provisional remedies and to direct the Parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any Party to respect the arbitral tribunal's orders to that effect. In any such judicial action each of the Parties irrevocably consents to service of process by first-class certified mail, return receipt requested, postage prepaid to the address set forth herein.

(d) The prevailing Party, as determined by the Tribunal, shall be entitled to recover its reasonable costs and, attorneys' fees and costs from the non-prevailing Party. The non-prevailing Party shall be responsible for all fees and costs of the Tribunal. The Tribunal may not award punitive damages.

(e) Except as may be required by applicable law, the Parties shall preserve the confidentiality of all aspects of the arbitration.