VelocityEHS

Software End User License EULA (eStore)

This VelocityEHS "**End User License Agreement**" is between VelocityEHS Holdings, Inc. ("**VelocityEHS**") and the entity indicated on the applicable Customer Order Form (defined below as "**Customer**").

BY CHECKING THE "I ACCEPT THE TERMS AND CONDITIONS" BOX AND COMPLETING THE ONLINE ORDERING PROCESS, CUSTOMER ACCEPTS ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AS PUBLISHED ON [VELOCITYEHS' WEBSITE](#) (AS MAY BE RELOCATED BY VELOCITYEHS FROM TIME TO TIME). CUSTOMER AGREES THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY CUSTOMER AND LEGALLY BINDING BETWEEN CUSTOMER AND VELOCITYEHS. IF CUSTOMER DOES NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, DO NOT ACCESS OR USE THE SERVICES. VELOCITYEHS MAY MODIFY THIS AGREEMENT AS SET FORTH IN SECTION 12(g) (MODIFICATIONS TO THIS AGREEMENT).

If Customer enters into this Agreement on behalf of a company or other legal entity, Customer represents that Customer has the authority to bind such entity and its Affiliates to this Agreement. If Customer does not have such authority, or if Customer does not agree with the terms and conditions set forth in this Agreement, Customer must not accept this Agreement and Customer must not use the Software.

1. SOFTWARE PRODUCTS

    (a) **Software**. In order to use the Software under this EULA, Customer must activate Customer's copy of the Software with the valid license key(s) or activation code(s) provided to Customer ("**Product Key**") at the time of purchase in accordance with the scope of use and other terms specified for each type of Software, the Documentation, and as set forth in this Section 1 of this EULA. Except as set forth herein, any terms which apply to a Software product (such as VelocityEHS Server) also apply to any add-on features to that Software product.

    (b) **Usage Metrics**. Your license to Software will be subject to User-Based restrictions, as identified in the Documentation and on the applicable Customer Order Form, or if there is no Customer Order Form, as otherwise designated by VelocityEHS.

        i. **User-Based License**: If Customer's Software license is designated as User-Based, the total count of Authorized Users enabled to use such Software must not exceed the number of licenses purchased on the applicable Customer Order Form(s) or received by Customer from VelocityEHS Your purchase of "User-Based" licenses may be further specified on the applicable Customer Order Form as included in a specified Software package, and the technical capabilities available to each Authorized User shall be as set forth in the Documentation.

2. LICENSE

    (a) **Grant of License**. Subject to all of the terms and conditions of this EULA, and except as set forth in Section 5 (Term and Termination), during the applicable License Term, VelocityEHS grants Customer a limited, worldwide, non-transferable, non-sublicensable, non-exclusive license to use the Software [for which Customer have been issued a Product Key by VelocityEHS,] but only in accordance with: (a) the Documentation; (b) the restrictions in Section 1 (Software Products), Section 2(d) (License Restrictions) and any restrictions on the applicable Customer Order Form; and (c) the number of Authorized Users (as applicable) on the platforms and configurations or any other restrictions mutually agreed upon by Customer and an Authorized Partner. You may allow Customer's Contractors and Affiliates to use the Software in accordance with this EULA, provided Customer shall remain liable for all acts and omissions of Customer's Affiliates and Contractors as if their acts or omissions were Customer's own.

    (b) **Archive Copies**. You are entitled to make a reasonable number of copies of the Software for archival purposes.

    (c) **Electronic Delivery**. All Software and Documentation shall be delivered by electronic means unless otherwise specified on the applicable Customer Order Form. Software shall be deemed delivered when it is made available for download by Customer ("**Delivery**").

(d) **License Restrictions**. As a condition of Customer's license, Customer shall not (and shall not allow any third party to): (a) decompile, disassemble, or otherwise reverse engineer the Software or Third Party Code or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Software or Third Party Code by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions, or as permitted by an applicable Open Source Software license); (b) distribute, sell, sublicense, rent, lease or use the Software, Third Party Code (or any portion thereof) for time sharing, hosting, service provider or like purposes; (c) remove any product identification, proprietary, copyright trademark, service mark, or other notices contained in the Software, Third Party Code; (d) modify any part of the Software, Third Party Code, create a derivative work of any part of the Software, Third Party Code, or incorporate the Software, Third Party Code into or with other software, except to the extent expressly authorized in writing by VelocityEHS or as permitted by an applicable Open Source Software license; (e) publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Software; (f) utilize any equipment, device, software, or other means designed to circumvent or remove any form of Product Key or copy protection used by VelocityEHS in connection with the Software, or use the Software together with any authorization code, Product Key, serial number, or other copy protection device not supplied by VelocityEHS or through an Authorized Partner; (g) use the Software to develop a product which is competitive with any VelocityEHS product offerings; (h) use unauthorized Product Keys or keycode(s) or distribute or publish keycode(s) except as may be expressly permitted by VelocityEHS in writing; (i) as applicable to User-Based licenses, enable access to the Software for a greater number of Authorized Users than the sum quantity of licenses purchased on the applicable Customer Order Form(s); (j) as applicable to User-Based licenses, reassign license rights between Authorized Users so frequently as to enable a single license to be shared between multiple users; (k) assert, nor will Customer authorize, assist or encourage any third-party to assert, against VelocityEHS or any of its affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Software Customer has purchased or used hereunder; or (l) use the Software to develop a product that converts any VelocityEHS file format to an alternative report file format used by any general-purpose report writing, data analysis or report delivery product that is not the property of VelocityEHS.

3. OWNERSHIP

Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, VelocityEHS and its licensors have and will retain all rights, title and interest (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Software, Third Party Code, Deliverables, and all copies, modifications and derivative works thereof (including any changes which incorporate any of Customer's ideas, feedback or suggestions). You acknowledge that Customer are obtaining only a limited license right to the Software, Third Party Code and that irrespective of any use of the words "purchase", "sale" or like terms hereunder no ownership rights are being conveyed to Customer under this EULA or otherwise.

4. PAYMENT

Customer shall pay all fees associated with the Software licensed via credit card through the online ordering process as set forth in the applicable Customer Order Form. All fees are in USD, are non-refundable once paid, and will include all applicable taxes.

5. TERM AND TERMINATION

(a) **Term of License**. Unless sooner terminated as provided herein, Customer is authorized to use the software for an indefinite time period under a perpetual license model.

(b) **Term of EULA**. This EULA commences on the Effective Date and expires at such time as all License Terms have expired in accordance with their own terms (the "**Term**"). Either party may terminate this EULA (including all related Customer Order Forms): (a) if the other party fails to cure any material breach of this EULA within thirty (30) days after written notice of such breach including without limitation Customer's failure to pay, provided that VelocityEHS may terminate

this EULA and the Software license(s) (including termination of the Software license(s) if this EULA has already expired or has been terminated) immediately upon any breach of Section 2(d) (License Restrictions) (b) if the other party ceases operation without a successor; (c) in order to comply with applicable laws, regulations, or requests of governmental entities, including U.S. economic sanctions laws, regulations, and requirements, and applicable foreign import and export controls; or (d) if the other party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within sixty (60) days). Unless otherwise specified herein, termination is not an exclusive remedy and the exercise by either party of any remedy under this EULA will be without prejudice to any other remedies it may have under this EULA, by law, or otherwise.

(c) **Termination**. Upon any expiration or termination of this EULA, Customer shall cease any and all use of any Software, destroy all copies thereof and so certify to VelocityEHS in writing, and immediately pay any outstanding fees due hereunder.

(d) **Survival**. Sections 2(d) (License Restrictions), 3 (Ownership), 4 (Payment), 5 (Term and Termination), 6(d) (Disclaimer of Warranties), 7 (Indemnification), 8 (Limitation of Liability), 9 (Confidential Information), and 11 (General) shall survive any termination or expiration of this EULA.

6.   LIMITED WARRANTIES AND DISCLAIMER

(a) **Limited Warranty**. VelocityEHS warrants to Customer that for a period of thirty (30) days from Delivery (the "**Warranty Period**") the Software shall operate in substantial conformity with the Documentation. VelocityEHS does not warrant that Customer's use of the Software will be uninterrupted or error-free or that any security mechanisms implemented by the Software will not have inherent limitations. VelocityEHS' sole liability (and Customer's exclusive remedy) for any breach of this warranty shall be, in VelocityEHS' sole discretion, to use commercially reasonable efforts to provide Customer with an error-correction or work-around which corrects the reported non-conformity, or if VelocityEHS determines such remedies to be impracticable within a reasonable period of time, to refund the license fee paid for the applicable Software. VelocityEHS shall have no obligation with respect to a warranty claim unless notified of such claim within the Warranty Period. For the avoidance of doubt, this warranty applies only to the initial Delivery of Software under an Customer Order Form and does not renew or reset, for example, with renewal License Terms or the delivery of Software updates or maintenance releases or Product Keys.

(b) **Exclusions**. The above warranty shall not apply: (a) if the Software is used with hardware or software not authorized in the Documentation; (b) if any modifications are made to the Software by Customer or any third party; (c) to defects in the Software due to accident, abuse or improper use by Customer; or (d) to any Evaluation Version or other Software provided on a no charge or evaluation basis.

(c) **Mutual Warranties**. Both parties each hereby warrant to the other that: (a) it has the authority to enter into the EULA, to grant the rights granted by it under the EULA, and to perform its obligations under the EULA; and (b) it will comply with all applicable laws and regulations in effect during the term of the EULA as they apply to such party's rights obligations under the EULA.

(d) **Limited Warranties and Disclaimer**. THIS SECTION 6 IS A LIMITED WARRANTY AND, EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6, THE SOFTWARE, INCLUDING WITHOUT LIMITATION THE MAPS AND THE THIRD-PARTY CODE, AND ALL SERVICES ARE PROVIDED "AS IS". NEITHER VELOCITYEHS NOR ITS LICENSORS MAKES ANY OTHER WARRANTIES, CONDITIONS OR UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. YOU MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE WARRANTY PERIOD.

7. INDEMNIFICATION

(a) **Indemnification by VelocityEHS**. VelocityEHS will indemnify, defend, and hold Customer harmless from and against any and all losses, damages, liabilities, or costs ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Claim**") that the Software as provided to Customer, or any use of the Software in accordance with this EULA, infringe or misappropriate such third party's U.S. copyright or trade secret rights. If such a Claim is made, Customer will permit VelocityEHS, at VelocityEHS's sole discretion, to (i) modify or replace the Software, or component or part thereof, to make it non-infringing, or (ii) obtain the right for Customer to continue use the Software. If VelocityEHS determines that neither alternative is reasonably available, VelocityEHS may terminate this EULA, in its entirety or with respect to the affected component or part, effective immediately on written notice, and refund Customer any prepaid fees covering the remainder of the term of the terminated Customer Order Form. The indemnification and defense obligations of this Section 7(a) will not apply to the extent that the Claim arises from: (A) use of the Software in combination with data, software, hardware, equipment, or technology not provided by VelocityEHS or authorized by VelocityEHS in writing; (B) modifications to the Software not made by VelocityEHS; (C) a Claim arising from Software for which there is no charge; (D) a Claim arising from Customer's use of the Software in violation of this EULA. This Section 7(a) states VelocityEHS's sole liability to Customer, and Customer's exclusive remedy against VelocityEHS, for any type of claim described in this Section.

(b) **Indemnification by Customer**. Except as prohibited by law, Customer will indemnify, hold harmless, and, at VelocityEHS's option, defend VelocityEHS from and against any Losses resulting from any third-party Claim alleging or based on: (i) infringement or misappropriation of any third- party intellectual property right arising out of or resulting from the Data or any other materials provided by Customer (or Customer's use of such Data or other materials in connection with the Software); (ii) Customer's use of the Software in an unlawful manner or in violation of this EULA and/or the Documentation; (iii) Customer's use of the Software in combination with data, software, hardware, equipment or technology not provided by VelocityEHS or authorized by VelocityEHS in writing; or (iv) modifications to the Software not made by VelocityEHS.

(c) **Cooperation**. In the event of any occurrence which may constitute grounds for indemnification under this Section 7, the party seeking indemnification agrees: (i) to notify the other party promptly of any occurrence with respect to which indemnification is sought, provided that any delay shall only relieve the indemnifying party of its obligations hereunder to the extent that the defense of such claim is prejudiced by such delay; (ii) to cooperate with the indemnifying party in the defense of any Claim with respect to which indemnification is sought; (iii) to tender to the indemnifying party the right to assume and control the defense of any Claim with respect to which indemnification is being sought, provided that the indemnifying party may not settle a Claim unless it unconditionally releases the indemnified parties of all liability; and (iv) not to cause or contribute to any occurrence, nor to take any action, or fail to take any action, which causes, contributes to, or increases the indemnifying party's liability hereunder.

8. LIMITATION OF LIABILITY

(a) **Limitation of Liability**. IN NO EVENT WILL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID OR PAYABLE BY CUSTOMER HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO LIABILITY. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY BUT WILL NOT LIMIT CUSTOMER AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER SECTION 4.

(b) **Exclusion of Consequential and Related Damages**. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION, OR PUNITIVE

DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY.

(c) **Exceptions to Limitations**. THE EXCLUSIONS AND LIMITATIONS IN SECTIONS 10(A) AND 10(B) WILL NOT APPLY TO: (I) EITHER PARTY'S BREACH OF CONFIDENTIALITY, (II) THE PARTIES' INDEMNIFICATION OBLIGATIONS, (III) CUSTOMER'S VIOLATION OF SECTION 1 (SOFTWARE PRODUCTS), OR (IV) CUSTOMER'S INFRINGEMENT OF VELOCITYEHS' INTELLECTUAL PROPERTY.

(d) **Disclaimer**. THE FOREGOING TERMS WITH RESPECT TO WARRANTIES, LIMITED REMEDIES, WARRANTY DISCLAIMER, AND LIMITED LIABILITY ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN VELOCITYEHS AND CUSTOMER. CUSTOMER ACKNOWLEDGES AND AGREES THAT VELOCITYEHS WOULD NOT BE ABLE TO PROVIDE THE SERVICES WITHOUT SUCH LIMITATIONS.

9. CONFIDENTIAL INFORMATION

(a) **Definition of Confidential Information**. "Confidential Information" means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential, including, but not limited to, the terms and conditions of this Agreement and all Customer Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. Customer's Confidential Information includes, but it not limited to, the Data. VelocityEHS's Confidential Information includes, but is not limited to, the Software. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is lawfully received without restriction from a third party, or (iv) was independently developed by the Receiving Party without knowledge or use of the Confidential Information.

(b) **Confidentiality Responsibilities**. The Receiving Party will: (i) use the same degree of care that it uses to protect its own confidential information of like kind (but not less than reasonable care); (ii) not use any of the Disclosing Party's Confidential Information for any purpose outside the scope of this Agreement, and (iii) except as otherwise authorized by the Disclosing Party in writing, limit access to the Disclosing Party's Confidential Information to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Customer Order Form to any third party other than its Affiliates, legal counsel, accountants, or any other person or entity that has, in Receiving Party's discretion, a reasonable need to know such information ("**Representatives**") without the Disclosing Party's prior written consent, provided that a party that makes any such disclosure to its Representatives will remain responsible for such Representatives' compliance with this Section 9.

(c) **Compelled Disclosure**. The Receiving Party may disclose Disclosing Party's Confidential Information to the extent required by law to do so, provided the Receiving Party gives the Disclosing Party prior written notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's expense, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party and the Disclosing Party does not contest the disclosure, the Disclosing Party will reimburse

the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

(d) **Privacy Policy**: Your use of the Software is subject to the VelocityEHS Privacy Policy.

10. GENERAL

(a) **Notices**. All notices and communications under this EULA will be in writing and will be delivered in person, mailed (postage prepaid), or delivered by overnight express carrier, to the address of the parties listed on the applicable Customer Order Form. All notices sent as provided in this Section will be deemed received if personally delivered or faxed with confirmation of receipt, then on the date of receipt; or if sent by overnight express carrier, on the next business day immediately following the day sent; or if by mail, four days after depositing in the U.S. Mail. In addition to and notwithstanding the foregoing, VelocityEHS may also provide such notice and communications to Customer under this EULA using the electronic e-mail addresses of the Customer contact listed on a Customer Order Form.

(b) **EULA to Governing Law and Jurisdiction**. This EULA will be governed in all respects by the laws of the State of Delaware, USA, without regard to conflicts of laws rules. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. Each party consents to the jurisdiction of the relevant court of Delaware, USA, for any legal action, suit, or proceeding arising under or relating to this EULA and agrees that any such action, suit, or proceeding may be brought only in such courts. Each party further waives any objection to the laying of venue for any such suit, action, or proceeding in such courts or for the purpose of enforcing any such decisions or rulings.

(c) **Attorneys' Fees**. In any arbitration, suit, action, or proceeding relating to this EULA, the prevailing party will have the right to recover from the other its costs and reasonable fees and documented expenses of attorneys, accountants, and other professionals incurred in connection therewith.

(d) **Export Compliance**. Each of Customer and VelocityEHS will at all times strictly comply with all applicable laws, rules, regulations, and governmental orders, now or hereafter in effect, relating to its performance of this EULA. Each of Customer and VelocityEHS further agree to make, obtain, and maintain in force at all times during the term of this EULA, all filings, registrations, reports, licenses, permits and authorizations required under applicable law, regulation or order in order for each party to perform its obligations under this EULA. The Software, Content, other technology VelocityEHS makes available, and any derivatives thereof, may be subject to export laws and regulations of the United States and other jurisdictions. Customer represents that it is not named on any U.S. government denied-party list. Customer shall not permit Users to access or use any Software or Content in a U.S.-embargoed country or in violation of any U.S. export law or regulation.

(e) **Anti-Corruption**. Each of Customer and VelocityEHS will comply fully with all applicable anti-corruption laws and regulations, including, for example, the United States Foreign Corrupt Practices Act, and any similar laws of any country in which each party operates.

(f) **Entire Agreement**. This EULA and any Customer Order Forms constitutes the entire agreement between VelocityEHS and Customer regarding Customer's use of the Software and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding Customer Order Forms) is for convenience only. Any conflict between this EULA and any such document will be resolved in favor of this EULA. In the event of any conflict between the applicable Customer Order Form and this EULA, the applicable Customer Order Form will control.

(g) **Modifications**. VelocityEHS may modify this EULA from time to time by giving notice to Customer through VelocityEHS's online user interfaces. Unless a shorter period is specified by VelocityEHS (e.g. due to changes in the law or exigent circumstances), the modifications become

effective upon renewal of Customer's current Subscription term or entry into a new Customer Order Form. Notwithstanding the foregoing, VelocityEHS may modify this EULA at its discretion to address technological, operational, or regulatory changes affecting delivery of the Software; provided, that VelocityEHS must give Customer no less than thirty (30) days' prior written notice of such modification. If Customer does not agree to such modified terms, Customer should discontinue its use of the Software. Customer may be required to click to accept or otherwise agree to the modified EULA in order to continue using the Software, and, in any event, continued use of the Software after the modified version of this EULA becomes effective will constitute Customer's acceptance of such modified version.

(h) **Assignment; Change in Control**. Customer may not assign any of its rights or obligations hereunder without VelocityEHS's prior written consent, which shall not be unreasonably withheld; provided, however, either party may assign this EULA in its entirety (together with all then-existing Customer Order Forms), without the other party's consent in connection with a merger, acquisition, or sale of all or substantially all of its assets. If Customer is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of a direct competitor of VelocityEHS, then VelocityEHS may terminate this EULA immediately upon written notice without any further liability. Subject to the foregoing, this EULA will bind and inure to the benefit of the parties, their respective successors, and permitted assigns.

(i) **Relationship of the Parties**. The parties are independent contractors. This EULA does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

(j) **No Third-Party Beneficiaries**. The provisions of this EULA are for the sole benefit of the parties hereto. There are no third-party beneficiaries to this EULA.

(k) **Waiver**. No failure or delay by either party in exercising any right under this EULA will constitute a waiver of that right. The waiver of any default by either party will not be deemed a continuing waiver and will apply solely to the instance to which such waiver is directed.

(l) **Severability**. If any provision of this EULA is held by a court of competent jurisdiction to be unenforceable or contrary to applicable law, the parties agree that the provision will be deemed modified to the least extent necessary to make it enforceable, and all other provisions of this EULA will remain unaffected.

(m) **Force Majeure**. In no event will either party be liable to the other party, or be deemed to have breached this EULA, for any delay or failure to perform its obligations under this EULA resulting from acts or causes beyond its reasonable control, including without limitation, acts of war, export regulations, third-party labor strikes, power failures, natural disasters, or other similar events ("**Force Majeure Events**"). In the event that either party is unable to perform any of its obligations under this EULA because of a Force Majeure Event, the party who has been so affected will promptly give notice to the other and will exercise all reasonable efforts to resume performance. The terms of this Section 10(m) will not apply to Customer's obligation to pay for Software in accordance with Section 4.

(n) **Marketing**. Customer hereby authorizes VelocityEHS to disclose that Customer is a customer of VelocityEHS and authorizes VelocityEHS to use Customer's trademarks (including logos) in connection with such disclosures. VelocityEHS acknowledges and agrees that all proprietary, intellectual property, and any other rights in and to Customer's name, logo, service marks, and/or trademarks are Customer's sole and exclusive property.

(o) **Federal Government End User Provisions**. In the event that the Software may be delivered to a federal government end user or for ultimate federal government use: VelocityEHS provides the Software solely in accordance with the following: Government technical data and software rights related to the Software include only those rights customarily provided to the public as specified in this EULA. 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 granted under these terms, it must negotiate with VelocityEHS to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

11. DEFINITIONS

(a) "**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with Customer. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of Customer's voting interests.

(b) "**Authorized User**" means those licensed uniquely identified individuals who are authorized by Customer to install and/or use the Software regardless of whether those individuals are actively using the Software at any given time. Licenses granted on an Authorized User basis may be permanently reassigned between uniquely identified individuals over time, but may not be reassigned so frequently as to enable the sharing of a single license between multiple users.

(c) "**Contractor**" means those independent third parties who perform services related to this EULA for Customer, but solely to the extent they are acting on Customer's behalf.

(d) "**Customer Data**" means data generated by Customer or Customer's Authorized User and used by or imported into the Software.

(e) "**Documentation**" means any supporting product help and technical specifications documentation provided by VelocityEHS with the Software to Customer. Documentation does not include white papers, community forums, training videos, tutorials, or other similar resources which may be made available for Customer's convenience.

(f) "**Effective Date**" means the date of Customer's first Customer Order Form or the initial Delivery date of the Software (whichever is earlier).

(g) "**License Term**" means the Software license term specified on the applicable Customer Order Form or by an Authorized Partner. The License Term may be a fixed term, a limited term for Evaluation Versions, or perpetual.

(h) "**Customer Order Form**" means any order on a VelocityEHS order form which references this EULA. Each Customer Order Form which references this EULA shall be deemed a part of this EULA.

(i) "**Software**" means the proprietary Software product(s) provided in connection with this EULA in object code form (or as otherwise specified in any related Customer Order Form), as more fully described in the Documentation. "Software" shall also include any Support and Maintenance Services releases provided to Customer under this EULA. Unless otherwise noted, the Software and Documentation are referred to collectively herein as "Software". All undefined names of Software products have the meanings given to them in the Documentation.