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In consideration of the mutual promises and upon the terms and conditions set forth below, the parties agree as follows:

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- 1.4 - For the Software or any Modification You distribute in compiled or object code format, You must also provide recipients with access to the Software or Modification in source code format along with a complete copy of this Agreement. The distribution of the Software or Modifications in compiled or object code format may be under a license of Your choice, provided that You are in compliance with the terms of this Agreement. In addition, You must make absolutely clear that any license terms applying to such Software or Modification that differ from this Agreement are offered by You alone and not by AGNITY, and that such license does not restrict recipients from exercising rights in the source code to the Software granted by AGNITY under this Agreement or rights in the source code to any Modification granted by You as described in Section 1.3.
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5. Limitation of Liability
- IN NO EVENT WILL AGNITY BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER) IN CONNECTION WITH OR ARISING OUT OF OR RELATING TO THE FURNISHING, PERFORMANCE OR USE OF THE SOFTWARE OR ANY OTHER RIGHTS GRANTED HEREUNDER, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, AND EVEN IF AGNITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
6. Term and Termination
- 6.1 - This Agreement will continue in effect unless and until terminated earlier pursuant to this Section 6.
 - 6.2 - In the event You violate the terms of this Agreement, AGNITY may terminate this Agreement.
 - 6.3 - All licenses granted hereunder shall terminate upon the termination of this Agreement. Termination will be in addition to any rights and remedies available to AGNITY at law or equity or under this Agreement.
 - 6.4 - Termination of this Agreement will not affect the provisions regarding reservation of rights (Section 3.1), provisions disclaiming or limiting AGNITY's liability (Sections 4 and 5), Termination (Section 6) or Miscellaneous (Section 7), which provisions will survive termination of this Agreement.
7. Miscellaneous

- This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter. The relationship of the parties hereunder is that of independent contractors, and this Agreement will not be construed as creating an agency, partnership, joint venture or any other form of legal association between the parties. If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, this Agreement will be construed in a manner that most closely effectuates the intent of this Agreement. Such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law. This Agreement will be interpreted and construed in accordance with the laws of the State of California and the United States of America, without regard to conflict of law principles. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. All disputes arising out of this Agreement involving AGNITY or any of its subsidiaries shall be subject to the jurisdiction of the federal or state courts of northern California, with venue lying in Alameda County, California. No rights may be assigned, no obligations may be delegated, and this Agreement may not be transferred by You, in whole or in part, whether voluntary or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of AGNITY, and any purported assignment, delegation or transfer without such consent shall be void ab initio. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed or be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action