

**Sumac Standard License Agreement Terms 2015-07-27**  
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## Definitions

As used herein, the following terms shall have the following respective meanings:

Documentation	means the manuals and other written materials which describe the Software, its operation and matters related to its use and which Softwood generally makes available to its licensees for use with the Software and any updated, improved or modified version(s) of such materials, whether provided in published written material, on magnetic media or communicated by electronic means.
Licensed Materials	includes the Documentation and the Software.
Major Release	has the meaning assigned in the article on Software Releases.
Purposes	means managing and administering contacts and fund-raising activities
Software	means the Sumac software, including its online and web-based components, which is used for the Purposes and the modules of which are described in more detail in Appendix S

## Grant of License

### GL-1. Grant

Subject to this Agreement, Softwood hereby grants to Licensee a non-exclusive, non-transferable (except as otherwise provided in this Agreement) license:

- a. to use the Licensed Materials in connection with the Purposes;
- b. to reproduce the Licensed Materials as reasonably necessary for backup, archival or disaster recovery purposes and for use in internal test systems, provided that all proprietary notices on or in the Licensed Materials are reproduced in the copies;
- c. to use and execute the Software on Licensee's or Licensee's agent's computers solely to enable Licensee to apply the Software to its Purposes.

### GL-2. Restrictions

Except as expressly provided in this Agreement, Softwood reserves all rights in and to the Licensed Materials, and Licensee shall not:

- a. use, rent or lease the Licensed Materials to provide or allow the provision of services for third parties;
- b. distribute, license or otherwise transfer the Licensed Materials directly or through third parties;
- c. customize, modify or create derivative works of any of the Licensed Materials without the prior written consent of Softwood;
- d. use the Software for the purposes of product development or commercialization or for any purpose other than internal business use; or
- e. reproduce the Software.

Licensee acknowledges and agrees that it does not have, and will not have, any need to access the source code to the Software in connection with the licensed use of such Software as contemplated in this Agreement.

### **GL-3. Related Licensees**

If Licensee is sold to, acquires or merges with another person and such person has not entered into an agreement with Softwood in respect of the Licensed Materials of comparable scope to this Agreement, licenses granted under this Agreement shall not extend to such other person unless the Licensee and Softwood shall have negotiated an amendment to this Agreement that provides for such extension, which amendment the parties agree to negotiate in accordance with the following guiding principles:

- a. pricing shall be at Softwood's then current standard pricing for customers similar in size, market and scope of operation;
- b. the specific terms of such license shall be negotiated in good faith; and
- c. negotiations for the terms of the new license shall commence no later than two months following the sale, acquisition or merger of the Licensee and shall conclude no later than two months thereafter.

## **Acceptance**

### **AC-1. Acceptance**

The Software shall be considered to have been accepted the earlier of 45 days after it is delivered to Licensee or when Licensee has commenced production use of the Software.

### **AC-2. Non-Conformance**

If, prior to acceptance, the Software does not operate in conformance with the Documentation, written notification shall be furnished to Softwood detailing the non-conformance. Softwood shall be allowed a 30 day cure period, which may be extended by mutual agreement, to correct the non-conforming Software.

### **AC-3. Softwood Obligation**

Softwood's sole obligation in the event that the Licensed Software fails to meet the acceptance criteria shall be to make its reasonable best efforts to correct the problem.

### **AC-4. Failure To Correct**

If Softwood is unable to correct any problems within 30 days after Licensee has commenced production use of the Software, which time period may be extended by mutual agreement, Licensee's sole remedy is to terminate this Agreement. Upon such termination, Softwood shall refund all sums, without any deduction whatsoever, paid by Licensee under this Agreement and Licensee shall destroy or return all Licensed Materials to Softwood at Softwood's expense. Upon compliance with these requirements, neither party hereunder shall have any further liability of any nature whatsoever to the other party.

## **Payment**

### **P-1. Definitions**

The following terms have the meanings assigned in Appendix P:

- Initial Fee, and
- Annual Fee.

### **P-2. Annual Fee**

On each anniversary of the Effective Date, Licensee shall pay an Annual Fee to Softwood.

**P-3. When Payable**

The Initial Fee shall be due and payable upon execution of this Agreement. The Annual Fee shall be due and payable on the date of the anniversary of the Effective Date.

All other fees shall be due when billed.

**P-4. Taxes**

All fees are net. Licensee shall pay or reimburse all taxes, duties and assessments, if any due, based on or measured by amounts payable to Softwood in any transaction between Licensee and Softwood under this Agreement (excluding taxes based on Softwood's net income) together with any interest or penalties assessed thereon, or furnish Softwood with evidence acceptable to the taxing authority to sustain an exemption therefrom.

**P-5. No Set-off**

Licensee's obligation to remit fees to Softwood shall be absolute, unconditional, non-cancellable and non-refundable, and shall not be subject to any abatement, set-off, claim, counterclaim, adjustment, reduction, or defense for any reason, including, but not limited to, any claims that Softwood failed to perform under this Agreement or termination of this Agreement.

**P-6. Interest**

If Licensee fails to pay in full on a timely basis any amount due to Softwood, such unpaid amount shall be subject to a monthly service charge of 1.5 percent per month of the unpaid balance or the maximum rate allowable by law, and such service charge shall accrue on the unpaid amount each day such payment is overdue and undisputed.

## **Confidentiality**

**C-1. Definitions**

Either party ("Disclosing Party") may from time to time disclose Confidential Information to the other party ("Recipient").

"Confidential Information" includes:

- a. the following types of information, and other information of a similar nature (whether or not reduced to writing or still in development): designs, concepts, ideas, inventions, specifications, techniques, discoveries, models, data, source code, object code, documentation, diagrams, flow charts, research, development, methodology, processes, procedures, know-how, new product or new technology information, strategies and development plans (including prospective trade names or trademarks), business plans, financial plans and projections and other information, sales and marketing plans, suppliers, personnel and other business relationships;
- b. information concerning the business, technology, customers, financial information and plans of the Disclosing Party which is either marked as "confidential" or which, due to the circumstances surrounding its disclosure or its nature or sensitivity, should have been understood by the Recipient as intended to be treated as "confidential" and subject to the undertakings of this article;
- c. the terms and conditions, but not the existence of this Agreement or that fact that the parties have entered into a contractual relationship with regard to the subject matter hereof; and
- d. the Licensed Materials, the services to be provided, and all techniques, concepts and

methods relating thereto or to sales thereof.

**C-2. Confidentiality Obligations**

- a. Recipient agrees that it shall not make use of Confidential Information for its own benefit or for the benefit of any person or entity other than Disclosing Party, except for the expressed purposes and as necessary for the performance of this Agreement, and not for any other purpose.
- b. During the term of this Agreement and for a period of five years thereafter, Recipient will keep in confidence and trust and will not disclose or disseminate, or permit any employee, agent or other person working under Recipient's direction to disclose or disseminate, the existence, source, content or substance of any Confidential Information to any other person.
- c. Recipient will employ at least the same methods and degree of care, but no less than a reasonable degree of care, to prevent disclosure of the Confidential Information as Recipient employs with respect to its own confidential trade secrets and proprietary information. Recipient's employees and independent contractors will be given access to the Confidential Information only on a need-to-know basis, and only if they have executed a form of non-disclosure agreement with Recipient which imposes a duty to maintain the confidentiality of information that is at least as restrictive as the terms of this article. Recipient will not copy or load any of the Confidential Information onto any computing device or store the Confidential Information electronically except in circumstances in which Recipient has taken all necessary precautions to prevent access to the information stored on such the relevant device or electronic storage facility by anyone other than the Persons entitled to receive the Confidential Information hereunder.
- d. With respect to customer information that is considered personal data, the Parties agree that they shall treat and transfer such data to each other only in compliance with applicable data protection laws.
- e. Disclosure of Confidential Information disclosed to a Recipient does not transfer any sort of proprietary rights to that information. The disclosed information remains the property of the Disclosing Party.

**C-3. Permitted Disclosures**

The commitments in this article will not impose any obligations on Recipient with respect to any portion of the received information which:

- a. is now generally known or available or which hereafter, through no act or failure to act on the part of Recipient, becomes generally known or available;
- b. is rightfully known to Recipient at the time of receiving such information;
- c. is furnished to Recipient by a third party without restriction on disclosure and without a breach by such third party of any confidentiality undertaking with respect thereto;
- d. is independently developed by Recipient without the use of Confidential Information; or
- e. is required to be disclosed by operation of law or by an instrumentality of the government, including but not limited to any court, tribunal or administrative agency; provided that, in the case of any disclosure required under these circumstances, Recipient shall give Disclosing Party as much advance notice as is reasonably practicable under the circumstances so as to permit Disclosing Party to seek a protective order.

**C-4. Maintenance of Records**

Each Party shall maintain complete and accurate files and books and records of account with respect to all of its activities hereunder and all transactions relating to the Licensed Materials. Records shall be

maintained for a period of at least two years after termination or expiration of this Agreement.

## **Proprietary Rights**

### **PR-1. Ownership**

This license is not a sale. All title, ownership and intellectual property rights in the Licensed Materials remain with Softwood or the licensors of materials provided as part of the Licensed Materials. All copies of the Licensed Materials shall be and remain the property of Softwood or its licensors.

### **PR-2. Use of Licensed Materials**

Licensee may use the Licensed Materials for the Purposes. Licensee shall not create derivative works of the Licensed Materials or otherwise alter, adapt, modify or translate the Licensed Materials in any way for any purpose except the purposes expressly permitted by this Agreement. Licensee shall not incorporate component files of the Software into any other product.

### **PR-3. Reverse Engineering**

Licensee shall not modify, translate, reverse engineer, decompile, disassemble or otherwise attempt to derive the source code of the Software or any part of it, or decode any passwords or encrypted license or installation keys.

### **PR-4. Markings**

Licensee shall not remove any copyright notices, trademarks, or any other confidentiality or proprietary legends or logos of Softwood or its licensors appearing on or within the Licensed Materials.

### **PR-5. Modifications by Licensee**

Licensee will own any modifications consented to by Softwood, provided that Licensee hereby grants to Softwood an irrevocable, perpetual, royalty-free, worldwide, unrestricted license, with the right to sublicense, to use, copy, publicly display, distribute, modify and otherwise commercially exploit any such modification in any manner whatsoever.

### **PR-6. Translations**

Any technical manuals, sales brochures, and other information relating to the Licensed Materials translated into another language by Licensee shall be owned by and subject to copyright in the name of Softwood. Licensee shall pay all of the costs of any such translations and copies thereof printed by Licensee.

### **PR-7. Obligation to Notify**

Each party shall notify the other promptly upon becoming aware of

- a. any use by a third party of trademarks, service marks, copyrights, trade names, patents or other proprietary information or intellectual property rights owned by or used by Softwood that comes to the attention of the Licensee that may infringe upon the rights of Softwood; and
- b. any suits or proceedings brought by third parties claiming that the use by the Licensee of any trademark, service mark, copyright, logo, symbol, label, detail or trade name authorized by Softwood to be used by the Licensee by this Agreement constitutes an infringement of such third party's proprietary rights.

Softwood may in its discretion take or not take whatever action it believes is appropriate. If Softwood elects to take action to protect its rights, Licensee shall cooperate with Softwood in any prosecution of such infringement or other efforts to protect the proprietary information from unauthorized use and shall,

upon request from Softwood, assist Softwood in connection with any required or desirable registration of any proprietary rights in or associated with the Licensed Materials in the country in which the Licensee is located or with any infringement action. Softwood shall not join Licensee as a part to any legal proceedings without Licensee's consent, such consent not to be unreasonably withheld.

## **Software Releases**

### **SR-1. Definitions**

"Major Release" means a major new version of the Software and Documentation that is made available by Softwood to its customers with a current license agreement with Softwood and which is identified as version X.0.

"Interim Releases" means a new version of the Software made available to customers with a current license agreement with Softwood and that provides bug fixes, enhancement(s) to existing features or additional features or functionality.

### **SR-2. Software Provided**

Softwood will provide Licensee with Major Releases and Interim Releases as such are made available generally to its customers, distributors and end users.

### **SR-3. Communication**

Softwood will provide Licensee with such newsletters and other publications, as Softwood routinely provides or makes accessible to all its customers to furnish information on topics such as Software advisories, known problem and solution summaries, product release notes, application notes, product descriptions, removal of an item from a product line, training class descriptions and schedules, and bulletins about user group activity.

## **Maintenance and Support Services**

### **MS-1. Standard Maintenance Services**

Subject to Licensee's timely payment as set forth in this Agreement, Softwood shall provide the following standard maintenance and support services:

- a. Softwood shall provide to the Licensee, when released, all updates released by Softwood and upon delivery to the Licensee such updates shall be deemed Software licensed by Softwood to the Licensee hereunder. In addition, Softwood shall provide to the Licensee's trained technical support coordinator second level telephone and email support during regular office hours in Toronto.
- b. Softwood shall use commercially reasonable efforts to correct (either through a known fix or an acceptable workaround) any documented reproducible failures of any of the Software to function substantially in accordance with the functional descriptions thereof provided in the then-current specifications applicable thereto within 24 hours (in the case of a major failure) or within a reasonable time (for all other failures) after Softwood has received written notice of such failures from Licensee and as set forth in this Agreement. Where no known fix or acceptable workaround exists for such failure, Softwood shall use commercially reasonable efforts to remedy such failures within five business days after receipt of written notice from Licensee. Notwithstanding the above, all major failures will be remedied within 45 days.
- c. Updates of the Software that may incorporate corrections of defects and, at the sole discretion of Softwood, enhancements to the Software.

- d. Softwood will acknowledge a request for support within one business day. Softwood will make best efforts to resolve a request for support within three business days. If a problem cannot be resolved within such three-day period, Softwood will provide its best estimate of when a resolution will be available.

These standard maintenance and support services do not include:

- e. customized development;
- f. training;
- g. on-site support.

#### **MS-2. Obligations of Licensee**

Upon detection of any error in the Licensed Materials, Licensee shall notify Softwood promptly by either email or telephone with a description of the problem. If requested by Softwood, Licensee shall provide a follow-up with a written problem report containing a detailed description of the nature of the error, the conditions under which it occurs, relevant data sufficient to enable Softwood to reproduce a reported error in order to verify its existence and diagnose its cause, and other data that Softwood reasonably may request in order to reproduce operating conditions similar to those present when the error occurred.

In connection with the services being performed by Softwood hereunder, Licensee shall make the requisite resources available on a timely basis in order to work cooperatively with Softwood in fulfilling the parties' respective obligations hereunder.

Licensee shall install at its expense all corrections to the Licensed Materials, in accordance with instructions provided by Softwood.

When Softwood delivers a Major Release or an Interim Release to Licensee, Licensee shall deploy such Release immediately.

#### **MS-3. Support**

Licensee is responsible for all front-line contact with, and shall provide first level support of, Licensee users of the Software, including general help and technical assistance in the use of the Software.

#### **MS-4. Licensee Caused Problem**

If Softwood is requested to correct a problem and such problem is found to be caused by: abuse, misuse, accident or neglect; repairs, alterations, and/or modifications which are not permitted under this Agreement and which are performed by other than Softwood or its agents; maintenance, malfunction, modification of the computers or servers on which the Software is installed or its operating system; Licensee's failure to maintain the configuration environment (e.g. memory/disk capacity, operating system revision level, prerequisite or co-requisite items, etc.) required; where inadequate backups are supplied; or any other cause not inherent in the Software, Licensee agrees to pay for such support services on a time and materials basis at Softwood's then prevailing standard rates.

#### **MS-5. Training and On-Site Support**

At the request of Licensee, Softwood will provide additional training and on-site support for an additional fee as negotiated.

## **Representations and Warranties**

#### **RW-1. Definition**

"Product Warranty Period" is a period of two months starting on the date on which the Licensed Materials are delivered to Licensee.



## **RW-2. Softwood Warranties**

- a. Softwood represents and warrants that the Software shall function during the Product Warranty Period substantially in accordance with the Documentation. Softwood's obligation under this warranty shall be limited to correcting the functionality problems of which Softwood is notified during the Product Warranty Period. This warranty shall not apply:
- (i) to defects which are the result of improper handling or use,
  - (ii) to defects related to Software which has been previously identified by Softwood to the Licensee and for which program corrections have been submitted to the Licensee,
  - (iii) in the event there has been an alteration or revision to the Licensed Materials that was not authorized by Softwood, or
  - (iv) where the latest update or revision has been supplied to the Licensee but not used.

The Licensee shall reimburse Softwood, at Softwood's published rates, for reasonable expenses incurred and the time expended in responding to false warranty claims or in repairing any unauthorized alterations or revisions. Softwood shall not be obligated to remedy defects in Software that cannot be reproduced by Softwood.

- b. Softwood represents and warrants that the services provided by Softwood hereunder shall be performed in a good, workmanlike, timely and professional manner by qualified persons. Licensee's remedy for breach of this warranty shall be prompt re-performance of services by Softwood to conform to the requirements of this Agreement at no additional cost to Licensee. Any claim for breach of this warranty must be made within six months after the performance of the services to which the warranty claim relates.
- c. Softwood represents and warrants that the Software, as delivered by Softwood, does not contain any undocumented code, routines, virus, feature or function that may enable Softwood or any third party:
- (i) to discontinue Licensee's effective use of the Software or any data provided by Softwood;
  - (ii) to erase, destroy, corrupt or modify any data of Licensee without the consent of such Licensee; or
  - (iii) to bypass any internal or external software security measure to obtain access to data of Licensee without the consent or knowledge of Licensee.

Softwood shall promptly provide to Licensee written, reasonably detailed notice upon becoming aware of the existence of any of the foregoing features contained in the Software provided to Licensee. Licensee acknowledges that third parties with access to a Licensee's computer or communication system may have the ability to disable or otherwise damage the operation of the Software and the Licensee's system and data through no fault of Softwood or any defect in the Software, and Softwood shall have no obligations or liability with respect to such events. Licensee's remedy for breach of this warranty shall be prompt replacement of the affected Software in the possession of Licensee.

- d. Softwood represents and warrants that the Licensed Materials do not infringe on any intellectual property of any third party and no such claim (whether or not embodied in an action, past or present) that the Licensed Materials infringe on any third party intellectual property, has been threatened or asserted, and no such claim is pending against Softwood or, to Softwood's knowledge, against any entity from which Softwood obtained such rights.
- e. Softwood represents and warrants that it has all power and authority necessary to grant the rights

and licenses contained herein without violating the proprietary rights of any third party.

The remedies set forth in sections a. to c. shall be the sole and exclusive remedies for Softwood's breach of the respective warranties set forth in those sections.

### **RW-3. Notice and Cooperation**

Licensee shall promptly notify Softwood of any alleged breach of any warranties.

### **RW-4. Disclaimer of Warranties**

*Except as expressly set forth in this Agreement, and to the maximum extent permitted by law, the Licensed Materials and any services provided by Softwood are provided "as is" without warranty or condition of any kind. Softwood and its suppliers make, and Licensee receives, no other warranties, whether express, implied, or statutory, and Softwood expressly disclaims all other warranties and conditions, including the implied warranties of merchantability and fitness for a particular purpose. Softwood does not warrant that:*

- a. any Softwood technology licensed hereunder shall meet Licensee's requirements,*
- b. such Softwood technology shall operate in combination with other hardware, software, systems or data not provided by Softwood which Licensee may select for use,*
- c. the operation of the Licensed Materials shall be uninterrupted or error-free, or*
- d. all program errors shall be corrected.*

*Some jurisdictions do not allow certain limitations of liability and damages, so some of the above limitations may not apply to Licensee. Licensee may have other rights which vary from jurisdiction to jurisdiction. If conditions or warranties may not be disclaimed under applicable law, then any implied conditions and warranties are limited in duration to 30 days after the Effective Date.*

## **Liability and Indemnification**

### **LI-1. General Indemnification**

Licensee shall defend, indemnify, and hold harmless Softwood from and against any claim, demand, cause of action, debt, or liability, including reasonable attorneys' fees, which arises or results from the use, licensing, or distribution by Licensee of any Licensed Materials, including without limitation claims relating to installation, maintenance or support by Licensee of such Licensed Materials, or any modification or alteration of any Licensed Materials by Licensee, but excluding any claim as to which Softwood is required to indemnify Licensee under section LI-2 resulting from a breach by Softwood of its obligations hereunder or that is attributable to the willful misconduct or gross negligence of Softwood. Licensee's obligation under this section is subject to the conditions that (i) Softwood promptly notifies Licensee in writing of such claim, and (ii) Licensee shall have sole control of such defence and all negotiations for any settlement or compromise, although Softwood may participate in the same at Licensee's request, and any settlement imposing liability on Softwood shall be subject to Softwood's prior written consent, not to be unreasonably withheld.

## **LI-2. Limitation of Liability**

Except in the case of appropriation of intellectual property, the liability of each party arising under this Agreement shall be limited to direct, objectively measurable damages. Softwood shall not be liable to Licensee (or any person claiming rights derived therefrom) under this Agreement or in connection the provision of services or the Licensed Materials under any circumstances for the cost of procurement of substitutes or for any other special, indirect, incidental, punitive, exemplary, or consequential damages, however characterized, including without limitation any damages resulting from loss of use, data, business, customers, savings, or profits in connection with this Agreement or the use or performance of any Licensed Materials, in each case even if Softwood shall have been advised of the possibility of such damages in advance. Each party hereby waives any claim which it might otherwise have had against the other for punitive or exemplary damages. Notwithstanding any provision of this Agreement to the contrary in no event shall the aggregate liability of Softwood under this Agreement exceed the aggregate of the fees actually paid to Softwood during the immediately prior nine month period. The foregoing limitations shall apply regardless of the form of action brought seeking such damages, whether in contract, tort (including without limitation negligence), statute or otherwise. No action, regardless of form, arising out of this Agreement may be brought by either party more than one year after the cause of action has accrued.

## **LI-3. IP Infringement Indemnity**

- a. Softwood shall defend any suit, matter, claim, allegation or proceeding brought against the Licensee insofar as the same is based upon a claim (an "Infringement Claim") that the Licensed Materials, or any portion thereof, supplied by Softwood hereunder ("Infringing Material") constitute an infringement of any United States patent issued as of the Effective Date, any copyright or any trade secret of a third party. Softwood's obligation under this section is subject to the conditions that (i) Softwood is promptly notified by the Licensee in writing of such claim, and (ii) Softwood shall have sole control of such defense and all negotiations for any settlement or compromise, although the Licensee may participate in the same Softwood's request, and any settlement imposing liability on Licensee shall be subject to Licensee's prior written consent, not to be unreasonably withheld.
- b. Licensee shall give to Softwood full information and assistance for the defense of same and all negotiations for any settlement or compromise; and Softwood will pay all damages and costs finally awarded therein against Licensee, except to the extent that such damages or costs arose because of the negligence or misconduct of Licensee or were otherwise caused by the Licensee or its agents and representatives or as otherwise provided in section d.
- c. If any Infringement Claim has been made (or in Softwood's opinion is likely to occur), Softwood may, at its option and expense, either (i) procure for Licensee the right to continue using the Infringing Material in question; (ii) replace or modify such Infringing Material to cure such potential infringement without a material reduction in functionality, as determined by Licensee acting reasonably; or (iii) remove the Infringing Material from the Licensed Materials and refund to Licensee fees paid by Licensee to Softwood attributable to the calendar month immediately preceding the month in which such Infringement Claim is made (or the month in which Softwood first determined that such a claim was likely to occur). Upon fulfillment of Softwood's obligations set forth in either clause (i), (ii), or (iii) above, Softwood shall be discharged of all further liability with respect to such Infringement Claim, except as provided in section a.
- d. Softwood shall have no liability to Licensee under this section with respect to any claim of infringement which is based upon: (i) the combination of any Licensed Materials with any machine, device, firmware or software not furnished or prescribed by Softwood; (ii) any

modification of any Software by a person other than Softwood; (iii) Licensee's failure to install updates as instructed by Softwood; or (iv) compliance by Softwood with designs, plans or specifications furnished by Licensee, .

- e. The provisions of this section constitute the sole and exclusive remedy of Licensee, and Softwood's entire liability, for any claimed or actual infringement of third party intellectual property rights by the Licensed Material.

## **Term and Termination**

### **TT-1. Term**

The term of this Agreement shall commence on the Effective Date and continue in effect until the date of termination pursuant to this article.

### **TT-2. Termination**

Either party (the "First Party") may terminate this Agreement immediately and with immediate effect at any time upon written notice to the other party (the "Second Party") if the Second Party:

- a. breaches any material term or condition of this Agreement and such breach is not cured within 30 days after notice of the breach is given by the First Party;
- b. is or becomes insolvent or unable to pay its debts; or
- c. commences or becomes involuntarily subject to any case, proceeding or other action seeking the adjudication of the Second Party as bankrupt or insolvent, and such case, proceeding or action is not discharged within ten days after written notice thereof has been given to the Second Party.

### **TT-3. Termination By Non-Payment of Annual Fee**

Licensee may terminate this agreement by notifying Softwood that it will not be paying the Annual Fee that would otherwise be due at the next anniversary of the Effective Date. In this case, this Agreement terminates two months after the next anniversary of the Effective Date.

### **TT-4. Effect of Termination**

- a. Each Party acknowledges that, upon termination of this Agreement in accordance with the terms hereof, Licensee shall not have any continuing rights under this Agreement, nor shall either party have any right to any compensation at any time from the other party arising out of or by reason of any such termination.
- b. Upon termination of this Agreement for any reason, Licensee shall immediately:
  - (i) furnish Softwood written notice certifying that the original and all copies, including partial copies, whether furnished by Softwood or made by Licensee, of the Licensed Materials, and proprietary or confidential information delivered by Softwood to Licensee hereunder, have either been returned to Softwood or destroyed and no copies or portions thereof remain in Licensee's possession or control; and
  - (ii) discontinue the use of the Licensed Materials.
- c. Upon termination of this Agreement for any reason, Softwood shall immediately furnish Licensee written notice certifying that the original and all copies, including partial copies, whether furnished by Licensee or made by Softwood, of proprietary or confidential information delivered by Licensee to Softwood hereunder, have either been returned to Licensee or destroyed and no copies or portions thereof remain in Softwood's possession or control.

- d. Termination shall not relieve the parties from their obligations under this Agreement arising prior to such termination.

**TT-5. Survival**

Notwithstanding termination of this Agreement, whether or not by the effect of this article, those provisions of this Agreement which state that they are intended to survive, shall survive termination of this Agreement.

## **General Terms**

**GT-1. Entire Agreement**

This Agreement, including all appendices attached hereto, constitutes the entire agreement between the parties pertaining to the subject matter hereof. It supersedes in their entirety any and all, prior or contemporaneous, written or oral agreements, negotiations, or other dealings between the parties.

**GT-2. Assignment**

Neither this Agreement nor any rights hereunder shall be assignable by either party without the prior written consent of the other party hereto.

**GT-3. Authority**

The person entering into this Agreement represents and warrants that such person is authorized to bind and does so bind his or her principal or employer and has adequate legal capacity to enter this Agreement.

**GT-4. No Third Party Beneficiary**

It is the explicit intention of the parties hereto that no person other than the parties shall be entitled to bring any action to enforce any provision of this Agreement against either of the parties, and the covenants, undertakings, and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors and assigns as permitted hereunder.

**GT-5. Amendment**

No amendment, modification or discharge of this Agreement and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought.

**GT-6. Construction**

Each party hereto hereby acknowledges that the parties hereto participated equally in the negotiation and drafting of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently against one party than against the other.

**GT-7. Headings**

Article and section headings contained in this Agreement are inserted for convenience of reference only, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

**GT-8. Governing Law**

This Agreement will be governed, construed, and enforced exclusively in accordance with the laws of the province of Ontario and the federal laws of Canada applicable to contracts executed and performed entirely in, and by residents of Ontario, and the parties hereto hereby irrevocably attorn to the jurisdiction of the courts of the said province. We agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from and shall not apply to this Agreement.

#### **GT-9. Binding Effect**

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns as permitted hereunder.

#### **GT-10. Force Majeure**

Neither party shall be liable to the other party for delay in performing its obligations, or failure to perform any such obligations under this Agreement, if the delay or failure results from circumstances beyond the reasonable control of the party, including but not limited to: act of God; accident; war; fire; lockout; strike or labor dispute; riot or civil commotion; act of the public enemy; enactment, rule, order or act of civil or military authority; acts or omissions of the other party; judicial action; inability to secure adequate materials, labour, or facilities (despite exertion of commercially reasonable efforts to obtain such items); defaults of suppliers; the inability of carriers to make scheduled deliveries; or any other event beyond the reasonable control of such party. Notwithstanding the foregoing, such circumstances shall not excuse either party from making payments. Either party shall have the right to terminate this Agreement without further obligation if the circumstances continue for a period of 60 days.

#### **GT-11. Waiver**

Failure or delay by either party to enforce at any time any of the provisions of this Agreement, or to exercise any election of options provide herein, shall not constitute a waiver of such provision or option, nor affect the validity of this Agreement or any part thereof, or the right of the waiving party to thereafter enforce each and every such provision.

#### **GT-12. Severability**

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be legally ineffective or unenforceable, such provision shall, to the extent possible, be deemed rewritten to reflect the original intent of the parties, and the validity of the remaining provisions shall not be affected.

#### **GT-13. Press Releases**

Each party will obtain the written approval of the other in respect of any press release or public announcement pertaining to this Agreement or matters related hereto. Neither party shall issue any such press release or make any such public announcement prior to such approval. For the purposes of this paragraph, the term "written" shall include an email.

#### **GT-14. English Language**

The parties hereto confirm their express wish that this agreement (including the schedules hereto) as well as all notices, documents and agreements related hereto be drawn in the English language. Les parties aux présentes reconnaissent qu'il est de leur volonté expresse que la présente convention (y compris ses annexes) ainsi que tout avis, documents et ententes s'y rapportant soient rédigés en anglais.

#### **GT-15. Currency**

All payments required hereunder shall be made, in Canadian dollars (CAD) if Licensee's headquarters are in Canada and in United States of America dollars (USD) otherwise, in immediately available funds to a bank designated by the recipient. The party making payment shall bear all costs associated with making the payment.

#### **GT-16. No Joint Venture or Agency**

Nothing in this Agreement shall be construed so as to constitute either party hereto as a joint venturer, or agent of any other party hereto, or to require or entitle either party to share profits or gains or ownership interests in or from any property or activities.

#### **GT-17. Subcontracts**

Softwood may subcontract any of the services to be provided by Softwood hereunder. Softwood shall be responsible for the fulfillment of its obligations hereunder, notwithstanding the performance of such obligations by its subcontractors.

#### **GT-18. Equitable Remedies**

Both parties acknowledge that remedies at law for breach of either party's obligations under this Agreement will be inadequate, that the non-breaching party may be irreparably harmed by any such breach, and that in the event of any such breach, the non-breaching party shall be entitled to specific performance or any type of preliminary, temporary or permanent injunctive relief.

#### **GT-19. Orders and Shipment**

Licensee shall order Licensed Materials using a written, unconditional purchase order. All purchase orders shall: conform to and cite this agreement; describe the Licensed Materials being ordered; and identify the quantity, price, method of delivery, shipping address, and billing address.

This agreement governs all purchase orders accepted by Softwood. Any terms or conditions in purchase orders or other business forms of Licensee or Softwood which change or differ from the terms and conditions of this agreement shall be of no force or effect whatsoever concerning the subject matter of this agreement. Licensee's or Softwood's failure to object thereto shall not be deemed a waiver of its rights hereunder.

Softwood shall promptly deliver all ordered items in an accepted purchase order to the shipping address and using the method of delivery specified in the purchase order. Licensee shall pay shipping charges.

#### **GT-20. Softwood Client References**

Licensee agrees that Softwood may disclose to actual and prospective customers, for client reference purposes, the fact that the Licensee and Softwood have entered into a contractual relationship regarding the use of Licensed Materials by Licensee.

In addition, subject to reasonable prior written notice, Licensee shall respond to inquiries from potential licensees of Softwood Licensed Materials, and cooperate with Softwood and perform for potential licensees of Softwood demonstrations of licensee's use of the Licensed Materials.

#### **GT-21. Hiring**

Both parties agree not to hire employees of the other party or its affiliates (or persons so employed within the prior 12 months) without the other party's permission.

#### **GT-22. Compliance With The Law**

Parties shall comply with all applicable laws concerning this agreement. Licensee shall adhere to high standards of honesty, integrity, fair dealings, and ethical conduct in all of its dealings with clients, potential clients, and the general public, and shall refrain from any business or advertising practice, which may be injurious to the business or reputation of Softwood.

Licensee agrees to comply with all relevant regulations of the United States Department of Commerce and with the United States Export Administration Act to insure that the Licensed Materials are not exported in violation of United States law, and to comply with the Export and Import Permits Act to ensure that the Licensed Materials are not exported in violation of Canadian law.

Licensee further agrees that it shall use the Licensed Materials only for lawful purposes and in accordance with this Agreement.

**GT-23. Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

**GT-24. Restricted Rights of U.S. Government Licensees**

If Licensee is acquiring the Software on behalf of any part of the U.S. Government, the following provisions apply.

The Software and Documentation are provided with RESTRICTED RIGHTS for US Government customers. Use, duplication, or disclosure by the US Government is subject to restrictions as set forth in FAR 12.212 (Commercial Computer Software-Restricted Rights) and DFAR 227.7202 (Rights in Technical Data and Computer Software), as applicable.