



## END USER LICENSE AGREEMENT

Updated November 5, 2021

*This End User License Agreement (including any applicable Order, this "**Agreement**") governs Licensee's use of Aceyus software licensed on a perpetual license basis by Aceyus, Inc. ("**Aceyus**"), with an address at 10700 Sikes Place, Suite 240, Charlotte, NC 28277, or by an authorized Aceyus reseller ("**Reseller**"). This Agreement also provides terms for the Services provided by Aceyus to Licensee.*

*This Agreement is a legally binding contract between Aceyus and the licensee ("**Licensee**") accepting this Agreement by either: (a) signing this Agreement or an Order that refers to this Agreement, (b) clicking on an "Accept" button or otherwise indicating acceptance when installing or using the Software, and/or (c) using the Software. The individual accepting this Agreement on behalf of Licensee represents that he or she has the authority to enter into this Agreement and bind Licensee.*

If Licensee does not agree to be bound by the terms of this Agreement, then Aceyus does not grant Licensee a right to install or use the Software.

### 1. Definitions

The following defined terms have the meanings indicated below. Other capitalized terms have the meaning assigned to them elsewhere in this Agreement.

(a) "**Active Named Agent**" means a single individual contact center agent who is an employee or contractor of Licensee, and whose activity and/or call/contact record information has been captured from any of the Data Sources through use of the Software within the previous thirty (30) days.

(b) "**Authorized User**" means any current Licensee employee or contractor who is provided access to the Software in accordance with this Agreement and the Documentation.

(c) "**Data Source**" means a Licensee database containing Licensee Data that is connected to the Software.

(d) "**Deployment Services**" mean the setup, training, Data Source connection, and other implementation services provided by Aceyus, as agreed by the parties in the Order.

(e) "**Documentation**" means the user manuals, operating manuals, and other documentation delivered or otherwise made available by Aceyus for use with the Software.

(f) "**Initial Deployment Date**" means the date that the Software is operational and has connected to and pulled Licensee Data from any Data Source.

(g) "**Licensee Data**" means all data transferred or otherwise provided by Customer and its Authorized Users for use with the Software.

(h) "**Licensee-Supplied Components**" mean the Data Sources, server hardware, database, operating system, web browser versions, and other items that Licensee provides or is required to provide for use of the Software. The required Licensee-Supplied Components are specified in the Documentation, the Order, and/or the Statement of Work.

(i) "**Operational Data**" means statistical, meta, usage and other operational data and information related to Licensee's use of the Software, including, without limitation, statistical and performance information related to the provision, operation or improvement of the Software. Operational Data excludes any personally identifiable information.

(j) "**Order**" means a statement of work, order form, or other document that is signed or electronically accepted by Aceyus (or its Reseller or agent) and Licensee, that references this Agreement, and that specifies as applicable the Software, Services provided, fees, license limitations, and other applicable terms and restrictions.

(k) "**Professional Services**" mean the consulting, custom integration, custom report and custom dashboard building, and other professional services provided by Aceyus, as agreed by the parties in one or more Statements of Work and/or in the Order.

(l) "**Sandbox**" means any independent instance of the Software that is used only for non-production purposes and with non-production Data Sources. Sandbox systems are limited in performance and capabilities.

(m) "**Services**" mean, collectively and as applicable, the Deployment Services, the Professional Services, and the Support and Maintenance Services.

(n) "**Software**" means and refers to the proprietary Aceyus software products that are agreed by the parties in Orders, including all new releases, updates and error corrections thereto made available to Licensee.

(o) **"Support and Maintenance Services"** mean the support and maintenance services provided under this Agreement.

## 2. License

(a) License. Subject to the terms of this Agreement including the payment of all applicable fees, Aceyus hereby grants Licensee the perpetual, non-exclusive, non-transferable, and non-sublicensable right and license to use the Software in executable code form only and solely for the business purposes of Licensee. The Order may contain limitations on the number of Active Named Agents, number of associated servers, number of instances, and other agreed limitations on Licensee's use of the Software. Licensee agrees to use the Software in compliance with all applicable laws, the Documentation, the Order, and this Agreement. Licensee has no right to use Sandboxes unless expressly specified in the Order.

(b) Connection of Data Sources. Licensee will make Licensee's Data Sources readily available and accessible to Aceyus so that the Software can be configured to access and extract the data from Licensee's Data Sources and load the relevant Licensee Data on the Software. Licensee agrees: (a) to cooperate with Aceyus in providing Aceyus with access to the Data Sources and Licensee Data, including assisting with the installation of any connectors provided by Aceyus for the identified Data Sources and to make those Data Sources available to the Software; (b) to make available to Aceyus Licensee subject matter experts, including subject matter experts in the Data Sources; and (c) to make available in a timely manner all technical documentation, business process information, and other documents that are necessary to aid in the implementation of the connectors for the relevant Data Sources.

(c) Authorized Users and Access Controls. Licensee may authorize its employees and contractors to be Authorized Users, per the procedures in this Agreement and the Documentation. Licensee shall use commercially reasonable efforts to prevent unauthorized access to the Software and is responsible for identifying and authenticating all Authorized Users, for approving access by Authorized Users to the Software, for controlling against unauthorized access by Authorized Users, and for maintaining the confidentiality of usernames, passwords and account information by Authorized Users. Licensee shall be fully responsible for use of the Software by Authorized Users and their compliance with all applicable laws, the Documentation, and the terms of this Agreement. Licensee is responsible for authorizing Authorized Users and for revoking authorization if Authorized Users no longer work for Licensee.

(d) Restrictions. The Software may be used solely by Authorized Users for lawful purposes. Licensee shall not (and will not permit any Authorized User or third party to): (a) use the Software to store or transmit infringing, libelous, malicious, or unlawful materials, including any malicious code, viruses, worms, trojan horses, attacker tools or programs that are intended to compromise the confidentiality, integrity, or availability of the data, applications, or operating system of any computer system; (b) use the Software for any unlawful purpose; (c) interfere with or disrupt the integrity or performance of the Software or related data; (d) modify, adapt, reverse engineer, decompile, translate or disassemble the Software in whole or in part; or (e) create or develop any products or services that compete with the Software. Licensee may make a reasonable number of backup copies of the Software, but otherwise may not make any copies of the Software.

(e) Licensee Obligations. Licensee shall: (i) be responsible for the Licensee-Supplied Components, whether operated directly by Licensee or through the use of third-party services, including without limitation all Data Sources; (ii) be responsible for the accuracy and completeness of all Licensee Data; (iii) employ physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to prevent unauthorized access to or use of the Software; (iv) notify Aceyus immediately of any unauthorized access to or use of the Software, or any other known or suspected breach of security, and (v) use reasonable efforts to immediately stop unauthorized access to the Software that is known or suspected by Licensee.

(f) Feedback. Aceyus may use feedback regarding any suggested improvements to the Software and/or Services provided by Licensee for any purpose, including without limitation to modify, supplement, or improve the Software and/or Services, without payment or compensation to Licensee.

(g) Access. Licensee agrees that Aceyus must be provided with Persistent Direct Access (as defined in the Support Terms) to the servers hosting the Software.

(h) Third-Party Software. Aceyus' website and/or the Documentation contains information on certain open source and other third-party software that is included with or incorporated into the Software ("**Third-Party**

**Software**”). Certain open source Third-Party Software is licensed directly by Licensee pursuant to the public licenses associated with such software. ACEYUS PROVIDES THIRD-PARTY SOFTWARE TO LICENSEE “AS IS.”

(i) Software Communications and License Keys. The Software may include product activation and other technology designed to prevent unauthorized use and copying. This technology may cause the Software and associated hardware to automatically connect (currently, via HTTPS) to an Aceyus-hosted license server on a continual basis, may rely on license keys, and may prevent uses of the Software that are not permitted. Licensee consents to the transmission of Software usage information to Aceyus and to Aceyus’ use of license keys and other technology designed to prevent unauthorized use and copying, and Licensee agrees not to circumvent or attempt to circumvent any such anti-copying mechanisms.

(j) Evaluation License. If Licensee validly obtained a limited evaluation license for the Software (“**Evaluation Software**”) in the Order, Aceyus grants Licensee a personal, non-exclusive and non-transferable license to use, for the term of the license and up to the quantity of licenses specified in the Order for the evaluation, the executable code of the Evaluation Software solely for internal testing and evaluation use.

### 3. API Terms

(a) Introduction. The Software may include one or more application programming interfaces and/or software development kits (referred to herein as the “**APIs**”). The APIs typically allow Licensee to create scripts and programs to automate certain tasks performed through the Software and to enable certain integrations.

(b) Limits on Usage. Aceyus may, from time to time, set and update limits on Licensee’s usage of the APIs, including without limitation limits on API calls and requests and access to data (the “**API Limits**”). The API Limits will be described on the Aceyus website and/or in the Documentation and may be updated from time to time. Licensee agrees to comply with all API Limits and further agrees that it will not use the APIs in a manner that constitutes excessive or abusive usage, or otherwise is in breach with the terms of this Agreement. Without limiting the foregoing, Licensee agrees not to use the APIs in a manner that competes with the Services or the Software, or that provides API functionality to third parties. Licensee will not circumvent or attempt to circumvent any API Limits.

(c) Updates. Aceyus may update the APIs from time to time. Licensee acknowledges and agrees that such updates may cause issues with any scripts, code or programs previously written with use of the API’s (the “**Licensee Code**”), and that it is Licensee’s sole responsibility to update any Licensee Code. Aceyus does not guarantee backwards compatibility when it updates the API’s.

(d) Indemnification for API Usage. Licensee shall defend, indemnify, and hold Aceyus harmless arising from all loss, damages, claims, actions, proceedings, and expenses arising out of or related to Licensee’s and/or any Authorized Users’ use of Licensee Code. Aceyus has no liability or responsibility for mistakes or actions caused by Licensee Code, and/or any errors, misuse or unintended use associated with Licensee’s or any Authorized User’s use of the APIs or Licensee Code.

### 4. Services

(a) Services. As set forth in an agreed Order, Aceyus will provide Professional Services for Licensee. All Professional Services will be subject to the terms of this Agreement.

(b) Expenses. Licensee shall reimburse Aceyus for all reasonable expenses incurred by Aceyus in connection with this Agreement, including but not limited to mileage, airfare, lodging, and meals, so long as such expenses have been pre-approved by Licensee.

(c) Support and Maintenance Services. Subject to Licensee’s payment of the applicable fees, unless otherwise set forth in the Order (including if the Order specifies that Reseller is to provide support services), Aceyus will provide Licensee with Support and Maintenance Services in accordance with the terms at [www.aceyus.com/terms/support](http://www.aceyus.com/terms/support), as may be updated from time to time (the “**Support Terms**”). Licensee is required to obtain Support and Maintenance Services for the first year after Licensee acquires its Software license.

(d) Licensee Cooperation. Licensee shall reasonably cooperate with Aceyus and its suppliers in the delivery of Services hereunder, including without limitation by providing Aceyus and its suppliers with timely approvals

and access to Licensee's technical personnel, information, systems, and other items as reasonably requested by Aceyus in connection with the delivery of Services.

(e) Subcontractors. Aceyus may use subcontractors to provide the Services. Aceyus will be fully responsible for any breach of this Agreement by any Aceyus subcontractors.

## 5. Term and Termination

(a) Term. This Agreement will remain in effect until terminated as set forth herein.

(b) Breach. Either party may terminate this Agreement if the other party materially breaches this Agreement, and such breach is not cured after thirty (30) days written notice.

(c) Bankruptcy. Either party may terminate this Agreement if: (i) the other party has a receiver or administrative receiver appointed over its assets; (ii) the other party's governing body passes a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation, reconstruction, or merger), or a court of competent jurisdiction enters an order to that effect; (iii) the other party makes a general assignment for the benefit of creditors (iv) the other party ceases or threatens to cease to carry on business; (v) the other party is generally not paying its debts as they become due; or (vi) the other party is the subject of any petition under any bankruptcy or other law for the protection of debtors, except an involuntary petition that is dismissed within sixty (60) days after filing.

(d) Surviving Terms. Termination of this Agreement will not affect any accrued rights or liabilities of either party. The following sections of this Agreement shall survive termination or expiration of this Agreement: 1 (Definitions); 2(f) (Feedback); 5(d) (Surviving Terms), 5(e) (Payment Obligations on Termination), 6 (Fees and Payment), 7 (Intellectual Property); 8 (Confidentiality); 10(d) (Warranty Disclaimer); 11 (Limitation of Liability); 12 (Assignment); 13 (Entire Agreement), and 15 (Additional Terms). Within five (5) business days after termination of this Agreement, Licensee shall return or erase all copies of all Software and Documentation provided by Aceyus to Licensee hereunder that are in Licensee's possession or control.

(e) Payment Obligations on Termination. Upon termination, Licensee shall promptly pay all outstanding amounts due under this Agreement up to the effective date of termination.

## 6. Fees and Payment.

Unless otherwise set forth in the Order, the following fee and payment terms shall apply:

(a) Terms. Licensee shall pay Aceyus the amounts set forth in the Order including in any agreed Statement of Work(s). All payments under this Agreement shall be: (i) due within thirty (30) calendar days of receipt of invoice, (ii) made in United States dollars and (iii) non-refundable. All payments not submitted when due (except for payments timely disputed in good faith) will be subject to interest at the rate of 1% monthly, or the maximum amount allowed by applicable law if lower, calculated from the date when payment becomes overdue until payment is made. If Licensee disputes any invoice amounts, it must do so in good faith, provide Aceyus with reasons for such dispute within ten (10) days of receipt of the invoice, pay any undisputed portion of such invoice, and negotiate with Aceyus in good faith a resolution of such dispute.

(b) Taxes. Licensee shall pay all federal, state, local and other taxes based on this Agreement or the Services, excluding taxes based on Aceyus' net income. If Licensee claims tax-exempt status for any purpose in connection with this Agreement, Licensee represents and warrants that it is a tax-exempt entity and will provide Aceyus upon request with a correct copy of Licensee's tax-exempt certification.

## 7. Intellectual Property

(a) Ownership. Licensee agrees that Aceyus and its third-party licensors and suppliers own all right, title and interest, including but not limited to copyright, patent, trademark, trade secret, and all other intellectual property rights, in the Software, Services, Operational Data, and Documentation (including but not limited to the look and feel, algorithms, database structures, methodologies, and know-how associated with the Software) and

any and all copies. All Software updates made available to Licensee under this Agreement shall be deemed part of the Software and shall be subject to the terms of this Agreement.

(b) Custom Components. If Aceyus creates a Custom Component (as defined in the Support Terms) for Licensee, then Aceyus shall own and retain all right, title and interest in such Custom Component and such Custom Component will be subject to the same license grant provided to Licensee in this Agreement for use of the Software. If Licensee creates a Custom Component, Licensee shall own and retain all right, title and interest in such Custom Component, and Licensee grants Aceyus a worldwide, nonexclusive, royalty-free right and license to use and copy the Custom Component as necessary to provide Services for Licensee. In addition, Licensee acknowledges and agrees that Aceyus may create and make available to its other customers Software updates and Custom Components that contain the same or similar functionality as Licensee-created Custom Components, and Licensee agrees not to assert any rights against Aceyus to prevent or restrict the foregoing.

(c) Licensee Data. Licensee shall own and retain all intellectual property rights in and to Licensee Data. Licensee hereby grants to Aceyus a nonexclusive, royalty-free license during the Term to use, process and transmit Licensee Data for the purpose of providing the Services to Licensee.

(d) Indemnification. Aceyus, at its expense, shall defend or at its option settle any third-party action, suit or proceeding brought against Licensee which alleges that Licensee's authorized use of the Software infringes any third party copyright, trademark or patent in force in the United States, or misappropriates a third party trade secret enforceable in the United States, and shall pay damages finally awarded against Licensee, provided that (i) Licensee notifies Aceyus promptly in writing of the claim, (ii) Aceyus has sole control of the defense and all related settlement negotiations, and (iii) Licensee provides Aceyus with all commercially reasonable assistance, information and authority to perform the above at Aceyus' expense. The foregoing indemnity shall not apply to the extent that the alleged infringement is attributable to: (1) the combination of the Software with any products or services not provided by Aceyus, (2) modification to the Software by any person or entity other than Aceyus, (3) use of the Software outside the permitted license rights in this Agreement, (4) use of Software by Licensee after being provided with an update to such Software that Licensee is made aware avoids the infringement issue, (5) any third-party code contained within the Software, or (6) Licensee Data or changes to the Software made based on Licensee's specifications or instructions. THIS SECTION STATES ACEYUS' SOLE LIABILITY TO LICENSEE WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.

(e) Notices. Licensee agrees to reproduce all copyright and other notices in each copy of the Documentation and Software made by Licensee, and further agrees not to modify or delete any such notices in the Documentation and Software.

(f) Certification and Inspection. Licensee agrees that within thirty (30) days of a written request from Aceyus or Aceyus' authorized representative, Licensee will fully document and certify that Licensee's use of the Software conforms to this Agreement. To ensure compliance with this Agreement, Licensee agrees that upon reasonable notice, or when connected to Licensee's system for the purpose of providing Services hereunder, Aceyus shall have the right to inspect Licensee's use of the Software for compliance with the terms of this Agreement. Any inspection will be conducted during regular business hours. In conjunction with any such inspection, Licensee agrees to provide copies of Licensee's records relating to installation and use of the Software to Aceyus.

## 8. Confidentiality

(a) Definition. "**Confidential Information**" means any information or data (including without limitation any formula, pattern, compilation, program, device, method, technique, or process) that is disclosed by one party (a disclosing party) to the other party (a receiving party) pursuant to this Agreement. Confidential Information of Aceyus includes, but is not limited to, the Software, as well as the structure, organization, design, algorithms, methods, templates, data models, data structures, flow charts, logic flow, and screen displays associated with the Software; the Documentation; and Aceyus' non-public pricing, sales, implementation, and training materials and procedures. Confidential Information does not include information that: (i) is or becomes publicly known or available without breach of this Agreement; (ii) is received by a receiving party from a third party without breach of any obligation of confidentiality; or (iii) was previously known by the receiving party as shown by its written records. The terms of this Agreement (as well as information relating to the negotiation of this Agreement) shall be deemed the Confidential Information of the Parties hereto.

(b) Confidentiality Obligations. A receiving party agrees: (i) to hold the disclosing party's Confidential Information in strict confidence; and (ii) except as expressly authorized by this Agreement, not to use, disclose, or copy the Confidential Information. Without limiting the foregoing, Licensee shall disclose and allow access to the Software only for the purpose of supporting Licensee's license to use the Software. Licensee acknowledges that Aceyus may use Licensee's Confidential Information for the proper management and administration of Aceyus, including but not limited to use for quality improvement, enhancement of products, support, and system maintenance purposes. A receiving party may disclose Confidential Information of the disclosing party as required by law or court order; in such event, such party shall inform the other party as soon as practicable, prior to any such required disclosure. Without limiting any of the foregoing, Licensee expressly acknowledges and agrees that it shall not permit any third party, nor any employee, representative or agent thereof, that develops, markets or licenses software or services with functionality similar to the functionality of the Services or Software to have access to the Services or Software or to any trade secrets and confidential information therein.

(c) Remedies. Each party acknowledges and agrees that any violation of this Section may cause such party irreparable injury for which such party would have no adequate remedy at law and that such party shall be entitled to preliminary and other injunctive relief against the other party for any such violation. Such injunctive relief shall be in addition to, and not in limitation of, all other remedies or rights that such party may have at law or in equity.

(d) Aceyus Policy on Sensitive Information. It is Aceyus' corporate policy not to share information that is considered by Aceyus in its sole discretion to be sensitive and/or highly confidential. This type of information includes, but is not limited to, financial data, vulnerability scan reports, employee data, or contracts with external organizations. Aceyus will use reasonable efforts to comply with Licensee requests for information from time to time that align with current laws and Aceyus policies.

(e) Termination. Upon the termination or expiration of this Agreement, the receiving party will either return to the disclosing party or destroy all the Confidential Information delivered or disclosed to the receiving party, together with all copies in existence thereof at any time made by the receiving party.

## **9. Security**

(a) Nature of Aceyus Software. Licensee acknowledges that Aceyus provides software and solutions for managing contact center operations that work with call/contact center statistics and metadata. Licensee agrees to use reasonable efforts to limit the inclusion of personal data in databases used with the Software.

(b) Security. Aceyus shall maintain commercially reasonable information security measures relating to its handling of Licensee Data that comply with applicable laws and industry standards. Aceyus' information security measures shall include appropriate administrative, technical, physical, organizational and operational safeguards, security training, and other security measures designed to (i) protect the security and confidentiality of Licensee Data and (ii) protect against the threat of information security incidents.

(c) Licensee Obligations. Licensee is responsible for safeguarding the confidentiality and security of its access to the Software and agrees to comply with the current Aceyus security recommendations and best practices specified in the Documentation. Licensee shall employ physical, administrative and technical controls, screening and security safeguards necessary to securely administer, distribute and safeguard access credentials and protect against any unauthorized access.

## **10. Warranty**

(a) Authority. Each party warrants that it has full authority to enter into this Agreement and is not bound by any contractual or legal restrictions from fulfilling its obligations hereunder.

(b) Aceyus Warranties. Aceyus warrants that: (i) for a period of thirty (30) days from the Initial Deployment Date, that the Software will substantially conform to the specifications contained in the applicable Documentation, and (ii) that the Services will be performed by qualified personnel in a professional and workmanlike manner. Any allegation of breach of the warranty in 10(b)(ii) must be made within thirty (30) days after delivery of the Services, and Licensee's sole remedy shall be re-performance of such Services.

(c) Licensee Warranty. Licensee warrants that Licensee has all necessary rights to provide Aceyus with access and use of the Licensee Data and the Licensee-Supplied Components, as necessary for Aceyus to provide Services to Licensee.

(d) Disclaimer. Aceyus does not warrant that the Software will operate uninterruptedly or error-free or will be completely secure. Licensee is solely responsible for the Licensee Data, including its accuracy and completeness. The successful operation of the Software is dependent on Licensee's delivery of the Licensee-Supplied Components and use of proper procedures and systems. Aceyus is not responsible for errors or issues with any third-party software or systems not supplied by Aceyus, including with respect to data communications issues with such software and systems. ACEYUS DOES NOT WARRANT THAT THE SOFTWARE OR SERVICES WILL ACHIEVE ANY SPECIFIC RESULT OR BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ACEYUS AND ITS SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY; FITNESS FOR A PARTICULAR PURPOSE; WARRANTIES OF NON-INFRINGEMENT; OR ANY WARRANTIES ARISING AS A RESULT OF LICENSEE USAGE IN THE TRADE OR BY COURSE OF DEALING.

## **11. Limitation of Liability**

Licensee agrees that any liability of Aceyus or any of its suppliers relating to this Agreement, the Software, and the Services shall be limited to the amount of fees actually received by Aceyus from Licensee under this Agreement regarding the Order in question during the twelve (12) months prior to the date the relevant cause of action accrued. In no event shall Aceyus or any of its suppliers be liable for any special, incidental, indirect, cover, consequential, exemplary or punitive damages; any damages based on injury to person or property or death; or any lost sales, profits or data, even if Aceyus is told that any of such damages may occur. The fees charged by Aceyus under this Agreement are calculated with specific reference to the level of liabilities undertaken by Aceyus hereunder. Aceyus is not liable or responsible in any way for any issues caused by the actions or inactions of Licensee or Reseller.

## **12. Assignment**

This Agreement may not be assigned by either party without the prior written consent of the other; provided that either party may assign its rights and obligations under this Agreement without consent to (a) any affiliate of such party, or (b) any party acquiring all or substantially all of the assets or stock, by merger or otherwise, of such party or the relevant division of such party. Any permitted assignee must agree in writing to be bound by the terms of this Agreement.

## **13. Entire Agreement**

The parties agree that this Agreement, including all Orders, all terms incorporated by reference, and all Amendments hereto, is the complete and exclusive statement of the agreement between Aceyus and Licensee, which supersedes any proposal, prior agreement, or license, oral or written, and any other communications relating to the subject matter of this Agreement. Aceyus may from time to time update terms and other documents incorporated by reference herein, so long as those updates does not materially reduce any Aceyus commitments therein. Aceyus will provide Licensee with notice of material changes to such terms or documents, which notice may be email. In the event of any conflict between the terms of an Order and the terms of this Agreement, the terms of this Agreement shall control unless the Order expressly identifies the Sections of this Agreement to be varied. Except as expressly set forth herein, this Agreement may be modified only by means of a written amendment signed by authorized representatives of each party. The terms of any purchase order submitted by Licensee will not operate to modify or supplement any terms of this Agreement. The parties agree that there are no intended third-party beneficiaries under this Agreement.

## **14. Independent Contractor**

The parties are independent contractors, and nothing contained herein shall be construed to create any other relationship between the parties. Nothing in this Agreement shall be construed to constitute either party as the agent of the other party for any purpose whatsoever, and neither party shall bind or attempt to bind the other

party to any contract or the performance of any other obligation or represent to any third party that it has the right to enter into any binding obligation on the other party's behalf.

## 15. Additional Terms

(a) Force Majeure. Except for Licensee's payment obligations, each party shall be excused from performance and shall not be liable for any delay or failure to perform caused by events outside of its reasonable control, including without limitation the occurrence of, war, pandemic, terrorism, sabotage, insurrection, riot or other act of civil disobedience, labor disturbance or shortage, act of public enemy, failure of the Internet, act of any government affecting the terms hereof, explosion, flood or other act of God.

(b) Choice of Law. This Agreement shall be construed in accordance with the internal laws of North Carolina without regard to its choice of law provisions, and all disputes shall have exclusive venue in the federal and state courts in Mecklenburg County, North Carolina, and both parties consent to the jurisdiction of such courts. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (USA) do not apply to this Agreement. If any term of this Agreement shall be found invalid, the term shall be modified or omitted to the extent necessary, and the remainder of this Agreement shall continue in full effect. In any action brought by a party related to this Agreement, the prevailing party shall be entitled to collect from the other party its reasonable litigation costs and attorney's fees and expenses.

(c) Logo. Licensee agrees that Aceyus may use Licensee's name and logo as part of a Licensee list in connection with Aceyus' marketing activities, including without limitation on Aceyus' web site. Any other publicity, press release, or case study involving Licensee and Aceyus must be agreed in writing by the parties.

(d) Export. Licensee acknowledges that the Software, Services and related technical data are subject to export restrictions under United States law. Licensee agrees to comply with all applicable United States and international export and import control laws, including but not limited to the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by the United States and other governments.

(e) Waiver; Severability; Counterparts. The waiver by either party of a breach of any provision of this Agreement shall not constitute or be construed as a waiver of any future breach of any provision(s) of this Agreement. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

(f) HIGH RISK APPLICATIONS. THE SOFTWARE IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS REQUIRING FAULT TOLERANCE OR FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPON SYSTEMS, IN WHICH THE FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK APPLICATIONS"). Aceyus and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Applications.

(g) Government End-Users. Each of the Software, Documentation, and related items are intended to be "commercial items" to the maximum extent permitted under the US Code of Federal Regulations and any similar laws. All government end users only have the rights set forth herein.

(h) Notices. All notices under this Agreement shall be in writing and shall be given by: (i) delivery in person; (ii) a nationally recognized next day courier service, (iii) first class, registered or certified mail, postage prepaid, return receipt requested or (iv) e-mail, provided that there is confirmation of receipt. Notices to Aceyus will be to the address set forth in this Agreement or by email to legal@aceyus.com. Notices to Licensee will be to the address or email specified in the Order. All notices shall be effective upon receipt by the party to which notice is given. Each party may change its address for receipt of notice by giving notice of such change to the other party.



This Agreement is signed by an authorized representative of each party.

**Licensee:**

**Aceyus, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_