

## **BQE SOFTWARE SERVICE LEVEL AGREEMENT**

These Terms of Service are an agreement between BQE Software (or, if applicable based on where Customer lives, one of its Affiliates) and Customer (the "Agreement"). This Agreement consists of the below terms and conditions, the SLA's applicable to the Service, and the pricing and payment terms made available relating to the Service. The Service also may contain other posted notices or codes of conduct, which are incorporated by reference into this Agreement.

Please read this Agreement carefully. By subscribing to and/or using any of the Service, CUSTOMER agrees to be bound by this Agreement, including any modifications made to it from time to time. If CUSTOMER does not agree to the terms and conditions in this Agreement, IT may not subscribe to or use the Service.

### **1. DEFINITIONS**

**"Affiliate"** means any legal entity that a party owns, that owns a party, or that is under its common ownership. "Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity. If Customer is an agency of a state, provincial, or local government, "Affiliate" means (1) any government agency, department, office, instrumentality, division, unit or other entity, of Customer's state, provincial or local government that is supervised by, or is part of, Customer, or which supervises Customer or of which Customer is a part, or which is under common supervision with Customer; (2) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state or province and located within Customer's state's or province's jurisdiction and geographic boundaries; and (3) any other entity in Customer's state or province expressly authorized by the laws of Customer's state or province to purchase under state or provincial contracts; provided that a state or province and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government or its Affiliates. Notwithstanding the forgoing, provincial Crown corporations are not Affiliates for the purposes of this definition. If Customer is an agency of the U.S. government, "Affiliate" means any other agency of the U.S. government. If Customer is an agency of the Canadian government, "Affiliate" means any other agency of the Canadian government, except for a federal Crown corporation.

**"Client Software"** means any software provided to Customer related to the Service.

**"Content"** means all data, including all text, sound, video or image files and software that are provided to BQE Software by, or on behalf of, Customer, its Users and associated account Users through their use of the Service.

**"Customer"** means the entity that has entered into this Agreement. If an individual enters this Agreement on behalf of a company or other legal entity, such individual represents that he or she has the authority to bind such entity to this Agreement.

"**License**" means the rights granted by BQE Software to Customer to copy, install, use, access, display, run and/or otherwise interact with the Service and/or Client Software for, as applicable, for Customer's internal business purposes.

"**BQE Software**" means BQE Software or its Affiliates.

"**Order**" means an order for Services. An Order may include multiple Subscriptions to Services.

"**Service**" means BQE Software Online services (including pre-release services and Add-on Services) and software, including any updates, upgrades, support, and content (e.g., audio and visual information, documents) contained or made available to Customer by BQE Software in the course of using the Service. BQE Software may change the Service at any time and for any reason without notice.

"**SLAs**" means service level agreements representing commitments BQE Software makes with regard to the Services.

"**Subscription**" means the part of the Order identifying the specific Services being ordered and may include the User quantity, ship-to address, or other information.

"**Term**" means the duration of a Subscription.

"**Users**" means individuals within Customer's organization who have the right to use the Services, as dictated by the number of User Licenses purchased by Customer.

"**User licenses**" refers to the named licenses that Customer has purchased under its Subscription for Services.

## **2. License grant – what customer is licensed to use**

**2.1 General.** BQE Software grants Customer a License to the Services ordered by Customer, subject to Customer's obligation to pay and any rights and limitations described in this Agreement. This License is non-exclusive, non-perpetual, and is not transferable. The ability to use Services may be affected by minimum system requirements or other factors. BQE Software reserves all rights not expressly granted.

**2.2 Client Software.** Customer may need to install Client Software to access and use the Service. Customer may make copies of the Client Software solely to support the Service for its Users. Copies must be true and complete copies (including copyright and trademark notices) and be made from a BQE Software approved media or a network source. Customer may use a third party to make and install these copies, but Customer agrees that it will be responsible for that third party's actions. Customer agrees to use reasonable efforts to make its employees, agents and other individuals that it allows to use the Client Software aware that it is licensed from BQE Software and subject to the terms of this Agreement. Additional rights and restrictions for the Client Software may accompany the provision of such Client Software, and Customer agrees to abide by all such additional rights and restrictions.

**2.3 Authorized Users.** Only those individuals who Customer designates as authorized Users may use and access the Service. Only Users who have administrator privileges may add additional authorized Users to the Service up to and including the total number of User Licenses purchased during the Subscription period. User Licenses cannot be shared or used by more than one individual authorized User and cannot be reassigned to a new User to replace a current authorized User who has terminated employment or otherwise changed job status or function and no longer uses the Service. However, a User who has administrator privileges may delete an authorized User from the Service and add a new authorized User to the Service to replace the former authorized User.

**2.4 External Users.** Customer does not need to purchase additional Users accounts for external users who access the Service without using any of the software. “External users” means users that are not Customer, or its employees, Affiliates, contractors or agents.

**2.5 Limitations on use.** Customer shall not reverse engineer, decompile or disassemble the Service or Client Software, except where applicable law permits it despite this limitation. Customer shall not rent, lease, lend, resell, or host to or for third parties any Service or Client Software.

**2.6 Font Components.** While using the Service, Customer may use its fonts to display and print content. Customer may only: (i) embed fonts in content as permitted by the embedding restrictions in the fonts; and (ii) temporarily download them to a printer or other output device to print content.

### **3. Ordering, pricing, payments, renewals and taxes**

**3.1 Ordering.** Customer shall place an Order for each Subscription for a Service via any means made available by BQE Software for such Ordering. If Customer desires to use the Service for more than the total number of User Licenses available through the Service level it subscribed to, it must subscribe to the appropriate Service level prior to commencing any such use. If Customer desires to reduce the total number of Users, it may do so, subject to the cancellation fees set forth in Section 4.2. Any Services added to a Subscription will expire at the end of the Term. Each Subscription shall be for a defined Term (e.g., 30 days or 12 months). Customer may place Orders for its Affiliates under this Agreement and grant its Affiliates administrative rights to manage the Services. Affiliates may not place Orders under this Agreement. To the extent Customer grants any rights to Affiliates, such Affiliates shall be bound by the terms and conditions of this Agreement. Customer agrees that it is jointly and severally liable for any Services purchased for or other actions taken by any of its Affiliates or any third party to which it provides rights under this Agreement.

**3.2 Subscription Fees.** “Subscription Fee” means the monthly or annual amount Customer is required to pay for the Subscription to the Service and Client Software. Customer may be required to pay the Subscription Fee in advance, in arrears or both. BQE Software may charge Customer at one time for more than one billing period. Subscription Fees are available via the Order or other means made available by BQE Software. Payments are due and must be paid in accordance with the Order. Price level changes are not retroactive. Prices for each price level are fixed at the time the Subscription is first placed and apply throughout the Term. Subscription Fees are subject to change at the beginning of any Subscription renewal.

**3.3 Renewal.** Unless the offer specifically states otherwise, Customer's Subscription will automatically renew at the expiration of the Term.

**3.4 New agreement.** Prior to placing new Orders, renewing any Subscriptions, or further use of the Services, and upon notice, BQE Software may require that Customer enter into an updated agreement to govern Orders, renewal Subscriptions, or usage from that date forward.

**3.5 Taxes and other Incidental Charges.** The prices and rate plans do not include any taxes, phone and Internet access charges, mobile text messaging, wireless service and other data transmissions, unless stated otherwise. Customer is responsible for all such incidental charges and any taxes and it is legally obligated to pay including, but not limited to, paying BQE Software any applicable value added, sales or use taxes or like taxes that are permitted to be collected from Customer by BQE Software under applicable law. If any taxes are required by law to be withheld on payments made by Customer to BQE Software, Customer may deduct such taxes from the amount owed BQE Software and pay them to the appropriate taxing authority; provided, however, that Customer shall promptly secure and deliver to BQE Software an official receipt for any such taxes withheld or other documents necessary to enable BQE Software to claim a Foreign Tax Credit. Customer will make certain that any taxes withheld are minimized to the extent possible under applicable law.

**3.6 Refunds.** All charges are non-refundable unless expressly stated otherwise or otherwise provided by law.

**3.7 Late Payments.** Except to the extent prohibited by law, BQE Software may assess a late charge if Customer does not pay on time, regardless of any disputes Customer may have raised about its bill. Customer must pay these late charges as and when billed by BQE Software. The late charge will be the lesser of 5% of the unpaid amount each month or the maximum rate that is permitted by law. BQE Software may use a third party to collect past due amounts. Customer must pay for all reasonable costs incurred by BQE Software to collect any past due amounts. These costs may include reasonable attorneys' fees and other legal fees and costs. BQE Software may suspend or cancel the Service if Customer does not pay in full and on time.

#### **4. Term and termination**

**4.1 Termination by BQE Software.** BQE Software may cancel or suspend Customer's use of the Service or a portion thereof at any time if Customer violates the terms of this Agreement, if BQE Software believes that Customer's use of the Service represents a direct or indirect threat to its network function or integrity or anyone else's use of the Service, or if BQE Software is otherwise required by law to do so. Upon notification by BQE Software of any such cancellation or suspension, Customer's right to use the Service will stop immediately. Cancellation or suspension of the Service for Customer's violation of the terms of this Agreement will not change Customer's obligation to pay any Subscription fees due for the applicable Term. BQE Software may also cancel or suspend Customer's use of the Service for convenience at any time during the Term. Cancellation or suspension for convenience will only be effective upon a 1-month notification by BQE Software.

**4.2 Termination by Customer.** Customer may terminate a Subscription or reduce the number of User Licenses by providing a written cancellation notice at least 30 days prior to the end of the Subscription cycle. There will be no refund of the pre-paid subscription. Any balance owed for the subscription period must be paid in full prior to the cancellation request.

**4.3 Effect of termination.** Upon termination or cancellation of the Service by either party for any reason, BQE Software may delete Customer's Content permanently from its servers. Notwithstanding the foregoing, BQE Software will keep Customer's Content for a period of 60 days before it is deleted from BQE Software's servers. Customer is solely responsible for taking the necessary steps to back up its Content and ensure that it maintains its primary means of business.

**4.4 Waiver of rights and obligations.** To the extent necessary to implement the termination of this Agreement, each party waives any right and obligation under any applicable law or regulation to request or obtain intervention of the courts to terminate this Agreement.

**4.5 No liability for deletion of Content.** Customer acknowledges that, other than as expressly described in these terms, BQE Software will have no obligation to continue to hold, export or return Customer's Content. Customer acknowledges that BQE Software will have no liability whatsoever for deletion of Content pursuant to these terms.

## **5. Privacy**

**5.1 Access and Disclosure.** In order to operate and provide the Services, BQE Software collects certain information about its Customer. BQE Software uses and protects that information as described herein and in BQE Software's privacy statement, available at <http://www.bqe.com>. In particular, BQE Software may access or disclose information about Customer, including the content of its communications, in order to:

- comply with the law or respond to lawful requests or legal process;
- protect the rights or property of BQE Software or its customers, including the enforcement of its agreements or policies governing Customer's use of the Services; or
- act when BQE Software believes, in good faith, that such access or disclosure is necessary to protect the personal safety of BQE Software employees, customers or the public.

Customer hereby consents to the access and disclosures outlined in this section.

**5.2 Transfer of personal information.** Personal information collected through the Service may be stored and processed in the United States or any other country in which BQE Software or its affiliates, subsidiaries, or agents maintain facilities. By using the Service, Customer consents to any such transfer of information outside of its country.

**5.3 Performance and usage data.** In order to provide the Service, BQE Software may collect certain information about Service performance, Customer's computers and its Service use. BQE Software may automatically upload this information from Customer's computers. This data will not personally identify Customer.

**5.4 Filtering technology.** BQE Software may use technology or other means to protect the Service, protect its customers, or stop customers from breaching this Agreement. Examples include filtering to stop spam and viruses or increase security. These means may hinder Customer's use of the Service.

**5.5 Communications.** Because the Service is a hosted, online application, BQE Software may need to notify Users of the Service occasionally of important announcements regarding the operation of the Service. As a condition of the Service, Users may receive marketing and other non-critical Service-related communications from BQE Software from time to time.

## **6. Use rights and limitations**

**6.1 SLAs.** BQE Software will comply with the then-current SLA in place relating to the Services.

**6.2 Customer's Use.** In using the Service, Customer will:

- comply with all laws;
- comply with any codes of conduct or other notices provided by BQE Software;
- keep its password secret, and
- promptly notify BQE Software if it learns of a security breach or unauthorized access related to the Service.

Customer may not:

- use the Service in any way that harms BQE Software or its Affiliates, resellers, distributors and/or vendors (collectively, the "BQE Software parties"), or any customer of a BQE Software party or the Service or other Users;
- engage in, facilitate, or further unlawful conduct;
- damage, disable, overburden or impair the Service (or the networks connected to the Service) or interfere with anyone's use and enjoyment of the Service;
- resell or redistribute the Service, or any part of the Service, unless Customer has a contract with BQE Software that permits it to do so;
- use any portion of the Service as a destination linked from any unsolicited bulk messages or unsolicited commercial messages ("spam");
- use any unauthorized automated process or service to access and/or use the Service (such as a BOT, a spider, periodic caching of information stored by BQE Software or "meta-searching"), however, periodic automated access to the Service for report creation or scheduling is permitted;
- use any unauthorized means to modify or reroute, or attempt to modify or reroute, the Service or work around any of the technical limitations in the Service;
- modify, create derivative works from, reverse engineer, decompile or disassemble or otherwise attempt to discover any trade secret contained in the Service or in any technology, or system used by BQE Software in connection with providing the Service, except and only to the extent that applicable law expressly permits Customer to do so despite this limitation;
- create Internet "links" to the Service or "frame" or "mirror" any content of the Service to give the impression that Customer is offering all of the functionality of the Service as its service located on its own servers;
- build a product or service using similar ideas, features, functions or graphics of the Service;
- copy any ideas, features, functions or graphics of the Service.

**6.3 Limits on Service.** BQE Software may establish limits on the Service. For example, it may limit the number of days the Service will retain any content that BQE Software, Customer or its Users provide, the number and size of email messages that Customer may send or receive through the Service, the maximum storage space on BQE Software's servers available to Customer, the number of Service accounts to which Customer may subscribe, how long BQE Software retains an inactive Service account (one where Customer does not sign in to the Service for an extended period of time; the number of transactions Customer can conduct through the Service, and the number of asynchronous transactions that can be executed with an organization

**6.4 Use of Other BQE Software Services.** Customer may need to use certain BQE Software websites or services to access and use the Services. If so, the terms of use associated with those websites or services, as applicable, apply to Customer's use of them.

**6.5 Third Party Services.** BQE Software may make services from third parties available to Customer through the Service. These third party services are the responsibility of the third party, not BQE Software. The third party service providers may require Customer to accept additional terms and conditions and/or pay a fee in order to use their services. Those additional terms and conditions are between Customer and the third party. Any third party's use of information Customer provides as part of using their service is subject to the privacy statements and practices of that third party and/or their suppliers. BQE Software encourages Customer to review the privacy statement of these third party providers. BQE Software is not responsible for the privacy statements or privacy practices of these third party providers or their suppliers.

**6.6 Third Party Software.** Customer is solely responsible for any third party software installed in or used with the Services. BQE Software is not a party to and is not bound by any terms governing Customer's use of the third party software, Customer acknowledges that it will direct and control the installation in and use of such software with the Service. BQE Software will not run or make any copies of third party software licensed by the Customer except to support Customer's use of the Service. Customer may not install or use the third party software in any way that would subject BQE Software's intellectual property or technology to obligations beyond those included in the Agreement. BQE Software does not, and will not have any obligation to, provide technical or other support for any third party software. BQE Software does not make any representation or guaranty that any third party software will operate successfully with the Service or continue performing after an update, upgrade, services patch, support fix or platform migration has been made to the Service.

## **7. Customer content**

**7.1 Content.** Customer, its Users and associated account Users may be able to post or store Content to third party or BQE Software websites made available through the Service. Customer may be able to post or provide materials (including feedback) that are part of the Service in a publicly accessible area that allows Customer to communicate with others. If so, the terms of use associated with those websites where public access is made available for Customer to share Content, as applicable, apply to Customer's use of them. Customer acknowledges that certain technical processing for posting Content may be required to store and retrieve the Content, conform to connecting networks' technical requirements, or conform to the limitations of the Service.

**7.2 Links to third-party Web sites.** The Service may contain links to third-party websites. These third-party websites are not under BQE Software’s control. If BQE Software has included these links in the Service, it provides them as a convenience only. The inclusion of these links is not an endorsement by BQE Software of any third-party website, service or product. BQE Software reserves the right to disable links to any third-party website that Customer posts on the Service.

**7.3 BQE Software will not own any Content.** BQE Software performs regular backups of Content for the purpose of recovery in the event of a failure in BQE Software’s data centers. However, notwithstanding the foregoing, Customer is solely responsible for maintaining and backing up any Content that it uses with the Service. Customer, not BQE Software, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use such Content. BQE Software shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Content that Customer uses with the Service.

## **8. Associated accounts**

Only Customer may use its Service account. However, BQE Software may allow Customer to setup additional member accounts that are dependent on Customer’s account (an “associated account”). BQE Software may limit associated accounts. Customer is responsible for all activity under its Service account, associated accounts and passwords. Customer is solely responsible for monitoring usage of its Service account and for any use or misuse of its Service account or the Service resulting from any associated account or any third party using any password or user name selected by or issued to Customer. If Customer is the authorized User of an associated account, then the person or entity that gave Customer access to the Service (the account holder) has full control over Customer’s associated account. This control includes the right to end the Service, close or alter Customer’s associated account at any time, and, in some cases, request and receive machine and Service usage information related to Customer’s associated account.

## **9. Pre-Release Service**

If the version of the Service that is licensed to Customer is a pre-release or early access version, including its user interface, features and documentation (“Beta Version”), then it may not work the way a final version of the feature or Service will. BQE Software reserves the right to not release a commercial version of, or to change, any Beta Version of the Service at any time without notice to Customer. Any such Beta Version is confidential and proprietary to BQE Software and its suppliers. For five years after Customer subscribes to the Beta Version of the Service or the subsequent commercial version of the Service, whichever is first, Customer agrees not to disclose any Beta Version to third parties or to use any Beta Version other than for its internal purposes in connection with Customer’s use of the Service. Customer’s duty to protect the confidentiality of any Beta Version survives this Agreement.

**Pre-release services are provided “as-is,” “with all faults” and “as available.” You bear the risk of using pre-release services. To the maximum extent permitted by law, the BQE Software parties give no express warranties, guarantees, or conditions. You may have additional rights under your local laws that this Agreement cannot change. To the extent permitted by law, we exclude any implied warranties or conditions including those of merchantability, fitness for a particular purpose, workmanlike effort, non-infringement, and satisfactory quality.**



## 10. Trial Period Offers

You may receive a trial period offer for the Service. Your use of the Service during a trial period is subject to the terms of this Agreement. At the end of the trial period, if you do not subscribe to the Service, BQE Software will consider the Service terminated pursuant to Section 4.3 of this Agreement.

## 11. Confidentiality

BQE Software and Customer shall treat the terms and conditions of this Agreement as confidential and shall not disclose them to any third party except in the furtherance of the parties' business relationship with each other. For government Customers, this Section is subject to the requirements of applicable trade secret, public records, or similar laws.

## 12. Warranties

**12.1 Limited warranty.** BQE Software warrants that the Services and Client Software will conform substantially to the description of them contained in the applicable BQE Software user documentation. This limited warranty is subject to the following limitations:

- this limited warranty applies only during the Term, including any renewals ("Warranty Period");
- any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last only during the Warranty Period;
- this limited warranty does not cover problems caused by accident, abuse or use of the Services in a manner inconsistent with this Agreement, or resulting from events beyond BQE Software's reasonable control;
- this limited warranty does not apply to problems caused by the failure to meet minimum system requirements; and
- this limited warranty does not apply to downtime or other interruption in access to the Services, or any other performance metrics that are addressed in an applicable SLA.

**12.2 Remedies for breach of limited warranty.** If Customer notifies BQE Software within the Warranty Period that a Service does not meet the limited warranty, then BQE Software will, at its option, either (1) return the amount paid for the Service during the (a) Term or (b) 12 months prior to delivery of notice to BQE Software, whichever is less, or (2) update such Service to make it conform. These are Customer's only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.

**12.3 DISCLAIMER OF OTHER WARRANTIES.** OTHER THAN THIS LIMITED WARRANTY, BQE SOFTWARE PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES. BQE SOFTWARE DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS OTHERWISE REQUIRED BY APPLICABLE LAW.

## 13. Defense of infringement and misappropriation claims

**13.1 Agreement to protect.** BQE Software will defend Customer against any claims made by an unaffiliated third party that any Service or Client Software infringes that party's patent, copyright or trademark or makes intentional unlawful use of its trade secret or undisclosed information.

**13.2 What Customer must do.** Customer must notify BQE Software promptly in writing of the claim and give BQE Software sole control over its defense. Customer must also provide BQE Software with reasonable assistance in defending the claim. BQE Software will reimburse Customer for reasonable out of pocket expenses that it incurs in providing that assistance.

**13.3 Limitations on defense obligation.** BQE Software's obligations will not apply to the extent that the claim or award is based on:

- Customer's use of the Service or Client Software after BQE Software notifies it to discontinue its use due to a third party claim;
- Customer's combination of the Service or any related Client Software with a non-BQE Software product, data or business process;
- damages attributable to the value of the use of a non-BQE Software product, data or business process;
- Customer's use of BQE Software's trademark(s) without express written consent to do so; or
- any trade secret or undisclosed information claim, where Customer acquires the trade secret or undisclosed information (1) through improper means; (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (3) from a person (other than BQE Software) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret or undisclosed information.
- Customer will reimburse BQE Software for any costs or damages that result from any of the above actions.

**13.4 Specific rights and remedies in case of infringement.**

- BQE Software's rights in addressing possible infringement. If BQE Software receives information concerning an infringement claim related to a Service or Client Software, BQE Software may, at its expense and without obligation to do so: (1) procure for Customer the right to continue to use the allegedly infringing Service and/or Client Software, (2) modify the Service and/or Client Software, or (3) replace the Service and/or Client Software with a functional equivalent, to make it non-infringing, in which case Customer will immediately stop using the allegedly infringing Service and/or Client Software after receiving notice from BQE Software.
- Customer's specific remedy in case of injunction. If, as a result of an infringement claim, Customer's use of a Service or Client Software is enjoined by a court of competent jurisdiction, BQE Software will, at its option, either: (1) procure the right to continue its use; (2) replace it with a functional equivalent; (3) modify it to make it non-infringing; or (4) terminate the License for the infringing Service and/or related Client Software and refund any amounts paid in advance by Customer for unused Services.

## **14. Limitation of liability**

**14.1 Limitation on liability.** Except as otherwise provided in this Section, to the extent permitted by applicable law, the liability of BQE Software and of BQE Software's contractors to Customer arising under this Agreement is limited to direct damages up to the amount Customer paid BQE Software for the Service and/or Client Software giving rise to that liability during the (1) Term or (2) twelve months prior to the filing of the claim, whichever is less. These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:

- BQE Software's obligations under the Section titled "Defense of infringement and misappropriation claims";
- Customer's use of BQE Software's trademark(s) without express written consent to do so;
- liability for damages awarded by a court of final adjudication for BQE Software's or its employees' or agents' gross negligence or willful misconduct;
- liabilities arising out of any breach by BQE Software of its obligations under the Section entitled "Confidentiality"; or
- liability for personal injury or death caused by BQE Software's negligence or that of its employees or agents or for fraudulent misrepresentation.

**14.2 EXCLUSION OF CERTAIN DAMAGES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES OR SUPPLIERS, WILL BE LIABLE FOR ANY INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS OR OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

## **15. Verifying compliance**

During the Term of any Subscription and for three years thereafter, Customer must keep all usual and proper records relating to the Subscription(s) and Customer's use of the Services and/or Client Software under this Agreement. BQE Software may request that Customer conduct an internal audit of all Services in use throughout Customer's organization, comparing the number of User Licenses in use to the number of User Licenses issued to and/or paid for by Customer. By requesting an audit, BQE Software does not waive its rights to enforce this Agreement or to protect BQE Software's intellectual property by any other means permitted by law. If verification or self-audit reveals any unlicensed use, Customer must promptly order sufficient Licenses to cover its past and present use. If material unlicensed use is found, Customer must reimburse BQE Software for the costs BQE Software has incurred in verification and acquire the necessary additional Licenses at single retail license cost within 30 days.

## **16. Miscellaneous**

**16.1 Notices.** Notices, authorizations, and requests to BQE Software in connection with this Agreement must be sent by regular or overnight mail, or express courier, to the addresses listed below. Notices will be treated as delivered on the date shown on the return receipt. Termination of the Agreement, a Subscription, or cancellation of a Subscription initiated by a Customer should be sent via the BQE Software customer service contact.

BQE Software, Inc.  
3825 Del Amo Blvd.  
Torrance, CA 90503

**16.2 Assignment.** Customer may not assign this Agreement. BQE Software may assign this Agreement to its Affiliates.

**16.3 Severability.** If a court holds any provision of this Agreement to be illegal, invalid or unenforceable, the rest of the document will remain in effect and this Agreement will be amended to give effect to the eliminated provision to the maximum extent possible.

**16.4 Waiver.** A waiver of any breach of this Agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.

**16.5 Applicable law.** This Agreement is governed by the laws of the State of California without regard to its conflict of laws principles, except that (1) if Customer is an entity of the U.S. Government, this Agreement is governed by the laws of the United States, and (2) if Customer is an entity of a state or local government in the United States, this Agreement is governed by the laws of that state. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement. The Services are protected by copyright and other intellectual property rights laws and international treaties.

**16.6 Dispute resolution.** Any action to enforce this Agreement must be brought in the State of California, USA. This choice of jurisdiction does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction. If Customer is an entity of the U.S. Government or an entity of a state or local government, this Section does not apply and jurisdiction and venue will be determined by applicable law.

**16.7 This Agreement is not exclusive.** Customer is free to enter into agreements to license, use or promote non-BQE Software, software or services.

**16.8 Entire agreement.** This Agreement, any SLAs, and the pricing and payment terms available set forth in the Order constitute the entire agreement concerning the subject matter and supersede any prior or contemporaneous communications.

**16.9 Survival.** Provisions regarding fees, restrictions on use, transfer of licenses, export restrictions, defense of infringement and misappropriation claims, limitations of liability, confidentiality, compliance verification, obligations on termination, and the provisions in this Section entitled "Miscellaneous" will survive termination of this Agreement.

**16.10 Customer consent to partner fees.** When Customer places an Order for certain Services, it may have the opportunity, at its sole discretion, to identify a BQE Software "Partner of Record" associated with its Subscriptions. By identifying a Partner of Record, directly or by authorizing a third party to do so, Customer consents to BQE Software paying certain fees to the Partner of Record. The fees are for pre-sales support to BQE Software and may also include post-sales support to Customer. The fees are based on, and increase with the size of, Customer's Order.

**16.11 Force majeure.** Neither party will be liable for any failure in performance due to causes beyond either party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Services)). This Section will not, however, apply to Customer's payment obligations under this Agreement.

**16.12 User ID.** Customer agrees that it is responsible for protecting the confidentiality of any BQE Software User IDs or other authentication IDs associated with this Agreement.

**16.13 U.S. export jurisdiction.** The Services are subject to U.S. export jurisdiction. Customer must comply with all applicable laws including the U.S. Export Administration Regulations as well as end-user, end-use and destination restrictions issued by U.S. and other governments.

**16.14 English language controls.** The English language version of this Agreement controls.

**16.15 Natural disaster.** In the event of a natural disaster, BQE Software may post information or provide additional assistance or rights on <http://www.BQE.com>.

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