

These master terms and conditions (the “Terms”, and together with (as applicable) your Order Form, Support Addendum and Professional Services Addendum, the “Agreement”) are a binding agreement between you (“you” or “Customer”) and PROPHECY (“Prophecy” “us” or “we”) governing your use of the Prophecy Software and Prophecy Services ordered on your Order Form. Certain features of the Prophecy Services or Prophecy Software may be subject to additional guidelines, terms, or rules, which will be posted on the Prophecy Service in connection with such features. All such additional terms, guidelines, and rules are incorporated by reference into these Terms. These Terms shall apply and be incorporated into any Support Addendum or Professional Services Addendum. Prophecy reserves the right to amend, discontinue, limit, disable, terminate, or cancel any feature of the Prophecy Service or Prophecy Software at any time.

## 1. DEFINITIONS.

**1.1 “Additional Materials”** means all services, hardware, and software necessary to operate or use the Prophecy Software or Prophecy Services and not owned or provided by Prophecy unless expressly agreed to under this Agreement.

**1.2 “Affiliate”** shall mean any present or future corporation, partnership, or other entity

that is in or under the direct or indirect majority ownership or control of Customer or Prophecy, respectively, or of another Affiliate of Customer or Prophecy, where “control” means ownership of fifty percent (50%) or more of the outstanding voting securities (but only as long as such person or entity meets these requirements).

**1.3 “Customer Data”** means any data, content, works, and information provided or delivered by Customer, its Affiliates, and/or any User to Prophecy. Notwithstanding the foregoing, Customer Data shall not mean any data, content, works, or information provided by Customer or its representatives or any User to the extent that such information has been anonymized or aggregated by Prophecy or its representatives such that it does not identify any particular individual or entity, and Prophecy shall own all rights to such deidentified data, content, works, and information.

**1.4 “Documentation”** means the user manuals provided to Customer with the Prophecy Software in either electronic, online help files or hard copy format.

**1.5 “Effective Date”** means the date on the Order.

**1.6 “Prophecy Services”** means, as applicable, the Professional Services, and Support Services. Prophecy Services shall be made available by Prophecy through the access methods described in this Agreement.

**1.7 “Prophecy Software”** means the software program or programs identified in applicable Order Form and all Documentation, and any modified, updated or enhanced versions of such programs and Documentation that Prophecy may provide to Customer along with Support Services.

**1.8 “Intellectual Property Rights”** means all known or hereafter existing worldwide copyrights, trademarks, service marks, trade secrets, patents, patent applications, know-how, moral rights, contract rights, and other proprietary rights.

**1.9 “Order Form”** means the Prophecy Order Form, Signed Prophecy Quote or customer Purchase Order.

**1.10 “Users”** means Customer’s or any of its Affiliates’ employees who are authorized by Customer or an Affiliate to use the Prophecy Software or Services on behalf of Customer and/or its Affiliates and have been supplied user identifications and passwords by Prophecy for this purpose. The number of authorized Users shall be set forth on an Order Form, and Customer shall inform Prophecy in writing if any Affiliate employees are Users which will be noted on the Order Form

## 2. LICENSE GRANT; DELIVERY; OTHER OBLIGATIONS.

**2.1 License.** Subject to the terms and conditions of this Agreement, Prophecy grants to Customer and its Affiliates (if applicable), during the Term (as defined below), a non-exclusive, non-transferable (except as set forth in Section 13.3 of these Terms), license (except if set forth on the ordering document as a term) to download, execute or deploy the Prophecy Software for the number of Users for which Customer has paid the applicable fees (as described in Section 6 below), or an unlimited number of Users as agreed between Prophecy and Customer in writing on an ordering document, solely for the performance of Customer's and/or its Affiliates' internal business purposes in accordance with the Documentation, the limitations set forth on the Order Form, and the other terms and conditions of this Agreement. The Software is accepted upon order. Customer shall be responsible for the acts and omissions of its Affiliates hereunder.

**2.2 Restrictions On Use.** Customer acknowledges that the Prophecy Software and the structure, organization, and source code thereof constitute valuable trade secrets of Prophecy. Accordingly, except as expressly permitted in Section 2.1 or as otherwise authorized by Prophecy in writing, Customer and its Affiliates will not, and will not permit their employees or any third party to (a) modify, adapt, alter, translate, or create derivative works from the Prophecy Software; (b) sublicense, lease, rent, loan, sell, distribute, make available or otherwise transfer the Prophecy Software to any third party, (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Prophecy Software; (d) benefit from the use or functionality of the Prophecy Software via timesharing, service bureau or other arrangement, unless agreed to in writing by Prophecy; (e) use the Prophecy Software for any benchmarking or other testing services; (f) use the Prophecy Software to create a competitive product or service; or (g) otherwise use or copy the Prophecy Software except as expressly allowed under Section 2.1 above. The Prophecy Software is licensed as a single product; it may not be used on more than one individual computer. This license authorizes you to make one copy of the Prophecy Software solely for backup or archival purposes, provided that the copy you make contains all of the Prophecy Software's proprietary notices unaltered and unobstructed.

**2.3 Additional Materials.** Unless otherwise expressly agreed to by the parties, Customer shall provide and obtain for itself all Additional Materials as instructed by Prophecy, or as set forth in the Documentation or as may be required. All use of Additional Materials will be subject to the terms and conditions required by the third party licensor(s), vendor(s) and/or provider(s) of such Additional Materials (if any).

**2.4 Customer Data.** Customer hereby grants to Prophecy a non-exclusive, non-transferable, non-assignable, non-sublicenseable right and license to use the Customer

Data solely for the limited purpose of, and solely as necessary for, performing Prophecy's obligations hereunder for the benefit of Customer and its Affiliates. Prophecy shall not use the Customer Data for the benefit of any other customer of Prophecy, or for any other purpose, without Customer's prior written approval. Subject to the rights granted in this Agreement, Customer and, as applicable, its Affiliates retain all right, title and interest in and to the Customer Data, and Prophecy acknowledges that it neither owns nor acquires any additional rights in and to the Customer Data not expressly granted by this Agreement.

**2.5 Delivery.** Prophecy shall provide the Prophecy Software to Customer through electronic download, or such other methods as agreed by the parties.

**3. SUPPORT SERVICES.** Subject to the terms and conditions of this Agreement, including without limitation Customer's payment of all applicable Support Fees (or License Fees, as applicable), Prophecy will provide Customer with those support and maintenance service for the Prophecy Software described in the applicable "Support Addendum" (the "Support Services").

**4. PROFESSIONAL SERVICES.** Subject to the terms and conditions of this Agreement, including without limitation Customer's payment of all applicable Professional Services Fees (as defined below) Prophecy will provide Customer with those professional services for the Prophecy Software described in the applicable "Professional Services Addendum" (the "Professional Services").

**5. PROPRIETARY RIGHTS.** Prophecy and its licensors own and retain all right, title and interest in and to the Prophecy Software, including all copyrights, patents, trade secret rights, trademarks and other intellectual property therein, and any improvements, enhancements or derivatives thereto. Your possession, installation or use of the Prophecy Software does not transfer to you any title to the intellectual property in the Prophecy Software, and you will not acquire any rights to the Prophecy Software except as expressly set forth in this Agreement. All rights in and to the Prophecy Services and Prophecy Software not expressly granted to Customer and its Affiliates in this Agreement are reserved by Prophecy and its suppliers. Customer and its Affiliates will not remove, alter, or obscure any proprietary notices (including copyright notices) of Prophecy or its suppliers on the Prophecy Software or Documentation.

## **6. FEES AND PAYMENT.**

**6.1 License Fees.** Customer will pay Prophecy the Prophecy Software license fees in the amount and pursuant to the schedule set forth in the applicable Order Form (the "License Fees"). All License Fees are non-refundable, except as otherwise set out in this Agreement.

or agreed to by the parties. If Customer ordered and paid for a Subscription license, the License Fee for each Prophecy Software ordered is an annual fee payable in advance. The first annual Subscription License Fee is due and payable on the Effective Date and for each subsequent year the Subscription License Fee is due and payable on the applicable anniversary of the Effective Date unless Customer provides Prophecy with written notice that it wishes to terminate its license not less than sixty (60) days before the end of the then-current contract year. Upon any termination of a Subscription license, all licenses terminate, and Customer shall cease using the Prophecy Software and return any materials, Documentation, or Confidential Information to Prophecy. If Customer ordered and paid for a Perpetual license, the Perpetual License Fee for each Prophecy Software is the one-time fee per the order. The Perpetual License Fee is due and payable on the Effective Date.

**6.2 Support and Professional Services Fees.** Customer will pay the fees for Support Services (the "Support Fees") in the amount and pursuant to the schedule set forth in applicable Order Form, and the Support Addendum. The Support Fees are payable annually in advance. Notwithstanding, if (a) Customer has ordered a "Perpetual" license to the Prophecy Software (as set forth on the applicable Order Form, then the "Support Fees shall be separate annual fees payable by Customer; or (b) Customer has ordered a "Subscription" license to the Prophecy Software (as set forth on the applicable Order Form), then the "Support Fees" shall be included in the License Fees and such Customer shall not have to pay an additional support fee. Customer will pay the fees for Prophecy's provision of Professional Services ("Professional Services Fees") in the amount and pursuant to applicable Order, and the Professional Services Addendum.

**6.3 Payment.** Unless otherwise expressly provided in this Agreement, Customer will pay all invoices within thirty (30) days of effective date. All payments must be made in U.S. dollars. Outstanding balances shall accrue interest at a rate equal to the lesser of one and one-half percent (1.5%) per month and the maximum rate permitted by applicable law, from due date until paid, plus Prophecy's reasonable costs of collection, including attorney's fees. All Fees due hereunder are exclusive of, and Customer shall pay, all sales use and other taxes, export and import fees, customs duties and similar charges applicable to the transactions contemplated by this Agreement, except for taxes based upon Company's net income. The Support Fees, Subscription License Fees, and Professional Services Fees are subject to revision by Prophecy upon ninety (90) days written notice to Customer.

**6.4 Records; Audit.** At all times during the Term, and for at least one (1) year after any termination of this Agreement, Customer will maintain complete and accurate records of (i) Customer's usage of the Prophecy Software and Prophecy Services as reasonably

necessary for verification of Customer compliance with the terms and conditions of this Agreement. During the term of the software license, Prophecy may request a self-assessment of Software use so as to true up the license counts to match usage. Should Customer not complete the true up, a minimum 10% increase will be applied to the usage count per annum. Upon true up, customer shall pay the additional license fees from the date of the last self-assessment or Effective date, whichever is the latter. Upon thirty (30) days written prior notice Prophecy will have the right to have an independent audit firm inspect Customer's records relating to Customer's use of the Prophecy Software and Prophecy Services solely in order to verify Customer's compliance with the terms and conditions of this Agreement. The audit will be performed during Customer's normal business hours. The costs of the audit will be paid by Prophecy, unless the audit reveals that Customer has (i) failed to comply with the terms and conditions of this Agreement, or (ii) underpaid the amounts owed to Prophecy by five percent (5%) or more, in which case Customer will pay Prophecy for all reasonable out-of-pocket costs and expenses reasonably incurred by Prophecy in connection with such audit. Customer will promptly pay to Prophecy any amounts shown by any such audit to be owing and due.

## **7. WARRANTY; DISCLAIMER.**

**7.1 Prophecy Services Warranty.** Prophecy warrants that it will perform the Professional Services and Support Services in a professional and competent manner in accordance with industry standards. Prophecy will, at its own option and expense, and as its sole obligation and Customer's exclusive remedy for any breach of the warranty under this section, re-perform the Support Services or Professional Services which gave rise to the breach or, at Prophecy's option, refund the fees paid by Customer for the Support Service or Professional Services (as applicable) which gave rise to the breach; provided that Customer shall notify Prophecy in writing of the breach within thirty (30) days following performance of the defective Prophecy Services, specifying the breach in reasonable detail.

**7.2 Disclaimers.** PROPHECY DOES NOT WARRANT THAT THE PROPHECY SOFTWARE, OR CUSTOMER'S USE OF THE PROPHECY SOFTWARE OR PROPHECY SERVICES WILL BE ERROR-FREE, UNINTERRUPTED OR FREE FROM UNAUTHORIZED ACCESS. THE EXPRESS WARRANTY IN SECTION 7.1 IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE PROPHECY SOFTWARE AND PROPHECY SERVICES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS, WHICH ARE HEREBY DISCLAIMED. WITHOUT LIMITING THE FOREGOING, CUSTOMER RECOGNIZES THAT PROPHECY DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE PROPHECY SOFTWARE AND PROPHECY SERVICES. SUCH FLOW DEPENDS IN

LARGE PART ON THE PERFORMANCE OF INTERNET AND TELECOMMUNICATIONS SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT USERS' CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF) OR TO THE TELECOMMUNICATIONS NETWORKS (OR PORTIONS THEREOF). ACCORDINGLY, PROPHECY DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS. IT IS YOUR RESPONSIBILITY TO ENSURE, BY BENCHMARKING OR OTHERWISE, THAT THE SYSTEM ON WHICH YOU INTEND TO OPERATE THE PROPHECY SOFTWARE, (INCLUDING MEMORY SIZE OF THE COMPUTER, COMPUTING POWER AND THROUGHPUT CAPABILITY, NUMBER, SPEED AND ARRANGEMENT OF DATA ON DISK DRIVERS, NETWORK CAPABILITY, NUMBER OF ON-LINE USERS, OPERATING SYSTEMS AND THE OPTIMIZATION AND TUNING OF THESE TOGETHER WITH THE AMOUNT OF WORKLOAD YOU INTEND TO OPERATE ON SUCH SYSTEM), IS OF SUFFICIENT CAPACITY AND ADEQUATELY TUNED TO PROCESS YOUR WORKLOAD WITHIN THE TIME PARAMETERS YOU WANT.

## 8. INDEMNITY.

**8.1 From Prophecy.** Prophecy will defend at its own expense and indemnify and hold Customer, its Affiliates, and their respective directors, officers, employees, contractors and agents harmless from and against any and all claims, liabilities, losses, damages, judgments, awards, costs (including, without limitation, legal fees and expenses), actions and/or other proceedings made, sustained, incurred, brought or prosecuted in any manner whatsoever relating to or arising from a claim made by a third party against Customer related to any infringement by the Prophecy Software of a third party's U.S. Intellectual Property Rights. The foregoing obligations are conditioned on Customer's (a) notifying Prophecy promptly in writing of such action, (b) giving Prophecy sole control of the defense thereof and any related settlement negotiations, and (c) cooperating and, at Prophecy's request and expense, assisting in such defense, providing that a failure or default under clauses (a)-(c) shall not excuse or relieve Prophecy from any defense or indemnity to the extent Prophecy's defense is not materially prejudiced by such failure or default. If the Prophecy Software becomes, or in Prophecy's opinion are likely to become, the subject of an infringement claim, Prophecy may, at its option and expense, without limiting the foregoing obligations of Prophecy, either (i) procure for Customer the right to continue using the Prophecy Software, or (ii) replace or modify the Prophecy Software so that it become non-infringing; provided, however, if Prophecy reasonably determines that the remedies under (i) or (ii) are not commercially practicable, Prophecy may terminate this Agreement upon written notice to Customer and refund Customer the License Fees paid and all prepaid, unused Support Fees for such Prophecy Software, as applicable. Notwithstanding the foregoing, Prophecy will have no obligation under this Section 8 or

otherwise to the extent of any infringement claim is based upon (a) any use of the Prophecy Software not in accordance with this Agreement and/or the Documentation and/or Prophecy's written instructions, or (b) any use of the Prophecy Software in combination with software or hardware not supplied by Prophecy (other than the Additional Materials). Or (c) any modifications or alterations to the Prophecy Software. THIS SECTION 8 STATES PROPHECY'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.

**9. From Customer.** Customer will defend at its own expense and indemnify and hold Prophecy, its Affiliates, and their respective directors, officers, employees, contractors and agents harmless from and against any and all claims, liabilities, losses, damages, judgments, awards, costs (including, without limitation, legal fees and expenses), actions and/or other proceedings made, sustained, incurred, brought or prosecuted in any manner whatsoever relating to or arising from Customer's breach of this Agreement.

**10. LIMITATION OF LIABILITY.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, OR FOR ANY LOST DATA, LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PROPHECY'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE PROPHECY SOFTWARE AND PROPHECY SERVICES, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE TOTAL FEES PAID BY CUSTOMER UNDER THIS AGREEMENT. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE LIMITATIONS OF LIABILITY UNDER THIS SECTION SHALL NOT APPLY TO (A) A BREACH OF SECTION 2.2, (B) A PARTY'S INDEMNIFICATION OR DEFENSE OBLIGATIONS OR A BREACH THEREOF, (C) A BREACH OF SECTION 11, OR (D) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

## **11. CONFIDENTIALITY.**

**11.1 Confidential Information.** Each party (the "Disclosing Party") may from time to time disclose to the other party (the "Receiving Party") certain information regarding the business of the Disclosing Party and its suppliers, including technical, marketing, financial, employee, customer, planning, and other confidential or proprietary information ("Confidential Information"). Any information that the Receiving Party knew or should have known, under the circumstances, was considered confidential or proprietary by the Disclosing Party will be considered Confidential Information of the Disclosing Party. The Prophecy Software, including without limitation any routines, subroutines, directories,



tools, programs, or any other technology included therein, shall be considered Prophecy's Confidential Information. All Customer Data shall be considered Customer's Confidential Information. The terms of this Agreement shall be considered Confidential Information.

**11.2 Protection of Confidential Information.** The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

**11.3 Exceptions.** The Receiving Party's obligations under Section 11.2 with respect to any Confidential Information of the Disclosing Party will terminate if such information: (a) was already known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) was disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions (other than any Customer Data); (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) was independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information (other than any Customer Data). In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party; (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's request and expense, in any lawful action to contest or limit the scope of such required disclosure or obtain a protective order.

**11.4 Return of Confidential Information.** The Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control promptly upon the written request of the Disclosing Party; provided that the Disclosing Party may keep one copy for its legal and archival purposes.

## **12. TERM AND TERMINATION**

**12.1 Term.** The term of this Agreement will begin on the Effective Date and will continue

unless terminated for the term as specified in the Order Form (the “Term”).

**12.2 Termination.** Either party may terminate this Agreement if the other party breaches any material provision of this Agreement and does not cure such breach within thirty (30) days after receiving written notice thereof. In addition, if the license is a Perpetual License either party may terminate all or part of this Agreement at any time for any or no cause by providing the other party with at least sixty (60) days’ written notice.

**12.3 Effects of Termination.** Upon termination or expiration of this Agreement, any amounts owed to Prophecy under this Agreement before such termination or expiration will be immediately due and payable, all licensed rights granted in this Agreement will immediately cease to exist (except for any perpetual licenses paid for by Customer). Except to the extent Customer has licensed any Prophecy Software on a perpetual basis, Customer must promptly discontinue all use of the Prophecy Software and Prophecy Services, erase all copies of the Prophecy Software from Customer’s computers, if applicable, and return to Prophecy or destroy all copies of the Prophecy Documentation and other Prophecy Confidential Information in Customer’s possession or control. Sections 5,6,7,2,9,11,13.2,13.3 together with any accrued payment obligations, will survive expiration or termination of this Agreement for any reason. In the event that Customer terminates this Agreement without cause pursuant to Section 11.2 above, any License Fees paid, Support Fees paid, or Professional Services Fees paid but not yet used at the time of such termination shall not be refunded to Customer. If the license to the Prophecy Software is perpetual, Customer shall continue to use it in accordance with the limitation set forth in this Agreement.

## 13. GENERAL

**13.1 Publicity.** Prophecy may create a general contract announcement press release indicating that the parties have entered into this Agreement, (b) use Customer’s business name and logo in written materials identifying Prophecy’s customers, on Prophecy’s website(s), and in other appropriate promotional materials, (c) identify Customer in applicable case studies and (d) identify Customer as a reference for prospective customers and the media (provided that Customer shall not be obligated to comment in any way).

**13.2 Compliance with Laws.** Each party shall comply with all applicable export and import control laws and regulations concerning the Prophecy Software, their provision, or use. In particular, a party will not export or re-export the Prophecy Software without all required government licenses, and each party agrees to comply with the export laws, restrictions, national security controls and regulations of all applicable foreign agencies or authorities

**13.3 Assignment.** Neither party may assign or transfer, by operation of law or otherwise, any of its rights under the Agreement (including the rights granted to Customer to use the Prophecy Software and/or Prophecy Services) to any third party without the other party's prior written consent, which consent will not be unreasonably withheld or delayed; except that each party may assign this Agreement, without consent, to an Affiliate or any successor to all or substantially all its business or assets to which this Agreement relates; whether by merger, sale of assets, sale of stock, reorganization or otherwise. Any attempted assignment or transfer in violation of the foregoing will be null and void.

**13.4 Conflicts.** If there is any conflict between any of the documents making up the Agreement, the conflicts shall be resolved in the following order of priorities: Order Form; Terms; Support Addendum; then Professional Services Addendum. As it relates to Order form, the order of Priorities is Prophecy Order Form; Customer Purchase Order; Signed Quotation.

**13.5 Force Majeure.** Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder for any cause which is beyond the reasonable control of such party.

**13.6 Notices.** All notices, consents, and approvals under this Agreement must be delivered in writing by courier, by electronic facsimile (fax), or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth on the first page of this Agreement, and will be effective upon receipt or when delivery is refused. Either party may change its address by giving notice of the new address to the other party.

**13.7 Governing Law.** This Agreement will be governed by and interpreted in accordance with the laws as stated on the Order Form, without reference to its choice of laws rules. The parties expressly exclude the application of the United Nations Convention on the International Sale of Goods. Any dispute hereunder shall be exclusively resolved in the state and federal courts as stated on the Order Form

**13.8 Remedies.** Except as provided herein, the parties' rights and remedies under this Agreement are cumulative. Customer acknowledges that the Prophecy Software contains valuable trade secrets and proprietary information of Prophecy, that any actual or threatened breach of Section 2 or Section 11 may constitute immediate, irreparable harm to the non-breaching party for which monetary damages would be an inadequate remedy and that Prophecy is entitled to seek injunctive relief in the event of any such actual or threatened breach. If any legal action is brought by either party to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other

collection expenses, in addition to any other relief it may receive.

**13.9 Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**13.10 Severability.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

**13.11 Construction.** The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word “including” means “including but not limited to.”

**13.12 Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. These Terms, or any part of the Agreement may be amended or modified by Prophecy at any time as published on its web site <https://www.snaresolutions.com/> (<https://www.snaresolutions.com/>).

## ABOUT PROPHECY

Board of Directors

(<https://www.prophecyinternational.com/en/about/board-of-directors/>)

Shareholder Information

(<https://www.prophecyinternational.com/en/about/shareholder-information/>)

News

(<https://www.prophecyinternational.com>)

## PRODUCTS

Snare

(<https://www.prophecyinternational.com/en/brands/snare/>)

eMite

(<https://www.prophecyinternational.com/en/brands/emite/>)

[/news/](#))

## LATEST NEWS

eMite announced as Amazon Connect Technology Partner (<https://www.prophecyinternational.com/emite-announced-as-amazon-connect-technology-partner/>)

*17th Oct 2019*

eMite launches new analytics solution for Amazon Connect (<https://www.prophecyinternational.com/emite-launches-new-analytics-solution-for-amazon-connect/>)

*2nd Apr 2019*

Prophecy International Appoints Global Customer Operations Lead (<https://www.prophecyinternational.com/prophecy-international-appoints-global-customer-operations-lead/>)

*14th Sep 2018*

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