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8. Limitation of Liability

Nothing in this EULA and in particular within this "Limitation of Liability" clause shall attempt to exclude liability that cannot be excluded under applicable law. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN ADDITION TO THE ABOVE WARRANTY DISCLAIMERS, IN NO EVENT WILL (A) BMO BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY DAMAGES FOR LOST DATA OR LOST PROFITS, ARISING FROM OR RELATING TO THE PRODUCTS OR PRODUCT SOFTWARE, EVEN IF BMO KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND (B) BMO' TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THE PRODUCTS AND PRODUCT SOFTWARE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, EXCEED THE FEES ACTUALLY PAID BY YOU TO BMO OR BMO' AUTHORIZED RESELLER FOR THE PRODUCT AT ISSUE IN THE PRIOR 12 MONTHS (IF ANY). THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM. BMO DISCLAIMS ALL LIABILITY OF ANY KIND OF BMO' LICENSORS AND SUPPLIERS.

10. Confidentiality.

"Confidential Information" shall mean the Product Software and all other information disclosed to you that BMO characterizes as confidential at the time of its disclosure either in writing or orally, except for information which you can demonstrate: (a) is previously rightfully known to you without restriction on disclosure; (b) is or becomes, from no act or failure to act on your part, generally known in the relevant industry or public domain; (c) is disclosed to you by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by you without access to the Confidential Information. You shall use your best efforts to preserve and protect the confidentiality of the Confidential Information at all times, both during the term hereof and for a period of at least 3 years after termination of this EULA, provided, however, that any source code you receive shall be held in confidence in perpetuity. You shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of BMO. You shall not use any Confidential Information other than in the course of the activities permitted hereunder. You shall notify BMO in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this EULA, and will cooperate with BMO in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If you are legally compelled to disclose any of the Confidential Information, then, prior

to such disclosure, you will (i) immediately notify BMO prior to such disclosure to allow BMO an opportunity to contest the disclosure, (ii) assert the privileged and confidential nature of the Confidential Information, and (iii) cooperate fully with BMO in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, you shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements.

11. For U.S. Government End Users.

The Product Software is a “commercial item,” as that term is defined at 48 C.F.R. 2.101 (OCT 1995), and more specifically is “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212 (SEPT 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (JUNE 1995), the Product Software is provided to U.S. Government End Users only as a commercial end item and with only those rights as are granted to all other customers pursuant to the terms and conditions herein.

12. Export Compliance.

The Product Software and related technology are subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree to strictly comply with all such laws and regulations and acknowledge that you have the responsibility to obtain authorization to export, re-export, or import the Product Software and related technology, as may be required. You will indemnify and hold BMO harmless from any and all claims, losses, liabilities, damages, fines, penalties, costs and expenses (including attorney’s fees) arising from or relating to any breach by you of your obligations under this section.

13. Governing Law; Venue.

The courts in some countries will not apply Minnesota law to some types of disputes. If you reside in one of those countries, then where Minnesota law is excluded from applying, your country’s laws will apply to such disputes related to these terms. Otherwise, you agree that this EULA, and any claim, dispute, action, cause of action, issue, or request for relief relating to this EULA, will be governed by the laws of Minnesota, without giving effect to any conflicts of laws principles that require the application of the laws of a different jurisdiction. Any action or proceeding relating to this EULA must be brought in a binding, mandatory arbitration in accordance with the rules of the American Arbitration Association (“AAA”) and each party irrevocably submits to the jurisdiction and venue of any such arbitration in any such claim or dispute, except that BMO may seek injunctive relief in any court having jurisdiction to protect its intellectual property or Confidential Information.

14. Assignment.

Neither the rights nor the obligations arising under this EULA are assignable by you, and any such attempted assignment shall be void and without effect.

15. Notices.

Any notice to you may be provided by email to the address that you registered with BMO.

16. Severability.

If any provision of this EULA 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.

17. Waiver.

All waivers by BMO will be effective only if in writing. Any waiver or failure by BMO to enforce any provision of this EULA on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

18. General.

The Product Software is deemed irrevocably accepted upon your use of the Product Software or Product. BMO will have no responsibility to provide maintenance or support services with respect to the Product Software. The parties are independent contractors. You acknowledge that the Product Software contains valuable trade secrets and proprietary information of BMO, that any actual or threatened breach of Section 2 (Restrictions) of this EULA will constitute immediate, irreparable harm to BMO for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. The headings of Sections of this EULA are for convenience and are not to be used in interpreting this EULA.