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B.1 SUBSCRIPTION SERVICES.

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- (iii) Telephone and online support per a schedule specified in the Sales Order;
- (iv) Access to training materials as specified in the Sales Order;
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(ix) Additional services made available or offered by the Subscription Provider in writing from time to time.

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B.2 SUBSCRIPTION PRICING.

(a) To purchase a Subscription, Licensee shall request a quotation from the Subscription Provider ("**Sales Order**"). The pricing shall be as set forth in the Sales Order. The Subscription package pricing is the annual cost for Subscription Services per one production instance and shall be based upon the current number of Authorized Users of Licensee. The pricing for Subscription Services for the Initial Term (as defined below) must be paid by Licensee prior to the commencement date of the Initial Term and, in any event, prior to a Subscription Provider providing any Subscription Services. Subscription Provider is not obligated to provide any Subscription Services for the Initial Term under any Sales Order prior to receipt of any payment due under such Sales Order. The amount due for any Renewal Term as calculated pursuant to the terms set forth below must be paid by Licensee promptly following a True-Up (as defined below).

(b) If you have purchased a Subscription from an authorized Aras reseller or distributor ("**Aras Partner**"), then to the extent there is any conflict with the terms of this Agreement and the agreement entered into between Licensee and the Aras Partner, including any purchase order ("**Partner Transaction**"), then as between Licensee and Aras, the terms of this Agreement shall prevail. Any rights granted to Licensee under the Partner Transaction which are not contained in this Agreement apply only in connection with the Aras Partner. The following shall apply with respect to transactions entered into with an Aras Partner:

(i) Instead of paying Aras, Licensee will pay the applicable amounts to the Aras Partner, as agreed to between Licensee and the Aras Partner. Aras may suspend or terminate Licensee's rights to use the Licensed Software if Aras does not receive the corresponding payment from the Aras Partner. The amount paid or payable by the Aras Partner to Aras for your use of the Licensed Software will be deemed the amount actually paid or payable by Licensee under this Agreement for purposes of calculating the liability cap in Section D.3 (Limitation of Liability).

(ii) Instead of a Sales Order with Aras, the Sales Order details (e.g., Licensed Software, Scope of Use and Term) will be as stated in the order placed with Aras by the Aras Partner on Licensee's behalf, and the Aras Partner is responsible for the accuracy of any such order as communicated to Aras.

(iii) If the Licensee is entitled to a refund under the terms of this Agreement, Aras will refund any applicable fees to the Aras Partner and the Aras Partner will be solely responsible for refunding the appropriate amounts to the Licensee.

(iv) Aras Partners are not authorized to modify the terms of this Agreement or make any promises or commitments on Aras' behalf, and Aras is not bound by any obligations to Licensee other than as set forth in this Agreement.

B.3 SUBSCRIPTION TERM AND RENEWAL.

(a) **Initial Term.** The term of a Subscription shall commence upon the Subscription Start Date specified in the Sales Order or as otherwise agreed upon by the parties in writing and continue for the period(s) specified in the Sales Order or as otherwise agreed upon by the parties in writing (the "**Initial Term**"), unless terminated prior to the end of such period in accordance with the terms hereof.

(b) **Renewal Term.** A Subscription will automatically renew for a period of the same duration as in the Sales Order unless Licensee gives written notice of its intent not to renew 90 days before the end of the then-current term and the applicable Sales Order shall be deemed amended accordingly (each a "**Renewal Term**" and, collectively, together with the Initial Term, the "**Term**"). Aras may refuse to renew the Term by written notice 90 days before the end of the then-current Term.

(c) **Renewal Price Increase.** The price of a Subscription for the initial contract year in the Renewal Term shall be based on the then current list price at the time of renewal for any Renewal Term and the applicable Sales Order shall be deemed amended accordingly; however, in no event shall the increase in one annual contract year be more than 10% of the amount charged in the prior contract year. Notwithstanding anything to the contrary in this Agreement, any renewal in which the Subscription volume has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's pricing.

(d) At the end of the Initial Term and each subsequent Renewal Term, the Subscription Provider and Licensee will review the then current and planned number of enabled named Authorized Users and the Subscription Provider will adjust the pricing for the Renewal Term based upon the results of such review (a "**True-Up**"). At the end of the Initial Term and each subsequent Renewal Term, Licensee will provide total current count of enabled named Authorized Users to Subscription Provider for the purposes of such True-Up and determining the Subscription pricing for the subsequent Renewal Term. Additionally, Licensee will provide estimates of growth in user accounts over the Renewal Term to enable determination of the appropriate renewal price schedule to be applied.

(e) **Non-Renewal.** In the event a Subscription is not renewed in accordance with the terms of this Agreement, any Licensed Software that is distributed as Subscriber paid Licensed Software will be terminated automatically by the expiring license key.

C. PROFESSIONAL SERVICES

C.1 SCOPE OF SERVICES.

Licensee, from time to time, may obtain certain professional services ("**Professional Services**") from either Aras or an Aras Authorized Partner (the "**Service Provider**") as set forth in a separate statement of work ("**SOW**") executed by Licensee and the Service Provider. Professional Services may include, but are not limited to, installation, training, process consulting, development and/or implementation services. In connection with such Professional Services, Service Provider may provide to Licensee certain information and tangible embodiments or other results of such Professional Services developed, created or acquired by the Service Provider, solely or in conjunction with others, for Licensee, and all ideas, specifications, data, inventions, techniques, modifications, processes, improvements, designs, or work of authorship incorporated therein (the "**Work Product**"). Except as otherwise specifically provided in an SOW, each SOW shall be governed by the terms of this Agreement. To the extent of any conflict between the terms of the SOW and this Agreement, the terms of the SOW shall control but only to the extent of the Professional Services performed thereunder.

C.2 STATEMENT OF WORK AND PERFORMANCE OF SERVICES.

Each SOW shall be set forth in writing, mutually agreed upon by the Service Provider and Licensee and include a description of the Professional Services to be performed by the Service Provider under this Agreement, the rate of compensation to be paid by Licensee for such Professional Services, and any other terms applicable to such Professional Services. The Service Provider agrees to perform the Professional Services described in each SOW in accordance with the

terms of this Agreement and the terms set out in the applicable SOW. As a condition to the Service Provider's obligations, Licensee must at all times: (a) in good faith cooperate with the Service Provider and provide access to such information, facilities, and equipment as may be reasonably required in order to provide the Professional Services; (b) provide such personnel assistance, as may be reasonably requested from time to time; and (c) carry out in a timely manner all other Licensee responsibilities set forth in the SOW. In the event of any delay in Licensee's performance of any of the obligations set forth in (a), (b) or (c), or any other delays caused by Licensee, the Service Provider, may adjust its obligations and milestones set forth in the SOW as reasonably necessary to account for such delays.

C.3 PROFESSIONAL SERVICES TERM.

Obligations of the parties with respect to Professional Services shall commence on the date indicated on a signed SOW and shall continue until the earlier to occur of completion of the Professional Services or termination in accordance with the terms hereof.

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D.3 LIMITATION OF LIABILITY

(a) IN NO EVENT SHALL EITHER PARTY (INCLUDING ANY ARAS PARTNER) BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL, STATUTORY OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF USE OR DATA, DAMAGE TO SYSTEMS OR EQUIPMENT, BUSINESS INTERRUPTION OR COST OF COVER GOODS) IN CONNECTION WITH OR ARISING OUT OF THE DELIVERY, PERFORMANCE OR USE OF THE LICENSED SOFTWARE OR THE TERMS OF THIS AGREEMENT, REGARDLESS OF WHETHER IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) IF YOU HAVE DOWNLOADED, INSTALLED OR USED THE LICENSED SOFTWARE BUT HAVE NOT PURCHASED A SUBSCRIPTION OR RECEIVED ANY PROFESSIONAL SERVICES, THE ENTIRE LIABILITY OF ARAS AND ANY ARAS AUTHORIZED PARTNER FOR ANY DAMAGES AWARDED BY A COURT RESULTING FROM A CLAIM UNDER THIS AGREEMENT, AND YOUR EXCLUSIVE REMEDY UNDER THIS AGREEMENT, SHALL NOT EXCEED FIVE DOLLARS (US \$5.00). IF YOU HAVE PURCHASED A SUBSCRIPTION OR RECEIVED ANY PROFESSIONAL SERVICES, THE ENTIRE LIABILITY OF EITHER PARTY AND ANY ARAS AUTHORIZED PARTNER FOR ANY DAMAGES AWARDED BY A COURT RESULTING FROM A CLAIM UNDER THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID TO ARAS OR ANY ARAS AUTHORIZED PARTNER BY LICENSEE FOR THE SUBSCRIPTION SERVICES OR PROFESSIONAL SERVICES THAT ARE THE SUBJECT OF THE CLAIM, AS APPLICABLE, DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO A CLAIM FOR SUCH DAMAGES.

(c) Notwithstanding the foregoing, the disclaimers and limitations of liability set forth in this subsection D.3 shall not apply with respect any damages arising from (i) either party's breach of its confidentiality obligations under this Agreement; (ii) Licensee's breach of the terms set forth in Section A; or (iii) either party's gross negligence or willful misconduct.

(d) NO CLAIM ARISING OUT OF THIS AGREEMENT, REGARDLESS OF FORM, MAY BE BROUGHT AGAINST ARAS MORE THAN THE SHORTER OF ONE YEAR OR THE MINIMUM PERIOD ALLOWED BY LAW AFTER THE CAUSE OF ACTION HAS OCCURRED.

D.4 TERM AND TERMINATION

(a) This Agreement shall commence on the date on which you download, install or use, whichever is earlier, the Licensed Software.

(b) Without prejudice to any other rights or remedies available pursuant to the terms of this Agreement or pursuant to applicable law, rule or regulation, this Agreement or any portion hereof may be terminated pursuant to the following terms and conditions:

(i) Either party may terminate this Agreement or any portion hereof upon written notice to the other party if such other party fails to comply with the material terms and conditions of this Agreement (including any payment due) and fails to cure such non-compliance within thirty (30) days following receipt of written notice of such failure from the non-breaching party;

(ii) If Licensee challenges the validity, enforceability or scope of Licensee's rights in the Licensed Software or any Work Product (including in a cross-claim or counterclaim in a lawsuit), Aras may terminate this Agreement upon written notice to Licensee.

(c) Upon termination of this Agreement, notwithstanding the terms of the license granted in Section A.1, Licensee's license to the Licensed Software shall end automatically and Licensee must destroy all copies of the Licensed Software and all of its component parts, and all Subscription Services and/or Professional Services being provided at such time, if any, shall immediately cease. In addition, upon termination of a Subscription, whether by termination of this Agreement or termination of any Subscription Services, (i) Licensee shall promptly pay any unpaid fees for the Subscription to the Subscription Provider provided Licensee's nonpayment is not related to a dispute of fees; and (ii) if Licensee terminates a Subscription pursuant to the terms of subsection D.4(b)(i) above, the Subscription Provider shall pay Licensee a pro-rated refund of the fee paid for the current term of the Subscription. Subsections A.2, A.3, C.4 and Section D shall survive any termination of this Agreement.

D.5 THIRD PARTY ADD-ON SOLUTIONS.

From time to time certain add-on software ("**Third Party Add-on Software**") that is intended for use with the Licensed Software may be made available or offered by Aras or by an Aras Authorized Partner and other non-related parties either as a free download from the Aras website or other websites, by subscription or for sale by Aras or by an Aras Authorized Partner. The terms of this Agreement explicitly do not cover such Third Party Add-on Software. Each licensor of Third Party Add-on Software may provide a separate license, warranty, and indemnification terms as identified in the Sales Order or otherwise provided to the Licensee.

D.6 MISCELLANEOUS

(a) Licensee, Aras or any Aras Authorized Partner, as applicable, agree to maintain the confidentiality of any confidential or proprietary information received from the other parties ("**Confidential Information**") for a period of two (2) years after the termination of this Agreement. Confidential Information shall not include publicly available or independently developed information. The receiving party of any Confidential Information of the other party agrees not to use said Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. The receiving party shall protect the secrecy of and avoid disclosure and unauthorized use of the disclosing party's Confidential Information to the same degree that it takes to protect its own confidential information and in no event less than reasonable care. After termination of this Agreement, each party shall return to the other party any Confidential Information of the other party received during the term of this Agreement. Notwithstanding the foregoing, the existence of this Agreement and the identity of the Licensed Software and the parties to this Agreement may be disclosed for business purposes by either party.

(b) Neither Party shall issue any press release relating to this Agreement without the other Party's consent. Notwithstanding the foregoing, Aras may identify Licensee as a customer of Aras on Aras website and in Aras' marketing literature (including without limitation in any presentations and case studies), and Aras is hereby granted a license for the Term to use Licensee's name and logo for this purpose.

(c) The Licensed Software is deemed to be "commercial computer software" and "commercial computer software documentation" pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. The rights of the United States Government to use, modify, reproduce, release, perform, display or disclose the Licensed Software shall be governed by this Agreement.

(d) This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflicts of laws principles. All disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of and venue in the Federal and State courts within Suffolk County, Massachusetts, U.S.A. The parties expressly waive and disclaim the applicability of the Uniform Computer Information Transactions Act (UCITA), as may be adopted in any jurisdiction, and the United Nations Convention on the International Sale of Goods.

(e) If any provision in this Agreement is invalid or unenforceable, that provision shall be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement shall remain in full force and effect.

(f) This Agreement is not assignable, in whole or in part, by Licensee without the prior written consent of Aras, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Licensee may

assign this Agreement to an affiliate or in connection with a merger or sale of all of Licensee's stock or all or substantially all of the assets of Licensee. Any attempt at assignment by you, including by means of merger, acquisition, operation of law or otherwise, that is not expressly permitted under the terms of this Agreement or that is done without such consent shall be null and void and of no force and effect.

(g) If by reason of labor disputes, strikes, lockouts, riots, war, inability to obtain labor or materials, earthquake, fire or other action of the elements, accidents, governmental restrictions, appropriation or other causes beyond the reasonable control of a party hereto, either party is unable to perform in whole or in part its obligations as set forth in this Agreement, then such party shall be relieved of those obligations to the extent it is so unable to perform and such inability to perform shall not make such party liable to the other party. Neither party shall be liable for any loss, injury, delay or damages suffered or incurred by the other party due to the above causes.

(h) This Agreement and all Sales Orders, and to the extent applicable any SOWs, set forth the entire understanding and agreement among Licensee and Aras and supersede all proposals or communications, oral or written, between the parties relating to the subject matter of this Agreement, unless Aras and Licensee have executed a separate written contract which specifically states that the terms of that contract prevail. Except as otherwise expressly stated herein, no other terms or conditions and no modification, alteration or amendment of this Agreement shall be binding upon Aras unless accepted in writing by an authorized officer of Aras. Aras expressly rejects any terms and conditions contained in any purchase order or other document presented by Licensee prior to or after the date of this Agreement or any Sales Order or SOW provided under the terms of this Agreement. In the event of any conflict between the terms of this Agreement and the terms of any Sales Order or SOW, the terms of this Agreement shall control.

(i) All fees and any other charges incurred under the terms of this Agreement are exclusive of all federal, state, municipal, and other governmental excise, sales, use, customs, value added, and other taxes, fees or duties now in force or enacted in the future. If Aras or any Aras Authorized Partner is required to pay any such taxes, the taxes shall be billed to and paid by Licensee. Licensee agrees to pay on or before its due date all such taxes, fees, duties and charges which arise out of or in connection with this, but excluding taxes calculated on Aras' or any Aras Authorized Partner's net income.

(j) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns and nothing in this Agreement is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, provided that all Aras Authorized Partners will be deemed to be third party beneficiaries for purposes of this Agreement.

(k) From time to time, information about your license key(s), the version of the Licensed Software, the operating environment and the language packs you have installed may be transmitted by the installed Licensed Software to Aras. This information allows Aras to be more efficient in their communications with you regarding software patches, critical bug fixes and technical bulletins. For example, by (i) downloading alerts about new service pack availability directly to your server and in the correct language; and (ii) utilizing the user interface to send critical technical support notifications to you that are applicable to the specific installation of the Licensed Software running in your environment. No software updates will be automatically applied to your installation.

(l) All notices and other communications required or permitted under this Agreement will be in writing and delivered by confirmed transmission, by courier or overnight delivery service with written verification of receipt, or by registered or certified mail, return receipt requested, postage prepaid, and in each instance, will be deemed given upon receipt. All such notices, approvals, consents, and other communications will be sent to the addresses set forth in the Sales Order or such other address as may be specified by either party to the other in accordance with this Section. All notices to Aras will be copied and addressed to the attention of General Counsel.