

**IMPORTANT – READ THIS CAREFULLY BEFORE DOWNLOADING, INSTALLING, USING OR ELECTRONICALLY ACCESSING THIS PROPRIETARY PRODUCT.**

**Windward Studios, Inc.**

**License Agreement**

This agreement is a legal agreement between Windward Studios, Inc. (“Windward”) and the business entity or person for whom you (“You”) are acting (“Licensee”) as the licensee of the Software (defined below) (“Agreement”). You agree that You are the Licensee or you are an employee or agent of Licensee and are entering into this Agreement for license of the Software by Licensee for Licensee’s business purposes as described in and in accordance with this Agreement. You hereby agree that you enter into this Agreement on behalf of Licensee and that you have the authority to bind Licensee to this Agreement. Windward recommends that You print a copy of this Agreement and retain such copy for Licensee’s records and future reference.

WINDWARD IS WILLING TO LICENSE THE SOFTWARE AND PROVIDE SERVICES TO LICENSEE ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS IN THIS AGREEMENT. BY DOWNLOADING, INSTALLING, CONFIGURING, ACCESSING OR OTHERWISE USING THE SOFTWARE, INCLUDING ANY UPDATES, UPGRADES, OR NEWER VERSIONS, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND THIS AGREEMENT, AND THAT LICENSEE AGREES TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT.

IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, WINDWARD IS UNWILLING TO LICENSE THE SOFTWARE TO LICENSEE OR PROVIDE THE SERVICES TO LICENSEE, AND THEREFORE, DO NOT COMPLETE THE DOWNLOAD PROCESS, ACCESS OR OTHERWISE USE THE SOFTWARE, AND SELECT THE “I DO NOT ACCEPT THIS AGREEMENT.” IF YOU DO NOT ACCEPT THIS AGREEMENT, LICENSEE SHOULD IMMEDIATELY RETURN THE SOFTWARE AND CEASE ANY USE OF THE SOFTWARE. LICENSEE MAY RECEIVE A FULL REFUND IF THE SOFTWARE (INCLUDING WRITTEN MATERIALS) IS PROMPTLY RETURNED TO WINDWARD WITHIN FIVE (5) DAYS AFTER THE DATE OF LICENSE.

IF LICENSEE HAS ENTERED INTO A WINDWARD SOFTWARE LICENSE AGREEMENT OR OTHER SOFTWARE LICENSE AGREEMENT WITH WINDWARD OR ITS AUTHORIZED AGENT OR PARTNER, WHICH GOVERNS LICENSEE’S USE OF THE SOFTWARE AND SERVICES, THEN THE TERMS OF THAT AGREEMENT GOVERN AND TAKE PRECEDENCE OVER THIS AGREEMENT. IF LICENSEE HAS NOT ENTERED INTO SUCH AN AGREEMENT WITH WINDWARD PRIOR TO LICENSEE’S DOWNLOADING INSTALLATION OF THIS SOFTWARE, THEN LICENSEE’S RIGHT TO INSTALL AND USE THIS SOFTWARE IS SUBJECT TO LICENSEE’S AGREEMENT TO THIS AGREEMENT.

**1. LICENSE GRANTS.** The software product accompanying this Agreement contains several kinds of materials that have different types of licenses identified in each Order. Windward offers its products to its licensees as (a) an on-premise solution licensed by licensees for licensees’ own use as an end user (“End User License” as further defined below), (b) a cloud-based solution hosted by the licensees that such licensees make available as a hosted solution to licensees’ end user customers (“ASP License”), or (c) as an on-premise solution where the licensees (i) are value-added resellers of the Windward software, (ii) distribute the Windward software to licensees’ customers solely as part of a licensee on-premise bundled offering, and (iii) license the bundled offerings to licensees’ customers for such customers’ own use on-premise as end users (“ISV License”).

**1.1 End User License; License Types**

**(a) Definitions.**

**(i)** “Documentation” means the user guides and manuals provided by Windward to Licensee for installation and/or use of the Software.

**(ii)** “License Term” means the license term for each Software product Licensed by Licensee specified in the applicable Order.

**(iii)** “License Type” means the type of License applicable to the Software, as more fully described in an Order.

**(iv)** “Order” means a purchase order, Windward’s online order process, or other ordering document issued by Licensee under this Agreement to Windward that is accepted by Windward.

**(v)** “Services” means the maintenance and support services described in Section 5 below.

**(vi)** “Software” means the applications or computer software owned or licensed by Windward chosen by Licensee and listed in an Order to which Licensee purchases a License pursuant to this Agreement, in machine-readable, object code form, including any Documentation and Updates.

**(vii)** “Update” means an error correction, patch, bug fix, modification, option or new release of the Software that is generally made available to purchasers of Services at no additional charge other than media and handling charges.

**(b) End User License.** If Licensee has obtained an End User License to the Software for Licensee’s own internal business purposes, the following terms shall apply and take precedence over any preceding inconsistent or conflicting terms: Subject to the terms and conditions of this Agreement, Windward grants to Licensee during the License Term (subject to Section 6 of

the Agreement), non-exclusive, non-transferable, non-sublicensable license to copy and install the particular number of copies of each Software application licensed by Licensee from Windward or its authorized agent or partner, for the purpose as set forth in the applicable Documentation for the Software and to the extent permitted by Licensee's payment of applicable license fees, if any, under a Windward approved License Type and/or your Software license key subject to the Software product specific terms specified in this Agreement, the technical restrictions of the Software and/or any additional licensing terms specified by Windward via Documentation, notification and/or Windward's License FAQ located on the Windward website ([www.windwardstudios.com](http://www.windwardstudios.com)), and other applicable limitations set forth in an Order ("End User License"). Each individual Software application may be installed and used solely on the number of computers set forth in the Order, if applicable, and used for Licensee's business operations in accordance with the applicable provisions of this Agreement. The License to the Software is limited to the quantities specified in each applicable Order.

**(c) License Types.**

**(i) SOLO** - single user, standalone License.

**(1)** May be installed and used solely on one computer.

**(2)** Each License is valid for applications running under the credentials of a single user. If Licensee runs the Software on a single virtual machine ("VM") under multiple user credentials (i.e. on a Citrix server), a separate License is required for each user running an application calling the Software.

**(3)** Pricing: Pay-Per-Page model.

**(ii) FLEX** - Components: Windward Designers + Windward Engine

**(1)** Designer component is a single user, standalone License.

**a.** May be installed and used solely on one computer.

**b.** Each License is valid for applications running under the credentials of a single user. If Licensee runs the Software on a single VM under multiple user credentials (i.e. on a Citrix server), a separate License is required for each user running an application calling the Software.

**(2)** FLEX Engine component may be installed on an unlimited number of computers/servers

**(3)** Pricing:

**a.** Designer: Pay-Per-Server model.

**b.** Engine: Pay-Per-Page model.

**(iii) PRO** - Components: Any combination of Windward Designers + Windward Engines

**(1)** Designer component is a single user, standalone License.

**a.** May be installed and used solely on one computer.

**b.** Each License is valid for applications running under the credentials of a single user. If Licensee runs the Software on a single VM under multiple user credentials (i.e. on a Citrix server), a separate License is required for each user running an application calling the Software.

**(2)** PRO Engine component may be installed only on the number of servers Licensed by Licensee.

**a.** Licensee must have a separate License for each system on which Licensee executes the Software. A system is defined as a single VM if running on a VM. If running directly on a computer, it is the computer itself.

**b.** Each License is valid for applications running under the credentials of a single user. If you run the Software on a single VM under multiple user credentials (i.e. on a Citrix server), a separate License is required for each user running an application calling the Software.

**c.** A Server License has a maximum number of "cores." This is the total number of cores the Software "sees," therefore a dual core processor is two cores and hyper-threading (if turned on) counts as multiple cores because each hyper-thread is a distinct core as seen by the software. If the License is used on a server where the number of cores Licensed is greater than or equal to number of cores on the machine, the number of threads that may call Windward is unlimited. If the number of cores Licensed is less than the number of cores on the machine, then the number of threads is limited to the core limit of the License.

**d.** The Test Server License is for testing purposes only. It may not be used as a production or end user system. The Test Server output is watermarked.

**e.** The Development Server License is for development purposes only. It may not be used as a production or end user system. The Developer License allows a single report to be concurrently generated, for a maximum of 250 reports per day, and the output is watermarked.

**(3)** Pricing: Pay-Per-Server model.

**1.2 End User Evaluation License. If Licensee has obtained an End User License to the Software for trial or evaluation purposes, the following terms shall apply to such License Type and take precedence over any preceding inconsistent or conflicting terms unless and until Licensee purchases a product License for a License Term:** Subject to the terms and conditions of this Agreement, Windward hereby grants Licensee a limited, revocable, non-exclusive, non-sublicensable, non-transferable license to install the Software on the number of computers permitted by Windward and use the Software for a period of fourteen (14) days, or as extended, following acceptance of this Agreement (“Evaluation Period”), in accordance with the Documentation provided therewith, solely for Licensee’s internal business purpose of evaluating and testing the Software to determine whether to purchase a License for a License Term (“Evaluation License”). Licensee may elect to obtain a License to the Software by notifying Windward in writing prior to the expiration of the Evaluation Period, agreeing to an Order, and paying the applicable fees in accordance with this Agreement. Upon payment of such fees, Licensee shall receive a license key to procure Licensee’s future use of such Software under the License for the License Term. **If Licensee does not procure a license key prior to expiration of the Evaluation Period, Licensee’s evaluation license shall expire and terminate, and the Software will cease to function.** Licensee hereby acknowledges and agrees that, during the Evaluation Period, Windward may collect usage statistics and data from the Software and verify that Licensee has the latest version of the Software and matching license key. During the Evaluation Period, the Software is provided for trial and internal evaluation purposes “AS-IS”, WITHOUT ANY WARRANTIES OF ANY KIND and Licensee’s use of the Software is entirely at its own risk. Except as altered in this Section, all terms of this Agreement shall apply and govern Licensee’s use of the Software during the Evaluation Period explicitly excluding Sections 6 and 10.

**1.3 ASP License. If Licensee has obtained an ASP License to the Software to provide access and use to software to Customers as a Hosted Service, the following terms shall apply to such License Type and take precedence over any preceding inconsistent or conflicting terms:**

**(a) Definitions.**

**(i)** “ASP Bundled Offering” means the offering of the Software with a Licensee Hosted Service product, where the main functionality of the ASP Bundled Offering is not reporting.

**(ii)** “Customer” means an entity that remotely accesses the ASP Bundled Offering from Licensee for use of the Software for such entity’s own internal business purposes and not for further distribution.

**(iii)** “Customer Agreement” means a written agreement between Licensee and Customer which, at a minimum, contains contractual provisions that provide substantially the same protections and restrictions for the Software and Documentation as set forth in this Agreement.

**(iv)** “Customer Key” means the license key for the Software supplied to Customer.

**(v)** “Hosted Service” means a service that makes software accessible to a user via the Internet and where the user is not a licensee of a copy of the software and any other services are merely ancillary to the usage of the software and/or other integrated software components.

**(vi)** “Licensee Marks” means all trademarks, service marks, trade names, logos or other words or symbols identifying or associated with the business of Licensee.

**(vii)** “Price List” means the applicable Windward fee schedule that is in effect when Software or Services are ordered by Licensee which fee schedule Windward may change from time to time by giving Licensee (90) days prior written notice.

**(viii)** “Windward Marks” means those trademarks and service marks identifying or associated with the Software that Windward permits Licensee to use in accordance with this Agreement.

**(b) Appointment.** Subject to the terms and conditions of this Agreement, Windward hereby appoints Licensee as a non-exclusive application service provider utilizing the Software solely as part of an ASP Bundled Offering to Customers for the Order Term.

**(c) License Grant.** Subject to the terms and conditions of this Agreement, Windward hereby grants Licensee a non-exclusive, non-transferable, non-sublicensable license for the Order Term to:

**(i)** market the Hosted Service using the Software as part of an ASP Bundled Offering to Customers under the Licensee Marks;

**(ii)** grant access to the Software and Documentation as part of the Hosted Services and to provide remote access to the Software solely as part of an ASP Bundled Offering to Customers through a Customer Agreement.

**(iii)** demonstrate the Hosted Services to potential Customers;

**(iv)** use the Software internally to test and integrate the Software into the ASP Bundled Offering and provide Level 1 Support for the Software; and

**(v)** use the technical support documentation supplied by Windward for Licensee to provide Level 1 Support in accordance with the terms of this Agreement.

**1.4 ISV License. If Licensee has obtained an ISV License to the Software as a value-added reseller to distribute the Software to Customers as part of a Licensee Offering, the following terms shall apply to such License Type and take precedence over any preceding inconsistent or conflicting terms:**

**(a) Definitions.**

**(i)** “Customer” means an entity that licenses the ISV Bundled Offering from Licensee for use of the Software on the Customer’s premises for such entity’s own internal business purposes and not for further distribution.

**(ii)** “Licensee Offering” means the Licensee products licensed for on-premises use to a Customer and related services described in the Order.

**(iii)** “ISV Bundled Offering” means the license of the Software with a Licensee Offering product, where the main functionality of the ISV Bundled Offering is not reporting.

**(b) Appointment.** Subject to the terms and conditions of this Agreement, Windward hereby appoints Licensee for the term of this Agreement as a non-exclusive value-added reseller of the Software solely as part of an ISV Bundled Offering to Customers.

**(c) License Grant.** Subject to the terms and conditions of this Agreement, Windward hereby grants Licensee a non-exclusive, non-transferable, non-sublicensable license to:

**(i)** market the Software as part of an ISV Bundled Offering to Customers under the Licensee Marks;

**(ii)** license and distribute the Software, Customer Keys and Documentation to Customers solely as part of an ISV Bundled Offering through a Customer Agreement;

**(iii)** demonstrate the Software to potential Customers;

**(iv)** use the Software to test and incorporate the Software into the ISV Bundled Offering and provide Level 1 Support for the Software; and

**(v)** use the technical support documentation supplied by Windward for Licensee to provide Level 1 Support in accordance with the terms of this Agreement.

**2. END USER LICENSE RESTRICTIONS.** The Software is licensed and not sold. All rights not expressly granted to Licensee in this Agreement are reserved by Windward. Licensee shall not, and shall not permit any third party to: (a) modify, prepare derivative works, transfer, sublicense, or relicense the Software, or use the Software for third party transactions, commercial time-sharing, rental or service bureau use; (b) cause or permit the reverse engineering (except to the extent expressly allowed by local law), disassembly or decompilation of the Software; or (c) use the developer system version in a production or end user system. Licensee may make one copy of the Software for archival or backup purposes which copy shall be subject to the terms of this Agreement.

**3. ASP LICENSE AND ISV LICENSE RESTRICTIONS AND REQUIREMENTS.**

**3.1 Restrictions.** Licensee shall not, nor permit any third party to, (i) decompile, reverse assemble or otherwise reverse engineer the Software, (ii) use the Software for third party transactions, commercial time-sharing, rental or service bureau use, application services or, except as expressly authorized herein, publicly perform or publicly display the Software, (iii) make copies of the Software and Documentation, except for one copy for back-up or archival purposes or as expressly allowed in this Agreement, (iv) use or disclose Software keys except as expressly authorized in this Agreement, (v) provide an application programming interface to the Software or authorized modifications of the Software, (vi) distribute the Software in any format for development or application compilation purposes, or (vii) use or incorporate the Software or any portion of the Software in any Licensee products which would compete directly or indirectly with the Software. Except as otherwise provided in this Agreement, Licensee shall not alter, modify or change the Software.

**3.2 Copies and Keys.** Licensee of an ISV License may make copies of the Software as required for the ISV Bundled Offering for a Customer. The ISV Bundled Offering shall only be supplied to Customer with a Customer Key obtained from Windward. Licensee shall not supply Customer a Customer Key other than the Customer Key provided by Windward and shall obligate Customer to treat the Customer Key as Confidential Information of Windward.

**3.3 Software Changes.** Windward reserves the right, from time to time, to add, change or discontinue Software upon giving one hundred and twenty (120) days’ notice to Licensee. If a Software product is discontinued, Licensee may continue to distribute the discontinued Software product for the remaining Term, but Windward shall not be obligated to provide Services for the discontinued Software product beyond the 12-month period beginning after the end of the 120-day notice period.

**3.4 Requirements and Responsibilities.**

**(a)** Licensee agrees not to make any reference or claim about Windward or the Software other than presenting current information that has been published by Windward or approved by Windward in writing.

**(b)** Licensee agrees not to use deceptive, misleading, illegal or unethical practices in marketing, licensing and supporting the Software to Customers.

**(c)** Licensee agrees to comply with all applicable laws and regulations in performing its duties under this Agreement.

(d) Licensee agrees that, in connection with its performance of its duties hereunder, it shall not make any payments, in money or any other item of value or make any offers or promises to pay any money or any other item of value to (a) any government official, (b) any foreign political party, (c) any candidate for foreign political officer or (d) any other person or entity, with the knowledge that such payment, offer or promise to pay will be made to any government official for the purpose of influencing such government official to make one or more business decisions favorable to Licensee in connection with the resale of Windward Software or Services. Licensee further represents that no government official is a principal, owner, officer, employee or agent of any entity in which Licensee has an interest, and no government official has any material financial interest in the business of the Licensee.

(e) Licensee shall maintain complete and accurate books and records in connection with the activities under this Agreement, including not manipulating server transaction records to avoid paying the proper Fees. Such records shall include executed Customer Agreements.

(f) Upon Windward's request, Licensee shall provide Windward with a copy of the Licensee's standard Customer Agreement for the Software.

(g) Licensee shall comply with the following license limitations:

(i) Each Customer must have a separate license for each License Type on which Customer executes the Software and each Customer Agreement shall contain, at a minimum, the requirements and restrictions for the applicable License Type for each End User License.

(ii) Licensee shall ensure that Customer will keep a port open at all times so that Windward may retrieve reports and access the applicable Bundled Offering as reasonably necessary.

(iii) Each License is valid for applications running under the credentials of a single user. If you run the Software on a single VM under multiple user credentials (i.e. on a Citrix server), a separate License is required for each user running an application calling the Software.

(iv) A Server License has a maximum number of "cores." This is the total number of cores the Software "sees," therefore a dual core processor is two cores and hyper-threading (if turned on) counts as multiple cores because each hyper-thread is a distinct core as seen by the software. If the License is used on a server where the number of cores Licensed is greater than or equal to number of cores on the machine, the number of threads that may call Windward is unlimited. If the number of cores Licensed is less than the number of cores on the machine, then the number of threads is limited to the core limit of the License.

(v) The Test Server License is for testing purposes only. It may not be used as a production or end user system. The Test Server output is watermarked.

(vi) The Development Server License is for development purposes only. It may not be used as a production or end user system. The Developer License allows a single report to be concurrently generated, for a maximum of 250 reports per day, and the output is watermarked.

(h) Licensee shall keep Windward informed as to any problems encountered with the Software and any resolutions arrived at for those problems, and to communicate promptly to Windward any and all modifications, design changes or improvements of the Software suggested by any customer, employee or agent.

(i) Licensee shall: (a) acquire no right, title or interest in the Windward Marks; (b) it shall not use the Windward Marks as part of Licensee's corporate or trade name, if any, or permit any third party to do so without the prior written consent of Windward; and (b) it will promptly notify Windward of any improper use by any third party of the Windward Marks or of similar marks.

**4. TRAINING.** If Licensee has obtained an ASP License or an ISV License, Windward agrees to make available to Licensee's staff, at Licensee's expense, ongoing training in the marketing, sale and use of the Software, at Windward's then current rates, for Licensee to perform its obligations under this Agreement. For any on-site training services requested by Licensee and accepted by Windward in writing, Licensee shall pay Windward for all agreed to fees and for actual, reasonable travel and out-of-pocket expenses.

## **5. MAINTENANCE AND SUPPORT SERVICES.**

**5.1 Provision.** For each End User License, Windward shall provide First Level Support Services described in Section 5.2. For ASP Licenses and ISV Licenses, Windward shall make available to Licensee only and not to Licensee's Customers, Second Level Support Services as described in Section 5.4. ASP Licensee and ISV Licensees are responsible for providing to their Customers First Level Support Services as described in Section 5.2 and Section 5.3.

**5.2 First Level Support Services.** Windward shall take reasonable steps to correct material nonconformities with the Software specifications in the applicable Documentation. Services shall commence on the initial delivery of the Software to Licensee and shall continue for the period set forth in the Order ("Services Term"). Services will be provided from Windward's offices through the use of email and internet-based support only. Email and internet-based support is for the purpose of providing advice and assistance to Licensee on the use of the Software, and will include basic information and instructions, including assistance with the general use of the Software, optimization of the available functions, installation of the Software, research problems reported to Windward by Licensee, and expected functionality of future Software and Updates. Services will include the right to receive Updates to the Software at no additional charge if and when Windward makes them generally available.

**5.3 ASP License and ISV License First Level Support.** Licensees of an ASP License or an ISV License shall:

- (a) collect Customer's diagnostics as requested by Windward to assist Windward in providing Second Level Support services.
- (b) provide telephone assistance or if applicable on-site assistance in researching and finding solutions to problems in the use of the Software, if these problems have been caused by an error in the Software as installed at Customer's site.
- (c) have resources available who are able and capable of giving instruction and training in the use of the Software to existing and new Customers.
- (d) coordinate all Second Level Support requirements with Windward and working directly with Customers on all matters pertaining to First Level Support requirements.
- (e) provide Customers with Updates.
- (f) designate two members of its technical staff as Licensee's sole representatives for contact with Windward regarding Windward technical support obligations under this Agreement. The technical contacts shall also be the main contacts for First Level Support requests by Customers.

**5.4 Second Level Support Services.** Second Level Support means the following online and telephone technical support provided by Windward to Licensee for the purpose of providing advice and assistance to Licensee to support Licensee's Customers on the operation and use of the Software:

- (a) advice and assistance to support Licensee's Customers on Software functionality, debugging and troubleshooting in accordance with then-current Windward support policies;
- (b) research problems reported by Licensee; and
- (c) provide Licensee with Updates.

**5.5 Covered Software.** Windward will provide Services for the most current release of the Software. Once a release has been made generally available, Licensee should convert to the latest release in order to insure uninterrupted service and continued support.

**5.6 Hours of Operation.** Services via telephone are available between the hours of 8:00 a.m. and 5:00 p.m., U.S. MST, weekdays, excluding U.S. holidays observed by Windward (the "Hours of Operation"). Licensee may receive Services by telephone by calling Windward's customer support number set forth in the Documentation. Telephone Services will be provided in the English language only and Licensee must speak, write, and understand English. Services via the internet are available for extended hours via the Windward Helpdesk Center which may be accessed from the Windward website at [www.windwardstudios.com](http://www.windwardstudios.com).

**5.7 Exclusions.** Windward is not required to perform Services with respect to the following: (i) assistance in resolving problems due to Licensee's modification of the Software; (ii) problems encountered as a result of non-Windward product offerings co-resident on the system hub machine; (iii) assistance in resolving software problems other than those associated with Software, including, but not limited to, problems with the hardware and its operating system, communications and system administration-related problems; (iv) assistance in migrating to new releases of other software products; (v) assistance in resolving problems due to using the Software in an operating environment not authorized by Windward; (vi) Licensee's failure to use the Software in accordance with the applicable Documentation; and (vii) Licensee's failure to use error corrections previously provided by Windward.

**5.8 Licensee's Responsibilities.** Licensee shall cooperate fully with Windward's reasonable requests for information, personnel and time necessary to provide Services, including providing information for Windward to reproduce the errors reported by Licensee.

## **6. PRICING MODELS; FEES, PAYMENT, AND TAXES.**

### **6.1 License Pricing Models.**

(a) **Pay-per-Page.** Subscription model wherein each time a report is run, the Software checks in with the Windward license server for approval. If approval is received, the report is run, and the page total is then sent back to the license server to be charged against the customer's account. Customer prepays for N pages per month; with overages assessed for all pages over the base amount.

(b) **Pay-per-Server.** Subscription model wherein a customer prepays for N individual Licenses. (Overages are charged for any "scaled out" servers, if applicable, as described below.)

(i) **Connected mode:** The Software will communicate with the Windward license server at various times while running for approval to run on that machine. If unable to communicate at any time, the Software will cease operation.

(ii) **Disconnected mode:**

(1) **Pay-per-server License with expiration date.**

(2) **Limited to run only on computers specified by host name or IP address.**

(iii) **Scaled Out Servers.** Use Case: Web applications wherein one or more servers are running 24/7, with additional servers with the exact same software that are spun up as volume increases.

- (1) Pay-per-server pricing, based on the number of additional servers running.
- (2) Licensee must have a full-time pay per server License to scale out on top of.
- (3) Connected mode only.
- (4) Charged in blocks of time.

**6.2 Fees.** In consideration of the Software and Services and any accompanying Licenses provided to Licensee by Windward hereunder, Licensee shall pay Windward the License fees, Services fees, expenses, and taxes set forth on the applicable invoice provided by Windward based on the applicable Order.

**6.3 Payment.** Licensee shall pay all invoices as follows: Licensee shall pay all fees and expenses at the time of purchase. Monthly, quarterly, and annual billing cycles are available. Depending on what option Licensee chooses, the Order will be renewed at the end of each subscription month, quarter, or year. Payment may be made using a credit card or other payment methods accepted by Windward in the Order. Windward will charge Licensee's credit card or other payment account at the time of purchase of the License and when there are other charges as specified in the License Type (e.g. overages), and Licensee hereby authorizes Windward to charge its credit card or other payment account on or before each Renewal Term on a recurring basis. Customer shall maintain complete and accurate billing and credit card and payment information on file with Windward. All payments received by Windward are non-refundable except as otherwise expressly provided in this Agreement. All fees and expenses specified in this Agreement are exclusive of, and Licensee shall be solely responsible for, all value-added, sales, use, import, duties, customs or other taxes applicable to the transactions contemplated by this Agreement, except for any taxes based upon Windward's net income. All fees and expenses are quoted in U.S. dollars and Licensee shall pay the fees and expenses in U.S. dollars. If Licensee fails to pay Windward the amounts when due, Windward may (a) cause the Software to suspend operation until such time as Licensee brings its account completely current, and (b) exercise any other rights under the Agreement.

**6.4 Reporting.** Licensee understands and acknowledges that the Software contains License verification capabilities which will contact the Windward license server before each report runs to verify that the License is valid and inform the Windward license server that a report is being run. The information sent to Windward shall contain information about the usage of the Software, including, without limitation, information detailing the number of pages generated by the Software, and the number of users, and the number of servers running reports (collectively "Usage Information"). Licensee hereby grants Windward permission to operate these reporting capabilities to obtain reports that contain such Usage Information ("Reports") in order to verify Licensee's compliance with the terms of this Agreement. If Licensee fails to pay Windward the additional amounts due Windward may (a) cause the Software to suspend operation until such time as Licensee brings its account completely current, or (b) exercise any other rights under the Agreement. If the Reports reveal any other nonconformance with this Agreement, Windward may seek its remedies available to it under this Agreement.

## **7. TERM AND TERMINATION.**

**7.1 Term.** The initial term of this Agreement shall commence after Licensee submits the Order for Licenses and when payment has been received by Windward and continue for the initial term set forth in the Order unless terminated earlier by a party in accordance with this Section ("Initial Term"). Thereafter, this Agreement shall automatically renew for additional periods equal to the Initial Term (each, a "Renewal Term"), unless a party gives the other party written notice of its intent to not renew at least 10 days prior to the end of the Initial Term or the then-current Renewal Term. The Initial Term and each Renewal Term are collectively referred to as the "Term."

**7.2 Termination.** This Agreement and the License granted herein may be terminated immediately upon written notice (a) by Windward if any amounts owed by Licensee are past due; (b) by a party upon the material breach by the other party of any of its other obligations under this Agreement, which breach has not been cured within thirty (30) days after the breaching party has received written notice thereof; or (c) by Windward if Licensee has violated Sections 1, 2, 3, or 9 of the Agreement.

**7.3 Effect of Termination.** Upon termination Licensee shall promptly cease using and delete the Software from Licensee's system and destroy the Documentation and any copies of the Software or Documentation. Upon termination of this Agreement, any applicable fees owed by Licensee through the date of termination shall become due and payable. Licensee shall promptly return to the other all Confidential Information of Windward that Licensee may have in Licensee's possession or control. For ASP Licenses and ISV Licenses, upon termination of this Agreement (a) all rights and licenses of and obligations of and restrictions on Windward hereunder shall terminate, except that licenses granted to Customers in accordance with this Agreement will remain in effect in accordance with their terms; (b) Licensee will, at the option of Windward, destroy or return all Software, Software keys, catalogues, and literature in its possession, custody or control in whichever form held (including all copies or embodiments thereof) and will cease using the Software, Services and Windward Marks. Notwithstanding the termination of this Agreement for any reason, the rights and duties of the parties under Sections 7.3, 8, 9, 11, 12 and 13 and all payment obligations and license restrictions of this Agreement shall survive such termination and remain in full force and effect.

**8. INTELLECTUAL PROPERTY.** Subject only to the Licenses expressly granted in this Agreement, as between Windward and Licensee, Windward shall be the sole owner of all intellectual property rights in and to the Software, Software keys, and the Documentation. Licensee shall not remove any of Windward's or its licensor's copyright, trademark and other proprietary notices contained on or in the Software or the Documentation, and Licensee will reproduce all such notices on all copies permitted to be made by Licensee under this Agreement. Windward may utilize all ideas, suggestions, feedback, improvements data, reports or the like that Licensee provides to Windward or otherwise makes with respect to the Software or the Services without any obligation to Licensee. To

the extent that Licensee has or later obtains any intellectual property rights in and to the Software or Services or any future enhancement or modification thereto or any part thereof, by operation of law or otherwise, Licensee hereby disclaims such rights, assigns and transfers such rights exclusively to Windward, and agrees to provide reasonable assistance to Windward, to give effect to such assignment and to protect, enforce and maintain such rights. Licensee shall not remove any of Windward's or its licensor's copyright and other proprietary notices contained on or in the Software, Services, Documentation or any other materials delivered to Licensee, and Licensee will reproduce all such notices on all copies permitted to be made by Licensee under this Agreement

**9. CONFIDENTIAL INFORMATION.** "Confidential Information" means (a) the Software, the Documentation and any business or technical nonpublic information of Windward, including without limitation, License keys provided to Licensee by Windward; (b) any other information of Windward that is specifically designated by Windward as confidential or proprietary; and (c) the terms and conditions of this Agreement. Confidential Information shall not include information that (i) is in or enters the public domain without breach of this Agreement through no fault of Licensee; (ii) Licensee were demonstrably in possession of prior to first receiving it from Windward without obligation of restrictions; (iii) Licensee can demonstrate was developed by Licensee independently and without use of or reference to the Windward's Confidential Information; or (iv) Licensee receive from a third party without restriction on disclosure and without breach of a nondisclosure obligation. Licensee shall maintain the Confidential Information in strict confidence during the Term and, until such time as the Confidential Information enters the public domain pursuant to items (i) through (iv) above. Licensee shall exercise no less than reasonable care with respect to the handling and protection of such Confidential Information. Licensee shall use the Confidential Information only during the Term and as expressly permitted herein and shall disclose such Confidential Information only to Licensee's employees as is reasonably required in connection with the exercise of Licensee's rights and obligations under this Agreement (so long as those employees are subject to binding use and disclosure restrictions at least as protective as those set forth herein).

#### **10. WARRANTIES AND DISCLAIMERS.**

**10.1 By Windward.** Windward warrants that, for a period of ninety (90) days from initial delivery of the Software to Licensee, the Software will, when properly installed and used in accordance with the Documentation, perform substantially in accordance with the specifications for the Software as described in the applicable Documentation. As Licensee's exclusive remedy and Windward's sole obligation for breach of this warranty, Windward shall use commercially reasonable efforts to correct any reproducible error in the Software constituting a breach of the warranty at no additional charge. Windward does not warrant that Licensee's use of the Software will be error-free, virus-free or uninterrupted. Windward makes no other warranty, express or implied, with respect to any Services or Software provided by Windward under this Agreement. WINDWARD HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS AND OTHER TERMS, WHETHER STATUTORY, ARISING FROM COURSE OF DEALING, OR OTHERWISE, INCLUDING WITHOUT LIMITATION TERMS AS TO QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT.

**10.2 ASP Licensee and ISV Licensee Warranties.** For ASP Licenses and ISV Licenses, Licensee represents and warrants that neither this Agreement (or any term hereof) nor the performance of or exercise of rights under this Agreement, is restricted by, contrary to, in conflict with, ineffective under, requires registration or approval or tax withholding under, or affects Windward's proprietary rights (or the duration thereof) under, or will require any termination payment or compulsory licensing under, any law or regulation of any organization, country, group of countries or political or governmental entity located within or including all or a portion of the territories where Licensee sells the ASP Bundled Offering or ISV Bundled Offering to Customers. Licensee will not make or publish any representations, warranties, or guarantees on behalf of Windward or its suppliers concerning the Products that are inconsistent with any warranties made by Windward to its end users concerning the Products without Windward's specific prior written approval.

#### **11. INDEMNIFICATION.**

**11.1 By Windward.** Windward agrees to defend Licensee from and against any third party claims alleging that the Software or Documentation as furnished to Licensee and used within the scope of this Agreement infringes any U.S. patent issued as of the Effective Date, or any copyright, trademark or is a misappropriation of any trade secret of such third party and Windward will pay all final judgments awarded or settlements entered into on such claims. The foregoing indemnity obligation shall not extend to any claims of infringement arising out of or related to (i) a modification of the Software or Documentation by anyone other than Windward or its duly authorized agent; (ii) the incorporation into the Software or Documentation of any information provided by or requested by Licensee; (iii) a combination of the Software with any third party software or equipment not specified in the Documentation and where such combination is the cause of such infringement; or (iv) the use of a version of the Software other than the then-current version if the infringement would have been avoided by using of the then-current version. In the event the Software or Documentation are held or are believed by Windward to infringe, Windward may, at its sole option and expense, elect to (a) modify the Software or Documentation so that they are non-infringing; (b) replace the Software with non-infringing Software which are functionally equivalent; (c) obtain a License for Licensee to continue to use the Software as provided hereunder; or if none of (a), (b), or (c) is commercially reasonable, then (d) terminate the License for the infringing Software or Documentation and refund the License fees paid for that Software or Documentation, prorated over a five (5) year term from the Effective Date. This Section 9.1 states Windward's entire liability and Licensee's sole and exclusive remedy for any infringement of third-party proprietary rights of any kind.

**11.2 By Licensee.** Except for claims covered by Section 11.1, Licensee agree to indemnify and defend Windward from and against all third-party claims arising out of or related to this Agreement (including Licensee's use of the Software) or by Licensee's negligence, willful misconduct or breach of the terms of this Agreement.



**11.3 Indemnification Procedure.** The party seeking indemnification must (a) give prompt notice of the claim to the other party; (b) grant sole control of the defense or settlement of the claim or action to the other party; and (c) provide reasonable cooperation to the other party and, at the other party's request and expense, assistance in the defense or settlement of the claim.

**12. LIMITATION ON LIABILITY.** NEITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, SUFFERED BY THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTIONS OR OTHER ECONOMIC LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY USE OF OR FAILURE TO BE ABLE TO USE THE SOFTWARE OR SERVICES. WINDWARD SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATED TO (i) TRANSACTIONS PERFORMED USING THE SOFTWARE OR SERVICES; OR (ii) MODIFICATIONS TO THE SOFTWARE OR SERVICES BY LICENSEE, WHETHER SUFFERED BY LICENSEE OR ANY THIRD PARTY. WINDWARD'S TOTAL AGGREGATE LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE FEES PAID BY LICENSEE HEREUNDER FOR THE SOFTWARE OR SERVICE THAT IS THE SUBJECT OF THE ACTION. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT. LICENSEE ACKNOWLEDGE THAT WINDWARD'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED IN THIS SECTION WILL APPLY REGARDLESS OF WHETHER ANY LIMITED OR EXCLUSIVE REMEDY SPECIFIED IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY TO LIABILITY ARISING FROM ANY BREACH OF SECTIONS 1, 2, 3, OR 7 AND ANY OBLIGATIONS UNDER SECTION 11.

**13. GENERAL TERMS.**

**13.1 Publicity.** Windward may, in its reasonable discretion, contact any Customer at any time for any purpose related to such Customer's use of the ASP Bundled Offering or ISV Bundled Offering, as applicable. Windward may, and Licensee shall ensure that Windward has the rights necessary, to use the name and logo of any Customers in connection with promoting the Windward products and services.

**13.2 Notices.** All notices required under this Agreement shall be (a) in writing, (b) deemed to have been duly made and received when (i) personally served, (ii) delivered by commercially established courier service, or (iii) ten (10) days after deposit in mail via certified mail, return receipt requested, to the addresses specified in the Order or at such other address as the parties shall designate in writing from time to time, and, (c) for notices to Windward, marked "Attention: Contracts Department".

**13.3 Export Control.** The Software may be subject to United States export control regulations. Licensee shall obtain at Licensee's expense all necessary licenses, permits and regulatory approvals required by any and all governmental authorities and agencies having jurisdiction over the export and re-export of software and technical data in accordance with all applicable regulations of the Office of Export Administration of the U.S. Department of Commerce and the U.S. Treasury Department Office of Foreign Asset Control.

**13.4 U.S. Government End Users.** For any Software or Documentation licensed directly or indirectly on behalf of a unit or agency of the United States Government, this provision applies. The Software and Documentation: (a) was developed at private expense and are in all respects the proprietary information of Windward; (b) were not developed with government funds; (c) are a trade secret of Windward for all purposes of the Freedom of Information Act; (d) are commercial items and thus, pursuant to Section 12.212 of the Federal Acquisition Regulations (FAR) and DFAR Supplement Section 227.7202, Government's use, duplication or disclosure of the Software or Documentation is subject to the restrictions set forth by Windward.

**13.5 Dispute Resolution.** Any unresolved disputes between the parties relating to or arising from this Agreement shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA Rules") before a single neutral and competent arbitrator selected in accordance with the AAA Rules. Such arbitration shall be held in Denver, Colorado and conducted in the English language. The cost and expense of arbitration shall be shared equally by the parties to the arbitration and each party will bear its own attorney fees, regardless of which party prevails. The arbitration shall be conducted in accordance with the following time schedule unless otherwise mutually agreed to in writing by the parties: (i) no later than thirty (30) days after the appointment of the arbitrator, the arbitrator shall schedule a hearing on the dispute and (ii) within thirty (30) business days after the date of the hearing referenced in clause (i), the arbitrator shall render a decision. The decision or award of the arbitrator shall be final and binding upon the parties, and to the same extent and to the same degree as if the matter had been adjudicated by a court of competent jurisdiction and shall be enforceable under the Federal Arbitration Act. However, the parties agree that any breach of a party's confidentiality obligations and the license grant and restrictions set forth in this Agreement will result in irreparable injury to the other party for which there is no adequate remedy at law. Therefore, in the event of any breach or threatened breach of such obligations, the nonbreaching party will be entitled to seek equitable relief in addition to its other available legal remedies without submitting such matter to arbitration. Each party hereby irrevocably submits to the exclusive jurisdiction and venue of the state and federal courts located in Denver, Colorado for any action seeking injunctive relief hereunder.

**13.6 Integration and Modification.** This Agreement sets forth the entire agreement between the parties and supersedes any and all prior proposals, agreements or communications, written or oral, of the parties with respect to the subject matter hereof. This Agreement sets forth the general terms and conditions applicable to all Services provided by Windward to Licensee under the specific terms and conditions set forth in the applicable order, renewal notice, or quotation provided by Windward, if any. The provision and receipt of Services are expressly conditioned on the acceptance of the terms in this Agreement. No other terms apply. No terms and conditions proposed by either party shall be binding on the other party unless accepted in writing by both parties, and each party hereby objects to

and rejects all terms and conditions not so accepted. This Agreement may not be modified, altered or amended, except by written instrument duly executed by both parties.

**13.7 Miscellaneous.** No failure or delay by either party in exercising any right hereunder will operate as a waiver thereof. If Licensee wishes to assign or otherwise transfer this Agreement to anyone, Licensee must obtain Windward's prior written consent, which consent shall not be unreasonably withheld. This Agreement will be binding on the parties, their successors and permitted assigns. This Agreement will be construed under the laws of the State of Colorado, without regard to its conflicts of law principles. Except as required by Section 13.4 above, any action or lawsuit related to this Agreement must be brought exclusively in either the federal or state courts located in the City and County of Denver, Colorado and each party hereby irrevocably submits and waives any objection to the exclusive jurisdiction and forum of such courts. The parties hereby disclaim the application of the 1980 U.N. Convention on Contracts for the International Sale of Goods. The English language version of this Agreement shall be controlling in the interpretation or application of the terms of this Agreement. If any provision of this Agreement is, for any reason, held invalid or illegal in any respect by an arbitrator or a court of competent jurisdiction, such inability or illegality shall not affect the validity of this Agreement itself and there shall be substituted for the affected provision, a valid and enforceable provision which most closely approximates the intent and economic effect of the invalid provision. If such provision cannot be amended so as to be valid and enforceable, then such provision is severable from this Agreement, and the remaining provisions of this Agreement shall remain valid and enforceable. If any legal action is brought to enforce the terms and conditions of this Agreement, the prevailing party will be entitled to recover its attorneys' fees, court costs, and other collection expenses, from the non-prevailing party in addition to any other relief it may be awarded.

Effective December 16, 2019