

STANDARD TERMS AND CONDITIONS

The following standard terms and conditions apply to all sales of equipment, software and/or accessories (collectively “Products”) by Data Ltd. Inc. (DLI) to its customer (“Customer”), except as provided below or as may be set forth in a separate written agreement signed by DLI and Customer. The issuance of a purchase order to DLI constitutes the customer’s acceptance of the following terms and conditions. DLI and Customer, intending to be legally bound, agree as follows.

SECTION 1. ENTIRE AGREEMENT

These terms and conditions (referred to herein as the “Agreement”) constitute the final, complete and exclusive agreement between the parties relating to the subject matter hereof, and supersedes all prior or contemporaneous proposals, understandings, representations, warranties, promises and other communications, whether oral or written, relating to such subject matter (including without limitation any prior. Standard Terms and Conditions. Published by DLI). Any term or condition in any order, confirmation or other document furnished by Customer at any time, which is in any way inconsistent with or in addition to the terms and conditions set forth in this Agreement is hereby expressly rejected, and DLI’s acceptance of any offer or order of Customer is expressly made in reliance on Customer’s assent to all terms and conditions hereof.

SECTION 2. PURCHASE OF PRODUCTS

- A. **PRICES.** The prices applicable to the Products and/or Specific Services shall be quoted by DLI to Customer. Such prices quoted by DLI do not include any excise, sales, use or other taxes, and therefore are subject to increase in the amount of any applicable taxes that DLI may be required to collect or pay upon the sale or delivery of the Products. In addition, such prices quoted by DLI for Products do not automatically include any Services. Quotes for Products and/or Service do not include charges for Shipping, Handling, Customs Fees and/or Insurance, all of which will be invoiced to and paid by Customer as per the payment terms for said Customer.
- B. **PURCHASE ORDER PROCESS.** Customer shall place orders for Products to be purchased hereunder by submitting one or more written purchase orders to DLI during the term of this agreement. Each such purchase order shall state the full DLI item number, the description of said item(s), quantity of item(s), billing address and shipping address, shipping method, insurance (if required), and requested delivery date. Terms and Conditions submitted by the Customer shall not be binding

on DLI without express written approval by DLI, or otherwise contracted between both DLI and Customer. In addition, the delivery of Products pursuant to any purchase order submitted by Customer shall not be binding on DLI unless agreed upon in writing by DLI.

- C. STANDARD PRODUCTS. Unless specifically set forth by DLI in writing: (1) All products shall be DLI's standard, off-the-shelf items, and no special customized version of any Product shall be provided by DLI; and (2) DLI shall have no obligation to ensure that the Products operate in conjunction with Customer's equipment, software or other products or systems, and Customer shall be responsible for all costs it incurs in connection with any modifications it elects to make to its own equipment, software or other products or systems.
- D. RELATED SERVICES. The parties may agree that DLI will provide to Customer from time to time, certain services relating to Customer's purchase of the Products, including but not limited to deployment of services and maintenance and support services. The parties agree that, in the absence of a separate written agreement covering such services, such services shall be covered by the provisions of this Agreement, including but not limited to Sections 6,7 and 10 below, and that Customer shall be separately invoiced for all such services in accordance with Section 4 below at DLI's then current rates for such services.

SECTION 3. CERTAIN OBLIGATIONS OF CUSTOMER

The provisions of this Section 3 shall apply if Customer intends to resell the Products. As used in this Agreement, the term "resell", and similar terms, shall include any resale, lease or other transfer or delivery of the Products.

- A. RESALE OF PRODUCTS ONLY TO PERMITTED PURCHASERS. Customer shall resell the Products only to the following persons and entities (referred to herein collectively as "Permitted Purchasers"): (1) Any end user of the Products (which shall mean any person or entity that uses the Products in the conduct of its business of selling goods or providing services to the general public and does not resell the Products to any third party), provided that such end user is in the market for which DLI has provided Product pricing to Customer; and (2) Any other person or entity with respect to which DLI has given its prior express written approval. If Customer resells Products to any person or entity other than a Permitted Purchaser, then (in addition to any other remedies available to DLI), DLI may invoice Customer, and Customer shall pay to DLI within thirty (30) days after the date of any such invoice, an amount equal to

the difference between (i) the total sum actually charged to the Customer for the Products resold to any person or entity other than a Permitted Purchaser and (ii) the total sum which would have been charged to Customer for such Products if such Products had been sold to Customer at DLI's standard end-user prices (list prices) then in effect for such Products.

- B. PROVISIONS FOR RESALE. DLI, at its option, may provide Customer with Associated Product Materials ("APM"), to be included with the Products when such Products are resold by Customer. Customer agrees to distribute the Associated Product Materials provided with each product of DLI that includes software created by or licensed by DLI and further agrees that it shall contractually bind resellers, to whom any product of DLI containing such software is sold, to distribute such APM. APM shall include, without limitation, any Certificate of Authenticity, the Desktop Software, the End User License Agreement, and such other materials as DLI may designate from time to time. Desktop Software shall mean software provided by DLI or any DLI supplier, whether on a CD-ROM disk or otherwise, that (i) complements and is part of the Device, and (ii) if installed on an electronic device (i.e. personal computer, cell phone, pda, etc.), enables data exchange between the Device and the personal computer. Customer agrees that all such documentation shall be for the benefit of DLI and shall be enforceable directly by DLI (in DLI's name or on behalf of Customer).
- C. COMPLIANCE WITH LAWS AND OTHER STANDARDS. Customer is responsible for compliance with all import and export control laws and regulations. Customer will obtain import, export, re-export approvals, permits and licenses required for goods, transfers, services and technical data delivered and will retain documentation to support compliance with those laws and regulations. DLI will not be liable to Customer for any failure to provide goods, services, transfers or technical data as a result of government actions that impact DLI's ability to perform, including: (1) The failure to provide or the cancellation of export or re-export licenses; (2) Any subsequent interpretation of applicable import, transfer or export law or regulation after the date of any order or commitment that has a material adverse effect on DLI's performance; or (3) Delays due to Customer's failure to follow applicable import, export, transfer, or re-export laws and regulations. Customer shall not sell, transfer, export or re-export any DLI goods, services or technical data for use in activities that involve the design, development, production, use or stockpiling of nuclear, chemical or biological weapons or missiles, nor use DLI's goods, services or technical data in any facility which engages in activities relating to such weapons or missiles. In addition, DLI's goods, services or technical data may not be used in

connection with any activity involving nuclear fission or fusion, or any use or handling of any nuclear material until Customer, at no expense to DLI, has insurance coverage, indemnities, and waivers of liability, recourse and subrogation, acceptable to DLI and adequate in DLI's opinion to protect DLI against any type of liability.

- D. INCORPORATION OF MICROSOFT PRODUCTS. Customer understands that some of the Products incorporate Microsoft products pursuant to a separate license agreement between DLI and Microsoft. Customer shall not market and shall not quote a separate price for the Microsoft and/or DLI's binaries contained in the Products.

SECTION 4. TERMS OF PAYMENT. DLI shall be entitled to invoice Customer at the time of each shipment of Products to Customer. Payment terms for all invoiced amounts shall be determined prior to any shipments being made to said Customer, whether it may be pre-pay (by check, certified bank check, credit card), or under net terms as approved by DLI. Customer shall make all payments due to DLI without regard to whether Customer has made or may make any inspection of the Products delivered to Customer. Any invoiced amount which is not paid when due shall bear a late fee at the rate of eighteen percent (18%) per annum or the maximum rate permitted by applicable law, whichever is less. If Customer fails to pay any invoiced amount when due, or if for any other reason DLI is not satisfied with the credit-worthiness of Customer, the DLI shall be entitled to withhold shipments (and the provision of any services) until Customer reestablishes its credit to DLI's satisfaction. Customer will not set off or recoup invoiced amounts or any portion thereof against sums that are due or may become due from DLI.

SECTION 5. DELIVERY OF PRODUCTS

- A. SHIPPING SCHEDULE. DLI shall use its reasonable efforts to ship Products to Customer in accordance with the shipment schedule provided to DLI by Customer. DLI reserves the right to ship Products as early as possible prior to the requested delivery date, unless agreed to in writing by DLI, in order to accommodate DLI overall delivery schedules. Notwithstanding the foregoing and without limiting the generality of Section 10 below, DLI shall not be liable for damages of any kind as a result of a delay in delivery for any reason.
- B. CHANGES PERMITTED. Customer may change a previously requested shipment date for any standard Products (i.e., Products other than custom or made-to-order Products), provided that Customer gives DLI written notice of such change within 24 hours of receipt of order confirmation.

- C. CHANGES SUBJECT TO CONSENT. Except as provided in Section 5(B) above, Customer shall not be entitled to change a previously requested shipment date, or cancel an order, for any Products except with DLI's prior express written consent, which consent shall be in DLI's sole discretion. If DLI gives its consent pursuant to the preceding sentence but the Products involved have already been built and/or shipped to Customer, then: (1) Customer shall return the Products to DLI and pay all related shipping, handling, customs and insurance charges (for both shipping the Products to Customer and returning the Products to DLI); and (2) Customer may be charged by DLI a restocking fee to cover rework and handling fees.
- D. SHIPMENT PROCESS. All outbound shipments from DLI's facility are shipped via Federal Express or DLI approved truck courier unless otherwise specified in writing on customers' purchase order. UPS (United Parcel Service) is only used with a customer provided account number. DLI shall invoice Customer for any and all shipping, handling, customs, insurance and similar charges incurred by DLI in shipping Products to Customer, and Customer shall pay such charges. DLI also reserves the right to ship Products to Customer freight collect. Customer shall be deemed to have accepted the Products upon the date title to such Products passes to Customer; provided, however, that nothing in this Section 5 (D) shall be deemed to limit Customer's warranty rights set forth in Section 9 below.
- E. INSPECTION AND ACCEPTANCE. Unless other acceptance criteria has been agreed to by the Parties under this Agreement the Customer will inspect Equipment within a reasonable period after delivery not to exceed 5 business days. Equipment will be presumed accepted unless DLI receives written notice of rejection explaining the basis for rejection within the same timeframe. DLI will have a reasonable opportunity to repair or replace rejected Equipment, at its option. DLI assumes shipping costs in an amount not to exceed normal surface shipping charges to DLI's Facility for the return of properly rejected Equipment. Following initial delivery, the party initiating shipment will bear the risk of loss or damage to Equipment in transit. If DLI reasonably determines that the rejection was improper, Customer will be responsible for all expenses caused by the improper rejection.

SECTION 6. TITLE TO PRODUCTS

- A. PASSAGE TO TITLE. Title to Products, and risk of damage thereto or loss thereof, shall pass to Customer at the time DLI makes the goods available to Customer for shipment. Notwithstanding the foregoing, Customer hereby grants to DLI a security interest in all Products delivered

to Customer, and in all accessions to, replacements of and proceeds from sale or lease of such Products, as security for the performance by Customer of all of Customer's obligations arising under this Agreement.

B. OWNERSHIP OF PROPRIETARY MATERIAL IN PRODUCTS.

Notwithstanding Section 6 (A) above, Customer acknowledges that the Products contain proprietary electronics, software and technical information of DLI or its licensor (collectively "Proprietary Materials") and that (as between DLI and Customer) ownership of all patents, copyrights, mask work rights, trademarks, trade names and other intellectual property rights relating to or residing in the Products and the Proprietary Materials shall remain with DLI or its licensor. Customer understands and agrees that this Agreement does not constitute a sale of any Proprietary Materials or any such intellectual property rights; except that Customer and its customers shall have the limited right to use Proprietary Materials in the course of using the Products (subject to Section 6 (C) below). Customer shall promptly notify DLI of any actual or threatened misappropriation or infringement of DLI's proprietary rights, which comes to Customer's attention.

C. SOFTWARE LICENSE FOR SOFTWARE AND DOCUMENTATION. (i)

Certain Products may include software to collect information about how, and under what conditions, the Product is used and functions, including without limitation information describing use of the touch panel, the keyboard, docking events, system up and down time, backlighting use and peripheral utilization. This information may be used by DLI to assist with matters such as repairs, diagnostics, and quality improvement. (ii) Without limiting the generality of Section 6 (B) above, the parties acknowledge that (as between DLI and Customer) DLI owns all rights (including without limitation all copyrights) in any software provided by DLI at any time (whether contained in a Product, provided on a diskette or other media, downloaded remotely or otherwise transferred) and in any documentation provided by DLI at any time. The terms "sell" and "buy," and similar terms, as used in this Agreement with respect to any such software and/or documentation shall mean the grant to Customer of a non-exclusive, non-transferable limited license (1) to use such software (in object code form only) and/or documentation together with Products provided by DLI in the United States for the sole purpose of using such Products, subject to the provisions in any separate license agreement or other document (relating to such software and/or documentation) supplied by DLI to Customer, and (2) in connection with any resale of Products provided by DLI, to grant to the purchaser thereof a sublicense to use such software (in object code form only) and/or documentation solely as provided in the foregoing clause "(1)" (subject to the restrictions imposed in Section 6 (D) below). Customer agrees that all such sublicenses shall

- be for the benefit of DLI and shall be enforceable directly by DLI (in DLI's name or on behalf of Customer). Customer shall have no right to market, distribute or otherwise transfer such software and/or documentation except as expressly provided in Section 6 (C).
- D. FURTHER RESTRICTIONS. Customer shall not reverse engineer, decompile, disassemble, translate, copy modify, alter or otherwise change any Product, or part thereof (including without limitation any Proprietary Materials, or any software or documentation provided by DLI), without the prior express written consent of DLI.
- E. TRADEMARKS. Customer shall not remove from the Products (or their packaging or documentation), or alter, any of DLI's trademarks, trade names, logos, patent or copyright notices, or other notices or markings, or add any other notices or markings to the Products (or their packaging or documentation), without the prior express written consent of DLI. DLI hereby grants to Customer a non-exclusive, non-transferable limited license to use DLI's trademarks relating to the Products during the term of this Agreement; provided, however, that (1) Customer shall use such marks only in connection with advertising or promotion of the Products to denote their origin, (2) Customer shall clearly designate that such marks are owned by DLI, and (3) Customer shall otherwise comply with DLI's then current policies for use of its marks. Any use of DLI's trademarks by customer (i) shall be in capital letters, (ii) if they are registered in the United States Patent and Trademark Office, shall be accompanied by the "®" symbol, (iii) if they are not registered in the United States Patent and Trademark Office, shall be accompanied by the "TM" symbol, and (iv) shall be followed by a common descriptive name for the products. Customer shall not, by virtue of the foregoing license, acquire any right, title or interest in DLI's trademarks; and Customer shall not contest or otherwise challenge the right, title and interest of DLI in its trademarks or the registration thereof. Customer's use of DLI's trademarks shall accrue to the benefit of DLI.

SECTION 7. CONFIDENTIAL INFORMATION.

- A. Unless otherwise provided, all information exchanged between DLI and Customer is non-confidential. If either DLI or Customer requires the exchange of confidential information, the exchange will be made under a separately signed confidentiality agreement between the parties. Neither DLI nor Customer will publicize the terms of this Agreement or the relationship between DLI and Customer in any advertising, marketing or promotional materials without the prior express written consent of DLI.
- B. Customer shall not publicly announce or discuss, or cause any third party to announce or discuss, the products of DLI without having received, in

advance, DLI's express written consent or notice. Customer shall also contractually obligate its reseller purchasers to refrain from publicly announcing or discussing, or causing any third party to publicly announce or discuss, the products of DLI without having received, in advance, express written consent or notice therefor.

SECTION 8. PATENT, COPYRIGHT AND TRADEMARK INDEMNITY.

- A. INDEMNITY. Subject to the provisions of this Section 8 and Section 10 below, DLI shall at its expense defend any action against Customer to the extent such action is based on a claim that a Product infringes a United States patent, copyright or trademark (except to the extent such action or claim is based on any software or software component provided by DLI at any time whether contained in a Product provided on a diskette or media, downloaded remotely or otherwise transferred), and DLI shall pay those damages and costs finally awarded against Customer in such action which are specifically attributable to such claim, provided that Customer notifies DLI promptly in writing of such action, Customer gives DLI sole control of the defense thereof (and any negotiations for settlement or compromise thereof), and Customer cooperates in the defense of DLI's expense. If any Product (excluding any software or software component provided by DLI) becomes, or in DLI's opinion is likely to become, the subject of a claim of infringement, then Customer shall permit DLI, at its option and expense, either (1) procure the right to continue using such Product, (2) replace or modify such Product so that it becomes non-infringing, or (3) accept return of such Product and give Customer a credit therefor, less depreciation for use, damage an obsolescence thereof to be determined at DLI's sole discretion. Customer shall not incur any costs or expenses for DLI under or pursuant to this Section 8 without DLI's express written consent. THE FOREGOING STATES THE ENTIRE LIABILITY OF DLI FOR INFRINGEMENT CLAIMS AND ACTIONS.
- B. CERTAIN EXCEPTIONS. DLI shall have no liability to Customer under this Section 8 or otherwise for any action or claim alleging infringement based upon any conduct involving (1) the use of any Product in a manner other than as specified by DLI, (2) the use of any Product in combination with other products, equipment, devices or software not supplied by DLI (including without limitation any application software produced by Customer for use with such Product), or (3) the alteration, modification or customization of any Product by any person other than DLI, or by DLI based on Customer's specifications or otherwise at Customer's direction (regardless of whether such alteration, modification or customization occurs before or after the Product is originally shipped by DLI to Customer). In the event of an infringement action or claim against DLI which is based on any conduct described in the preceding sentence, Customer shall at its own expense defend such action or claim, and

Customer shall pay any and all damages and costs finally awarded against DLI in connection with such action or claim, provided that DLI notifies Customer promptly in writing of such action or claim, DLI gives Customer sole control of the defense thereof (and any negotiations for settlement or compromise thereof), and DLI cooperates in the defense thereof at Customer's expense. Notwithstanding the absence of any such obligation(s), DLI reserves the option, in its sole discretion and at its expense, to assume at any time defense of any such claim.

SECTION 9. LIMITED WARRANTY.

- A. **WARRANTY TERMS.** Subject to the provisions of this Section 9 and Section 10 below, with respect to each Product sold by DLI hereunder (excluding software or software components), DLI warrants that, for the period of time that is published for each Product by DLI from time to time commencing on the date such Product is shipped from DLI's facility or the date title to such Product passes to Customer, whichever date is earlier (such period referred to herein as the "Warranty Period") all components of such Product, except software and software components, shall be free from faulty workmanship and defective materials. The software and software components, including any documentation designated by DLI for use with such software or software components, is provided "AS IS" and with all faults. The entire risk as to satisfactory quality, performance, accuracy and effort is with the Customer. DLI makes no warranties implied or actual regarding any of its software components or any of its accompanying documentation. The warranties provided by DLI in this Section 9 (A) are only the warranties provided DLI with respect to the Products sold hereunder, and may be modified or amended only by a written instrument signed by DLI and accepted by Customer. The warranties do not apply if, in the sole opinion of DLI, the product has been damaged by accident, misuse, neglect, and/or improper shipping and handling. Since the products are sensitive to static, the responsibility to protect them from static damage is solely that of Customer and user. This warranty is valid only if the product has not been tampered with or serviced by any party not authorized by DLI as a repair facility. Customer's remedies and DLI aggregate liability with respect to the warranties provided by DLI in this Section 9 (A) are set forth in and are limited by this Section 9 and Section 10 below.
- B. **WARRANTY CLAIMS.** If, during the applicable Warranty Period for a Product sold by DLI hereunder, it is determined that any component of such Product, except software components, is defective due to faulty workmanship or defective materials, or it is determined that any software component of such Product fails to substantially conform to the written documentation designated by DLI for use with such software component, then such Product shall be returned to DLI, it being agreed that DLI shall

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not bear the expense of shipping such Product to DLI except as otherwise agreed by DLI. Upon receipt of any such Product during the applicable Warranty Period, DLI shall, at its expense, (1) in DLI's sole discretion, repair or replace such Product, and (2) any such product to return it to its original location. DLI's obligations hereunder shall arise only if DLI's examination of the Product in question discloses to DLI's satisfaction that the claimed defect or nonconformity actually exists and was not caused by any improper installation, testing or use, any misuse or neglect, any failure of electrical power, air conditioning or humidity control, or any act of God, accident, fire or other hazard. Repair or replacement of a Product (or any part thereof) does not extend the Warranty Period for such Product.

- C. OTHER LIMITATIONS. THE EXPRESS WARRANTIES OF DLI STATED IN SECTION 9 (A) ABOVE DO NOT APPLY TO PRODUCTS NOT MANUFACTURED BY DLI, SOFTWARE NOT DEVELOPED BY DLI, CONSUMABLE ITEMS (E.G. STYLUS', BATTERIES), SPARE PARTS OR SERVICES, AND DO NOT APPLY TO PRODUCTS, OR COMPONENTS THEREOF (INCLUDING WITHOUT LIMITATION ANY SOFTWARE COMPONENT), WHICH HAVE BEEN ALTERED, MODIFIED, REPAIRED OR SERVICED IN ANY RESPECT EXCEPT BY DLI OR ITS REPRESENTATIVES. IN ADDITION, THE EXPRESS WARRANTIES OF DLI STATED IN SECTION 9 (A) ABOVE DO NOT APPLY TO ANY SOFTWARE COMPONENT OF A PRODUCT WHICH IS SOLD OR LICENSED SUBJECT TO A SEPARATE LICENSE AGREEMENT OR OTHER DOCUMENT RELATING TO SUCH SOFTWARE COMPONENT (INCLUDING WITHOUT LIMITATION A "SHRINK WRAP" LICENSE AGREEMENT); THE WARRANTIES APPLICABLE TO ANY SUCH SOFTWARE COMPONENT SHALL BE SOLELY AS STATED IN SUCH OTHER LICENSE AGREEMENT OR DOCUMENT. DLI MAKES NO WARRANTIES THAT THE SOFTWARE COMPONENTS OF ANY PRODUCT WILL OPERATE IN CONJUNCTION WITH ANY OTHER SOFTWARE OR WITH ANY EQUIPMENT OTHER THAN THE PRODUCTS.
- D. DISCLAIMER. THE EXPRESS WARRANTIES OF DLI STATED IN SECTION 9 (A) ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. EXCEPT AS PROVIDED IN SECTION 8 ABOVE, (1) THE EXPRESS OBLIGATION OF DLI STATED IN SECTION 9 (B) ABOVE IS IN LIEU OF ANY OTHER LIABILITY OR OBLIGATION OF DLI, INCLUDING WITHOUT LIMITATION ANY LIABILITY OR OBLIGATION FOR DAMAGE, LOSS OR INJURY (WHETHER DIRECT, INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR INCIDENTAL) ARISING

OUT OF OR IN CONNECTION WITH THE DELIVERY, USE OR PERFORMANCE OF THE PRODUCTS, AND (2) REPAIR OR REPLACEMENT (AT DLI'S OPTION) IS CUSTOMER'S SOLE REMEDY FOR ANY SUCH DAMAGE, LOSS OR INJURY.

SECTION 10. LIMITATION OF LIABILITY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT: (A) DLI'S AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE SALE OF PRODUCTS AND PROVISIONS OF SERVICES TO CUSTOMER, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE), AND INCLUDING ANY LIABILITY UNDER SECTIONS 8 AND 9 ABOVE, SHALL NOT EXCEED THE AGGREGATE PURCHASE PRICE FOR PRODUCTS IN QUESTION PAID BY CUSTOMER TO DLI UNDER THIS AGREEMENT; (B) DLI SHALL NOT BE LIABLE FOR ANY EXEMPLARY, SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF DLI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (C) EXCEPT AS PROVIDED IN SECTIONS 8 (A) AND 9 (B) ABOVE (BUT ONLY TO THE EXTENT AND SUBJECT TO THE LIMITATIONS SET FORTH IN SECTIONS 8 AND 9 AND CLAUSES "(A)" AND "(B)" OF THIS SECTION 10), DLI SHALL NOT BE LIABLE FOR ANY CLAIMS OF THIRD PARTIES RELATING TO THE PRODUCTS, AND CUSTOMER SHALL DEFEND DLI FROM, AND INDEMNIFY AND HOLD DLI HARMLESS AGAINST, ALL SUCH CLAIMS. THE PARTIES EXPRESSLY AGREE THAT THE PRODUCTS ARE NOT CONSIDERED TO BE GOODS FOR USE PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR CONSUMER GOODS, FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE OR OTHERWISE. THE FOREGOING STATES THE ENTIRE LIABILITY OF DLI WITH REGARD TO THIS AGREEMENT AND THE PRODUCTS. THE LIMITATIONS OF LIABILITY CONTAINED IN SECTIONS 8 AND 9 ABOVE AND THIS SECTION 10 ARE A FUNDAMENTAL PART OF THE BASIS OF DLI'S BARGAIN HEREUNDER, AND DLI WOULD NOT ENTER INTO THIS AGREEMENT ABSENT SUCH LIMITATIONS.

SECTION 11. U.S. GOVERNMENT RESTRICTED RIGHTS.

If the goods are acquired under the terms of a U.S. Government contract, use, duplication and disclosure are subject to the restrictions contained in the Rights in Technical Data and Computer Software clause at 252.227-7013 (DOD Contracts); and subdivisions (a) through (d) of 52.227-19 as applicable.

SECTION 12. GENERAL.

- A. FURTHER ASSURANCES. At any time upon request of DLI, Customer shall promptly and duly execute and deliver any such further instruments and documents and take such further action, as DLI may reasonably deem desirable to obtain the full benefits of this Agreement. Customer hereby irrevocably appoints DLI as its attorney-in-fact (which appointment is coupled with an interest) for the purpose of executing any documents necessary to perfect or to continue the security interest granted in Section 6 (A) above. Customer authorizes DLI to file a carbon, photographic or other reproduction of this Agreement as a financing statement.
- B. GOVERNING LAW. This Agreement shall for all purposes be governed by and interpreted in accordance with the laws of the State of Indiana and the United States of America, without regard to conflicts of law principles. DLI and Customer expressly agree to exclude from the Agreement the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successors thereto. The Federal or State Courts located within Indiana, USA will have exclusive jurisdiction to adjudicate any dispute arising out of or related to this Agreement.
- C. SEVERABILITY. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable for any reason, the remaining provisions hereof shall be unaffected and remain in full force and effect.
- D. MODIFICATIONS. DLI may unilaterally modify, amend, supplement or otherwise change this Agreement without prior written notice to Customer at DLI's sole discretion. Any such future modification, amendment, supplement or other change (a "Change") shall apply only with respect to orders accepted after the effective date of such Change. As used herein, the term "Agreement" shall include any such future Change. Without limiting the generality of the foregoing, DLI may establish terms and conditions which apply to one or more particular Products (including without limitation "shrink wrap" license agreements for software products), and in this event, such terms and conditions shall, with respect to the Products addressed therein, supersede this Agreement.
- E. ASSIGNMENTS. No right or obligation of Customer under this Agreement shall be assigned, delegated or otherwise transferred, whether by agreement, operation of law or otherwise, without the prior express written consent of DLI, and any attempt to assign, delegate or otherwise transfer any of Customer's rights or obligations hereunder, without such consent, shall be void. Either party may assign this agreement in connection with the sale or transfer of all or substantially all of the assets of the business to which it pertains. Subject to the preceding, this Agreement shall bind Customer and its permitted successors and assigns. Notwithstanding anything to the contrary herein, DLI may engage subcontractors to perform any of its obligations under this agreement.

- F. WAIVERS. All waivers must be in writing. The failure of either party to insist upon strict performance of any provision of this Agreement, or to exercise any right provided for herein, shall not be deemed to be a waiver for the future of such provision or right, and no waiver of any provision or right shall affect the right of the waiving party to enforce any other provision or right herein.
- G. EQUITABLE REMEDIES. The parties agree that any breach of Section 6 or 7 above would cause irreparable injury to DLI for which no adequate remedy at law exists; therefore, the parties agree that equitable remedies, including without limitation injunctive relief and specific performance, are appropriate remedies to redress any breach or threatened breach of Section 6 or 7 above, in addition to all other remedies available to the parties.
- H. RIGHTS AND REMEDIES. All rights and remedies hereunder shall be cumulative, may be exercised singularly or concurrently, and shall not be deemed exclusive except as provided in Sections 8 and 9 above. If any legal action is brought to enforce any obligations hereunder, the prevailing party shall be entitled to receive its attorneys' fees, court costs and other collection expenses, in addition to any other relief it may receive. This Agreement is not intended to provide any rights or remedies to any person or entity other than DLI and Customer and their respective permitted successors and assigns (if any).
- I. FORCE MAJEURE. DLI shall not be responsible for any failure to fulfill its obligations hereunder due to causes beyond its reasonable control, including without limitation acts or omissions of government or military authority, acts of God, shortages of materials, transportation delays, fires, floods, labor disturbances, riots or wars.
- J. CONSTRUCTION AND SURVIVAL. The headings and subheadings contained herein shall not be considered a part of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Sections 1, 2(A), 2(C), 2(D), 3, 4, 5(D), 6, 7, 8, 9, 10, 11 and 12 of this Agreement shall survive the purchase and sale of the Products hereunder and/or any expiration or termination of this Agreement.
- K. NOTICES. Any notice or communication permitted or required hereunder shall be in writing and shall be delivered in person by courier, or mailed by certified or registered mail, postage prepaid, return receipt requested. If notice is given in person or by courier it shall be effective upon receipt; and if notice is given by mail, it shall be effective three (3) business days after deposit in the mail.

- L. RELATIONSHIP BETWEEN THE PARTIES. Nothing contained in this Agreement shall be construed to constitute either party hereto as the partner, joint ventures, employee, agent or other representative or the other party hereto, except as provided in Section 12(A) above. Furthermore, nothing contained in this Agreement shall be construed to constitute Customer as an exclusive purchaser or distributor of the Products in any respect.