



## INVISION GENERAL LICENSE TERMS & CONDITIONS / LICENSE AGREEMENT

Agreement No.

This General License Terms & Conditions / License Agreement (the "License Agreement") is between \_\_\_\_\_ ("**Licensee**") and **PENBAY Solutions, LLC** ("**PENBAY**"), a Delaware corporation with a place of business at 101 Main Street, #540, Topsham, Maine 04086, USA.

### ARTICLE 1—DEFINITIONS

**Definitions.** The terms used are defined as follows:

- a. "Beta" means any alpha, beta, or prerelease Software or Documentation.
- b. "Data" means any Licensee or third-party digital dataset(s) including, but not limited to, information, independent works, or other material collected by the Software, geographic vector data coordinates, raster, reports, or associated tabular attributes.
- c. "Documentation" means all printed and digital materials including, but not limited to, help files, user reference documentation, training documentation, or technical information and briefings.
- d. "Evaluation Software" means Software and Documentation provided to Licensee solely for Licensee's evaluation purposes.
- e. "License" means the Software and Data license provided under this License Agreement, which shall be for use for a limited time period or term, or on a subscription or transaction basis.
- f. "Licensed Product Configuration" means the specific Software and Documentation version and authorized users ordered by Licensee and for which License fees have been paid, as shown on the attached Exhibit A, subject to modification reflecting Licensee's subsequent renewals, orders and payments, PENBAY's changes in Software versions offered or supported, or either party's termination of any License in accordance with this License Agreement.
- g. "Samples" means samples of code, applications, add-ons or extensions of Software, or Documentation.
- h. "Software" means all or any portion of PENBAY's proprietary software technology accessed or downloaded from a PENBAY authorized website or delivered on any media in any format including backups, updates, service packs, patches, upgrades, hot fixes, or permitted merged copies.
- i. "Web Services" means software services or Licensee or third-party data provided that perform geographic information system functions, tasks, or data services and are accessed over the Internet.

### ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

Software and Documentation are licensed and not sold. PENBAY and its licensors own Software and Documentation and all copies, which are protected by United States and applicable international laws, treaties, and conventions regarding intellectual property and proprietary rights including trade secrets. Licensee agrees to use reasonable means to protect Software and Documentation from unauthorized use, reproduction, distribution, or publication. PENBAY and its third-party licensors reserve all rights not specifically granted in this License Agreement including the right to change and improve Software and Documentation.

## ARTICLE 3—GRANT OF LICENSE

**3.1 Grant of License.** Subject to the terms of this License Agreement, PENBAY grants to Licensee a nonexclusive, nontransferable License solely to

- a. Use the type and number of copies of Software and Documentation (i) for which the applicable license fees have been paid at PENBAY's then-current rates, (ii) for Licensee's own internal use, and (iii) in accordance with the Licensed Product Configuration that has been purchased by Licensee and authorized by PENBAY or its authorized distributor.
- b. Access and use any secure PENBAY website resources such as client log in for help, documentation, or product support made available to Licensee for Licensee's own internal use, provided that Licensee follows PENBAY's terms of use policy specified therein. All password or controlled access information provided by PENBAY or its authorized distributor shall be treated as PENBAY confidential information.

**3.2 Beta License.** Licensee may request to participate in PENBAY's current Beta Testing Program.

- a. If Licensee is accepted into the Beta Testing Program, PENBAY will provide to Licensee access to Beta and will grant Licensee a personal, nonexclusive, nontransferable, royalty-free License to use Beta at the authorized and identified test sites solely for the purpose of testing Beta as delivered, in accordance with any Beta Testing Program guidelines provided by PENBAY and the terms of this License Agreement. This grant of License is effective from the date Licensee is accepted into the program or date of receipt of any Beta until the date of the commercial release of such Software from PENBAY Customer Service or the date of termination of the Beta Testing Program for the specific Beta, whichever is sooner.
- b. Licensee agrees to provide suggestions or comments regarding performance, usability or effectiveness, bug reports, test reports, or other feedback (collectively, "Feedback") to PENBAY with respect to Beta.
- c. Licensee grants to PENBAY the right to freely use, share, disclose, reproduce, license, distribute and otherwise publicly display and perform any Feedback provided to PENBAY by Licensee. Licensee will not provide Feedback that Licensee knows or reasonably should have known contains content subject to license or use restrictions.
- d. Beta and Feedback contain confidential information and trade secrets that are proprietary to PENBAY. Licensee agrees to use commercially reasonable means (at least as great as those used by Licensee for its own confidential information) to maintain the integrity, confidentiality, and PENBAY proprietary rights in Beta and Feedback. Licensee may not share or release Feedback or results of Beta testing with any third party.
- e. Beta is subject to change prior to its commercial release or may never be commercially released. Licensee acknowledges that Beta is not suitable or licensed for full use in any production system and accepts all responsibility for use and any results generated.

**3.3 Evaluation License.** PENBAY may from time to time offer Evaluation Software to Licensee at a discounted or prorated License fee for a shortened term, for the purpose of Licensee's evaluation prior to agreement upon a regular License at the full License fee.

**3.4 Consultant or Contractor Access.** Subject to Section 3.1, PENBAY grants Licensee the right to provide access to and use of Software or Documentation to any consultant or contractor of Licensee exclusively for the benefit of Licensee. Licensee shall be solely responsible for compliance by consultants and contractors with this License Agreement. Access to or use of Software and Documentation by consultants or contractors not exclusively for the benefit of Licensee is prohibited.

## ARTICLE 4—SCOPE OF USE

### 4.1 Permitted Uses

- a. Licensee may install and store Software and Documentation on electronic storage devices, sufficient to serve the specified number of authorized users under this License Agreement. Licensee shall promptly confirm to PENBAY upon periodic request, and authorizes PENBAY to electronically retrieve from Licensee's system, information on the identity of users for the purpose of verifying compliance with the limitations on authorized users or devices and payment of required annual user License fees under this License Agreement.
- b. Licensee may make one (1) copy of Software and Documentation for archival purposes. Licensee may make routine computer backups.
- c. Licensee may customize Software using any (i) macro or scripting language, (ii) published application programming interface, or (iii) source or object code libraries, but only to the extent that such customization is described in Documentation. Customizations employed as specifically described in the Documentation will not negate PENBAY's obligation to provide product support.
- d. Licensee may use, copy, or prepare derivative works of Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. Portions of Documentation supplied in digital format merged with other software and printed or digital documentation are subject to this License Agreement. Licensee shall include the following copyright attribution notice acknowledging the proprietary rights of PENBAY and its licensors: "Portions of this document include intellectual property of PENBAY and its licensors and are used herein under license. Copyright © 2015 PENBAY and its licensors. All rights reserved."
- e. Licensee may upload, submit, post, record, add, or store their own Data using Software and Documentation or employ third parties to perform the same.

### 4.2 Uses Not Permitted

- a. Except as provided herein, Licensee shall not sell, rent, lease, sublicense, lend, assign, or time-share Software or Documentation, nor allow anyone other than paid-up authorized users under this License Agreement to access same. Licensee shall not act as a service bureau or commercial application service provider that allows third-party access to Software and Documentation. Licensee shall not use Software or Documentation for a site or service and operate the site or the service for a profit or generate revenue through direct or indirect methods (e.g., advertising or by charging for access to the site or service).
- b. Except as provided herein, Licensee shall not redistribute Software or Documentation to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs.
- c. Licensee shall not reverse engineer, decompile, or disassemble Software or Documentation except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction.
- d. Except to the extent that applicable law prohibits this restriction, Licensee shall not make any attempt to circumvent any technological measure that controls access to or use of Software and Documentation.
- e. Except as provided herein, Licensee shall not redistribute any Software activation numbers, registration number/license authorization file, or developer license file to third parties.
- f. Licensee shall not use Software to transfer or exchange any material where such transfer or exchange is prohibited by intellectual property laws or any other applicable laws.
- g. Licensee shall not remove or obscure any PENBAY or its licensors' patent, copyright, trademark, or proprietary rights notices contained in or affixed to Software or Documentation.
- h. Licensee shall not unbundle individual or component parts of Software for independent use.
- i. After a reasonable transition period, Licensee shall not use an older version of Software that Licensee has updated to a newer version.
- j. Licensee shall not allow more Software users nor possess more Software copies at any given time than the total quantities then authorized in Licensee's Licensed Product Configuration on file with PENBAY.



- k. Licensee may not use Software for any purpose that is unlawful or reasonably objectionable. PENBAY reserves the right to screen, review, or remove any content associated with any use of Software or Documentation. Licensee agrees that the Licensee is solely responsible (and PENBAY has no responsibility to Licensee or any third party) for any use of Software or Documentation.

## **ARTICLE 5—TERM, TERMINATION, AND FEES**

This License Agreement is effective upon installation of Software by or on behalf of the Licensee, or at ninety (90) days from this License Agreement signature date, whichever is first (the “Effective Date”). This License Agreement and any License granted hereunder shall continue until (i) such time that Licensee elects in writing to discontinue use of Software or Documentation and terminates such License; (ii) expiration of the License term; or (iii) either party terminates this License Agreement for a material breach, including without limitation non-payment of License fees, that is not cured within seven (7) business days of written notice to the other party, except that termination may be immediate for a material breach of a nature that is impossible to cure.

Upon termination of any License, PENBAY may, without limitation, mark such Software’s Product ID as invalid to prevent further installations or usage. Upon termination of a License, Licensee shall cease use, uninstall, remove, and destroy all Software and Documentation and any whole or partial copies, modifications, or merged portions in any form, and execute and deliver evidence of such actions to PENBAY or its authorized distributor.

For the purposes of this License Agreement, the duration of the License shall be one (1) year from the Effective Date. Thereafter, Licensee may renew the License per annum at the then-current fee. Should Licensee renew this License Agreement, Licensee must issue a purchase order in advance of the renewal date, as invoiced by PENBAY. Payment is due in advance of the renewal term. Licensee agrees to pay PENBAY invoices within thirty (30) days of receipt. To reinstate a lapsed License, License fees from the lapsed date, in addition to the then-current License fees, must be paid. All License fees are nonrefundable.

## **ARTICLE 6—LIMITED WARRANTIES AND DISCLAIMERS**

**6.1 Limited Warranties.** Except as otherwise provided in this Article 6, PENBAY warrants that (i) the unmodified Software will substantially conform to the published Documentation and (ii) media on which the Software and Documentation are provided will be free from defects in materials and workmanship under normal use and service for a period of one (1) year from the Effective Date.

**6.2 Data and Web Services Disclaimer.** PENBAY does not provide Data or Web Services as part of any Software or License fee. Data or Web Services to which Software is applied for visualization or analysis are either provided by Licensee, freely available from a third party upon request of Licensee, or purchased from a third party by Licensee. Such Data and Web Services, over which PENBAY has no control, may contain nonconformities, defects, errors, or omissions. DATA OR WEB SERVICES ARE PRESENTED THROUGH SOFTWARE "AS IS" WITHOUT WARRANTY OF ANY KIND. Without limiting the generality of the preceding sentence, PENBAY and its licensors do not warrant that any Data and Web Services will meet Licensee's needs or expectations, that the use of any Data and Web Services will be uninterrupted, or that Data or Web Service nonconformities can or will be identified or corrected by Software. The availability of the Data or Web Services is at the sole discretion of the Licensee or third Party and may be subject to usage agreements and other restrictions. Although PENBAY will, at Licensee’s request, coordinate with Licensee or third-party providers of Data or Web Services upon formatting requirements for Software’s visualization or analysis of such Data or Web Services, PENBAY and its licensors do not thereby invite Licensee’s reliance upon any specific Data or Web Services. Licensee should always verify the Data and Web Services to which Licensee will apply Software to insure that it will

support Licensee's requirements. Licensee agrees to indemnify and save harmless PENBAY and its licensors from all claims, damages, and expenses, including reasonable legal fees, that may be incurred by PENBAY and its licensors from providers of Data or Web Services as a result of Licensee's use of Software.

**6.3 Software Disclaimer.** PENBAY does not warrant Software to be error-free and does not warrant particular results of Software's application to particular Data or Web Services nor its compatibility with particular hardware utilized by Licensee. Without abrogating the limitation of remedies elsewhere in this License Agreement, PENBAY warrants the basic functionality of Software (as modified from time to time by PENBAY through hot fixes, patches or updates addressing identified issues) in the visualization and analysis of uncorrupted and error-free data presented in a format and utilizing hardware meeting the requirements of Software and Documentation. SUCH WARRANTY OF BASIC FUNCTIONALITY OF SOFTWARE DOES NOT CONSTITUTE A WARRANTY OF MERCHANTABILITY OR WARRANTY FOR A PARTICULAR PURPOSE RELATIVE TO PARTICULAR DATA OR WEB SERVICES TO WHICH LICENSEE APPLIES SOFTWARE, WHICH ARE EXPRESSLY DISCLAIMED.

**6.4 Software Integration Disclaimer.** If Software is intended to link to, extract content from, or otherwise integrate with Licensee Data or third-party software, services, or Data, PENBAY makes no representation or warranty that Licensee's particular use of Software is or will continue to be authorized by law in Licensee's jurisdiction or that the third-party software, services, or Data will continue to be available to Licensee. This disclaimer of warranty constitutes an essential part of this License Agreement.

**6.5 Special Disclaimer.** SAMPLES, HOT FIXES, PATCHES, EVALUATION SOFTWARE, AND BETA ARE DELIVERED "AS IS" WITHOUT WARRANTY OF ANY KIND. LICENSEE ASSUMES ALL RISK AS TO THE QUALITY AND PERFORMANCE OF SAMPLES, HOT FIXES, PATCHES, EVALUATION SOFTWARE, AND BETA.

**6.6 Internet Disclaimer.** THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) THE PARTIES HAVE NO CONTROL OVER THE INTERNET, AND (iii) NONE OF THE PARTIES SHALL BE LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF SOFTWARE.

**6.7 General Disclaimer.** EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, PENBAY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. PENBAY DOES NOT WARRANT AND DISCLAIMS THAT SOFTWARE OR DOCUMENTATION WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR FREE, FAULT TOLERANT, OR FAIL SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. SOFTWARE AND DOCUMENTATION ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ENVIRONMENTAL DAMAGE. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

**6.8 Exclusive Remedy.** Licensee's exclusive remedy and PENBAY's entire liability for breach of the limited warranties set forth in this Article 6 shall be limited, at PENBAY's sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or a workaround for Software; or (iii) return of the annual

License fees paid during the current term by Licensee for Software or Documentation that does not meet PENBAY's limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of Software or Documentation and executes and delivers evidence of such actions to PENBAY or its authorized distributor.

## **ARTICLE 7—LIMITATION OF LIABILITY**

**7.1 Disclaimer of Certain Types of Liability.** PENBAY AND ITS LICENSORS SHALL NOT BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS, LOST SALES, OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS LICENSE AGREEMENT OR USE OF SOFTWARE OR DOCUMENTATION, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT PENBAY OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**7.2 General Limitation of Liability.** PENBAY'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, SHALL NOT EXCEED THE ANNUAL AMOUNT PAID BY LICENSEE DURING THE CURRENT TERM FOR SOFTWARE OR DOCUMENTATION PURSUANT TO THIS LICENSE AGREEMENT.

**7.3 Applicability of Disclaimers and Limitations.** Licensee agrees that the limitations of liability and disclaimers set forth in this License Agreement will apply regardless of whether Licensee has accepted Software or Documentation or any other product or service delivered by PENBAY. The parties agree that PENBAY has set its fees and entered into this License Agreement in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## **ARTICLE 8—INFRINGEMENT INDEMNITY**

**8.1** PENBAY shall defend, indemnify, and hold harmless Licensee from and against any loss, liability, cost, or expense, including reasonable attorneys' fees, which may be incurred by Licensee against any claims, actions, or demands by a third party alleging that Software infringes a US patent, copyright, or trademark, provided

- a. Licensee promptly notifies PENBAY in writing of the claim;
- b. Licensee provides documents clearly describing the allegations of infringement;
- c. PENBAY has sole control of the defense of any actions and negotiations related to the defense or settlement of any claim; and
- d. Licensee cooperates fully in the defense of the claim.

**8.2** If Software is found to infringe a US patent, copyright, or trademark, PENBAY, at its own expense, may either (i) obtain rights for Licensee to continue using Software or (ii) modify the allegedly infringing elements of Software while maintaining substantially similar Software functionality as applied to Data or Web Services. If neither alternative is commercially reasonable, the infringing Software shall be returned to PENBAY, this License Agreement shall terminate, and Licensee shall uninstall the infringing Software.

PENBAY's entire liability shall then be to indemnify Licensee pursuant to Section 8.1 and to refund License fees paid by Licensee for the infringing Software.

**8.3** PENBAY shall have no obligation to defend Licensee or to pay any resulting costs, damages, or attorneys' fees for any claims or demands alleging direct or contributory infringement of Software by (i) the combination of or integration with a product, process, or system not supplied by PENBAY; (ii) material alteration by anyone other than PENBAY or contractors acting on behalf of PENBAY; (iii) use after Licensee has been notified of possible infringement; or (iv) use after modifications are provided or a return is ordered by PENBAY under Section 8.2.

**8.4** In no event shall the indemnification set forth in this Article 8 apply to any Samples, Beta or Evaluation Software delivered hereunder.

THE FOREGOING STATES THE ENTIRE OBLIGATION OF PENBAY WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

## **ARTICLE 9—GENERAL PROVISIONS**

**9.1 Future Updates.** New or updated Software and Documentation shall be governed by this License Agreement. Licensee acknowledges that from time to time this License Agreement may need to be updated to address improved functionality or capabilities of Software and Documentation, and Licensee agrees not to unreasonably withhold consent to any such modification requested by PENBAY.

**9.2 Export Control Regulations.** Licensee expressly acknowledges and agrees that Licensee shall not export, re-export, transfer, or release Software or Documentation, in whole or in part, to (i) any US embargoed country (or to a national or resident of any US embargoed country); (ii) any person on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity where such export or re-export violates any US export control laws or regulations including, but not limited to, the terms of any export license or license exemption and any amendments and supplemental additions to US export laws as they may occur from time to time.

**9.3 Taxes and Fees, Shipping Charges.** License fees quoted to Licensee are exclusive of any and all taxes or fees, including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs, and shipping and handling charges.

**9.4 No Implied Waivers.** The failure of either party to enforce any provision of this License Agreement shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

**9.5 Severability.** The parties agree that if any provision of this License Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable and the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**9.6 Successor and Assigns.** Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate its obligations under this License Agreement without PENBAY's prior written consent, and any attempt to do so without consent shall be void. This License Agreement shall be binding upon the respective successors and assigns of the parties to this License Agreement. Notwithstanding, a government contractor that has acquired Software or Documentation under contract to the government may assign this License Agreement to its government customer upon written notice to PENBAY, provided the government

customer assents to the terms of this License Agreement. This License Agreement may be assignable by PENBAY to others, and any assignees of this License Agreement receive all of the rights and obligations defined hereunder.

**9.7 Survival of Terms.** The provisions of Articles 2, 5, 6, 7, 8, and 9 of this License Agreement shall survive the expiration or termination of this License Agreement.

**9.8 Equitable Relief.** Licensee agrees that any breach of this License Agreement by Licensee may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, PENBAY shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or undertaking or proving injury as a condition for relief.

**9.9 US Government Licensee.** Software and Documentation are commercial computer software and commercial computer software documentation. This License Agreement contains PENBAY's commercial license terms and conditions for such items. The commercial license rights in this License Agreement strictly govern Licensee's use, reproduction, or disclosure of Software and Documentation. No other license terms or conditions shall apply unless expressly agreed in writing by PENBAY and Licensee. PENBAY Software source code is unpublished, and all rights to Software and Documentation are reserved. In the event any court, arbitrator, or board holds that the Licensee has greater rights to any portion of Software or Documentation under applicable public procurement law, such rights shall extend only to the portions affected.

#### **9.10 Governing Law, Arbitration**

- a. *Licensees in the United States of America, Its Territories, and Outlying Areas.* This License Agreement shall be governed by and construed in accordance with the laws of the State of Maine, County of Sagadahoc, without reference to conflict of laws principles, except that US federal law shall govern in matters of intellectual property. Except as provided in Section 9.8, any dispute arising out of or relating to this License Agreement or the breach thereof that cannot be settled through negotiation shall be finally settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. Judgment on the award rendered by the arbitrator may be entered in a court of competent jurisdiction. If Licensee is a US government agency, this License Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613), in lieu of the arbitration provisions of this clause. This License Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded
- b. *All Other Licensees.* Except as provided in Section 9.8, any dispute arising out of or relating to this License Agreement or the breach thereof that cannot be settled through negotiation shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one (1) arbitrator appointed in accordance with said rules. The language of the arbitration shall be English. The place of the arbitration shall be at an agreed-upon location. This License Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Either party shall, at the request of the other, make available documents or witnesses relevant to the major aspects of the dispute.

**9.12 Patents.** Licensee may not seek, and may not permit any other user to seek, a patent or similar right worldwide that is based on or incorporates any Software or Documentation. This express prohibition on patenting shall not apply to Licensee's software and technology except to the extent that Software or Documentation, or any portion thereof, are a part of any claim or preferred embodiment in a patent application or a similar application.



**9.13 Entire Agreement.** This License Agreement, together with the attached Licensed Product Configuration, constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous license agreements, understandings, and arrangements between the parties relating to such subject matter. PENBAY is hereby authorized to update the Licensed Product Configuration to reflect changes consistent with (i) Licensee's renewal of this License Agreement or order for additional Software and Documentation or change in authorized users, provided appropriate License fees are timely paid by Licensee, (ii) PENBAY's changes in Software versions offered or supported, or (ii) termination by either party, in accordance with this License Agreement. Additional or different terms included with an order or other document from Licensee shall not be binding on PENBAY. Except as expressly provided above, any modification or amendment to this License Agreement must be in writing and signed by each party.

#### **ARTICLE 10—SOFTWARE MAINTENANCE AND UPDATE SERVICE**

PENBAY provides technical support in response to specific inquiries as well as Software maintenance by way of patches, updates, upgrades, and releases as applicable for qualifying Software. Maintenance is composed of technical support, Software and Documentation updates, and other benefits. PENBAY will support/maintain Software for the term of this License Agreement. Software maintenance will apply only to unmodified Software and commercially released modified versions of Software, to the extent that such customizations are in compliance with Section 4.1.c of this License Agreement. Software updates are provided only for standard hardware platforms and operating systems supported by PENBAY. Licensee is responsible for making or arranging for implementing provided updates to installations of Software and to any interfaces for nonstandard devices or custom applications.

PENBAY supports authorized users installing and maintaining qualifying Software, assistance in solving problems arising from the use of Software, hardware interfacing of peripheral devices, and logging of enhancement requests and problems or issues submitted by authorized users.

Licensee may contact Technical Support at

E-mail: [support@penbaysolutions.com](mailto:support@penbaysolutions.com)

Phone: +1-207-230-0182

Support Web Form: <http://www.penbaysolutions.com/support>

Hours: 8:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday (except holidays).

#### **ARTICLE 11—MAINTENANCE SUPPORT**

PENBAY will use commercially reasonable efforts to provide corrections or workaround solutions for any problem or issue reported and determined to be in Software or Documentation at no cost to Licensee for the term of this License Agreement. While it is PENBAY's goal to provide an acceptable resolution for incoming problems/issues and incidents, PENBAY cannot predict a resolution time and is unable to guarantee that all problems or issues can be resolved or addressed.

#### **ARTICLE 12—OTHER SERVICES**

PENBAY can provide services and support not specifically identified in Article 10 or Article 11 under a separately scoped, negotiated, and executed services contract. These services may include, but are not limited to, general consulting, needs assessment, data development, data loading, requirements gathering, system design, software configuration, system implementation, system testing, report development, custom application development, custom documentation, training, and ongoing system support.

If PENBAY fails to fulfill its obligations, Licensee's sole and exclusive remedy is indicated in the Terms and Conditions of this License Agreement.

**ACCEPTED AND AGREED:**

<b>Licensee</b>	
<b>Street</b>	
<b>City/State/Zip</b>	
<b>Signature</b>	
<b>Printed</b>	
<b>Title</b>	
<b>Date</b>	

<b>PENBAY SOLUTIONS, LLC.</b>	
<b>Street</b>	101 Main Street #540
<b>City/State/Zip</b>	Topsham, Maine 04086
<b>Signature</b>	
<b>Printed</b>	
<b>Title</b>	
<b>Date</b>	

**EXHIBIT A:** Attach completed Licensed Product Configuration as here.