



TERMS AND CONDITIONS APPLICABLE TO TRIUMFANT, INC. TERM SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-32), PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE

1. INSPECTION/ACCEPTANCE

The Contractor (“immixTechnology, Inc.”) can only, and shall only tender for acceptance those items that substantially conform to the software manufacturer’s (“Triumfant”) published specifications. Therefore, items delivered shall be considered accepted upon delivery. The ordering activity reserves the right to inspect or test any software that has been delivered. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity must exercise its postacceptance rights (1) within the warranty period; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

2. GUARANTEE/WARRANTY

a. Unless specified otherwise in this contract, Triumfant’s standard commercial guarantee/warranty as stated in the contract’s commercial pricelist will apply to this contract.

Except with respect to the Demonstration Version and the Pre-commercial or Beta Version of the Licensed Software, Triumfant, Inc. warrants that, for a period of ninety (90) days from the date of delivery: (i) when used in the manner for which it was intended based on the description contained in the accompanying documentation, the Licensed Software will perform in substantial conformance with the documentation supplied with the Licensed Software; and (ii) the physical media on which the Licensed Software is furnished will be free from defects in materials and workmanship under normal use (if applicable).

b. EXCEPT AS OTHERWISE EXPRESSLY WARRANTED IN THIS SECTION 11, THE LICENSED SOFTWARE, AND ANY OTHER MATERIALS, SOFTWARE, INFORMATION, DATA AND/OR SERVICES PROVIDED BY TRIUMFANT ARE PROVIDED “AS IS” AND “WITH ALL

FAULTS,” AND TRIUMFANT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, CONDITION, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA, OR QUALITY, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION, WORKMANSHIP, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. NO WARRANTY IS MADE BY TRIUMFANT ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. TRIUMFANT DOES NOT WARRANT THAT THE LICENSED SOFTWARE, OR ANY OTHER INFORMATION, DATA, MATERIALS, SOFTWARE OR SERVICES PROVIDED UNDER THIS AGREEMENT WILL MEET LICENSEE’S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. LICENSEE ACKNOWLEDGES THAT TRIUMFANT’S OBLIGATIONS UNDER THIS AGREEMENT ARE FOR THE BENEFIT OF LICENSEE ONLY.

c. Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor and Triumfant will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

Limitation of Liability. To the maximum extent permitted by applicable law, Triumfant’s entire liability and Licensee’s exclusive remedy for damages from any event or claim arising under or relating to this Agreement, for any cause whatsoever, and regardless of the form of action, whether in contract or in tort (including, without limitation, breach of warranty and negligence), will be limited as follows:

Triumphant will be liable for Licensee's direct damages only, in an amount not to exceed, in the aggregate for all claims, the total amount of license fees paid to Triumphant under this Agreement.

IN NO EVENT WILL TRIUMFANT BE LIABLE FOR (A) ANY DAMAGES CAUSED BY THE FAILURE OF LICENSEE TO PERFORM ITS RESPONSIBILITIES; OR (B) ANY LOST PROFITS, LOSS OF BUSINESS, LOSS OF USE, LOST SAVINGS OR OTHER CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Triumphant will not be held 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, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, or inability to obtain any export or import license or other approval of authorization of any government authority.

Coordination. The foregoing limitations in this Section will not apply to Triumphant's obligations for indemnification for intellectual property infringement, or to the payment of settlement costs, damages and attorneys fees. The limitations of liability set forth in this Section will survive the expiration or termination of this Agreement.

Pre-Release Software. Licensee acknowledges and agrees that if the Licensed Software is a Demonstration Version or a Pre-commercial or Beta Version, then the provisions in this Section apply. To the extent that any provision in this Section conflicts with any other term or provision of this Agreement, this Section will prevail with respect to the Demonstration Version or Pre-commercial or Beta Version, to the extent necessary to resolve the conflict. Licensee acknowledges that the Demonstration Version or Pre-commercial or Beta Version is a pre-release version, does not represent a final product and may contain bugs, errors and other problems that could cause system or other failures and data loss. Consequently, any Demonstration Version or Pre-commercial or Beta Version is provided "AS-IS", and, except as specifically provided above, Triumphant disclaims any

warranty or liability obligations of any kind. WHERE LEGALLY LIABILITY CANNOT BE EXCLUDED FOR PRE-RELEASE SOFTWARE, BUT IT MAY BE LIMITED, TRIUMFANT'S ENTIRE LIABILITY AND THAT OF ITS SUPPLIERS WILL NOT EXCEED THE TOTAL AMOUNT PAID BY LICENSEE HEREUNDER.

Licensee acknowledges that (i) Triumphant has not promised or guaranteed that a Demonstration Version or a Pre-commercial or Beta Version will be announced or made available to anyone in the future, (ii) Triumphant has no express or implied obligation to announce or introduce the Demonstration Version or Pre-commercial or Beta Version, and (iii) Triumphant may not introduce a product similar to or compatible with the Demonstration Version or Pre-commercial or Beta Version. Accordingly, Licensee acknowledges and agrees that any research or development performed by Licensee regarding the Demonstration Version or the Pre-commercial or Beta Version (or any product associated therewith) will be done entirely at Licensee's own risk. During the term of this Agreement, if requested by Triumphant, Licensee will provide feedback to Triumphant regarding testing and use of the Demonstration Version or Pre-commercial or Beta Version, including error or bug reports. Upon receipt of a later unreleased version of the Demonstration Version or Pre-commercial or Beta Version or release by Triumphant of a publicly released commercial version of the Demonstration Version or Pre-commercial or Beta Version, whether as a stand-alone product or as part of a larger product, Licensee will return or destroy all earlier Licensed Software received from Triumphant. Notwithstanding anything in this Section to the contrary, Licensee will return or destroy any unreleased Demonstration Version or the Pre-commercial or Beta Version within thirty (30) days of the completion of testing of the Demonstration Version or Pre-commercial or Beta Version.

Links to Third Party Sites. Licensee may link to third party sites through the use of the Licensed Software. The third party sites are not under the control of Triumphant, and Triumphant is not responsible for the contents of any third party sites, any links contained in third party sites, or any changes or updates to third party sites. Triumphant is not responsible for webcasting or any other form of transmission

received from any third party sites. Triumfant is providing these links to third party sites to Licensee only as a convenience, and the inclusion of any link does not imply an endorsement by Triumfant of the third party site. Triumfant will have no liability with respect to any damages to the extent arising from any links to third party sites through the use of the Licensed Software.

3. TECHNICAL SERVICES

Triumfant shall provide a hot line technical support number for the purpose of providing user assistance and guidance in the implementation of the software. The technical support number is available as stated in **Schedule B** of this pricelist.

4. SOFTWARE MAINTENANCE

- a. Software maintenance service shall include services as stated in **Schedule B** of this pricelist.
- b. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

5. PERIODS OF TERM LICENSES (132-32) AND MAINTENANCE (132-34)

- a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time.
- b. Term licenses and/or maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice to the Contractor.
- c. Annual Funding. When annually appropriated funds are cited on an order for term licenses and/or maintenance, the period of the term licenses and/or maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the term licenses and/or maintenance orders citing the new appropriation shall be required, if the term licenses and/or

maintenance is to be continued during any remainder of the contract period.

d. Cross-Year Funding Within Contract Period. Where an ordering activity's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.

e. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the term licenses and/or maintenance is to be terminated at that time. Orders for the continuation of term licenses and/or maintenance will be required if the term licenses and/or maintenance is to be continued during the subsequent period.

6. UTILIZATION LIMITATIONS - (132-32, 132-33, AND 132-34)

- a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.
- b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:

(1) Title to and ownership of the software and documentation shall remain with Triumfant, unless otherwise specified.

(2) Software licenses are sold to sites and ordering activities. An ordering activity is defined as a cabinet level or independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect Triumfant's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the

user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.

(3) Except as is provided in paragraph 6.b(2) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have the ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.

(4) The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of disaster recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes.

(5) "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

Triumphant's Master License and Service Agreement standard terms and conditions are detailed in **Schedule A** of this pricelist.

7. SOFTWARE CONVERSIONS - (132-32 AND 132-33)

Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another. Under a perpetual license (132-33), the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version. Under a term license (132-32), conversion credits which accrued while the earlier version was under a term license shall carry forward and remain available as conversion credits which may be applied towards the perpetual license price of the new version.

8. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment on which the software can be used. Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.



**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF TRIUMFANT TRAINING COURSES FOR
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE
(SPECIAL ITEM NUMBER 132-50)**

1. SCOPE

- a. Triumphant shall provide training courses normally available to commercial customers, which will permit ordering activity users to make full, efficient use of general purpose commercial IT products. Training is restricted to training courses for those products within the scope of this solicitation.
- b. Triumphant shall provide training at Triumphant's facility and/or at the ordering activity's location, as agreed to by Triumphant and the ordering activity.

2. ORDER

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPAs) shall be the basis for the purchase of training courses in accordance with the terms of this contract. Orders shall include the student's name, course title, course date and time, and contracted dollar amount of the course.

3. TIME OF DELIVERY

Triumphant shall conduct training on the date (time, day, month, and year) agreed to by Triumphant and the ordering activity.

4. CANCELLATION AND RESCHEDULING

- a. The ordering activity will notify Triumphant at least seventy-two (72) hours before the scheduled training date, if a student will be unable to attend. Triumphant will then permit the ordering activity to either cancel the order or reschedule the training at no additional charge. In the event the training class is rescheduled, the ordering activity will modify its original training order to specify the time and date of the rescheduled training class.
- b. In the event the ordering activity fails to cancel or reschedule a training course within the

time frame specified in paragraph a, above, the ordering activity will be liable for the contracted dollar amount of the training course. Triumphant agrees to permit the ordering activity to reschedule a student who fails to attend a training class within ninety (90) days from the original course date, at no additional charge.

c. The ordering activity reserves the right to substitute one student for another up to the first day of class.

d. In the event Triumphant is unable to conduct training on the date agreed to by Triumphant and the ordering activity, Triumphant must notify the ordering activity at least seventy-two (72) hours before the scheduled training date.

5. FOLLOW-UP SUPPORT

Triumphant agrees to provide each student with telephone support for a period of one (1) week from the completion of the training course. During this period, the student may contact Triumphant's instructors for refresher assistance and answers to related course curriculum questions.

6. PRICE FOR TRAINING

The price that the ordering activity will be charged will be the ordering activity training price in effect at the time of order placement, or the ordering activity price in effect at the time the training course is conducted, whichever is less.

7. INVOICES AND PAYMENT

Invoices for training shall be submitted by the Contractor after ordering activity completion of the training course. Charges for training must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

8. FORMAT AND CONTENT OF TRAINING

a. Triumphant shall provide written materials (i.e., manuals, handbooks, texts, etc.) normally provided with course offerings. Such documentation will become the property of the student upon completion of the training class.

b. ****If applicable**** For hands-on training courses, there must be a one-to-one assignment of IT equipment to students.

c. Triumphant shall provide each student with a Certificate of Training at the completion of each training course.

d. Triumphant shall provide the following information for each training course offered:

- (1) The course title and a brief description of the course content, to include the course format (e.g., lecture, discussion, hands-on training);
- (2) The length of the course;
- (3) Mandatory and desirable prerequisites for student enrollment;
- (4) The minimum and maximum number of students per class;
- (5) The locations where the course is offered;
- (6) Class schedules; and
- (7) Price (per student, per class (if applicable)).

e. For those courses conducted at the ordering activity's location, instructor travel charges (if applicable), including mileage and daily living expenses (e.g., per diem charges) are governed by Pub. L. 99-234 and FAR Part 31.205-46, and are reimbursable by the ordering activity on orders placed under the Multiple Award Schedule, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts. The Industrial Funding Fee does NOT apply to travel and per diem charges.

***SCHEDULE A – TRIUMFANT MASTER
LICENSE AND SERVICES AGREEMENT
STANDARD TERMS AND CONDITIONS***

1. DEFINITIONS.

1.1 “Affiliate” means, for either Party, any entity which directly or indirectly controls, is controlled by, or is under common control with that Party, where “control” means the power to direct the management and policies of an entity, whether through majority ownership of voting securities, by contract, or otherwise.

1.2 “Authorized User” will have the meaning set forth in Section 6.3.

1.3 “Confidential Information” means any material or information relating to a Party’s research, development, products, product plans, services, licensees, licensee lists, markets, software, developments, inventions, processes, formulas, technologies, designs, drawings, marketing, finances, or other business information or trade secrets that such disclosing Party treats as proprietary or confidential. Without limiting the foregoing, the Licensed Software and any other software or databases (including any data models, structures, non-Licensee specific data and aggregated statistical data contained therein) of Triumfant will constitute Confidential Information of Triumfant.

1.4 “Cover Page” means Triumfant’s standard form of cover page to which these Master Terms are attached.

1.5 “Delivery Date” has the meaning set forth in Section 8.1.

1.6 “Demonstration Version” means a version of the Licensed Software, so identified, to be used only to review, demonstrate and evaluate the Licensed Software for a limited time period.

1.7 “Documentation” means the user documentation related to the use and operation of the Licensed Software, but only to the extent that Triumfant, in its sole discretion, makes such

documentation generally available for commercial distribution. All Documentation will be provided in English.

1.8 “Licensed Software” or “Software” will mean the object code version of any Triumfant’s software, including any third-party code contained therein, and related documents.

1.9 “Marks” means the trade names, trade dress, trademarks, service marks, commercial symbols, domain names, brands, designs, logos and/or any other marks used by Triumfant to denote Triumfant as the source of its products and services.

1.10 “Order” will mean Triumfant’s standard order form, attached as Exhibit A, executed by both Parties and accepted by Triumfant, substantially in the form attached to this Agreement, or Licensee’s purchase order form accepted by Triumfant that explicitly states that it is subject to the terms of this Agreement and sets forth (i) the Licensed Software, (ii) a statement incorporating this Agreement by reference to the date of the Agreement or the Contract Number listed on the Cover Page of this Agreement; and (iii) all other relevant information required by Exhibit A.

1.11 “Pre-commercial Release or Beta Version” means test copies of the software, so identified, released prior to the fully tested version ready for commercial use.

1.12 “Services Agreement” means any addendum to this Agreement, if any, and may include, without limitation, an Order, Triumfant’s standard form of Maintenance and Support Services Agreement, and/or Professional Services Agreement.

2. GENERAL. These Master Terms contain the general terms and conditions governing the general legal relationship between Triumfant and Licensee relating to the mutual covenants and obligations of the Parties set forth in the attached. Triumfant’s provision of licenses to its proprietary software and the provision of services related to such licenses are subject to the terms and conditions contained in this Agreement. However, Licensee acknowledges and understands that these Master Terms do not, absent payment of any applicable fees described herein

impose any obligation upon Triumfant to provide any such licenses or services other than those set forth in these Master Terms.

3. LICENSE. Subject to the terms and conditions of this Agreement and compliance with the terms and conditions of the Order, Triumfant hereby grants Licensee, a limited, non-exclusive, worldwide, non-transferable, license (for so long as Licensee is in compliance with the terms of this Agreement, including, without limitation, the Order) to use for internal business purposes the executable code version of the Licensed Software, provided any copy of the Licensed Software must contain all of the original proprietary notices, in accordance with the terms and conditions contained herein. Licensee may not modify the Licensed Software or disable any licensing or control features of the Licensed Software. Subject to the terms and conditions of this Agreement, Triumfant hereby grants to Licensee a non-exclusive, non-transferable, non-sublicenseable right and license during the term of this Agreement to make copies of the Documentation provided by Triumfant, solely for Licensee's internal use in connection with the exercise of rights granted in Section 3. Licensee acknowledges that no right is granted to modify, adapt, translate, publicly display, publish, create derivative works or distribute the Documentation.

4. ADDITIONAL LICENSE PROVISIONS

4.1 **General Restrictions.** Except as otherwise expressly provided in this Agreement, Licensee will not copy, modify, create derivative works of, or translate the Licensed Software, in whole or in part, nor resell, lease, lend, grant a security interest in, or distribute the Licensed Software to third parties.

4.2 **Reverse Engineering.** No license is given to Licensee for the source code to the Licensed Software. Licensee agrees that it, directly or indirectly, will not reverse engineer, decompile, modify, or prepare derivative works of the Licensed Software.

4.3 **Authorized Users.** Subject to the terms and conditions of this Agreement, Triumfant hereby grants, and Licensee accepts, the right and license to install and use the Licensed Software on one or more computers, provided, however, that the total

number of Authorized Users may not exceed the licenses purchased as expressly stated in the Order. For purposes of this Agreement, the term "Authorized Users" will mean any single user of the Licensed Software who is granted access to the Licensed Software by Licensee through the assignment of an active user ID and for which Licensee has paid the appropriate fees for such user and for Authorized Users who access the Licensed Software. Each unique user ID may not be shared or used by more than one user, but may be reassigned from time to time by Licensee to new users replacing users that no longer require access to the Licensed Software by designating each user ID as "active" or "inactive" as determined by Licensee's designated administrators. Licensee acknowledges and agrees that, as between Licensee and Triumfant, Licensee will be responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User which, if undertaken by Licensee, would constitute a breach of this Agreement.

4.4 **Sublicenses.** Without the prior written consent of Triumfant, Licensee will not sublicense or permit the sublicense of any of the rights granted to Licensee by Triumfant in this Agreement.

4.5 **Reserved Rights.** Triumfant reserves all rights not expressly granted under this Agreement.

5. PAYMENTS AND REPORTING

5.1 **Auditing Rights and Required Records.** Licensee agrees to maintain complete and accurate records regarding matters covered by this Agreement during the term of this Agreement and for a period of two (2) years after the termination or expiration of this Agreement with respect to matters covered by this Agreement. In addition, Licensee will create and maintain complete and accurate records of all copies of the Licensed Software and/or Documentation made by or on behalf of Licensee, including the date such copies are made and the locations where such copies are maintained. Licensee will promptly provide a copy of such records upon request by Triumfant. Throughout the term of this Agreement and for a period of two (2) years thereafter, Triumfant will have the right, at its own expense, upon reasonable prior notice, not more frequently than one (1) time per calendar year,

to inspect and audit Licensee's use of the Licensed Software and Documentation for purposes of determining Licensee's compliance with the terms and conditions herein, provided that if such inspection and audit reveals that Licensee has underpaid Triumfant with respect to any amounts due and payable during the period to which such inspection and audit relate, Licensee will promptly pay such amounts as are necessary to rectify such underpayment. Licensee agrees to cooperate with Triumfant in the performance of any such audit, and will provide to Triumfant such access to Licensee's relevant records, data, information, personnel and/or facilities as Triumfant may reasonably request for such limited purposes.

6. DELIVERY; ENHANCEMENTS AND UPDATES

6.1 Enhancements and Updates. Triumfant may, at any time, but is not obligated to, provide Licensee with upgrades, enhancements or updates of the Licensed Software. The terms of this Agreement will apply to any upgrade, enhancement, or update of the Licensed Software provided by Triumfant in its sole discretion from time to time.

6.2 Professional Services; Training and Support. Upon payment of the applicable fee(s), Licensee will be entitled to receive the services described herein. Licensee may request that Triumfant perform certain installation, configuration, training, or other related services (collectively, "Professional Services") for an additional fee pursuant to the terms of the Professional Services Agreement set forth herein

7. ADDITIONAL OBLIGATIONS OF THE PARTIES

7.1 Trademark License. No right, license, or interest to any trademark owned by Triumfant is granted hereunder, and Licensee agrees that no such right, license, or interest will be asserted by Licensee with respect to such trademark. Licensee will not remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels on the Licensed Software.

7.2 Third Party Restrictions. Licensee will undertake all measures necessary to ensure that its use of the Software and the Documentation complies in all respects with any contractual or other

legally binding obligations of Triumfant to any third party, provided that Triumfant has notified Licensee with respect to any such obligations. Licensee will not enter into any contractual relationship or other legally binding obligation with any third party which will have the purpose or effect of encumbering the use by Triumfant of the Licensed Software or the Documentation.

8. PROPRIETARY DATA

8.1 Acknowledgment. Licensee acknowledges that (i) the Licensed Software provided by Triumfant pursuant to this Agreement is the sole and exclusive property of Triumfant; (ii) the Licensed Software provided by Triumfant pursuant to this Agreement is entitled to protection under applicable copyright and other intellectual property laws; (iii) the Licensed Software provided by Triumfant pursuant to this Agreement constitutes valuable assets, trade secrets and proprietary rights of Triumfant; (iv) neither legal nor equitable title to the Licensed Software passes to Licensee under the terms of this Agreement; (v) any information with respect to the Licensed Software provided by Triumfant is Confidential Information and is to be reasonably protected by Licensee, whether or not any portion of the Licensed Software have been copyrighted or patented; and (vi) unless covered under a separate written agreement between Triumfant and Licensee, ownership of all modifications and enhancements to the Licensed Software, including, without limitation, all filters developed by Licensee for use in conjunction with the Licensed Software (which Licensee will promptly disclose to Triumfant), will remain solely with Triumfant.

8.2 Protection. Licensee agrees that it will not at any time permit the Licensed Software provided by Triumfant to be used, examined, reviewed or inspected by others during the term of this Agreement, other than by the employees or agents of Licensee, by auditors or governmental agencies as required by law, as otherwise allowed under the provisions of this Agreement, or by persons authorized by Triumfant in writing.

8.3 Restriction. Licensee will not modify, adapt, translate, copy, duplicate, print or reproduce the Licensed Software or any part or portion thereof; except that Licensee may make a limited number of

copies of the Licensed Software as reasonably necessary to exercise its rights and comply with its obligations under this Agreement.

9. WARRANTIES

9.1 Ownership. Triumfant warrants that it is the owner of, or is otherwise licensed to grant the rights granted hereunder in, the Licensed Software, and has full legal rights to grant the rights granted herein. Triumfant further warrants and represents that (i) it is not under, and will not assume, any contractual obligation that prevents Triumfant from performing its obligations or conflicts with the rights and licenses granted in this Agreement; and (ii) the Licensed Software does not directly or indirectly infringe any publicity, privacy or intellectual property rights of a third party including, to Triumfant's knowledge, any patents or patent applications.

10. INTELLECTUAL PROPERTY INFRINGEMENT

10.1 Triumfant Indemnity. Triumfant will defend Licensee, at Triumfant's sole expense, from and against any and all claims, suits or proceedings brought against Licensee which allege that the Licensed Software or its use thereof, infringes any copyright or trade secret of a third party or any patent or trademark registered on or before the Effective Date (a "Third-Party Claim") and will, to the extent such infringement actually causes the Third-Party Claim, indemnify and hold harmless Licensee against all damages and costs incurred by Licensee as a direct result of such Third-Party Claim, and all damages and costs assessed against Licensee that are payable as part of a final judgment or settlement; provided, Licensee promptly notifies Triumfant in writing of any claim, suit or proceeding hereunder and Triumfant will, at its option, have sole control of the defense and all settlement negotiations relating to any such claim, suit or proceeding.

10.2 Limitations. Notwithstanding the foregoing provisions of this Section 10, Triumfant does not indemnify Licensee from any claims of infringement to the extent such infringement is caused by: (1) modifications made to any Licensed Product or any portion of it by anyone other than Triumfant and its authorized subcontractors or other authorized third parties; or (2) the unauthorized combination, operation or use of the Licensed Software with any

software or equipment that Triumfant does not supply to Licensee or which is not approved by Triumfant.

10.3 Remedy. If a Third-Party Claim is made regarding the Licensed Software or in Triumfant's opinion is likely to occur, Triumfant, at its expense will settle the claim or defend Licensee in such proceeding and pay all settlements, costs, damages and legal fees finally awarded, provided that Licensee promptly notifies Triumfant in writing of the proceeding, provides Triumfant a copy of all information received by Licensee with respect to the proceeding, and cooperates with Triumfant in defending or settling the proceeding. Licensee will allow Triumfant to control the defense and settlement of the proceeding, including, without limitation, the selection of attorneys; provided that, in any settlement, Triumfant will obtain a complete and unconditional release of Licensee. If such a proceeding is brought or appears to Triumfant to be likely to be brought, Triumfant may, at its sole option and expense, either obtain the right for Licensee to continue using the allegedly infringing item(s) or replace or modify such item(s) to resolve such proceeding. If Triumfant finds that neither of these alternatives is available to it on commercially reasonable terms, Triumfant may require Licensee to return or destroy the original and all copies of the affected Licensed Software, whereupon the license for returned or destroyed Licensed Software would terminate, and Triumfant would reimburse Licensee in an amount equal to the undepreciated portion of the total license fees paid for the terminated Licensed Software based on a straight-line depreciation over a five year period.

11. GENERAL

11.1 Notices. Any and all notices or communications provided for herein will be given in writing by registered mail, overnight, or courier delivery, which will be addressed (in the case of Licensee) to the address of Licensee set forth on the Cover Page and (in the case of Triumfant) 79 T. W. Alexander Drive, 4401 Research Commons, Suite 205, Research Triangle Park, NC 27709, Attention: Controller. Either Party may change its address for notice purposes by giving the other Party written notice of such change. Any notice will be deemed to be given on the date of receipt by the addressee.



11.2 Waiver. A failure or delay of either Party to this Agreement to enforce at any time any of the provisions of this Agreement or to exercise any option which is herein provided or to require at any time performance or any of the provisions hereof, will in no way be construed to be a waiver of such provisions of this Agreement.

11.3 Export Restrictions. Licensee acknowledges that the Licensed Software is subject to U.S. export jurisdiction. Licensee agrees to comply with all applicable international and national laws that apply to the Licensed Software, including the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by U.S. and other governments.

11.4 Severability. In the event that any one or more of the provisions of this Agreement will for any reason be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement will be unimpaired and the invalid, illegal or unenforceable provisions will be replaced by a mutually acceptable provision which, being valid, legal and enforceable, comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.

11.5 Headings. The headings in this Agreement are for purposes of reference only and will not in any way limit or affect the meaning or interpretation of any of the terms hereof.

11.6 Force Majeure. Neither Party will be liable to the other Party or will be subject to termination of this Agreement by the other Party for any delay, nonperformance, loss or damage (other than for failure to pay any amount when due) because of reasons beyond its reasonable control including, but not limited to, acts of God, acts of government, war, riots, civil unrest, power failures, accidents in transportation or other causes beyond the reasonable control of the respective Party.

11.7 Third Party Beneficiaries. There are no intended third party beneficiaries of any provision of this Agreement.

11.8 United States Government Rights. Consistent with FAR 12.211 and 12.212, Commercial Computer Software, Computer

Software Documentation, and Technical Data for Commercial Items, in the event that Licensee is the United States Government (or any agency or department thereof), the Licensed Software is licensed to the U.S. Government under vendor's standard commercial license.

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***SCHEDULE B – TRIUMFANT
MAINTENANCE AND SUPPORT
SERVICES AGREEMENT STANDARD
TERMS AND CONDITIONS***

1: PRODUCT:

This Support Agreement applies only to the software product ("Triumfant"), which has been licensed by Triumfant to Licensee pursuant to the Master License and Services Agreement (the "License Agreement").

2: LICENSEE CONTACTS

2.1. The address for Licensee and Licensee's "Contact" person are provided by Licensee to Triumfant at the time of entering into the License Agreement and incorporated by reference herein. The Contact will be a member of Licensee's technical staff designated to carry out all contacts with Triumfant pursuant to this Support Agreement.

3: TERM

3.1. This Support Agreement will commence on the Effective Date of the License Agreement, and will continue in effect for an initial term of one (1) year (the "Initial Term"). Triumfant reserves the right to change the scope or terms of Maintenance and Support Services (as defined below) or the rates charged for any upcoming renewal term of this Support Agreement, provided that no change will be effective unless notice of such change is provided to Licensee no less than five (5) days before Licensee must give notice that it will not renew the Agreement.

4: MAINTENANCE AND SUPPORT SERVICES

During the term of this Support Agreement, the maintenance and support services (“Maintenance and Support Services”) to be provided to Licensee under this Support Agreement are:

4.1. Incident Reporting. Triumphant will have technical support personnel available as specified herein. Licensee will receive an initial response to inquiries as specified herein. An “Incident” is a failure of the Triumphant Software to conform in all material respects to its functional specifications as then published by Triumphant, provided that a reported Incident will not be deemed to be an Incident unless: (i) Triumphant is able reproduce it under the same or similar conditions with reasonable effort on a supported platform; (ii) it does not result from misuse or improper use of the Triumphant Software by Licensee; and (iii) the Triumphant Software has not been modified.

4.2. Error Correction. Triumphant will use commercially reasonable efforts to create Error Corrections as specified herein. An “Error Correction” is defined as a software modification or addition, which when made or added to the Triumphant Software or its documentation establishes material conformity of the Triumphant Software with its functional specifications. Error Corrections include, without limitation, changes in the documentation, procedures or routines that when used in the regular operation of the Triumphant Software eliminates the practical adverse effect on Licensee of the nonconformity.

4.3. Enhancements. An “Enhancement” is defined as extensions and other changes that are logical improvements to the Triumphant Software and that Triumphant makes generally available to Licensees receiving Maintenance and Support Services. Each Enhancement will include any Error Corrections issued since the previous Enhancement. Enhancements do not include (i) new software products that are generally made available as a separate, price-listed options or additions to the Triumphant Software or upgrades to new platforms or (ii) custom program modifications or requests for new functionality that are not made generally available to Licensees receiving Maintenance and Support Services. Triumphant will notify the Contact by e-mail when any Enhancements to the Triumphant Software are made available to customers receiving

Maintenance and Support Services. On request, Triumphant will ship or FTP one copy of the Enhancement to the Contact at no additional cost, provided however, that Triumphant reserves the right to require instead that the Contact download any or all Enhancements from Triumphant’s designated website.

4.4. Filter Sets, Response Sets, Policy Templates and Report Capabilities. Triumphant may provide at its sole discretion standard filter sets, response sets, policy templates, and/or report capabilities at no additional charge to Licensee. Requests for additional filter sets, response sets, and policy templates that are not part of Triumphant’s standard sets will be subject to additional fees as determined by Triumphant.

4.5. Technical Support. During the term of this Support Agreement, Triumphant will provide Licensee with support to provide assistance with technical issues relating to the installation, operation and functionality of the Triumphant Software as specified within. This support specifically, but without limitations, does not include assistance with Licensee’s input errors, issues related to any training content of the Triumphant Software, issues related to Licensee’s hardware, or other problems related to deployment of the Triumphant Software in conjunction with other software or operating systems.

5: LIMITATION ON MAINTENANCE AND SUPPORT SERVICES

5.1. Triumphant is obligated to provide Maintenance and Support Services only with respect to those Releases (as defined below) as specified herein. Triumphant may refuse to provide Maintenance and Support Services if Licensee fails to install all Error Corrections or Enhancements within sixty (60) days of receipt of the Error Correction or Enhancement.

5.2. Triumphant will have no obligation to provide any Maintenance and Support Services with respect to Triumphant Software modified by Licensee.

5.3. This Support Agreement, specifically but without limitation, does not obligate Triumphant to provide: (i) project management; (ii) personnel

management; (iii) application design or development; (iv) performance of Maintenance and Support Services on-site; (v) consulting, training or other support services relating to software other than the Triumphant Software; (vi) support or maintenance services relating to any hardware or peripheral devices; (vii) recreation or reentry of data lost for any reason whatsoever; (viii) performance of the generalized duties of a software developer engaged to create miscellaneous software applications at Licensee's discretion; or (ix) delivery of improvements to Triumphant Software requested by Licensee or prepared on a customized basis for Licensee.

6: RELEASES AND OWNERSHIP

6.1 All rights, titles and interests in and to any programs, systems, data or materials used or produced by Triumphant in the performance of Maintenance and Support Services, including but not limited to, Error Corrections, Enhancements or other releases ("Releases"), will remain the sole property of Triumphant. All Releases received by Licensee from Triumphant will become part of the Triumphant Software and will be governed by the terms of the License Agreement. Triumphant reserves the right to define the addition of new functionality or other elements as a new product and not a Release. Triumphant is under no obligation to develop new Releases. All Releases, including all copyright interests and intellectual property, will remain the sole property of Triumphant regardless of whether Licensee or its employees or contractors will have contributed to the conception or the Release, joined in the effort of its development or paid Triumphant for creation of it.

7: LIMITATION OF WARRANTY AND LIABILITY

7.1 TRIUMFANT MAKES AND LICENSEE RECEIVES, NO WARRANTY, EXPRESS OR IMPLIED, CONCERNING THE MAINTENANCE AND SUPPORT SERVICES TO BE RENDERED OR THE RELEASES TO BE RECEIVED HEREUNDER, AND ALL SUCH WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT ARE EXPRESSLY EXCLUDED; ALL RELEASES ARE PROVIDED "AS

IS." TRIUMFANT DOES NOT WARRANT THAT THE MAINTENANCE AND SUPPORT SERVICES HEREUNDER WILL MEET THE NEEDS OF LICENSEE OR PERMIT THE TRIUMFANT PROGRAMS TO OPERATE WITHOUT PROBLEMS, ERRORS OR INTERRUPTIONS. LICENSEE SPECIFICALLY AGREES THAT ALL LIABILITY OF TRIUMFANT TO LICENSEE RELATED TO THIS SUPPORT AGREEMENT WILL BE GOVERNED BY THE TERMS OF THIS SUPPORT AGREEMENT, AND WILL NOT, IN ANY EVENT, EXCEED THE AMOUNT LICENSEE PAID TO TRIUMFANT UNDER THIS SUPPORT AGREEMENT FOR SERVICES RELATED TO THE SPECIFIC TRIUMFANT SOFTWARE, WHICH SERVICES ARE THE SUBJECT OF THE CLAIM, DURING THE TWELVE (12) MONTHS PRECEDING THE DATE IN WHICH THE CLAIM AROSE.

7.2 LICENSEE EXPRESSLY AGREES THAT IN NO EVENT WILL TRIUMFANT BE LIABLE FOR ANY CONSEQUENTIAL OR SPECIAL DAMAGES ARISING FROM BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR ANY OTHER LEGAL THEORY, WHETHER IN TORT OR CONTRACT, EVEN IF TRIUMFANT HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING, INCLUDING WITHOUT LIMITATION, DAMAGES FROM INTERRUPTION OR BUSINESS, LOSS OF PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE OF SOFTWARE, LOSS OF DATA, COST OF RECREATING LOST DATA, COST OF ANY SUBSTITUTE SOFTWARE, OR LOSSES CAUSED BY DELAY. TERMINATION OF THIS SUPPORT AGREEMENT BY TRIUMFANT PURSUANT TO PARAGRAPH 9 WILL NOT RESULT IN LIABILITY OF TRIUMFANT TO LICENSEE FOR DAMAGE, LOSS, OR EXPENSE, AND LICENSEE EXPRESSLY WAIVES SUCH CLAIMS.

8: GENERAL PROVISIONS

8.1 Force Majeure. Neither party will be liable for any loss, damage, or penalty resulting from unavoidable delays or failures in performance resulting from acts of God or other causes beyond its control; provided, however, that no event or circumstance will excuse Licensee's absolute duty

to timely pay the Maintenance and Support Services fee in full.

8.2 Severability. If any provision of this Support Agreement will for any reason be adjudged by any court of competent jurisdiction to be invalid or unenforceable, such judgment will not effect, impair or invalidate the remainder of this Support Agreement, but will be confined in its operation to the provision of this Support Agreement directly involved in the controversy in which such judgment will have been rendered, and the invalid or unenforceable provision will be struck.

8.3 Entire Agreement. This Support Agreement constitutes the entire and exclusive agreement between the parties hereto with respect to the subject matter hereof, and may only be amended by a writing executed by both parties.

APPENDIX A: TRIUMFANT SERVICE LEVEL DESCRIPTION

Terminology and Definitions

Response Time: Response time is defined, as the time required for the assigned Triumfant support person to call the initiator of the Incident and begin work on the recorded Incident.

Resolution Time: Triumfant will use its best efforts to provide a workaround or fix once the Incident has been reproduced by Triumfant or a Triumfant Software defect has been identified. The time required to accomplish this is defined as Resolution Time.

Incident Class:

Incident classes are identified below:

Level 1: The Triumfant Software is down or severely impacted, or Licensee's data is lost or destroyed. No reasonable workaround is currently available (for example, system crashes or panics, or corrupted data).

Level 2 : The Triumfant Software is moderately affected. No workaround is currently available or the workaround is unreasonably cumbersome to use.

Level 3 : The issue with the Triumfant Software is not critical and the issue does not hinder normal operation, or a reasonable workaround is available. Level 3 also includes: general questions, comments or errors in documentation, which should be recorded but has no impact on daily work. Notwithstanding the foregoing, if an Incident is reported to Triumfant via email, the Incident will be classified as Level 3.

Account Manager: Triumfant will assign an Account Manager to be the primary contact for Licensee for new business requests and the facilitation of service support performance reviews. Triumfant reserves the right to change the Account Manager at any time without notice.

Service Levels

Triumfant' standard support services program includes the following:

1. Standard Support Hours are Monday through Friday from 8:00 AM to 8:00 PM (EST), excluding holidays and weekends.
2. Triumfant is available to open new support cases via telephone, email, or online helpdesk during the Standard Support Hours.
3. For the most current Releases of the Triumfant Software, Triumfant provides Error Correction or workarounds required for the Triumfant Software to conform to functional specifications as defined in the "APPENDIX B: TRIUMFANT SOFTWARE LIFECYCLE AND SUPPORT" below.
4. Triumfant provides new Releases and Enhancements for the Triumfant Software covered under Licensee's maintenance agreement at no additional fee.

5. Triumfant provides updated standard filter sets, response sets, policy templates, and report capabilities for the most recent Releases of the Triumfant Software covered under Licensee’s maintenance agreement at no additional fee.

6. Triumfant provides training for new features covered under Licensee’s maintenance agreement at no additional fee via regularly scheduled Web Training Sessions or for a fee at the Licensee’s Site or TriumfantTriumfant Site.,.

Response and Resolution Times

Incident Class	Response	Resolution
Level 1	2 hours	Upon confirmation of receipt, Triumfant begins continuous work on the Incident, provided that a Licensee resource must be available at any time to assist with problem determination. Triumfant will use its best efforts to provide a workaround or fix within 48 hours, once the Incident has been reproduced by Triumfant or a Triumfant Software defect has been identified. Triumfant may at its sole discretion incorporate any fix(es) in future Release(s) of the Triumfant Software.
Level 2	8 business hours	Upon confirmation of receipt, Triumfant will use its best efforts to provide a workaround or fix within 7 business days, once the Incident has been reproduced by Triumfant or a Triumfant Software defect is identified. Triumfant may at its sole discretion incorporate any fix(es) in future Release(s)

		of the Triumfant Software.
Level 3	24 business hours	Triumfant will use its best efforts to provide a workaround or fix within 10 business days, once the Incident has been reproduced by Triumfant or a Triumfant Software defect is identified. Triumfant may at its sole discretion incorporate any fix(es) in future Release(s) of the Triumfant Software.

Key Licensee Processes

Incident Reporting

All incidents related to support can be logged by contacting technical support.

Technical Support can be contacted via the following methods:

1. Phone 919-248-9393 ext 226
2. Email (support@triumfant.com)
3. Online Helpdesk (<http://www.rap-x.com/index.jsp?key=-1362174909>)

When contacting Triumfant Technical Support via phone, email, or the online Triumfant Helpdesk, a case is created with an associated priority. If a support case is created via the online helpdesk or over the telephone, customers may specify the case priority. If a case is created via email, the case priority will default to Level 3.

Triumfant reserves the right to change the contact information described above at any time.

Escalation

If an incident is not resolved to Licensee’s reasonable satisfaction, the Incident may be escalated. Incident issues are to be escalated first to Licensee Support Manager, secondly to the CTO, and finally to the Account Manager.

TECHNICAL SUPPORT ESCALATION LIST

Escalation Level	Contact Information
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Primary Contact	1. Phone 919-248-9393 ext. 126 2. Email (support@triumfant.com) 3. Online Helpdesk (http://www.rapx.com/index.jsp?key=-1362174909)
First Level Escalation	Jonathan Reece, Licensee Support Manager jon.reecse@triumfant.com Office: 919.248.9393 ext 126 Mobile: 919.418-2360
Second Level Escalation	Dave Hooks, CTO/EVP Engineering & Operations david.hooks@triumfant.com Office: 919.248.9393 ext 106 Mobile: 919.306.3866
Third Level Escalation	Account Manager

Triumfant reserves the right to change the contact information described above at any time.

New Business Introduction

To initiate a request for a new service or new product feature, please contact the Account Manager. The Account Manager will document the high-level requirements, develop a cost estimate for delivering the system functionality or service, and develop a timeline for system's implementation.

APPENDIX B: TRIUMFANT SOFTWARE LIFECYCLE AND SUPPORT

SOFTWARE RELEASE TERMINOLOGY

Term	Description
Release Numbering	Triumfant uses a three-place numbering system to designate Releases of software. The format is XX.YY.ZZZ, where X indicates a major release, Y indicates a minor release, and Z indicates a maintenance release. An example would be release 3.2.19. Often in referring to general

	product versions and releases, the maintenance release is omitted. For example, both 3.2.19 and 3.2.20 may sometimes be referred to as release 3.2.
Maintenance Release	For the purpose of this support policy, a maintenance release is considered part of the main release. For example, 3.2.19 is supported as part of the 3.2 release.
Current Release (GA)	The most recent General Availability (GA) major and minor release combination of Triumfant software is commonly known as the 'current release'.
GA-1 Release	The latest major/minor release combination to become generally available (GA) prior to the current release. For example, if the current release is 3.2, then GA-1 is 3.1.
GA-2 Release	The latest major/minor release combination to become generally available prior to the GA-1 release. Continuing the example above, if GA-1 is 3.1, then GA-2 is 3.0.
Full Support	Full support is provided to Licensee based on the terms and conditions of the Maintenance and Support Agreement. This includes: <ul style="list-style-type: none"> • Error Corrections as defined in Section 4.2 • Enhancements as defined in Section 4.3 • Workarounds • Standard Filter Sets, Response Sets, and Policy Templates as defined in Section 4.4 • Other modifications provided at no charge at Triumfant' sole discretion.
Limited Support	As a Release enters limited support (as described below), the following guidelines apply: <ul style="list-style-type: none"> • New enhancements, error

	<p>corrections, and/or workarounds will not be made to the Release.</p> <ul style="list-style-type: none"> • Triumfant will direct customers to existing enhancements, error corrections and workarounds applicable to the reported case. • Triumfant may develop fixes for problems of high technical impact or business exposure for the customer at Triumfant sole discretion.. • Triumfant may direct customers to upgrade to a more current Release of the Triumfant Software.
No Support	Product Releases that are no longer supported will not have any Error Correction or Enhancements added. Licensees must upgrade to at least a Limited Support Release in order to receive support under this Maintenance Agreement.

TRIUMFANT SOFTWARE LIFECYCLE AND SUPPORT

Triumfant provides the following support for various releases of software:

Triumfant Software Release	Level of Support
Current Release (GA)	Full Support
GA-1, GA-2	Limited Support
Releases prior to GA-2	No Support

APPENDIX C: TRIUMFANT PROFESSIONAL SERVICES AGREEMENT

1. ADDITIONAL DEFINITIONS. Certain capitalized terms used in this Professional Services Agreement, not otherwise defined above, shall have the meanings set forth or cross-referenced below. Capitalized terms used in this Professional Services

Agreement that are not otherwise defined in this Professional Services Agreement have the meaning set forth in the Master Terms.

1.1 “Professional Services” has the meaning set forth in Section 2.1.

1.2 “Statement of Work” has the meaning set forth in Section 2.2.

2. PROFESSIONAL SERVICES

2.1 Professional Services. The parties anticipate that Licensee may desire to engage Triumfant to perform certain services in connection with the licenses or access rights granted to Licensee by Triumfant under separate Exhibits to this Agreement, including, by way of example, installation, configuration and/or training services. Subject to the terms and conditions set forth in this Professional Services Agreement, Triumfant shall use commercially reasonable efforts to perform the services as set forth in Statements of Work (as defined below) separately executed by the parties (the “Professional Services”). Triumfant shall perform the Professional Services in a professional manner in accordance with industry standards.

2.2 Issuance of Statements of Work. Licensee may request that Triumfant perform services by requesting proposed Professional Services. Triumfant shall prepare draft statements of work as an exhibit to this Professional Services Agreement (each, a “Statement of Work”). Such Statement(s) of Work shall describe the fees, costs and expenses payable by Licensee to Triumfant in connection with the performance of such services. Licensee shall promptly notify Triumfant of its acceptance or rejection of such [Statement of Work](#). Until the acceptance in writing of the proposed Statement of Work, Triumfant shall have no obligation to perform the proposed Professional Services, provided that this Professional Services Agreement shall remain in full force and effect in accordance with Section 4. Each Statement of Work, regardless of whether it relates to the same subject matter as any previously executed Statements of Work, shall become effective upon execution by authorized representatives of both parties.

2.3 Modifications. Licensee may at any time request a modification to the Professional Services to be performed pursuant to any particular Statement of Work by written request to Triumfant specifying the desired modifications. Triumfant shall, within a reasonable time following receipt of such request, submit an estimate of the cost for such modifications and a revised estimate of the time for performance of the Professional Services pursuant to the Statement of Work. If accepted in writing by Licensee, such modifications in the Statement of Work shall be performed under the terms of this Professional Services Agreement. Modifications in any Statements of Work shall become effective only when a written change request is executed by authorized representatives of both parties.

3. PERSONNEL

3.1 Suitability. Triumfant shall assign employees and subcontractors with qualifications suitable for the work described in the relevant Statement of Work. Triumfant may replace or change employees and subcontractors in its sole discretion with other suitably qualified employees or subcontractors.

3.2 Licensee Responsibilities. Licensee shall make available in a timely manner at no charge to Triumfant all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information and resources of Licensee required by Triumfant for the performance of the Professional Services. Licensee shall be responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by Licensee. Licensee shall provide, at no charge to Triumfant, office space, services and equipment (such as copiers, fax machines and modems) as Triumfant reasonably requires to perform the Professional Services.

3.3 Nonsolicitation. Licensee acknowledges and agrees that the employees and consultants of Triumfant who perform the Professional Services are a valuable asset to Triumfant and are difficult to replace. Accordingly, Licensee agrees that, for a period of one (1) year after the termination or expiration of this Professional Services Agreement, it shall not knowingly solicit for hire (whether as an

employee, independent contractor or consultant) any Triumfant employee or consultant who performs any of the Professional Services. Licensee agrees that for each individual that Licensee hires in violation of this Section 3.3, Licensee shall pay to Triumfant liquidated damages equal to twenty percent (20%) of the annual cumulative value of salary and benefits paid or payable to that individual by either Licensee or Triumfant, whichever amount is greater. Such prohibitions shall not apply to employees or consultants who answer public advertisements, or who apply for employment with Licensee without any solicitation.

4. PROPRIETARY RIGHTS. Unless otherwise expressly agreed in any particular Statement of Work, except to the extent that the same constitutes or embodies Licensee's Confidential Information, ownership of all work product, developments, inventions, technology or materials provided under this Professional Services Agreement shall be solely owned by Triumfant, subject to the usage rights granted to Licensee under the relevant Statement of Work.

5. LIMITATION OF WARRANTIES AND LIABILITY. Triumfant makes no representations or warranties under this Professional Services Agreement, and Licensee acknowledges that this Professional Services Agreement is subject to all disclaimers and limitations or liability set forth in the Master Terms.