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"Certified Reseller" means the company that has executed or otherwise accepted this Agreement and is registered with IMT to purchase IMT Products and/or IMT Services directly from IMT or a Distributor for Resale to an End User.

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"Effective Date" means the date stated on the applicable License Order from Licensee.

"Licensee" as used herein means the entity identified on the applicable License Order and its Affiliates, only so long as such Affiliate remains an Affiliate as defined above.

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6. **License Fees; Payment.** The applicable fees for the Software set forth in the License Order ("License Fees") are due and payable within thirty (30) days after IMT's receipt of the License Order. All payments shall be made in USD\$. Any payment more than thirty (30) days overdue will bear a late payment fee of one percent (1%) per month, or, if lower, the maximum rate allowed by law. In addition, Licensee will pay all taxes, shipping, duties, withholdings, backup withholding and the like; when IMT has the legal obligation to pay or collect such taxes, the appropriate amount shall be invoiced to and paid by Licensee directly to IMT or Certified Reseller.
7. **Software Support.** Subject to payment of the applicable support fees set forth in the License Order ("Support Fees"), IMT or Certified Reseller will provide SoDA Software in accordance with its then current Software Support Terms identified in the License Order, which are deemed incorporated herein.
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10. **Limitation of Liability.** Except with respect to either party's indemnity and confidentiality obligations hereunder, (a) each party's entire liability and the other party's exclusive remedy under this Agreement shall not exceed the License Fees and Support Fees paid or owed for the Software; and (b) in no event shall Licensee, IMT or Certified Resellers be liable to the other party for (i) any consequential, special, incidental or indirect damages of any kind arising out of this Agreement or the use or inability to use the Software; (ii) any cost of procurement of substitute goods, technology, services or rights; (iii) any interruption of use or loss or corruption of data; or (iv) any matter beyond its reasonable control; in each case, even if the party at fault has been advised of the possibility of such damages, or any claim by a third party.
11. **Indemnification By IMT.** IMT shall hold Licensee harmless from liability to third parties resulting from infringement by the Software of any United States patent issued sixty (60) days or more before delivery of such Software or any copyright or misappropriation of any trade secret, provided IMT is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; IMT will not be responsible for any settlement it does not approve. The foregoing obligations do not apply with respect to the Software or portions or components thereof (i) not created by IMT, (ii) made in whole or in part in accordance to Licensee specifications, (iii) that are modified after delivered by IMT, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Licensee continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Licensee's use of such Software is not strictly in accordance herewith. Licensee will indemnify IMT from all damages, costs, settlements, attorneys' fees and expenses related to (I) any claim of infringement or misappropriation excluded from IMT's indemnity obligation by the preceding sentence, or (II) any other claim in connection with the Software or the use or distribution thereof.

## 12. Termination.



- a. **For Breach.** This Agreement and any license granted hereunder may be terminated immediately by either party for material breach by the other party of any of the provisions of this Agreement, and such breach has not been cured within thirty (30) days of written notice thereof. In the event that Licensee terminates this Agreement due to the default of IMT, IMT or Certified Reseller will refund the pro-rata portion of any prepaid Support Fee that is attributable to the time subsequent to the effective date of termination. In the case of integrated Software support included in the Licensee Fees, the Support Fee is considered to be 12.5% of the License Fees.
  - b. **Bankruptcy.** This Agreement may also be terminated by either party if the other party becomes insolvent, is adjudged bankrupt or becomes the subject of dissolution, liquidation or bankruptcy proceedings whether voluntarily or involuntarily (which proceedings are not dismissed within sixty (60) days), is subject to the appointment of a receiver or examiner, applies for judicial or extra-judicial settlement with its creditors, makes an assignment for the benefit of creditors, or otherwise discontinues business.
  - c. **Effect of Expiration or Termination.** Upon any expiration or termination of this Agreement, or any expiration or termination of the license with respect to a former Affiliate as provided in Section 14 below, Licensee (or such Affiliate) shall immediately cease all use of all affected Software and return or destroy all copies of all affected Software and all portions thereof and so certify to IMT. Except as otherwise expressly provided herein, the terms hereof (including the terms of Sections 3, 5, 7, 8, 9, 10, 11, 12, 14, 15 and 16) shall survive any termination. Termination is not an exclusive remedy and all other remedies will be available whether or not termination occurs.
13. **Confidentiality.** “Confidential Information” is defined as any information disclosed by either party and/or its Affiliates (the “Disclosing Party”) to the other party (the “Receiving Party”) relating to, without limitation, the Disclosing Party’s business, products, services, activities, suppliers, customers, technology, operations, strategies, programs, systems, inventions, product formulations, programs, databases, forecasts, pricing, marketing, sales, financial information, drawings, prototypes, test data, the terms and subject matter of this Agreement and confidential and proprietary information the Disclosing Party receives from third parties. Confidential Information includes, without limitation, written documentation, oral disclosures, disclosures made in graphic, photographic, electronic, computerized or other form, and disclosures made by visual observation. Confidential Information shall not include any information that: (a) is already known to the Receiving Party at the time of disclosure; (b) is generally available to the public or becomes publicly known through no breach of this Agreement by the Receiving Party; or (c) is received by the Receiving Party from a third party who was not under an obligation of confidentiality with the Disclosing Party.
- a. The Receiving Party shall (a) use the Disclosing Party’s Confidential Information solely for the purpose of performing this Agreement and (b) not distribute, disseminate, convey, publish or disclose, directly or indirectly, in any form or through any medium, such Confidential Information without the Disclosing Party’s prior written consent to any person or entity other than to those of its and its Affiliates’ respective employees, agents and advisors who: (i) have a need to know such Confidential Information in connection with the performance of this Agreement and (ii) have been informed by the Receiving Party of the confidential nature of such information and the obligations of the Receiving Party under this Agreement (collectively, “Permitted Recipients”). All Permitted Recipients shall agree to be bound by confidentiality and non-disclosure obligations with respect to the Confidential Information which are at least as restrictive as those set forth in this Agreement, and the Receiving Party will take reasonable steps to require its Permitted Recipients to perform such obligations. The Receiving Party shall be responsible for any breach of this Agreement by its Permitted Recipients. The Receiving Party



agrees and acknowledges that the Confidential Information is the property of the Disclosing Party.

- b. Upon expiration or earlier termination of this Agreement and upon written request of the Disclosing Party, the Receiving Party will: (i) return to the Disclosing Party all Confidential Information (including copies) provided by the Disclosing Party under this Agreement; (ii) destroy all summaries, abstracts and the like prepared by IMT that incorporate the Disclosing Party's Confidential Information and (iii) certify to the destruction of the same; provided, however, that IMT may retain one complete copy of the Confidential Information in its legal archives for the purpose of determining its obligations under this Agreement and for legal and regulatory purposes, provided that the Confidential Information is kept confidential.
  - c. If the Receiving Party becomes legally compelled, by applicable laws or by legal, administrative or regulatory process, to disclose Confidential Information, the Receiving Party shall provide prompt written notice to the Disclosing Party and the parties shall cooperate so that a protective order or other appropriate remedy may be sought, unless the Disclosing Party authorizes the Receiving Party in writing to disclose such Confidential Information. In the event that such protective order or other remedy is not obtained, or the Disclosing Party waives compliance with the provisions of this Agreement, the Receiving Party shall furnish only that portion of the Confidential Information that it is required to disclose, based on the opinion of counsel, and shall take all reasonable efforts to obtain a protective order or other reasonable assurance that confidential treatment will be accorded to such Confidential Information.
14. **Publicity.** IMT may use Licensee's name and logo in client listings. IMT may issue a press release announcing the relationship contemplated hereby, subject to Licensee's prior written approval which shall not be unreasonably withheld or delayed.
15. **Assignment.** Neither this Agreement nor the licenses granted hereunder are assignable or transferable (and any attempt to do so shall be void); provided that either party signing below may assign and transfer the foregoing to an Affiliate or to a successor to substantially all of such party's business or
- a. Assets; provided that in the case of such assignment by Licensee, if the authorized copies or users are not limited, the assignee is not licensed to expand use beyond Licensee's bona fide pre-assignment use plus reasonably expected growth assuming the assignment and related transactions had not occurred; and provided further, that the licenses granted hereunder are not assignable or transferable by Licensee to a former Affiliate that Licensee no longer directly or indirectly controls, is controlled by, or is under common control of or with (as "control" is used in the definition of Affiliate above), or to any third party taking control of such former Affiliate, and the license grant shall immediately expire and terminate with respect to such former Affiliate.
16. **Governing Law; Dispute Resolution.** This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act. Unless otherwise elected by IMT in writing for a particular instance, the sole jurisdiction and venue for actions related to the subject matter hereof shall be the state and U.S. federal courts located in Los Angeles County, California, and both parties consent to the jurisdiction of such courts. The substantially prevailing party in any action to enforce this Agreement will be entitled to recover its attorney's fees and costs in connection with such action. Notwithstanding the foregoing, where a dispute arises out of or in connection with this Agreement, the parties shall first attempt to settle any claim or controversy through consultation and negotiation exercising commercially reasonable efforts and in the spirit of mutual cooperation.



17. **General.** The provisions hereof are for the benefit of the parties and Licensee's Affiliates only and not for any other person or entity. Any notice, report, approval, authorization, agreement or consent required or permitted hereunder shall be in writing; notices shall be sent to the address the applicable party has or may provide by written notice or, if there is no such address, the most recent address the party giving notice can locate using reasonable efforts. Notices shall be deemed given when received by the addressee. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. If any provision shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this arrangement shall otherwise remain in full force and effect and enforceable. This Agreement and any License Order to which it is attached or referenced is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter hereof and any waivers or amendments shall be effective only if made in writing; however, any pre-printed or standard terms of any purchase order, confirmation, or similar form, even if signed by the parties after the effectiveness hereof, shall have no force or effect.