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**16. Miscellaneous.**

- 16.1. Licensee Representations. Licensee represents and warrants that: (a) the individual signing or accepting this Agreement has all necessary corporate or other authority to bind the entity that it purports to make party hereto, (b) Licensee has all necessary corporate or other authority or licenses to perform its obligations hereunder.
- 16.2. Confidentiality. Each party agrees to hold the other party's Confidential Information in confidence and not to use it for any purpose other than the purposes permitted under this Agreement. Each party agrees to use the same standard of care to protect Confidential Information as it uses to protect its own similar confidential and proprietary information, but not less than a reasonable standard of care. The terms of this Agreement constitute Confidential Information. Confidential Information of the other party may only be disclosed to those Affiliates, employees, contractors and advisors of Company or of Spanning, as applicable, on a need-to-know basis and who agree to be bound by confidentiality restrictions at least as restrictive as those contained in this Agreement; provided, that nothing shall prevent or prohibit a party from using or disclosing Confidential Information as may be required by law, rule, regulation or legal process. Confidential Information remains at all times the property of the disclosing party. Unless otherwise explicitly set forth herein, no licenses or rights under any patent, copyright, trademark, or trade secret are granted or are to be implied with respect to Confidential Information. Spanning may identify Licensee as a customer when referring to lists of customers. Furthermore, Spanning may automatically extract and use Licensee's data and information internally for the limited use of its research and analysis as may be necessary to enhance and improve the software and services it provides to its customers, provided always that any such retained data or information of Licensee shall be for internal use only and shall be used in a de-identified manner only.
- 16.3. Monitoring; Auditing. Licensee understands that the Software is programmed to track the number of deployed copies of the Software, authorized devices, users and other usage related data, and Licensee consents to such operations and shall not engage in any activity designed to circumvent or obstruct, or which has the effect of circumventing or obstructing, the Software's tracking capabilities. Licensee grants to Spanning the right to monitor usage by all of its users and to audit its books, records and accounts, at Spanning's expense, during Licensee's normal business hours to verify compliance with this Agreement, and Licensee agrees to make available to Spanning or its representatives any records pertaining to this Agreement. If any audit reveals that any additional amounts are owed in excess of five percent (5%) of the total Fees paid during the audited time period, then such owed amounts will be paid immediately and the cost of such audit shall be reimbursed by Licensee. Furthermore, in the event that Licensee uses any Software other than as licensed under this Agreement (or under another agreement executed by the parties), in addition to any other remedies available to Spanning, Licensee agrees to pay Spanning the then current subscription Fees and any related Service fees for such unauthorized use.
- 16.4. Assignment. Neither this Agreement nor the rights and licenses granted hereunder are assignable or transferable by Licensee without the prior written consent of Spanning; any attempt to do so shall be null and void *ab initio*. Spanning may assign this Agreement in whole or in part.



- 16.5. Notices and Electronic Communications. Spanning may give notice by means of a general notice on the Software, electronic mail to Licensee's e-mail address on record in Spanning's account information, or by written communication sent by first class mail or pre-paid post to Licensee's address on record in Spanning's account information. Such notice shall be deemed to have been given 48 hours after delivery by first class mail or pre-paid post or 12 hours after sending by email. Licensee shall give notice to Spanning (such notice shall be deemed given when received by Spanning) by confirmed mail delivery to its office at 26 West 17<sup>th</sup> Street, 9<sup>th</sup> Floor, New York, New York 10011, Attn: General Counsel.
- 16.6. Compliance With Laws and Export Control. Licensee shall abide by all applicable local, state, national and foreign laws, rules, treaties and regulations in connection with its use of the Software, including those related to data privacy, international communications and the transmission of technical or personal data. Licensee acknowledges that Spanning may discontinue provision or performance of the Software or Services or terminate the license to the Software granted hereunder following any changes in any relevant applicable law, which in the sole discretion of Spanning, makes performance impossible, or illegal. Licensee further acknowledges that the Software and related technology and technical data (collectively "**Controlled Technology**") may be subject to the import and export laws of any country where Controlled Technology is imported or re-exported, including U.S Export Administration Regulations. Licensee agrees not to export, re-export, import or provide any Controlled Technology to any prohibited country (such as embargoed countries), entity, or person (such as designated nationals) for which a license or other governmental approval is required or is otherwise prohibited. All Controlled Technology is prohibited for export or re-export to prohibited countries as listed at: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx> or to any country subject to similar trade sanctions. Licensee further agrees that it will not use, export or sell any Controlled Technology for use in connection with chemical, biological, or nuclear weapons, or missiles, drones or space launch vehicles capable of delivering such weapons.
- 16.7. Governing Law; Jurisdiction. This Agreement shall be governed by the laws of the State of New York and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Software shall be subject to the exclusive jurisdiction of the state and federal courts located in the Borough of Manhattan, New York, New York. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement. This choice of jurisdiction and venue does not prevent either party from seeking injunctive relief in connection with any breach or threatened breach of this Agreement or enforcement or recognition of any award or order in any appropriate jurisdiction. In addition, the parties agree that they may only bring claims against the other in their individual capacities and not as a plaintiff, class representative or member in any purported class or representative proceeding. The parties hereby agree that each is waiving all respective rights to a trial by jury regarding any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Software. Any claim by either party arising out of or related to this Agreement must be brought no later than two (2) years after it has accrued. If Spanning commences litigation in connection with this Agreement, it will be entitled to recover its reasonable attorneys' fees, costs and other expenses.
- 16.8. Government End Users. The Software and Documentation are comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and are provided to any civilian or military branch or agency of the U.S. government in accordance with the policies set forth in 48 C.F.R. 12.212 or 28 C.F.R. 227.7202-1 and 227.7202-3, respectively.
- 16.9. Remedies. Licensee acknowledges that the Software contains valuable trade secrets and proprietary information of Spanning and are protected by applicable intellectual property laws and treaties and by international copyright law and that any actual or threatened breach of the licenses granted herein will (a) constitute infringement or misappropriation of Spanning's intellectual property rights and (b) cause immediate, irreparable harm to Spanning for which monetary damages would be an inadequate remedy and for which injunctive relief is an appropriate remedy, in addition to any other remedy available to Spanning.
- 16.10. Entire Agreement; Severability. Subject to the other terms and conditions of this Agreement, this Agreement



is the entire agreement between Spanning and Licensee regarding Licensee's use of the Software, and supersedes and replaces any previous communications, representations, or agreements, or Licensee's additional or inconsistent terms, whether oral or written. In the event any provision of this Agreement is held invalid or unenforceable the remainder of the Agreement will remain enforceable and unaffected thereby. This Agreement may not be modified nor any rights under it waived, in whole or in part, except in writing, signed by both parties.

- 16.11. Force Majeure. Each party's obligation (other than Licensee's obligation to pay Fees when due) shall be suspended during any period that the party is rendered incapable of performing by virtue of any criminal acts of third parties, war, viruses, acts of public enemies, severe weather conditions, utility failures, strikes or other labor disturbances, fires, floods, other natural disasters, other acts of God, unforeseeable acts of employees, telecommunication or interruption of Internet service, or any causes of like or different kind beyond any reasonable control of the party.
- 16.12. Waiver. The failure of either party to insist in any instance upon any payment or performance when due by the other party, shall not relieve such other party of any of its obligations with respect to such performance, or constitute a waiver of such party's right to insist upon the full and timely performance in the future of any of the other party's obligations under this Agreement.
- 16.13. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original. This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party.

The parties have caused this Agreement to duly authorized, executed and delivered as of the Effective Date.

<b>Licensee</b>	<b>[Spanning Entity]</b>
By:	By:
Name:	Name:
Title:	Title
Effective Date:	