

ESM Software, LLC

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Contact for notices to Licensor: Contact for notices to Licensee:

ESM Software, LLC _____
Attn: Kent Smack _____
55 Old Bedford Road _____
Suite 107 _____
Lincoln, MA 01773 USA _____
ksmack@esmgrp.com _____

10. Dispute Resolution. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by binding arbitration conducted in the English language in Boston, Massachusetts, U.S.A., under the commercial arbitration rules of the American Arbitration Association ("AAA"). The arbitration shall be conducted by a single arbitrator jointly appointed by the Parties; provided, however, that if the Parties cannot agree within thirty (30) days after the initiation of the arbitration, then the arbitrator shall be appointed by the President of the AAA in Boston. The arbitrator shall resolve disputes regarding arbitration procedures. The arbitrator may proceed to an award notwithstanding the failure of the other party to participate in the proceedings. The arbitrator shall be authorized to grant interim relief, including preventing the destruction of goods or documents involved in the dispute, protecting trade secrets and providing for security for a prospective monetary award. In no event shall punitive damages be assessed against either Licensor or Licensee. If a matter

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11. Use of Name. Licensee agrees that Licensor may advertise that Licensee is its client and a user of the Software in press releases and other marketing materials.

12. Governing Law. The laws of the Commonwealth of Massachusetts govern this Agreement without giving effect to principles of conflicts of law.

13. Entire Agreement. This Agreement is the entire Agreement between Parties relating to the Software. This Agreement supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software or any other subject matter covered by this Agreement. This Agreement may be amended or modified only in a written instrument signed by an authorized representative of each party that expressly references this Agreement.

14. General Provisions.

a. No Waiver. Licensor's failure to strictly enforce any term or condition or to exercise any right it may have will not constitute a waiver of its right to strictly enforce these terms and conditions or exercise its rights in the future.

b. Enforceability and Remedies. All rights and remedies that Licensor has are cumulative and are in addition to any other rights and remedies it may have at law or in equity. If any provision of these terms and conditions is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired. These terms and conditions are binding upon, inure to the benefit of, and are enforceable by, the Parties, and our respective heirs, personal representatives, successors and assigns.

c. Counterparts. This Agreement may be executed in two counterparts, each of which when so executed shall be deemed to be an original and both of which when taken together shall constitute one Agreement.