

SCRIPTEL CORPORATION SALES TERMS AND CONDITIONS

Revised February 28, 2018

THESE SALES TERMS ESTABLISH AN AGREEMENT WITH YOU, AND YOU AGREE TO ENTER INTO AND BE BOUND BY THE AGREEMENT UPON THE EARLIER OF: (A) CLICKING THE "ACCEPT" OR "AGREE" BUTTON OR SELECTOR; OR (B) ORDERING, PAYING FOR, RECEIVING OR USING PRODUCTS THAT WE OFFER. THE AGREEMENT IS WITH YOU, AN INDIVIDUAL, IF YOU ARE A SOLE PROPRIETOR OR ACTING IN YOUR INDIVIDUAL CAPACITY, AND THE AGREEMENT IS WITH AN ENTITY IF YOU ARE AN AUTHORIZED REPRESENTATIVE OF THE ENTITY. NOTE: THESE SALES TERMS INCLUDE A WAIVER OF THE RIGHT TO A JURY TRIAL.

These Sales Terms and the terms of any online store, quote, invoice, order confirmation or Acceptance (defined below) provided by Scriptel Corporation ("**Scriptel**") via email, fax, mail or online, (collectively, "**Sales Information**"), together with the [End User License Agreement](#) related to any software provided by Scriptel, constitute the entire agreement (collectively, "**Agreement**") between Customer (defined below) and Scriptel with respect to the products ordered by Customer and delivered to Customer by Scriptel ("**Products**"). The term "**Customer**," as used herein, shall mean: (a) the person who placed the order in the person's individual capacity; or (b) the corporation, company or other entity for which a person placed the order on the entity's behalf. Customer shall be deemed to have accepted, and agreed to, these Sales Terms on the date of the first to occur of the following: ("**Effective Date**"): (i) Customer's or its representative's clicking or activation of the one or more "accept," "agree" or "consent" buttons or selectors presented to Customer in conjunction with these Sales Terms, (ii) Customer's or its representative's placement of an order for the Products, (iii) Customer's payment for the Products, (iv) Customer's receipt of delivery of the Products, or (v) Customer's use of the Products. Scriptel and Customer will be referred to in these Sales Terms collectively as "**Parties**" and separately as a "**Party**." For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Order; Acceptance; Prices.

No order from Customer shall be accepted or binding unless and until Scriptel provides Customer with a written confirmation of Scriptel's acceptance of the order in accordance with terms and conditions set forth in such confirmation ("Acceptance"). The Sales Information may identify the Products and set forth the prices of the Products ("Prices"). Unless otherwise specified in the Acceptance, Prices shall not include: (a) any applicable sales, use, import, export or other taxes; or (b) customs, duties, shipping costs, freight, insurance, container packing or the like, all of which shall be invoiced to and paid by Customer. Pursuant to Section 9.9 below, the Acceptance shall supersede any purchase order terms provided by Customer, which shall be null and void. Scriptel shall have the right to change the Prices without notice, discontinue any Product at any time and decline sales and shipments to Customer; provided, however, that any such acts shall not affect any Acceptance previously issued by Scriptel.

2. Special Production

Orders for special production runs, non-stock items or customized Products (collectively, "Special Production Products") shall be subject to Scriptel's requirements, including, without limitation, minimum quantities and extended delivery times. For Special Production Products, Scriptel reserves the right to over-ship ten percent (10%) or under-ship five percent (5%) of the unit quantity specified in the



Acceptance and invoice Customer accordingly. Orders for Special Production Products shall not be cancellable, refundable or terminated without Scriptel's written consent. Any such consent, which Scriptel may withhold at its sole discretion, shall require Customer to pay a cancellation charge that may vary with the amount of labor, materials and cost incurred by Scriptel as of the date of Customer's cancellation request.

3. Payment.

3.1 Credit Established.

If Scriptel deems Customer to be creditworthy based on historical payments or other factors, Scriptel may provide its written authorization for payment terms of net thirty (30) days or another period from the date of Scriptel's invoice ("Credit Authorization"). Scriptel may communicate the Credit Authorization to Customer by providing an invoice with the authorized payment terms or by providing a [Credit Form](#), which Customer may be required to sign as a condition for fulfilling Customer's order. Scriptel shall have the right to revoke any credit extended to Customer for any business reason, including, without limitation, Customer's non-payments or late payments or an adverse change in Customer's financial condition. In such event, Scriptel shall have the right to revoke the Credit Authorization and suspend further shipments until receipt of adequate assurance of Customer's ability to pay therefore.

3.2 Credit Not Established.

If Scriptel has not provided its Credit Authorization, Customer shall pay the full Price for the Products before Scriptel ships the Products from its location. Regarding Special Production Products, Customer shall pay the full price for such Products before Scriptel will be obligated to design, produce or ship such Products, and the applicable Acceptance shall be conditioned and contingent upon Scriptel's receipt of such advance payment.

3.3 Payment Method.

Unless Scriptel's Acceptance or invoice provides otherwise, Customer may pay Scriptel via check or electronic funds transfer. Use of Visa, MasterCard, Discover Card or American Express is also accepted subject to the addition of credit card processing fees and a maximum transaction limit. Customer shall be responsible for all bank fees charged by the banks of Customer and Scriptel and any intermediate bank in any electronic funds (wire) transfers.

3.4 Invoicing.

Customer shall pay for the Products received in accordance with the payment terms of Scriptel's invoices. Customer shall make any other payments owed by Customer under these Sales Terms (including, without limitation, payment for any inspection or repair fees charged in accordance with these Sales Terms) within thirty (30) days after receiving Scriptel's invoice for such payments. Any invoice not paid when due shall be subject to a late payment charge of one and one-half (1.5%) per month, or if such rate is greater than the maximum rate permitted by applicable law, than at the highest rate allowed by applicable law. In the event the Customer fails to make full payment when due and Scriptel engages an attorney or collection agency to assist in collection of the payment, Customer shall owe and pay all of Scriptel's reasonable cost of collection, including collection agency fees, attorney fees and court costs.

4. Shipment.

4.1 Costs.

All freight, carrier, insurance and shipping-related charges shall be invoiced to, and owed by, Customer or shipped freight collect. Scriptel may apply a handling charge to each package in



addition to the shipping charges. Each shipment shall be considered a separate and independent transaction, and payment therefore shall be made accordingly.

4.2 Shipment Timing; Installment Deliveries.

The Sales Information may set forth an estimated shipment date. Any such date shall represent Scriptel's best estimate, not a guarantee. Scriptel reserves the right to deliver Products in installments. Each such installment shall be separately invoiced and paid for when due, without regard to subsequent deliveries. The delay in delivery of any installment shall not relieve Customer of the obligation to accept the remaining deliveries.

4.3 Shipment Method.

All Products ordered by Customer shall be packaged and shipped to Customer according to the methods and carriers chosen by Scriptel. It is Customer's obligation to provide Scriptel with a prior written request for any special handling related to packaging, carrier selection or destinations. If Scriptel approves any such request, Customer shall pay for all expenses caused by such request, including, without limitation, expenses related to drop shipment arrangements.

4.4 Shipment Risk & Claims.

The shipment of Products shall be deemed accepted in good condition when delivered to the selected carrier. THE ENTIRE RISK OF LOSS AND DAMAGE TO THE PRODUCTS SHALL PASS TO CUSTOMER WHEN CUSTOMER (OR THE SELECTED CARRIER) TAKES POSSESSION OF THE PRODUCTS. Customer shall be responsible for inspecting the Products upon receipt. Customer shall require that any visible damage be noted on Customer's copy of the freight bill. If any Products have been lost or damaged in transit, Customer shall file a written claim with the carrier. Scriptel shall have no responsibility or liability for any such loss or damage. Any quantity shortages, omissions or incorrect items shall be reported in writing to Scriptel within fifteen (15) days of delivery. Claims for shortages, omissions or incorrect items shall not be considered if written notice is not received within such period. Invoicing errors shall be reported in writing within thirty (30) days of delivery. The applicable invoice numbers shall be furnished on all such claims. If Customer fails to report any such invoicing errors within such period, Customer shall be deemed to have accepted the applicable invoice as true and correct.

5. Return Policy.

5.1 First Step.

In the event that Customer is dissatisfied with any Product for any reason and such Product is still in its original, unused condition, Customer may return the Product only in accordance with the steps set forth in this Section. For the first step, Customer shall notify Scriptel of Customer's intention to return a Product, and Customer shall provide such notice within thirty (30) calendar days after such Product is delivered to Customer. If Customer fulfills the first step within such period, Scriptel shall provide a return material authorization ("RMA") number or other return permission to Customer, including an RMA number. Such RMA shall be valid only for forty-five (45) days from the date of issue. If Customer ships a Product to Scriptel without an RMA number, Scriptel shall have the right to decline receipt of such shipment, hold such Product and ship it back to Customer once Customer pays in advance for the cost of such shipment, and dispose of or resale such Product if Customer fails to make such advance payment within ninety (90) days after Scriptel's notice to Customer.

5.2 Second Step.



For the second step, Customer shall ship the undesired Product to Scriptel with shipping insurance for the full Price of the Product, and Customer shall return such Product in its original box and packaging including all components, parts, items and documentation which were part of the original shipment to Customer, together with an RMA number issued by Scriptel. Customer shall mark the RMA number on the shipping package. Customer shall be responsible for properly packaging the Product, paying all shipping costs, and paying any other taxes, fees or charges associated with transporting the Product to Scriptel. CUSTOMER SHALL BE RESPONSIBLE FOR ANY LOSS OR DAMAGE TO THE PRODUCT DURING SHIPMENT TO SCRIPTEL.

5.3 Restocking Fee.

If Scriptel determines that the returned Product is in its original, unused condition, has not been damaged or mistreated, has no signs of use, scratches, wear or tear, and is in condition for resale as new, Scriptel shall refund to Customer, the Price paid for such Product less a restocking fee equal to twenty-five percent (25%) of such Price. For clarity, if Customer's order includes a batch of Product units of the same model, such restocking fee shall apply to each of the Product units within such batch.

6. Support.

6.1 Basic Support.

If Customer has a question, issue or potential defect regarding a Product, Customer may email and phone Scriptel's customer support team composed of software engineers during normal business hours. Scriptel's [Contact webpage](#) provides the phone number, email address and hours of operation. Scriptel shall provide basic support by using commercially reasonable efforts to promptly answer calls and reply to emails within two business hours. Such basic support shall not include assistance related to issues caused by Customer's change in its technology system. If, based on the interaction with Scriptel, Customer alleges a breach of the Warranty (defined in Section 7.2), Customer may: (a) request RapidCare Replacement Support under Section 7.4 below if such support is allocated to the applicable Product; or (b) submit a Warranty Claim in accordance with Section 7.4 below.

6.2 Extended Support.

Scriptel may offer one or more support plans for extended support levels offered to Customers in accordance with a written extended support agreement ("**Extended Support Agreement**"). Any Extended Support Agreement entered into between Scriptel and Customer shall be incorporated into these Sales Terms and part of the Agreement.

7. Warranty.

7.1 Warranty Period.

The warranty period, if any, for each Product shall begin on the date the Product is shipped to Customer and shall end upon the expiration of the warranty period, if any, set forth in the Sales Information or the [Warranty Period webpage](#), which provides a list of the warranty periods for different Products. If the Sales Information and [Warranty Period webpage](#) provide no warranty period for a Product, the warranty period for such Product shall be ninety (90) days. Notwithstanding the foregoing, such warranty periods shall not apply to any claims related to cosmetic or aesthetic defects that do not impair the functionality of the Products ("Cosmetic Defects"). The warranty period for Products with Cosmetic Defects shall be thirty (30) days from the date the applicable Product is shipped to Customer. The term "Warranty Period," as used



herein, shall mean the period of warranty for the applicable Product pursuant to this Section, subject to the foregoing thirty (30) day limit for claims based on Cosmetic Defects.

7.2 Limited Warranty.

Subject to the exclusions and limitations provided in Section 7.3 below, Scriptel warrants that the Products shall be free from defects in materials and workmanship during the Warranty Period (“Warranty”).

7.3 WARRANTY EXCLUSIONS.

THE WARRANTY PROVIDED IN SECTION 7.1 SHALL NOT COVER, AND SCRIPTEL SHALL NOT BE RESPONSIBLE FOR, ANY DAMAGE, MALFUNCTION, DEFICIENCY, SHORTCOMING, LOSS OR LIABILITY CAUSED BY THE FOLLOWING:

- (A) IMPROPER INSTALLATION, SET-UP, TESTING OR TRAINING;
- (B) FAILURE TO PROVIDE A SUITABLE OPERATING ENVIRONMENT;
- (C) MISUSE, ABUSE, VANDALISM, ACCIDENTS, THEFT, FIRE, MISPLACEMENT, EXTERNAL CAUSES, POWER SURGES, PROBLEMS WITH ELECTRICAL POWER, VIRUSES, RECKLESS, WILLFUL, OR INTENTIONAL CONDUCT;
- (D) FAILURE TO USE, MONITOR OR MAINTAIN ANY PRODUCT IN ACCORDANCE WITH: (I) THE APPLICABLE USER’S MANUAL, GUIDE, SPECIFICATIONS OR DOCUMENTATION PROVIDED BY SCRIPTEL (COLLECTIVELY, “PRODUCT DOCUMENTATION”); OR (II) GOOD INDUSTRY PRACTICE;
- (E) USE OF ANY PRODUCT OTHER THAN FOR WHICH SUCH PRODUCT IS DESIGNED;
- (F) MODIFICATION OR DAMAGE OF ANY PRODUCT’S EMBEDDED FIRMWARE OR SOFTWARE DRIVERS BY SOFTWARE APPLICATIONS THAT ARE NOT PROVIDED BY SCRIPTEL;
- (G) ATTACHMENT, REMOVAL OR ALTERATION OF ANY PART OF ANY PRODUCT WITHOUT THE PRIOR WRITTEN CONSENT OF SCRIPTEL;
- (H) UNUSUAL MECHANICAL, PHYSICAL OR ELECTRICAL STRESS;
- (I) EXPOSURE OF ANY PRODUCT TO DIRECT SUNLIGHT, RAIN OR OTHER OUTDOOR ENVIRONMENTAL ELEMENTS;
- (J) EXPOSURE TO LIQUID;
- (K) FAILURE TO PERFORM PREVENTIVE MAINTENANCE;
- (L) IMPERFECTIONS THAT DO NOT MATERIALLY ALTER FUNCTIONALITY;
- (M) ANY SOFTWARE THAT IS NOT SUPPLIED BY SCRIPTEL;
- (N) THE COMBINATION OF ANY PRODUCT WITH ANY SOFTWARE, PRODUCT OR DEVICE NOT SUPPLIED BY SCRIPTEL;
- (O) ANY EQUIPMENT OR COMPONENTS THAT WERE NOT INCLUDED IN ANY PRODUCT AS ORIGINALLY SOLD TO CUSTOMER;
- (P) SERVICES, REPAIRS OR MODIFICATIONS NOT PERFORMED BY SCRIPTEL OR BY A SERVICE PROVIDER AUTHORIZED IN WRITING BY SCRIPTEL;
- (Q) NORMAL WEAR AND TEAR; OR
- (R) ANY PRODUCT FOR WHICH SCRIPTEL’S SERIAL NUMBER IS MISSING, ALTERED OR DEFACED OR IF ANY “WARRANTY VOID IF REMOVED” STICKER IS DAMAGED, MISSING OR SHOWS SIGNS OR TAMPERING.



7.4 Procedures to Obtain Warranty Service.

In the event that any Product has a defect covered by the Warranty, Customer shall comply with this Section 7.4 to qualify for receiving warranty service from Scriptel or its authorized contractor.

7.4.1 To qualify for any claim based on a Cosmetic Defect, Customer must not have put the applicable Product in use, and Customer shall provide a written certification to such effect.

7.4.2 To qualify for Warranty service for any Product: (a) Customer must provide Scriptel with a written claim within the applicable Warranty Period that describes the alleged defect; (b) Scriptel must receive such claim within thirty (30) days after Customer's initial discovery of the alleged defect; (c) Customer shall include in such claim, a detailed description of the symptoms associated with such alleged failure; and (d) if requested by Scriptel, Customer shall provide Scriptel with the opportunity to inspect such Product as installed or to diagnose the alleged defect over the telephone or via exchange of emails with the Customer. The term, "**Warranty Claim**," as used herein, shall mean a written claim provided by Customer in accordance with this Section 7.4.2 or a written confirmation sent from Scriptel to Customer that describes a claim that Customer explained to Scriptel through a telephone call.

7.4.3 Scriptel may then provide an RMA number to Customer. Unless otherwise directed in writing by Scriptel, within thirty (30) days after Scriptel's receipt of the Warranty Claim, Customer shall ship to Scriptel, the alleged defective Product packaged in its original shipping carton or a functional equivalent. Customer shall mark the carton exterior with the RMA number. Subject to Section 7.4.7, Customer shall pay for the shipping expense. Customer shall bear all risk of damage and loss related to the shipping of the Product to Scriptel.

7.4.4 Within a reasonable time after Scriptel's receipt of an alleged defective Product in accordance with this Section 7.4, Scriptel will attempt to verify that the Product qualifies as a failure covered by Warranty. Upon such verification, Scriptel shall, at Scriptel's sole option, either: (a) repair or modify the Product to resolve the defect; (b) replace the Product with a substantially similar product that may be new, refurbished or remanufactured at Scriptel's option; or (c) refund the amount Customer paid for the Product, less depreciation. Replacement parts and products will be new or serviceably used, comparable in function and performance to the original parts or Product. Such modification, repair or replacement shall be at Scriptel's expense. The modified, repaired or replacement Product will still be covered by the Warranty as if it had been purchased at the same time and from the same point of purchase as the original, alleged defective Product. The modified, repaired or replacement Product shall be subject to the original Warranty Period for the defective Product, which shall not be extended or renewed.

7.4.5 If Scriptel is unable to repeat or verify the alleged defect of the Product received from Customer or if Scriptel finds the alleged defective Product to be "not defective" or performing at the levels specified in the Product Documentation, then Scriptel will return the Product to Customer in the same or better condition as received from the Customer; provided, however, that Scriptel may charge a fee for inspecting the Product in which case Scriptel may withhold the return of the Product until receiving Customer's payment of such fee.

7.4.6 Subject to Section 7.4.7, Customer shall bear the full expense and risk of Scriptel's shipment of the original, modified, repaired or replacement Product to Customer.

7.4.7 **RapidCare.** For the purchase of certain Products, Scriptel may provide RapidCare replacement support as indicated in the Sales Information ("**RapidCare Replacement**



Support”). RapidCare is available to the original purchaser of a covered product during the stated RapidCare period, only when purchased through an authorized seller. The [RapidCare webpage](#) identifies the Products that receive RapidCare Replacement Support and the period of coverage. To qualify for RapidCare Replacement Support, Customer shall comply with the procedures and obligations set forth above in this Section 7.4; provided, however, that when Customer submits a Warranty Claim, Scriptel will confer with Customer via phone, email or other remote communication methods to assess the likelihood that the applicable Product is defective. At Customer’s request, regardless of Scriptel’s assessment, Scriptel will ship a comparable, working replacement Product to an address of Customer within the Contiguous United States via overnight shipping method. Scriptel will also provide to Customer a return shipping label and shipping instructions. Within thirty (30) days after Customer’s receipt of the replacement Product, Customer shall ship to Scriptel, the original, alleged defective, Product in its original package or the package of the replacement unit, together with such shipping label in accordance with such shipping instructions. If Scriptel determines that the alleged defective Product has a verifiable defect in breach of the Warranty, Customer shall not owe the costs of shipping the replacement Product or the alleged defective Product. In the event that Scriptel determines that the alleged defective Product is not in breach of the Warranty, Customer shall pay to Scriptel: (a) Scriptel’s standard repair charge or inspection fee for diagnosing the alleged defective Product or repairing damage found that is not a breach of the Warranty; (b) the cost of shipping the replacement Product to Customer; and (c) the cost of shipping the alleged defective Product to Scriptel. In such event, the alleged defective Product shall become the property of Scriptel.

7.5 Revocation of Warranty.

Notwithstanding anything to the contrary in the Agreement, Scriptel shall not be obligated to perform any of the Warranty obligations or other duties provided in Section 7 in the event that Customer has failed to make any payment in accordance with the Agreement, is in default of any payment obligation owed to Scriptel under the Agreement or has breached any term or condition of the Agreement.

7.6 LIMITATIONS OF WARRANTY.

CUSTOMER’S RIGHTS UNDER SECTION 7 OF THESE SALES TERMS SHALL BE THE EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ABOVE, SCRIPTEL (INCLUDING ITS AFFILIATES, CONTRACTORS AND AGENTS AND THEIR RESPECTIVE EMPLOYEES, DIRECTORS AND OFFICERS) HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTY ARISING FROM OR RELATED TO: (A) THE RESULTS (OR LACK THEREOF) OBTAINED THROUGH USE OF THE PRODUCTS OR THE RESULTS OF ANY RECOMMENDATION BY SCRIPTEL OR OTHERWISE; (B) COURSE OF DEALING OR OF PERFORMANCE, CUSTOMER OR USAGE OF TRADE EXCEPT OF TITLE; OR (C) INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. NO EMPLOYEE OF SCRIPTEL OR ANY OTHER PARTY IS AUTHORIZED TO MAKE ANY WARRANTY FOR THE PRODUCTS OTHER THAN THE WARRANTY EXPRESSLY SET FORTH HEREIN. IN NO EVENT SHALL SCRIPTEL BE LIABLE FOR THE COST OF PROCUREMENT OR INSTALLATION OF SUBSTITUTE PRODUCTS OR GOODS. IF APPLICABLE LAW PROHIBITS ANY OF THE DISCLAIMER OF ANY OF ANY SUCH WARRANTY, SUCH WARRANTY SHALL BE LIMITED IN TIME TO THE APPLICABLE WARRANTY PERIOD SET FORTH ABOVE.



8. Disclaimers and Limitation of Liability.

8.1 Costs of Installation and Removal.

In no event shall Scriptel have any liability or obligation with respect to expenses, liabilities or losses associated with the installation or removal of any Product for inspection, testing or redesign occasioned by any breach of Warranty, defect or by repair of any Product or by replacement of any Product with a comparable, equivalent or upgraded Product.

8.2 Use in High Risk Applications.

For any anticipated use of Products in hazardous environments or other applications requiring failsafe performance, such as medical applications (including, without limitation, cardiac pacemakers, defibrillators, electrodes, leads, and programmers, and components therefore), aircraft navigation or communication systems, air traffic control, nuclear facilities or any other application in which the failure of the Products could lead directly to death, personal injury or severe physical or property damage (collectively, "High Risk Applications"), Customer hereby acknowledges and agrees that the Products are manufactured for typical office environment conditions, not for requirements applicable to High Risk Applications. SCRIPTEL HEREBY EXPRESSLY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES OF FITNESS FOR HIGH RISK APPLICATIONS. It is the sole responsibility of persons contemplating High Risk Applications using the Products to comply with all applicable laws, regulations, codes and standards, including, without limitation, the U.S. Federal Food, Drug and Cosmetic Act and the regulations of the Food and Drug Administration or other similar laws.

8.3 NO SPECIAL DAMAGES.

NOTWITHSTANDING ANYTHING IN THESE SALES TERMS OR THE AGREEMENT TO THE CONTRARY, SCRIPTEL SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, LOST PROFITS, LOST DATA OR OTHER CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, HOWSOEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY, LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, LOST DATA, OR CLAIMS OF ANY THIRD-PARTIES.

8.4 LIMITATION OF LIABILITY.

SCRIPTEL'S MAXIMUM LIABILITY TO CUSTOMER RELATED TO ANY CLAIM ARISING FROM OR RELATED TO PRODUCTS, THESE SALES TERMS OR THE AGREEMENT SHALL BE LIMITED TO THE PURCHASE PRICE THAT CUSTOMER PAID TO SCRIPTEL FOR THE PRODUCTS RELATED TO SUCH CLAIM.

9. Miscellaneous.

9.1 Force Majeure.

Scriptel shall not be liable for delay or other failure of performance due to causes beyond its reasonable control, including, without limitation, acts of God, acts of Customer, acts of military or civil authorities, natural disasters, weather, fire or other casualty, strikes, lock-outs, embargoes, epidemic, war, riot, acts of terrorism, delays in transportation, machinery breakdowns, delays of carriers or suppliers, domestic or foreign governmental acts or regulations, or the inability to obtain the necessary shipping space, labor, materials, components or utilities through Scriptel's usual and regular sources at their usual and regular prices (collectively, "Force Majeure Event"). In the event of a Force Majeure Event, unless Scriptel and Customer agree otherwise in writing, the time for delivery of Products shall be deemed extended for a period of sixty (60) days, and



Customer shall extend any letter of credit that is required for the payment. If delivery is not made within such period, the Agreement regarding such Products shall be deemed cancelled and terminated without liability to either party.

9.2 Export Laws and Regulations; Permits and Approvals.

Customer shall obtain and maintain, at its own expense, any United States or non-United States governmental consents, authorizations, approvals, filings, clearances, permits, or licenses required for the export or import any Product.

9.3 Notice.

Customer shall send any legal notice regarding the Agreement to the following address or an updated address, which Scriptel may post at scriptel.com

Scriptel Corporation
2222 Dividend Drive
Columbus, Ohio 43228

9.4 Assignment.

Customer shall not assign the Warranty or any other rights or delegate any obligations under this Agreement without the prior written consent of Scriptel. Any assignment in violation of this Agreement shall be void. Scriptel may assign all or any part of the rights under this Agreement without the consent of Customer to any parent, subsidiary, affiliate, successor in interest or third party through merger, acquisition, contractual assignment or otherwise. The Agreement shall be binding upon the heirs, successors, legal representatives and permitted successors and assigns of the Parties.

9.5 Severability.

If any provision of the Agreement is held invalid or unenforceable by a court of competent jurisdiction, or becomes invalid or unenforceable by operation of law, the remainder of the Agreement shall continue in full force and effect.

9.6 Judicial Modification.

If any provision of the Agreement is deemed unenforceable by a court of law because of its scope in the disclaimer of warranties or liabilities, such court shall have the power to modify such provision, through reductions or limitations thereon or to delete specific words or phrases, and such modified provision shall then be enforceable and shall be enforced under applicable law.

9.7 Reservation of Rights.

Scriptel's delay or failure in enforcing any right or remedy afforded under the Agreement or by law shall not prejudice or operate to waive that right or remedy or any other available right or remedy.

9.8 Amendments.

Changes or modifications to the Agreement (including these Sales Terms and any Sales Information) may be made only in writing and signed by both Parties or agreed upon by the Parties by virtue of: mutual consent evidenced by email exchange between the Parties, or mutual consent conducted online through one or more webpages or online click-to-accept interfaces presented by Scriptel. Scriptel may update the version of these Sales Terms from time to time. To request the version of these Sales Terms in effect as of the Effective Date, Customer may email Scriptel using the email address sales@scriptel.com or interface at Scriptel's Contact webpage.

9.9 Entire Agreement.

The Agreement, including these Sales Terms, the Sales Information, End User License Agreement, Extended Support Agreement and Product Documentation, constitutes the entire agreement



between Scriptel and Customer, and the Agreement supersedes any previous agreements or understandings, whether oral or written. The Agreement expressly excludes and rejects any and all purchase orders, purchase order acknowledgments, and all terms therein. No promise, inducement or agreement not herein expressed has been made to Customer by Scriptel or by anyone acting on Scriptel's behalf except as expressly stated in the Agreement. In the event of a conflict between these Sales Terms and the terms of the End User License Agreement, the terms of the End User License Agreement shall control.

9.10 Dispute Resolution.

9.10.1 Definitions. For the purposes of this Section 9.10:

"Action" means any proceeding in a court of law in connection with, under, or in relation to the Agreement or any Dispute, including, without limitation, any lawsuit, appeal of court decision, appellate process and post-judgment proceeding.

"Affiliate" means, with respect to a Party: (a) any entity that directly or indirectly controls, is controlled by, or is under common control with such Party, and the term, "control," for purposes of this definition, means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of such entity; and (b) the beneficiaries, assignees and successors in interest of such Party and such entity.

"Dispute" means any dispute, controversy or claim in connection with, under, relating to or arising out of: (a) the Agreement, its interpretation, or the breach, termination, applicability or validity of the Agreement; (b) the Products or use thereof; or (c) any other dispute arising out of or relating to the relationship between the Parties.

"Legal Costs" means all fees, expenses and costs, including, without limitation, all court costs, all reasonable attorney fees, all expert witness fees, all accountant fees, and all debt collection fees and costs for debt claims unrelated to personal, family or household debt.

9.10.2 Governing Law; Jurisdiction; Venue.

The Agreement will be governed by and construed in accordance with the laws of the State of Ohio without giving effect to any conflict of laws principles. The Parties hereby irrevocably agree and consent that: (a) the state and federal courts located within Franklin County, Ohio will have the sole and exclusive jurisdiction over any and all Actions; and (b) the venue for any and all Actions will be in Franklin County, Ohio. The Parties hereby waive all claims of immunity from such jurisdiction and venue. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

9.10.3 WAIVER OF RIGHT TO JURY TRIAL.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY AND ALL ACTIONS. THIS WAIVER WILL BE IRREVOCABLE AND PERPETUAL. EACH PARTY UNDERSTANDS AND ACKNOWLEDGES THAT: (A) IN THE ABSENCE OF THIS SECTION, SUCH PARTY WOULD HAVE HAD A RIGHT TO LITIGATE ACTIONS THROUGH A JURY TRIAL; AND (B) THIS WAIVER IS A SUBSTANTIVE TERM BARGAINED BY THE PARTIES AS CONSIDERATION FOR ENTERING INTO THE AGREEMENT.

9.10.4 Legal Costs Awarded to Prevailing Party.

In the event any Action occurs, the prevailing Party shall have the right to recover from the non-prevailing Party, all Legal Costs incurred by the prevailing Party in connection with such Action, including, without limitation, all Legal Costs related to activities occurring before and after the Action is filed or instituted in a court of law, including mediation activities, lawsuit preparation and other pre-lawsuit activities, lawsuit and litigation activities, post-lawsuit activities, and all



settlement and negotiation activities. The non-prevailing Party hereby agrees and consents that the court shall award such Legal Costs to the prevailing Party. Without limiting the factors for evaluating whether a Party ("**Evaluated Party**") has prevailed against the other Party ("**Other Party**"), the Evaluated Party shall be deemed the prevailing Party in an Action if: (a) the Other Party initiated the Action, and the court dismissed at least the complaint portion of the Action; (b) the court dismissed the Action against the Other Party, whether based on the Other Party's voluntary action, the Evaluated Party's action or the court's compulsion; (c) the Other Party agreed to pay a monetary remedy to the Evaluated Party pursuant to a settlement agreement or consent decree entered into by the Parties after the Action was initiated; or (d) if, pursuant to a court judgment, the Evaluated Party received a monetary remedy that is greater than the monetary remedy (if any) received by the Other Party.

9.10.5 Affiliates.

The waivers, consents, covenants and other terms and conditions of this Section 9.10 shall apply to, and be binding upon, the Affiliates of the Parties. To the extent that any Action involves or relates to any Affiliate of either Party, such Party shall cause such Affiliate to: (a) agree to, and be bound by, the terms and conditions of this Section 9.10; and (b) sign any confirmations, certifications or other instruments to affirm such agreement of such Affiliate.

