

SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

UPDATED: December 22, 2022

BY SIGNING AN ORDERING DOCUMENT, CUSTOMER AGREES TO BE BOUND BY THIS SOFTWARE LICENSE AND MAINTENANCE AGREEMENT (THE "LICENSE AGREEMENT"), AS UPDATED FROM TIME TO TIME. THE LICENSE AGREEMENT (INCLUDING ANY APPENDICES, DATA PROCESSING ADDENDUMS) AND THE ORDERING DOCUMENT (COLLECTIVELY, THE "AGREEMENT") GOVERN CUSTOMER'S USE OF THE SOFTWARE AND ANY RELATED DOCUMENTATION AND BLUE YONDER'S PROVISION OF MAINTENANCE, IF PROVIDED. "BLUE YONDER" OR "JDA" MEANS BLUE YONDER, INC. (FORMERLY KNOWN AS JDA SOFTWARE, INC.), A DELAWARE CORPORATION.

TERMS AND CONDITIONS

1. SELECTED DEFINITIONS

- 1.1 "Bundled License" means multiple Software products licensed for one bundled License Fee.
- 1.2 "Data Processing Addendum" means the addendum available at <https://blueyonder.com/knowledge-center/gdpr/new-jda-customer-data-processing-addendum> which sets out additional terms with regard to the processing of personal data in order to meet the requirements of European Data Protection Law (as such term is defined therein).
- 1.3 "Data Protection Loss" means any loss, expense, compensation, fine, penalty, liability, damages or costs arising out of or in connection with Blue Yonder's or Blue Yonder's affiliated companies breach of their respective obligations in the Data Processing Addendum or breach of any other obligations relating to the processing of personal data under this Agreement.
- 1.4 "Documentation" means Blue Yonder's standard user instructions and/or functional specifications embedded within the Software, and any additions, updates, copies, translations, derivations, adaptations or modifications of or to the foregoing, in whole or in part.
- 1.5 "Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- 1.6 "IP Claim" means a claim by a third party against Customer that the Licensed Materials, when used within the scope of the terms set forth under this Agreement, infringes a third-party copyright or trademark, infringes a patent issued in the Territory (as defined in the relevant Ordering Document) or misappropriates a third-party trade secret.
- 1.7 "License Fees" means the fees for the licensing of the Software specified in the Ordering Document.
- 1.8 "License Term" means the license term identified in the Ordering Document.
- 1.9 "Licensed Materials" means the Software and Documentation.
- 1.10 "Maintenance" means the maintenance services, as may be updated by Blue Yonder from time to time, set forth in this Agreement.
- 1.11 "Maintenance Fees" means the fees for Maintenance specified in the Ordering Document.
- 1.12 "Renewal Term" means one or more consecutive 1-year periods following the Initial Term.
- 1.13 "Ordering Document" means any document entered into by the parties that references this Agreement.
- 1.14 "Software" means the Standard Software, Updates and any copies, translations, derivations, adaptations or modifications of or to the foregoing, in whole or in part.
- 1.15 "Standard Software" means the unmodified version of the software, in object code form, identified under an Ordering Document.
- 1.16 "Supported Software" means the Software components for which Customer has purchased, paid for and continues to pay for Maintenance.
- 1.17 "Territory" means the country or countries specified in the Ordering Document.
- 1.18 "Third Party Software" means third party software specified in an Ordering Document that Blue Yonder provides to Customer under license agreements with one or more third parties.

1.19 **“Updates”** means all new releases, programs, temporary fixes or patches to the Software, including any Documentation, that are provided by Blue Yonder when and if they become generally commercially available to its supported customers who are current in paying applicable Maintenance Fees. Updates do not include products, features or modules that are marketed by Blue Yonder for an additional fee.

Capitalized terms used herein and not otherwise defined shall have the meaning indicated on an Ordering Document.

2. SOFTWARE LICENSE

2.1 **Grant of License.** Subject to payment of all License Fees and Customer’s compliance with the terms of this Agreement, Blue Yonder grants Customer a non-exclusive, non-transferable, non-assignable (except as permitted under Section 12.10) limited license to install, access and use the Software and the Documentation licensed under the applicable Ordering Document(s) during the License Term to support Customer’s internal business needs in the Territory.

2.2 **Protection.** Customer shall make reasonable efforts to protect the Licensed Materials from unauthorized copying, distribution, possession, access or use, including with regard to compliance with Section 2.5 below. If Customer becomes aware of any unauthorized copying, distribution, possession, access or use of the Licensed Materials, Customer shall promptly notify Blue Yonder in writing and provide Blue Yonder with complete details of the foregoing, assist Blue Yonder in preventing the recurrence thereof, and cooperate with Blue Yonder in any investigation, action, litigation or proceedings reasonably necessary to protect Blue Yonder’s rights.

2.3 **Copies.** Customer may make a reasonable number of copies of the Software for archival, disaster recovery, and internal testing purposes. Customer may make a reasonable number of copies of the Documentation for its own internal business purposes to support Customer’s license to the Software. No other reproduction rights are granted under this Agreement.

2.4 **Ownership.** The Licensed Materials are licensed and not sold hereunder, and Customer will not have or acquire under or in connection with this Agreement or any Ordering Documents any ownership interest in the Licensed Materials, including any enhancements, derivatives, modifications or adaptations thereto, or in any related Intellectual Property Rights. Blue Yonder and its licensors are and will remain the exclusive owners of all right, title and interest in and to the Licensed Materials, including any Intellectual Property Rights relating thereto. Customer is not receiving and shall not receive any express or implied rights to modify, translate, adapt, or create any derivative works of the Licensed Materials, or any modifications, enhancements, derivatives or alterations thereto, and has no right to commercialize or transfer any Licensed Materials, in whole or in part, except as expressly permitted by this Agreement.

2.5 **Restrictions.** Except as expressly authorized in this Agreement or a Ordering Document, Customer shall not: (i) rent, lease, sublicense, distribute, transfer, encumber, copy, reproduce, display or timeshare the Licensed Materials or any portion thereof; (ii) modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of the Licensed Materials (iii) remove or alter the copyright, patent, or proprietary information legends or notices that appear on or in the Licensed Materials; (iv) distribute, export, sell or otherwise transfer, in whole or in part, the Licensed Materials; (v) allow any third parties to access or use the Licensed Materials without Blue Yonder’s prior written consent; (vi) demonstrate or disclose the Licensed Materials or the results of any testing or bench-marking of same to any third parties without Blue Yonder’s prior written consent; (vii) except where such restriction is prohibited by applicable law, reverse engineer, de-compile, attempt to derive source code (or underlying ideas, algorithms, structure or organization) of or to the Licensed Materials, as applicable, or (viii) bypass or breach any security device or protection used for or contained in the Licensed Materials. Third Party Software included as part of the Software may only be used in conjunction with the Software and pursuant to the Documentation.

3. DELIVERY

Unless physical delivery is specified in the applicable Ordering Document, Blue Yonder will provide Customer with functional access codes that permit Customer to take immediate possession of the Software and Documentation on Customer’s hardware. Delivery will be complete on the date when Blue Yonder first furnishes the functional access codes to Customer for electronic delivery (**“Delivery Date”**).

4. MAINTENANCE

4.1 **Maintenance.** Customer may purchase Maintenance for the fees and on the terms and conditions specified in the applicable Ordering Document. Maintenance consists of: (i) Updates to the Supported Software, when and if they become generally commercially available; (ii) Blue Yonder’s solution line telephone support; (iii) Blue Yonder’s solution line e-mail support; (iv) Blue Yonder applying reasonable commercial efforts to provide corrections of the Supported Software to cause it to substantially conform with the Documentation; (v) future non-English language versions of the Supported Software, when and if they become generally commercially available; and (vi) the option to migrate the Supported Software to other operating platforms then supported by Blue Yonder and generally available to maintenance paying customers, provided that (a) the option to migrate is only available for platforms that are determined by Blue Yonder to be similar in price, features and functionality, and (b) upon migration to a new platform, Customer’s right to use the old platform will terminate and Customer shall return to Blue Yonder, or at Blue Yonder’s option destroy, all copies of such Software on the old platform. Maintenance must be purchased for the total number of licenses of each Software product. Customer may not terminate Maintenance for less than the total number of licenses of each Software product. If Customer purchases Maintenance for a Bundled License, then Customer may terminate Maintenance only for the entire Bundled License and not for any of the individual Software products that comprise the Bundled License. Updates are automatically licensed to Customer under this Agreement if Customer is current in paying Maintenance Fees.

4.2 **Limitations.** Blue Yonder is not obligated to provide Maintenance for (i) Software that has been modified by Customer or a third party; (ii) Software modified by Blue Yonder for Customer, except as agreed to by the parties in an Ordering Document for an additional maintenance fee; (iii) problems resulting from any technology (including any software, hardware, firmware, system or network) or service not specified for Customer's use in the Documentation; (iv) issues which have been addressed in a patch release or temporary fix that Customer has elected not to apply; or (v) problems resulting from Customer's data. Customer acknowledges that to the extent it fails to maintain the Software at the most current Software release made available to Customer the applicable Software may experience incompatibility issues. Compatibility among Blue Yonder products and release levels is provided in the product release notes that are delivered with the Software and in the Software installation guides. Blue Yonder is not responsible for any incompatibility that results from Customer's use of different release levels between different Blue Yonder products.

4.3 **Initial and Renewal Terms; Price Increases.** Subject to payment by Customer of the annual Maintenance Fees, Maintenance will commence on effective date of the applicable Ordering Document and will continue for the duration of the Initial Term. After the Initial Term, during the License Term, Maintenance will automatically renew for successive Renewal Terms, unless either party terminates Maintenance by providing written notice thereof to the other party not less than 90 days' prior to the end of the Initial Term or a Renewal Term, as applicable. Upon expiration of the Initial Term, Blue Yonder may increase the Maintenance Fees no more than once annually. If different Software products are licensed to Customer on different billing cycles, Blue Yonder may consolidate and prorate the Maintenance Fees for the additional products at the time of Customer's purchase of additional Maintenance.

4.4 **Fees; Reinstatement.** Maintenance Fees will be invoiced annually in advance. In the event of non-payment, Blue Yonder may suspend performance of Maintenance in accordance with Section 9.3. If Maintenance is terminated for any reason other than a material breach of the Agreement by Blue Yonder, and Customer thereafter desires to reinstate Maintenance, Blue Yonder may charge Customer a reinstatement fee of up to 150% of the annual Maintenance Fees that would have been due during the period during which Maintenance was not provided.

4.5 **Test Environment.** Customer shall maintain (i) a test environment for the Supported Software and the ability to update the test environment from production when issues occur to enable Blue Yonder to diagnose and research support issues, (ii) remote/VPN access as requested by Blue Yonder to enable Blue Yonder to diagnose and research support issues, and (iii) a Blue Yonder log-on code that will allow Blue Yonder access to Customer's application environment to support both the Customer server and database software. This remote sign-on capability may be used to allow access to Customer's system to enable Blue Yonder to provide diagnostic and problem-solving assistance. The remote sign-on capability may also be used by Blue Yonder's other services, customer support or product development staff to deliver custom enhancements or modifications, if any, to be provided pursuant to a written agreement between Blue Yonder and Customer. Remote access is controlled by Customer who will, where appropriate, authorize Blue Yonder's access to its system and pay any related connectivity charges.

4.6 **Subcontractors.** Blue Yonder may use subcontractors to perform Maintenance. Blue Yonder will require that its subcontractors are bound to confidentiality and (where that subcontractor is also a Sub-Processor as defined in the Data Processing Addendum) data protection obligations that in both cases are substantially similar to Blue Yonder's confidentiality and data protection obligations under this Agreement, and Blue Yonder will be responsible for any breaches of this Agreement by subcontractors.

4.7 **Details of Affiliates and Sub-Processors.** Further information on Blue Yonder's current Affiliates and Sub-Processors is set out in the Data Processing Addendum.

5. SERVICES

5.1 Customer may purchase implementation, consulting, education, cloud, and other services from Blue Yonder pursuant to a separate, signed written services agreement.

6. WARRANTIES; DISCLAIMERS

6.1 **Software Performance Warranty.** Subject to Section 6.4, Blue Yonder warrants to Customer that, for a period of 180 days from the first Delivery Date of the Standard Software (the "Software Warranty Period"), the Standard Software and any Updates made available in respect of that Standard Software during the Software Warranty Period, will substantially conform in all material respects to the Documentation.

6.2 **Anti-Virus Warranty.** Blue Yonder warrants that before it delivers the Software to Customer, it uses generally available tools to protect the Software against malicious code such as viruses, worms, or Trojan horses.

6.3 **Exclusive Remedies.** If Blue Yonder breaches, or is alleged to have breached, the warranty set forth in Section 6.1, provided Customer has notified Blue Yonder promptly in writing of such breach, or alleged breach, during the applicable Software Warranty Period, Blue Yonder may, in its discretion and its expense, take any of the following steps to remedy such breach: (a) repair the Software; (b) replace the Software with functionally equivalent software (which software will, on its replacement of the Software, constitute Software hereunder); or (c) if Blue Yonder is unable to repair or replace the software as set forth in this Section within a commercially reasonable period of time, terminate this Agreement and, provided that Customer fully complies with its post-termination obligations as set forth in Section 8, promptly refund to Customer the License Fees paid for the non-conforming Software. THIS SECTION 6.3 SETS FORTH BLUE YONDER'S ENTIRE OBLIGATION AND LIABILITY FOR ANY BREACH OF THE WARRANTY SET FORTH IN SECTION 6.1. To be eligible to receive the foregoing remedies, Customer must be in compliance with all terms and conditions of this Agreement (including but not limited to the payment of all license fees then due and owing).

6.4 **Exclusions.** The warranty set forth in Section 6.1 does not apply to problems arising out of or relating to: (a) Customer's or a third-party's modification of or damage to the Software or the media on which it is provided; (b) Customer's operation or use of the Software other than as specified in the Documentation; (c) Customer's combination, operation or use of the Software with any technology (including any software, hardware, firmware, system or network) or service not specified for Customer's use in the Documentation; (d) Customer's negligence or abuse of the Software; (e) Customer's failure to promptly install all Updates that Blue Yonder has made available to Customer during the Software Warranty Period; (f) the operation of, or access to, a Customer or a third party system or network; (g) any Third Party Software, beta software, software that Blue Yonder makes available for testing or demonstration purposes, temporary software modules or software for which Blue Yonder does not receive a license fee; (h) Customer's breach of any material provision of this Agreement; or (i) any other circumstances or causes outside of the reasonable control of Blue Yonder (including abnormal physical or electrical stress).

6.5 **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6, NEITHER BLUE YONDER, ITS AFFILIATES NOR ITS LICENSORS MAKE ANY WARRANTY, REPRESENTATION, TERM, CONDITION OR AGREEMENT WITH RESPECT TO THE LICENSED MATERIALS OR MAINTENANCE AND THE LICENSED MATERIALS AND MAINTENANCE ARE PROVIDED 'AS-IS'. BLUE YONDER AND ITS LICENSORS EXPRESSLY DISCLAIM AND EXCLUDE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL IMPLIED AND STATUTORY WARRANTIES (INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE). WITHOUT LIMITING THE FOREGOING, BLUE YONDER MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND THAT THE LICENSED MATERIALS, OR ANY OTHER BLUE YONDER OR THIRD-PARTY GOODS, MAINTENANCE, TECHNOLOGIES OR MATERIALS (INCLUDING BUT NOT LIMITED TO ANY SOFTWARE OR HARDWARE), OR ANY PRODUCTS OR RESULTS OF THE USE OF ANY OF THEM, WILL MEET CUSTOMER'S OR OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, MAINTENANCE, TECHNOLOGIES OR MATERIALS (INCLUDING BUT NOT LIMITED TO ANY SOFTWARE, HARDWARE, SYSTEM OR NETWORK), OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH THIRD-PARTY MATERIALS.

7. INDEMNIFICATION

7.1 **Indemnity by Blue Yonder.** Blue Yonder shall defend Customer against or, subject to Section 7.5, settle any IP Claim and shall indemnify Customer for any damages, reasonable and verifiable costs and expenses (including reasonable legal fees) finally awarded against Customer by a court of competent jurisdiction (or settlements agreed to in writing by Blue Yonder) which are directly attributable to such IP Claim.

7.2 **Exclusive Remedies.** In the event of an IP Claim or Blue Yonder believes that an IP Claim is likely, Blue Yonder, in its discretion, may: (i) obtain for Customer the right to continue using the Licensed Materials; (ii) replace or modify the affected Licensed Materials so that they become non-infringing while giving substantially equivalent functionality; or (iii) if such remedies are not reasonably available, terminate the license for the affected portion of the Licensed Materials and require Customer to return such affected portion of the Licensed Materials, whereupon Blue Yonder will refund any prepaid License Fees after an appropriate deduction using a monthly straight-line depreciation over a thirty-six (36) month period based on Customer's first Delivery Date of the Licensed Materials and the date of removal of such affected Licensed Materials by Customer. CUSTOMER HEREBY AGREES THAT THIS SECTION 7.2 TOGETHER WITH THE INDEMNITY SET OUT IN SECTION 7.1 SETS FORTH BLUE YONDER'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR ANY IP CLAIM.

7.3 **Exclusions.** Blue Yonder is not liable, and will be relieved of its obligation to indemnify Customer under Section 7.1, for IP Claims to the extent the alleged infringement is based on or arises from: (a) Customer's or a third-party's modification of the Licensed Materials; (b) Customer's combination, operation, or use of the Licensed Materials in combination with any technology (including any software, hardware, firmware, system or network) or service not specified for Customer's use in the Documentation, to the extent such infringement would not have occurred but for the combination, operation or use; (c) use of the Licensed Materials not in accordance with the Documentation or in any manner not permitted by this Agreement; (d) Blue Yonder's compliance with Customer's specifications or directions, including, but not limited to, the incorporation of any software or other materials or processes provided by or requested by Customer; (e) Customer's use or possession of other than the then-most current release of the Licensed Materials, on condition that the then-most current release was made available to Customer, to the extent such infringement would have been prevented by Customer's use of the then-most current release; (f) software that Blue Yonder makes available for testing or demonstration purposes, temporary software modules or software for which Blue Yonder does not receive a license fee.

7.4 **Indemnity by Customer.** Customer shall indemnify, defend and hold harmless Blue Yonder against any third party claims or allegations that are based on: (i) Customer's use of the Licensed Materials in violation of this Agreement; (ii) any data, information, software or other materials provided or otherwise made available to Blue Yonder by Customer; or (iii) Blue Yonder's compliance with Customer's specifications or directions, including, but not limited to, the incorporation of any software or other materials or processes provided by or requested by Customer.

7.5 **Indemnity Procedures.** The obligations of each indemnifying party are conditioned upon receiving from the party seeking indemnification: (i) prompt written notice of such claim (but in any event notice in sufficient time for the indemnifying party to file a defense to any proceedings before expiration of any applicable filing deadlines); (ii) the exclusive right to control and direct the investigation,

defense and settlement (if applicable) of such claim; and (iii) all reasonable cooperation of the indemnified party. The indemnified party may participate in the defense of such claim using its own counsel at its own expense. The indemnifying party does not require the indemnified party's consent to settle any claim except where such settlement requires the indemnified party to take or refrain from taking any action that would be materially detrimental to their overall business and reputation (except with respect to use or non-use of the Licensed Materials or use of other material licensed by one party to the other hereunder).

8. TERMINATION; SURVIVAL

8.1 **Term.** The term of this Agreement commences on the applicable Ordering Document and continues indefinitely until terminated in accordance with this Section 8.

8.2 **Termination for Cause.** Either party may terminate this Agreement and any Ordering Documents and other attachments for cause if the other party materially breaches this Agreement and does not cure such breach within 30 days after its receipt of written notice specifying such breach from the non-breaching party. Consent to extend the cure period will not be unreasonably withheld. However, termination of any Maintenance (individually or collectively) will not terminate this Agreement.

8.3 **Termination for Insolvency.** Either party may terminate this Agreement and any Ordering Documents, and other attachments immediately on written notice to the other party at any time if the other party ceases to do business without appointing a successor, becomes unable to pay its debts when due in the ordinary course, becomes or is deemed to be insolvent, has a receiver, manager, administrator, administrative receiver, or similar officer appointed in respect of the whole or any part of its assets or business, enters into any moratorium or suspension of payments proceeding, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or enters into liquidation whether compulsorily or voluntarily.

8.4 **Effect of Termination.** Upon termination or expiration of this Agreement, Customer shall (i) immediately discontinue all use of the Licensed Materials and return to Blue Yonder, or at Blue Yonder's option destroy, all copies of same; and (ii) deliver a letter signed by a duly authorized officer of Customer certifying compliance with the requirements set forth herein.

8.5 **No Prejudice to Other Rights.** Termination of this Agreement is without prejudice to any rights either party has against the other party, including but not limited to injunctive relief, and termination will not relieve either party of any of its obligations to the other existing at the time of termination, including Customer's obligation to pay all fees and charges that accrued prior to termination.

8.6 **Survival.** The rights and obligations contained in Sections 2.4 (Ownership), 2.5 (Restrictions), 6.5 (Disclaimer of Warranties), 9 (Invoicing and Payment), 10 (Limitations of Liability), 11 (Confidentiality), and 12 (Miscellaneous) shall survive termination of this Agreement.

9. INVOICING AND PAYMENT

9.1 **Invoicing and Payment.** Customer shall pay all fees and costs (without any set-off, counterclaim, deduction or (subject to Section 9.5) withholding) within 30 days of the date of the applicable invoice, or as otherwise required under the applicable Ordering Document. Any payment (except payment subject to a good faith dispute pursuant to Section 9.2 below) not received from Customer by the due date will, at Blue Yonder's discretion, accrue late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

9.2 **Disputes.** Customer may dispute any part of an invoice by: (i) notifying Blue Yonder in writing of such dispute within ten (10) days of the invoice date; (ii) as part of the written notice, describing the nature of the dispute in reasonable detail to allow Blue Yonder to analyze the dispute; (iii) only making such dispute in good faith; and (iv) paying all undisputed amounts when due, and for the amounts in dispute, promptly after resolution of such dispute.

9.3 **Suspension of Maintenance.** If Customer's account is more than thirty (30) days past due (except with respect to fees subject to a good faith dispute pursuant to Section 9.2), in addition to any other rights or remedies Blue Yonder may have under this Agreement or by law, Blue Yonder reserves the right to immediately suspend performance of Maintenance (in whole or in part), without liability to Blue Yonder.

9.4 **Taxes.** All amounts payable to Blue Yonder are exclusive of any sales or use taxes, value added tax (VAT), goods and services tax (GST), service tax or any and all similar taxes or legally imposed fees, duties or contributions based on such amounts payable, all of which shall be the sole responsibility of Customer whether due now or subsequently imposed by any jurisdiction. Applicable taxes for License Fees and Maintenance Fees will be calculated based on the Delivery Address. Customer is not responsible for any taxes based upon the net income of Blue Yonder or its employees unless agreed to elsewhere in this Agreement or subsequent Ordering Document.

9.5 **Withholding Taxes.** If Customer is required to withhold income tax on any payments due under this Agreement, it shall promptly provide Blue Yonder with the official receipt of payment of these taxes to the appropriate taxing authority. Customer shall withhold only to the extent legally required under existing tax laws of Customer's legal country of domicile and after full consideration of applicable income tax treaty provisions, if any, by and between Customer's and Blue Yonder's respective legal countries of domicile. If tax is withheld and Customer does not submit a tax certificate to Blue Yonder within thirty (30) days after the payment due date, Customer shall immediately remit full payment for the outstanding amount to Blue Yonder.

10. LIMITATIONS OF LIABILITY

10.1 **General Liability Cap.** EXCEPT FOR (A) FEES PAYABLE BY CUSTOMER UNDER THIS AGREEMENT, (B) DAMAGES ARISING OUT OF OR RELATING TO CUSTOMER'S BREACH OF SECTION 2 ("SOFTWARE LICENSE") OF THIS AGREEMENT, (C) DAMAGES ARISING OUT OF OR RELATING TO A PARTY'S BREACH OF SECTION 11 ("CONFIDENTIALITY") OF THIS AGREEMENT, (D) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 7 OR (E) DATA PROTECTION LOSSES (WHICH ARE SUBJECT TO SECTION 10.2 BELOW), TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE CUMULATIVE, AGGREGATE LIABILITY OF EITHER PARTY AND THEIR RESPECTIVE AFFILIATES FOR ALL CLAIMS OR LOSSES ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING ALL SCHEDULES, THE DATA PROCESSING ADDENDUM AND STATEMENTS OF WORK) ARE LIMITED TO (i) IN THE CASE OF STANDARD SOFTWARE, THE AMOUNTS PAID OR PAYABLE BY CUSTOMER FOR THE STANDARD SOFTWARE GIVING RISE TO THE CLAIM, OR (ii) IN THE CASE OF MAINTENANCE, THE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE TO BLUE YONDER FOR THE MAINTENANCE GIVING RISE TO THE CLAIM IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

10.2 **Data Protection Losses Liability Cap.** IN NO EVENT WILL BLUE YONDER OR ITS AFFILIATED COMPANIES AGGREGATE LIABILITY IN RESPECT OF DATA PROTECTION LOSSES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ALL SCHEDULES, THE DATA PROCESSING ADDENDUM AND STATEMENTS OF WORK), EXCEED 150% OF THE FEES PAID OR PAYABLE BY CUSTOMER IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM (OR IF NO FEES HAVE BEEN PAID OR PAYABLE IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT, THEN 150% OF THE FEES PAID OR PAYABLE IN THE MOST RECENT 12-MONTH PERIOD WHERE ANY FEES WERE PAID OR PAYABLE). TO THE EXTENT THAT ANY BREACH OF SECTION 11 OF THIS AGREEMENT RELATES TO THE PROCESSING OF ANY PERSONAL DATA, THEN THE CAP IN THIS SECTION 10.2 APPLIES.

10.3 **Damages Waiver.** EXCEPT FOR (A) FEES PAYABLE BY CUSTOMER UNDER THIS AGREEMENT, (B) DAMAGES ARISING OUT OF OR RELATING TO CUSTOMER'S BREACH OF SECTION 2 ("SOFTWARE LICENSE") OF THIS AGREEMENT, (C) DAMAGES ARISING OUT OF OR RELATING TO A PARTY'S BREACH OF SECTION 11 ("CONFIDENTIALITY") OF THIS AGREEMENT, OR (D) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 7, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER PARTY (OR THEIR RESPECTIVE AFFILIATES) IS LIABLE FOR ANY LOST PROFITS, LOST REVENUE, LOSS OF DATA OR COSTS OF RECREATING DATA, OR THE COST OF ANY SUBSTITUTE EQUIPMENT OR SOFTWARE (IN EACH CASE WHETHER DIRECT OR INDIRECT IN NATURE) OR FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES ARISING IN ANY WAY OUT OF THE USE OF THE LICENSED MATERIALS, OR ANY MAINTENANCE OR THIS AGREEMENT REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND EVEN IF A PARTY IS INFORMED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES IN ADVANCE.

10.4 IN ALL CASES, CUSTOMER'S EXCLUSIVE REMEDIES ARE SET FORTH IN THIS AGREEMENT. BOTH CUSTOMER AND BLUE YONDER HEREBY AGREE THAT THE FOREGOING LIMITATIONS AND WAIVERS SET FORTH IN THIS SECTION 10 APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. Further, any right of action, proceeding or claim permitted under or in connection with this Agreement and not brought within 24 months after the occurrence of the act, omission or event first giving rise to the liability is irrevocably waived.

11. CONFIDENTIALITY

11.1 **Definition.** As used in this Agreement, "**Confidential Information**" means all confidential or proprietary information belonging to either party hereto and disclosed, made available to or learned by the other party during the term of this Agreement, including, without limitation, technical, business, financial, marketing or other information of every kind or nature (including, without limitation, trade secrets, know-how and information relating to the technology, software, designs, specifications and prototypes, customers, business plans, promotional and marketing activities, finances and other business affairs of such party), third party confidential information, and, with respect to Blue Yonder, the Licensed Materials and the terms and conditions of this Agreement (including but not limited to pricing).

11.2 **Exclusions.** Confidential Information does not include any information that (i) is or becomes generally available to the public through no improper action or inaction by the receiving party or any affiliate, agent, consultant or employee of the receiving party; (ii) was properly in the receiving party's possession or properly known by it, without restriction, prior to receipt from the disclosing party; (iii) was rightfully disclosed to the receiving party by a third party without restriction; or (iv) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.

11.3 **Confidentiality Obligations.** Subject to the terms of this Agreement, each party shall (i) hold in strict confidence all Confidential Information of the other party, (ii) use the Confidential Information solely to perform its obligations or exercise its rights under this Agreement, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any person or entity other than to its directors, officers, employees, consultants, subcontractors, auditors, and legal and financial advisors of such party ("**Representatives**") who need to know such Confidential Information and who are under confidentiality obligations at least as restrictive as the terms of this Agreement. Each party is responsible for any breaches of this Agreement by its Representatives. Except as otherwise expressly provided in this Agreement, neither party shall use or disclose the Confidential Information of the other party without the prior written consent of the disclosing party. Each party shall use the same degree of care to protect the disclosing party's Confidential Information as it uses to protect its own Confidential Information, but in no circumstances less than reasonable care.

11.4 **Permitted Disclosures.** The receiving party may disclose the Confidential Information of the other party in response to a valid court order, subpoena, civil investigative demand, law, rule, regulation (including, without limitation, any securities exchange regulation), or other governmental action, provided that (i) to the extent permitted by applicable law or regulation, the disclosing party is notified in writing prior to disclosure of the information, (ii) the receiving party uses reasonable efforts to obtain a protective order or, in the absence of a protective order, to limit the disclosure of the Confidential Information and to obtain confidential treatment thereof, and (iii) the receiving party has allowed the disclosing party to participate in the proceeding that requires the disclosure.

11.5 **Ownership.** As between the parties, the parties agree that the Confidential Information of the disclosing party is, and will remain, the property of the disclosing party. The receiving party obtains no right, title, interest, or license in or to any of the Confidential Information of the disclosing party except for the rights expressly set forth in this Agreement.

11.6 **Suggestions.** Customer may from time to time provide suggestions, enhancement requests, recommendations or other feedback ("**Suggestions**") to Blue Yonder with respect to the Software and/or Maintenance. Both parties agree that all Suggestions are and shall be given entirely voluntarily. Suggestions, even if designated as confidential by Customer, shall not, absent a separate written agreement, create any confidentiality obligation for Blue Yonder. Furthermore, except as otherwise provided herein or in a separate subsequent written agreement between the parties, Blue Yonder shall be free to use, disclose, reproduce, license or otherwise distribute, and exploit the Suggestions provided to it as it sees fit, entirely without obligation or restriction of any kind on account of Intellectual Property Rights or otherwise.

12. MISCELLANEOUS

12.1 **Governing Law.** This Agreement and the rights and obligations of the parties with respect to their relationship under this Agreement are governed by and must be construed and enforced, without reference to its choice of law rules, in accordance with the internal laws of: (a) the State of Arizona, if Customer's place of incorporation or principal place of business is in the United States, or in any region not otherwise specified herein; (b) the laws of England, if Customer's place of business registration or incorporation is in Europe, the Middle East, or Africa; (c) the laws of Singapore, if Customer's place of business registration or incorporation is in Asia Pacific; or (d) the laws of the Province of Ontario and the laws of Canada applicable therein, if Customer's place of business registration or incorporation is in Canada. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act are expressly excluded from this Agreement.

12.2 **Jurisdiction and Venue.** Subject to Section 12.3 below, any dispute, controversy, claim, question or disagreement (a "**Claim**") arising out of or related to this Agreement or the breach thereof: (a) will, if Customer's place of incorporation or principal place of business is in the United States, be brought exclusively in the state and federal courts located in Maricopa County, Arizona, and Customer hereby submits to the personal jurisdiction of such state and federal courts; or (b) will, in all regions other than the United States, be finally resolved by binding arbitration before a single arbitrator under the commercial arbitration rules of the International Chamber of Commerce in effect at the time such Claim is submitted to arbitration. The arbitrator must be a person having experience with and knowledge of the computer software business and such arbitrator will not have any authority to make any ruling, finding or award that does not conform to this Agreement. Judgment upon the award rendered by the arbitrator will be final and binding on all parties and may be entered as a judgment and enforceable by any court of competent jurisdiction.

12.3 **Equitable Relief.** Notwithstanding anything to the contrary contained in Section 12.1: (a) a party may immediately seek equitable relief (without the necessity of posting a bond), including, without limitation, temporary injunctive relief, against the other party in any court of competent jurisdiction with respect to any and all equitable remedies sought in connection with violation of the other party's confidentiality or Intellectual Property Rights arising out of or related to this Agreement; and (b) Blue Yonder, at its option, may pursue any and all remedies available at law and in equity in any court of competent jurisdiction with respect to any claim against Customer for nonpayment.

12.4 **Attorneys' Fees and Costs.** The prevailing party, or if there isn't one, the substantially prevailing party, in any action or proceeding to enforce this Agreement, is entitled to recover from the other party its costs and reasonable attorneys' and expert witness' fees in addition to its damages.

12.5 **Notices.** All notices must be in writing and in English and may be sent by email, except for notices of breach or demands for indemnification, which must be sent by either, certified mail or internationally recognized courier to the address indicated in the relevant Ordering Document or such other address as either party may indicate by at least 10 days' prior written notice to the other party. Notices to Blue Yonder will be addressed to Chief Executive Officer, with a copy to General Counsel at Blue Yonder, Inc., 15059 N. Scottsdale Rd., Scottsdale, AZ 85254.

12.6 **Entire Agreement.** This Agreement, including any appendices, the Data Processing Addendum and Ordering Documents that are incorporated herein by this reference, sets forth the entire understanding and agreement between Customer and Blue Yonder and supersedes all prior and contemporaneous agreements, proposals or communications, in whatever form, between the parties relating to the subject matter of this Agreement, including the licensing of the Licensed Materials and provision of the Maintenance. The parties acknowledge that, except as expressly set out in this Agreement, they are not relying on any prior agreements, proposals or communications, in whatever form. In the event of any conflict or inconsistency between this Agreement and any Ordering Document or appendix the applicable Ordering Document or appendix controls and governs over this Agreement to the extent necessary to resolve the conflict or inconsistency. In the event of any inconsistency between this Agreement and the Data Processing Addendum, the Data Processing Addendum controls and governs over this Agreement (except where this Agreement expressly states an intention to override a specific section of the Data Processing Addendum) to the extent necessary to resolve the conflict or inconsistency. Customer will not

require Blue Yonder or its employees to sign, or otherwise enter into, any additional agreements, addendums or other documents not specifically referenced and incorporated in this Agreement nor require Blue Yonder or its employees to undergo any security or background screening not expressly set forth in this Agreement as a condition of Blue Yonder performing any Services under this Agreement or any related statement of work or change request.

12.7 **Amendment.** This Agreement and each Ordering Document may not be amended, modified, or supplemented orally and may only be amended, modified, or supplemented by a written instrument signed by both parties.

12.8 **Waiver.** Subject to Section 10.4, the delay or failure of either party to enforce any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision.

12.9 **Severability.** If any provision in this Agreement is invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain in full force and effect.

12.10 **Assignment; Successors and Assigns.** Customer shall not assign (by operation of law or otherwise) any of its rights, obligations, or privileges hereunder without the prior written consent of Blue Yonder, which consent will not be unreasonably withheld. Any attempted assignment in violation of this Section is null and void and of no force or effect. Subject to the foregoing, this Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns. Blue Yonder may assign or sublicense this Agreement, in whole or in part, to any of its affiliates or in connection with a merger (by operation of law or otherwise) or sale or acquisition of all or substantially of its assets or voting securities.

12.11 **Force Majeure.** If the performance of either party is delayed or prevented at any time due to extraordinary circumstances beyond its reasonable control, performance will be excused until such condition no longer exists.

12.12 **Purchase Orders.** Nothing contained in any purchase order, clickwrap agreement, or other document or instrument issued by Customer will in any way modify or add any additional terms or conditions to this Agreement, and any such modified or additional terms or conditions are expressly rejected and excluded from the parties' agreement hereunder.

12.13 **Cooperation.** Each party will reasonably cooperate with the other party in connection with each party's performance under this Agreement. Customer acknowledges that timely providing Blue Yonder with office accommodations, facilities, suitably configured computer products, software (which may include permitting Blue Yonder's remote access to the Supported Software), equipment, assistance, cooperation, and complete and accurate information and data from Customer's officers, agents and employees may be necessary to enable Blue Yonder to perform Maintenance.

12.14 **Independent Contractors.** The relationship between Blue Yonder and Customer will continue to be that of independent contractors. Neither party is the legal representative, agent, joint venturer, partner, employee, or employer of the other party. Neither party has any right, power, or authority under this Agreement to assume or create any obligation on behalf of the other party, or to bind the other party in any respect. Neither party has entered into this Agreement with a corrupt motive to obtain or retain business nor to secure an unfair business advantage and each shall fully comply at all times with all applicable laws.

12.15 **Export.** Customer will not divert Licensed Materials or Services, nor provide services using Licensed Materials or Service, to prohibited locations, end users or end uses. By accepting the terms of this Agreement, Customer acknowledges that the Licensed Materials and Services are subject to U.S. sanctions and export controls, and undertakes all necessary action to prevent Customer, its employees, or contractors using the Licensed Materials or Services from diverting the Licensed Materials or Services contrary to U.S. and/or European Union law. Customer specifically represents and warrants that it will not export, re-export, sell, supply or transfer Blue Yonder products to any country or person to which the United States and/or the European Union has embargoed or restricted the provision of items, including, but not limited to, Cuba, Crimea, Iran, North Korea, or Syria, or to nationals of those countries and locations, or to any other embargoed or restricted destination or person, including those entities that are fifty percent (50%) or more owned or controlled by embargoed or restricted persons. Customer also warrants that it: (a) will not send any of the Licensed Materials or Services to an individual or entity for a prohibited purpose including, without limitation, defense, nuclear, chemical, or biological weapons proliferation or development of missile technology; and (b) upon learning that any of the Licensed Materials or Services were diverted contrary to the obligations in this section, Customer will immediately notify Blue Yonder.

12.16 **U.S. Government Restricted Rights.** The Licensed Materials provided under this Agreement are "commercial items" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as these terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end-users acquire the Software and Documentation with only those rights set forth herein. Owner and licensor is Blue Yonder, Inc., 15059 N. Scottsdale Road, Suite 400, Scottsdale, Arizona 85254.

12.17 **Compliance and Audit Rights.** Once annually, upon ten (10) business days' prior written notice, Blue Yonder may verify Customer's compliance with this Agreement by reviewing Customer's use and deployment of the Software. Either Blue Yonder or an independent public accounting firm reasonably acceptable to both parties will perform the audit during Customer's regular business hours with minimal disruption to Customer's ongoing business operations. Customer shall pay Blue Yonder for any over deployments of the Software disclosed by the audit. License Fees for such over deployments will be invoiced to and paid by Customer at the undiscounted license list price in effect as of the audit completion date ("**List Price**"), unless otherwise mutually agreed. Blue Yonder will bear the costs

of the audit, unless the audit discovers that the List Price value of non-compliant Software deployment exceeds five (5%) percent of the total List price value of Software paid for by Customer, in which case, Customer shall pay the reasonable costs of the audit.

12.18 Publicity; Press Releases. Blue Yonder may on one or more occasions reference Customer in advertisements, brochures, customer lists, presentations, financial reports or other marketing, promotional or related materials. In addition, upon Customer's approval, which approval will not be unreasonably withheld, Blue Yonder may issue a press release (or similar public announcement or communication) publicizing the relationship between Blue Yonder and Customer created by this Agreement.

12.19 Non-Solicitation. During the term of this Agreement and for a period of 12 months after its termination or conclusion, or if a court of competent jurisdiction determines that 12 months is overbroad or unenforceable, for a period of six (6) months after its termination or conclusion (the "**Restricted Period**"), neither Party shall solicit or recruit any employee or contractor of the other Party who, provided services under this Agreement and/or, in connection with his or her performance of work related to this Agreement, learned confidential information about the other Party. Nothing in this Section prevents either Party from hiring an employee or contractor of the other who responds to an advertised job opening directed to the general public, so long as the hiring party does not target the personnel of the other Party for recruitment.

12.20 Data Protection. If, in providing the Maintenance Blue Yonder does have access to any personal data in respect of which the Customer is the data controller and Blue Yonder is the data processor, then the parties agree that the Data Processing Addendum shall govern Blue Yonder's processing of such personal data. Appendix 1 of the Ordering Document sets out the details of the personal data which Blue Yonder processes on the Customer's behalf which is required to meet European Data Protection Laws (as defined in the Data Processing Addendum).

12.21 Personal Information. Customer acknowledges that Blue Yonder will process certain personal data about the Customer and/or its agents, representatives, employees or other related third parties for its own purposes including for the purposes of: (a) processing orders; (b) managing Customer's account with Blue Yonder; and (c) compiling aggregate statistics of the distribution and use of the Software and Maintenance. Customer may request access to and correction of the personal data or exercise any other rights it may have in respect of such personal data. More details on Blue Yonder's data processing activities are set out in its Privacy Notice a current version (as at the Effective Date of the relevant Ordering Document) is available <https://blueyonder.com/privacy-policy>.

12.22 No Chinese Data. Customer warrants that it shall not under or in connection with this Agreement provide or give Blue Yonder access to or request Blue Yonder to process any Chinese Data. For the purpose of this Agreement: (i) "Chinese Data" means any personal information, important data, national core data or any other data as described under Chinese Data Protection Laws; (ii) "Chinese Data Protection Laws" means (1) the Data Security Law of the People's Republic of China, Cybersecurity Law of the People's Republic of China, Personal Information Protection Law of the People's Republic of China; (2) any other cybersecurity, data protection or privacy laws in China as applicable from time to time; (3) regulations, guidance, rules, orders, opinions and other legislative and regulatory documents as applicable from time to time, including without limitation the Cross-Border Data Transfer Safety Evaluation Practice Guide, Practice Guide for Cybersecurity Standards - Technical Specification for the Certification of Cross-Border Processing of Personal Information; and (4) each cybersecurity, data protection or privacy law, and any regulations, guidance, rules, orders, opinions and other legislative and regulatory documents, respectively, as amended, replaced or superseded from time to time; and (iii) "People's Republic of China" or "China" shall exclude Hong Kong SAR, Macau SAR and Taiwan.

12.23 Security. Blue Yonder has implemented, and shall maintain, an internal information security policy. Blue Yonder's information security policy is designed specifically for equipment, networks and systems directly controlled by Blue Yonder (collectively, the "Blue Yonder Network"), and requires Blue Yonder to implement several technical, physical and organizational measures to prevent the unauthorized access to information stored or processed on the Blue Yonder Network. Blue Yonder shall continuously improve its security program by implementing security controls as per its information security policy as it relates to Customer Confidential Information stored and processed on the Blue Yonder Network. Blue Yonder will notify Customer without undue delay of any security breach known to Blue Yonder that directly affects the Customer Confidential Information, and in response to such breach, Blue Yonder will take commercially reasonable efforts to prevent further such breaches.

12.24 Interpretation. In the event of a dispute between the parties, this Agreement will not be construed for or against either party but will be interpreted in a manner consistent with the intent of the parties as evidenced by the terms of this Agreement. Unless otherwise specified, "days" means calendar days.

12.25 Third Party Rights. Except for Blue Yonder's licensors, no third party will be deemed to be an intended or unintended third-party beneficiary of this Agreement.