

TERMS AND CONDITIONS OF SALE

The parties acknowledge that the terms and conditions herein below are an integral part of this Product Sales Agreement ("Agreement"). Customer's acceptance of this Agreement by the issuance of a corresponding purchase order or by the receipt of any payment, partial or in full, shall constitute Customer's acknowledgement that it has read and understands the terms and conditions of this Agreement, and that such terms shall exclusively govern the subject matter of this Agreement, regardless of any varying or additional terms in any Customer documents.

1. USE OF PRODUCTS

Customer shall use the Product, as defined by the product description of the attached quotation, solely for its own purpose. Customer further agrees that it will not, and will not allow any third party to: (a) decompile, disassemble, or otherwise reverse engineer the Product or attempt to reconstruct any trade secret or know-how embodied in or latent to the Product by any means whatsoever; (b) distribute, sell, sublicense, rent, or lease the Product (or any portion thereof) or otherwise make the functionality of the Product available to third parties (except to demonstrate the Product to end users for product research under confidentiality); (c) remove or in any manner alter any product identification, proprietary, trademark, copyright or other notices contained in the Product; (d) reproduce or modify any part of the Product or create a derivative work of any part of the Product, except to the extent expressly authorized in writing by DHX; (e) publicly disseminate performance information or analysis (including, without limitation, benchmarks and performance tests) from any source relating to the Product without prior written approval from DHX; (f) make any commercial use of the Product (other than testing and evaluation of the Product); or (g) use or copy the Product, in whole or in part, except as expressly allowed under this Section 1. DHX and its suppliers reserve all rights not expressly granted by this Section 1.

2. TITLE AND PROPRIETARY RIGHTS. Notwithstanding delivery of the Product or any other provision of these Terms, title to the Product shall not pass to Customer until Seller has received payment in full for the invoiced amount for the Product. Until such time as title in the Product passes to Customer, Customer shall hold the Product as DHX's fiduciary and bailee and shall keep the Product separate from those of Customer and third parties, properly stored, protected and insured and identified as DHX's property; provided Customer shall be entitled to use the Product as provided in Section 1. Nothing contained in this Agreement grants or confers, or will be construed to grant or confer, any rights in or to the Product, expressly or by implication, except for the rights expressly set forth in Section 1. Title to any third-party products included in the Product, or otherwise provided to Customer by DHX ("Third Party Products"), and all intellectual property rights in and to them, are and will remain the exclusive property of the vendors of such Third Party Products.

3. RISK OF LOSS. DHX shall place the Product with the carrier designated by Customer for delivery, and risk of loss of the Product shall transfer to Customer on the Shipment Date.

4. PAYMENT. Customer shall be responsible for and pay, if applicable, (a) all taxes (excluding income taxes) arising out of the sale of the Product, including, without limitation, all federal, state, or local property, license, privilege, sales, use, excise or gross receipts taxes or other like taxes and tariffs, and (b) all fees and expenses incurred by Seller in connection with the delivery of Product. All amounts referenced in this Agreement are denominated and shall be paid in United States Dollars. DHX may charge Customer interest on overdue amounts from the date the amount became due at the lesser of the rate of one and one-half percent (1- 1/2%) per month or the maximum interest rate permitted by applicable law.

5. INDEMNIFICATION. Customer agrees to indemnify, defend and hold harmless DHX and its affiliates, subcontractors, vendors, officers, directors, employees, agents, consultants and representatives (collectively, the "Indemnitees") from and against any and all claims, demands, suits, liabilities, injuries (personal or bodily), causes of action, proceedings, losses, expenses, damages or penalties, including without limitation court costs and reasonable attorneys' fees (collectively, "Claims"), arising or resulting from its use of the Product.

6. LIMITATION OF LIABILITY

6.1. DHX's liability for any and all claims, including, without limitation, claims based in contract, in tort (including but not limited to negligence and strict liability), at law or in equity shall not exceed the

Customer-paid fees for the applicable Products.

- 6.2. DHX shall have no responsibility or liability for equipment, software or services supplied by persons other than DHX or for modifications to any Product made by persons other than DHX personnel.
- 6.3. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY PUNITIVE, INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF DATA, LOSS OF BUSINESS AND LOSS OF PROFITS (OTHER THAN WITH RESPECT TO THE PAYMENTS OWING TO DHX) ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATION OF DAMAGES AND REMEDIES AS PROVIDED IN THIS SECTION 6 CONSTITUTE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND MEASURE OF DAMAGES.
7. WARRANTY DISCLAIMER. THE PRODUCT IS PROVIDED "AS IS" AND ANY USE WILL BE AT CUSTOMER'S SOLE RISK. DHX AND ITS SUPPLIERS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCT INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, INFORMATIONAL CONTENT, SYSTEM INTEGRATION, ENJOYMENT, NONINFRINGEMENT OR ANY OTHER WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE.
8. CONFIDENTIAL INFORMATION. Customer agrees that all works of authorship, computer programs (in both source code and object code forms), know-how, techniques, inventions, discoveries, improvements, secret processes, trade secrets, trademarks, trade dress, copyrights and patentable subject matter, and any and all business, technical and financial information Customer obtains from DHX constitutes DHX confidential property ("Confidential Information"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by Customer to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Notwithstanding any foregoing marking requirements, the Product, technical information and other code or data of any type provided by DHX (or its agents) to Customer will be deemed Confidential Information of DHX without any marking or further designation. Except as expressly authorized herein and in accordance with the Mutual Non-Disclosure Agreement between the parties, incorporated herein by reference, Customer will hold in confidence and not use or disclose any Confidential Information.
9. GENERAL
 - 9.1. *Governing Law.* This Agreement shall be governed by and construed in accordance with the internal laws of the State of Georgia, without regard to conflicts of law principles or the United Nations Convention on Contracts for the International Sale of Goods. Each of the parties irrevocably agrees and consents (a) to the exercise of personal jurisdiction over it by the state or superior courts of the State of Georgia or by the United States District Court for the Northern District of Georgia; and (b) that if it brings an action, such action shall be instituted exclusively in one of the courts specified in (a) above. Service of process provided in accordance with Section 13 below shall be effective and sufficient to establish jurisdiction and venue in such court in any such action.
 - 9.2. *Waiver/Modification.* The failure by a party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. No waiver of any of the provisions of this Agreement will be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. Any waiver, amendment, supplementation or other modification of any provision of this Agreement will be effective only if it is in writing and signed by both parties.
 - 9.3. *Severability.* If any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination will not affect the validity or enforceability of any other provision of this Agreement.
 - 9.4. *Entire Agreement.* This Agreement together with the Mutual Non-Disclosure Agreement represent the entire agreement between the parties hereto concerning the subject matter of this Agreement and supersedes any and all prior or contemporaneous oral or written statements, agreements, correspondence, quotations and negotiations related to the subject matter thereof, entered into by the parties.
 - 9.5. *Compliance with Laws and Regulations.* Customer is responsible for complying with any and all applicable federal, state and local laws, codes, ordinances, rules, regulations, and administrative

orders, including, without limitation, export and import laws, rules and regulations and any and all other product safety laws, rules and regulations. Customer is advised that the Product is of United States origin and subject to the United States Export Administration Regulations; diversion contrary to United States law and regulation is prohibited. Customer agrees not to directly or indirectly export, import, download or transmit the Product to any country, end user or for any use that is prohibited by applicable United States regulation or statute (including but not limited to those countries embargoed from time to time by the United States government). Customer represents that neither the United States Bureau of Industry and Security nor any other governmental agency has issued sanctions against Customer or otherwise suspended, revoked or denied Customer export and/or import privileges. Customer agrees not to use or transfer the Product for any use relating to nuclear, chemical or biological weapons, or missile technology, unless authorized by the United States Government by regulation or specific written license. Additionally, Customer agrees not to directly or indirectly export, import or transmit the Product contrary to the laws or regulations of any other governmental entity that has jurisdiction over such export, import, transmission or use.

- 9.6. *Force Majeure.* Neither party will be liable for any delays or nonperformance resulting from circumstances or causes beyond its reasonable control, including, without limitation, negligent acts or omissions by the other party (including, without limitation, entities or individuals under its control, or any of their respective officers, directors, employees, other personnel, and agents); fire, epidemic or other casualty; act of God; strike or labor dispute; war or other violence; or any law, order, or requirement of any governmental agency or authority.
- 9.7. *Headings.* The headings of Sections of this Agreement are for convenience only and are not to be used in interpreting this Agreement.
- 9.8. *Assignment.* Neither Party shall assign or transfer this Agreement, even in connection with or as a result of any merger, sale, acquisition or dissolution, without the other Party's prior written consent; provided, however, that an assignment or transfer to an entity which is under common control and ownership with the Party making such assignment or transfer shall be deemed accepted upon written notice without the need of the other Party's prior written consent.
- 9.9. *Independent Contractor.* DHX is, and shall act as, an independent contractor and not as an agent or employee of Customer. Neither this Agreement, nor its terms or conditions, shall be construed as creating a partnership, joint venture, agency or franchise relationship between the Parties.
- 9.10. *Notices.* All notices under this Agreement must be in writing and sent by certified mail, postage prepaid, return receipt requested or commercially acceptable overnight delivery service. Notices shall be addressed to the Parties at their respective addresses under this Agreement or at another address as specified in writing by either Party. Notices shall be deemed given upon receipt or refusal.
- 9.11 *Publicity/Marketing.* Each Party will obtain the other Party's prior written consent and approval, which approval shall not be unreasonably withheld, before using the other Party's name, logos or trademarks in any marketing material.