

# LEVIT & JAMES, INC.

## BESTAUTHORITY™ END USER LICENSE AGREEMENT

The following terms and conditions constitute a legal agreement between you (the "**Customer**") and Levit & James, Inc. ("**L&J**"), having offices at P.O. Box 2503, Leesburg, Virginia 20177. By clicking "I Accept" or issuing a purchase order or paying for the Software (the first to occur of such events shall constitute the "**Effective Date**"), Customer agrees to the terms and conditions of this BestAuthority™ End User License Agreement ("**EULA**"). If you do not click "I Accept" or issue a purchase order or pay for the Software, then you are not authorized to and cannot use the Software. The EULA constitutes the entire agreement and understanding between L&J and Customer concerning the subject matter hereof, and cancels, terminates and supersedes all prior written and oral understandings, agreements, proposals, promises and representations of the parties respecting any and all subject matter contained herein. The terms of any Customer purchase order or other ordering document are hereby disclaimed and are of no force or effect.

### GENERAL TERMS AND CONDITIONS

In consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the foregoing and as follows:

**1. Definitions.** Capitalized terms used in the EULA have the meanings ascribed to them in this **Section 1** or elsewhere in the EULA:

"**Customer Staff**" means: (a) the attorneys and employees of Customer; and (b) those agents and independent contractors of Customer who: (i) use the Software and Documentation in relation to business for Customer; and (ii) are made aware of the EULA's Software-related obligations and are bound to abide by such obligations.

"**Documentation**" means all user, operator, technical, support and other materials and information, whether in printed or electronic format, that relate to the Software and are made available by L&J to Customer.

"**Indemnified Parties**" means the party entitled to be indemnified under the terms of **Sections 7.1** or **7.2**, as the case may be, and such party's members, partners, shareholders, directors, of-

ficers, employees, representatives, agents, successors and permitted assigns.

"**Indemnifying Party**" means the party that is required to indemnify the Indemnified Parties under the terms of **Sections 7.1** or **7.2**, as the case may be.

"**L&J Competitor**" means any entity that designs or produces software that competes with L&J's products (Best Authority, CrossWords or Stylizer).

"**Number of Litigators**" means the total number of individuals among the Customer Staff who fit in any one or more of the following categories:

(a) attorneys, including contract attorneys, billing or likely to be billing time on United States litigation matters;

(b) attorneys represented or advertised (e.g., on Customer's website) as available for United States litigation practice;

(c) research or litigation paralegals contributing citations to appellate briefs for United States courts (a paralegal or other non-attorney

who only checks citations or formats documents will not be included in the Number of Litigators); and

(d) individuals who author other documents, such as multi-client research publications, for which a table of authorities is produced.

"**Software**" means: (a) the object code version of L&J's Best Authority table-of-authorities production tool; (b) the object code version of third party software licensed by L&J to Customer; (c) any data tables provided by L&J to Customer; (d) any files contained within the setup kit(s) provided by L&J to Customer; and (e) any updates (including Updates of the type described in **Section 2.5(a)**) to any of the foregoing items (which, in the case of the items described in **subsections (a)** and **(b)**, shall be the object code version of such items).

"**Software License Fees**" means the one-time license fees set forth in L&J's quotation to Customer (which are for the Number of Litigators specified therein) and any additional Software license fees that may become due and payable as provided in **Section 3.3**.

"**Software Subscription Service**" or "SSS" means the arrangement under which L&J supplies its customers with Updates and support as further described in **Section 2.5**.

"**SSS Fees**" means the annual SSS fees (the first annual SSS fees are set forth in L&J's quotation to Customer) and any additional SSS fees that may become due and payable as provided in **Section 3.3**.

## 2. Software and SSS.

### 2.1 *Grant of License.*

(a) **General.** Subject to the terms and conditions set forth in this EULA, L&J grants to Customer a fully paid up (after Customer has paid all applicable Software License Fees), perpetual, non-exclusive, non-transferable (except in connection with a permitted assignment of this EULA as provided in **Section 10.2**) license

for Customer Staff to use the Software and Documentation in the United States for processing documents authored by Customer Staff as part of Customer's law practice. L&J shall provide to Customer a downloadable electronic version of the Software and the Documentation.

(b) **De Minimis Usage.** Customer may make *de minimis* use of the Software for processing documents that are not part of Customer's law practice provided those documents are: (i) authored by partners, members or employees of Customer; and (ii) not part of a regular revenue-generating activity. In addition to legal briefs and other documents to be filed in *pro bono* cases only, such use could include preparation of class assignments for professional training, or occasional contributions to law journals, legal magazines and other publications.

(c) **Registration and Use.** As part of establishing a customer relationship with L&J, Customer is required to provide to L&J a good faith estimate of its Number of Litigators and certain other information. Customer will be provided a "license key," which is a technical mechanism that enables Customer to use the Software in accordance with the terms of the EULA. Customer's receipt of the license key does not result in or constitute the granting of a license to the Software. Customer shall not modify or attempt to disable or avoid any Software feature related to the registration, storage, verification or display of license, serial number, expiration date or other similar information, except as expressly authorized by L&J (for example, through an authorized registration procedure).

(d) **No-Charge Copies.** If this EULA is a contract that initiated a no-charge, limited-term license to use the Software (whether for evaluation, training or other authorized purposes), Customer's right to use the no-charge copy of the Software will terminate on the earliest to occur of: (i) the latest internal expiration date of any license key(s) provided by L&J with the no-charge copy of the Software; and (ii) the date on which Customer and L&J subsequently execute a replacement agreement, which agreement shall supersede this EULA in its entirety.

**2.2 License Restrictions.** Customer shall not: (a) use the Software beyond the permitted use set forth in **Section 2.1**; (b) sell, rent, lease, lend, license, sublicense, distribute or otherwise transfer the Software or Documentation to any third party; (c) decompile, disassemble or reverse engineer the Software, in whole or in part; (d) write or develop any derivative software or any other software program based upon the Software, the Documentation or any other L&J Confidential Information; (e) use the Software to provide processing or other services (other than legal services) to third parties, or otherwise use the Software on a "service bureau" basis; (f) without L&J's prior written consent, provide, disclose, divulge or make available to, or permit use of the Software or Documentation by, any person who is not Customer Staff; or (g) use the Software with the intent of designing, creating or marketing a product that competes with the Software or assisting any third party to do the same.

**2.3 Installation and Copies of Software and Documentation.** To the extent reasonably required to exercise the license rights granted herein, Customer may copy, install and use the Software on any number of computers that Customer owns, rents or leases. Customer may store copies of the Software on storage devices, such as a network server, used to install or run the Software on Customer's other computers over an internal network. Customer may also copy, install and use the Software on any computer that is owned by Customer Staff, provided that Customer shall be responsible for any breach of the terms of this EULA caused by any person who thereby gains access to or use of the Software. Consistent with Customer's normal periodic backup procedures, Customer may make a reasonable number of backup or disaster recovery copies of the Software. Customer shall maintain a log that documents, or other records sufficient for Customer to be able to determine, the location of all originals and copies of the Software. All such copies are subject to the terms of the EULA. Customer may reproduce or copy any portion of the Documentation into machine-readable or printed form for its internal use only, and only as required to exercise its

rights hereunder. Customer shall include, and shall under no circumstances remove, L&J's and its third party licensors' copyright, trademark, service mark, and other proprietary notices on any complete or partial copies of the Software or Documentation in the same form and location as the notice appears on the original work.

**2.4 Certification and Audits.** Once annually, L&J shall have the right to request that Customer certify its compliance with the terms and conditions of the EULA, and to address any particular concerns L&J may express in that request, and Customer shall respond promptly (within (30) thirty calendar days) and in good faith to such requests. In addition, once annually L&J or its authorized representative shall have the right upon reasonable advance notice to audit and inspect Customer's use of the Software during Customer's regular business hours in order to verify compliance with the terms and conditions of the EULA. Without limiting any other available rights and remedies, if the results of any such certification procedure or audit show that Customer's utilization of the Software is not in compliance with the terms and conditions of the EULA, then L&J shall have the right to assess additional Software License Fees and additional SSS Fees (in each case as set forth in **Section 3.3**).

**2.5 Software Subscription Service.**

**(a) General.** For the annual SSS Fees, L&J will provide Customer with general support during L&J's then-current support hours (which are 10:00 a.m. to 6:00 p.m., Eastern time, as of the Effective Date), and may provide, from time to time, fixes, corrections, improvements, enhancements or subscription services (collectively, "**Update(s)**") related to the Software. Any supplemental software code provided to Customer as part of the SSS shall be considered part of the Software and subject to the terms and conditions of the EULA, unless other license terms are provided with the Update.

**(b) Software Versions.** Customer may continue to use the previous version of the Software on Customer's computers after Customer receives an Update. L&J shall continue to

provide advisory assistance for any version of the Software for a minimum of one (1) year after its release; however, Customer acknowledges that some technical issues may be resolved only by installation of more recent versions of the Software.

L&J designates its Software versions with numbers "*M.m.p*", where the first number ("M") signifies the major version, the second number ("m") signifies the minor version, and the third number ("p") signifies the patch level.

While Customer has a current, paid-up SSS, Customer is entitled to receive and use any updated version (including major versions and minor versions) of the product edition it has licensed, and shall additionally be entitled to unlimited telephone support for technical issues during L&J's then-current support hours.

(c) **Expiration and Renewal.** If Customer's SSS expires, Customer shall be entitled to receive and use any updated minor version that was released while its SSS was in effect, and additionally to receive and use any patch-level that was subsequently issued, for any minor version to which it was entitled. If Customer's SSS expires, it shall be entitled to courtesy-level assistance with issues, but will be required to renew its SSS retroactively to the date of expiration before receiving major troubleshooting or implementation assistance, or upgrades beyond those described immediately above.

**2.6 Recommended Equipment Configuration.** L&J provides recommendations for the hardware, operating system and/or third party software versions upon or with which to operate the Software (collectively, the "**Recommended Equipment Configuration**"), a current copy of which is available on L&J's website. Customer acknowledges that the Software may not function as designed if it attempts to operate the Software on a platform that does not comply with the Recommended Equipment Configuration. If Customer's platform is not compliant with the Recommended Equipment Configuration, or if L&J reasonably believes that a problem might be caused by a previously unknown conflict between the Software and Customer's

platform, at L&J's reasonable request, Customer will help L&J troubleshoot the problem by determining whether any malfunction can be reproduced on a platform that is compliant with the Recommended Equipment Configuration, or on a platform that does not include the element(s) or configuration option(s) that L&J believes to be the root cause of the problem. L&J cannot guarantee that third-party software products, or bugs in, patches or service packs for, or new versions of, third-party software products (including Microsoft Windows or Microsoft Office), will not interfere with the functioning of the Software; however L&J will use commercially reasonable efforts to work with the applicable third party vendors to resolve issues caused by such third-party products, bugs, patches, service packs or new versions.

### **3. Fees and Payment Terms.**

**3.1 Software License Fees.** L&J will issue an invoice to Customer on the Effective Date for the Software License Fees set forth in L&J's quotation to Customer, and such invoice shall be due and payable as provided in **Section 3.4**. Invoices for any additional Software License Fees that may become due and payable following the Effective Date shall be payable as provided in **Section 3.4**.

**3.2 SSS Fees.** L&J will issue an invoice to Customer on the Effective Date for the first annual SSS Fees set forth in L&J's quotation to Customer, and such invoice shall be due and payable as provided in **Section 3.4**. Thereafter, L&J may issue an annual *pro forma* invoice to Customer which shall constitute a conditional offer to renew the SSS at L&J's then-current rates, which renewal shall be governed by the terms contained in this EULA unless explicitly specified otherwise in L&J's renewal offer. Customer shall not be obligated to pay such invoice, but Customer's payment of such invoice shall constitute its agreement to renew SSS on the renewal terms offered by L&J. If Customer does not pay the *pro forma* invoice, the SSS shall expire as of the anniversary of the Effective Date.

**3.3 Changes in the Number of Litigators.** Customer shall keep track of its Number of Litigators. For purposes of compliance with the scope of the license granted herein, Customer shall report to L&J the then-existing Number of Litigators: (i) promptly following L&J's annual written inquiry, which shall be made approximately sixty (60) calendar days before each annual anniversary of the Effective Date; and (ii) promptly (not later than thirty (30) calendar days) after the date on which Customer's Number of Litigators exceeds one hundred twenty percent (120%) of the Number of Litigators for which Customer has paid Software License Fees. If Customer's then-existing Number of Litigators has increased above the highest Number of Litigators then licensed by Customer, then L&J shall issue an invoice to Customer for such increased Number of Litigators, and Customer shall pay to L&J additional Software License Fees, calculated as provided below, and additional SSS Fees, pro-rated to co-terminate with any SSS subscription then in effect. Payment of such fees will be due as provided in **Section 3.4**.

Additional Software License Fees will not exceed L&J's then-current list price per litigator, taking into account any volume discount schedules based on Customer's cumulative Number of Litigators. By way of example, if Customer previously purchased a ninety (90)-litigator license, and ten (10) litigators subsequently join Customer, the additional ten (10) litigators each will be charged at the one hundred (100)-litigator rate.

Customer shall not be entitled to a refund of Software License Fees, SSS Fees or any other fees if the actual Number of Litigators decreases below any previously licensed Number of Litigators.

**3.4 Time and Method of Payment.** Except as provided in **Section 3.2**, and unless disputed in good faith as provided in **Section 3.5**, Customer shall pay each L&J invoice within thirty (30) calendar days following Customer's receipt of the invoice. If Customer fails to pay any undisputed invoice by the applicable due date, without limiting any other rights and remedies that may be available to L&J, L&J will have the

right to: (a) assess late charges in an amount equal to the lesser of one and a half percent (1.5%) per month or the maximum allowable under applicable law; and/or (b) if Customer fails to pay Software License Fees and does not cure that failure as provided in **Section 4.2(a)**, terminate Customer's license to use the Software; and/or (c) if Customer fails to pay SSS Fees, suspend SSS until such fees have been paid; and/or (d) if Customer fails to pay SSS Fees and does not cure that failure as provided in **Section 4.2(a)**, terminate SSS. Any such suspension or termination will not relieve Customer of its obligation to pay any outstanding Software License Fees, SSS Fees or other fees plus interest. Customer will be responsible for any costs associated with collecting fees due under the EULA including, without limitation, legal costs, attorneys' fees, court costs and collection agency fees.

**3.5 Disputed Amounts.** Customer may withhold payment of any amount that is disputed in good faith provided a detailed explanation of the basis for such dispute and the amount thereof is communicated to L&J in writing by the original payment due date, and provided further that Customer pays all amounts that are not subject to a good faith dispute on or before their due date. Customer and L&J will use all reasonable efforts to resolve such disputes within fourteen (14) calendar days following L&J's receipt of Customer's dispute notice.

**3.6 Taxes.** Customer will pay or reimburse L&J for all sales, use, transfer, privilege, excise and all other taxes and all duties, whether international, national, state or local, however designated, which are levied or imposed by a governmental authority by reason of the license to the Software to Customer or the performance by L&J of SSS, excluding taxes on L&J's income. If Customer is exempt from sales and use tax, Customer shall provide a copy of the exemption letter to L&J, and in reliance thereon, L&J will not charge any sales tax in connection with the license of Software.

#### **4. Term and Termination.**

**4.1 Term.** The term of the license is perpetual, subject to the termination provisions of the EULA, and the term of the SSS is year-to-year, provided Customer pays the applicable SSS Fees.

**4.2 Termination by L&J.** Upon written notice to Customer, L&J shall have the right to terminate the EULA in its entirety (including Customer's license to use the Software) if: (a) Customer fails to timely pay the full amount of Software License Fees that are due to L&J under the EULA and not subject to a good faith dispute under the terms of **Section 3.5**, provided that Customer has not cured such failure within thirty (30) calendar days following L&J's written notice to Customer of such failure; (b) Customer breaches **Sections 2, 8 or 9** of the EULA, provided that Customer has not cured such breach within ten (10) calendar days of such breach; (c) Customer materially breaches any other term or condition of the EULA, provided such breach is not cured by Customer within thirty (30) calendar days following L&J's written notice to Customer of such breach; or (d) Customer: (i) terminates or suspends its business activities; (ii) becomes insolvent or makes an assignment for the benefit of creditors; or (iii) becomes subject to any Chapter 7 bankruptcy or insolvency proceeding under federal or state statutes. If Customer has fully paid its Software License Fees for the authorized Number of Litigators and Customer fails to pay for SSS, L&J shall have the right to terminate Customer's SSS but not the EULA. In addition to the above, L&J may terminate Customer's demonstration or evaluation license at any time upon written notice to Customer.

**4.3 Termination by Customer for Cause.** Customer shall have the right to terminate the EULA if L&J materially breaches any material term or condition of the EULA, provided such breach is not cured by L&J within forty-five (45) calendar days following Customer's written notice to L&J of such breach.

**4.4 Obligations upon Termination of the EULA.** If the EULA is terminated in its entire-

ty, then: (a) Customer's license rights to the Software shall immediately terminate without further action by L&J; (b) in accordance with **Section 9.6**, Customer shall immediately return to L&J the Software, Documentation and other L&J Confidential Information, or destroy and certify to L&J their destruction; and (c) each party shall otherwise comply with the other terms and conditions of **Section 9.6**.

**4.5 Survival.** The following terms shall survive any termination of the EULA: **Sections 3, 4.4, 5.3, 6, 7, 8, 9 and 10**, and solely in connection with any post-termination claim, suit or proceeding involving or affecting such surviving provisions, all of the terms and conditions of the EULA.

#### **5. Representations and Warranties.**

**5.1 Customer's Representations and Warranties.** Customer represents and warrants to L&J that: (a) Customer has the authority to enter into the EULA and perform its obligations hereunder; (b) Customer has not provided L&J with multiple or fraudulent registration information with the intent of concealing the identity of any user; (c) Customer and Customer Staff will only use the Software in accordance with the terms of the EULA and the Documentation, and only for lawful purposes; and (d) Customer and Customer Staff will not use the Software in a manner that violates any law or intellectual property rights of any third party.

**5.2 L&J's Representations and Warranties.** L&J represents and warrants to Customer that: (a) L&J has the authority to enter into the EULA and perform its obligations hereunder; (b) L&J owns or has the necessary rights to provide the Software to Customer; (c) at the time of delivery of the Software and for a period of ninety (90) calendar days after delivery of the Software, the Software shall function substantially in accordance with the Documentation; and (d) subject to Customer paying for and receiving SSS, and except for any license key(s), usage validation codes, counters and the like that may be embedded in the Software to determine the number of users, the Software shall not contain any virus, worm, trap door, back door, timer, clock or other

computer software code or routines or hardware components designed to disable, damage or impair the operation of the Software ("**Disabling Code**") (a programming "bug" will not be deemed a Disabling Code, even if such bug causes the above effect(s)); and (e) all services shall be performed in a workmanlike and professional manner by employees of L&J having a level of skill, training and expertise commensurate with the requirements of the EULA. In the event of a breach of the warranties in **subsections (c) or (d)** above, L&J shall use its commercially reasonable efforts to correct the applicable defect, provided L&J receives prompt written notice from Customer after the non-conformance is known, but in no event more than thirty (30) calendar days from the date of such non-compliance. If L&J fails or is unable to correct a defect, L&J will refund the Software License Fees to Customer, and Customer will return the Software to L&J. The preceding two (2) sentences set forth L&J's sole and exclusive liability and obligations, and Customer's sole and exclusive remedies, in the event of a breach of **subsections (c) or (d)** above.

### **5.3 Disclaimer.**

**(a) General.** EXCEPT FOR THE WARRANTIES PROVIDED IN SECTION 5.2, L&J AND ITS AFFILIATES, SUBCONTRACTORS AND THIRD PARTY LICENSORS MAKE NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING OR RELATING TO ANY OF THE SOFTWARE OR SERVICES PROVIDED TO CUSTOMER UNDER THE EULA.

**(b) Implied Warranties.** L&J SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. L&J DOES NOT GUARANTEE THAT CUSTOMER'S USE OF THE SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE OR SECURE.

**6. Limitations on Liability.** EXCEPT FOR CLAIMS INVOLVING THE PARTIES' INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 7.1 AND 7.2, AND EXCEPT FOR CLAIMS INVOLVING CUSTOMER'S VIOLATION OF L&J'S INTELLECTUAL PROPERTY RIGHTS AND/OR FAILURE TO COMPLY WITH THE LICENSE RESTRICTIONS SET FORTH IN SECTIONS 2.1, 2.2 AND/OR 2.3 OF THE EULA: (A) NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND IN CONNECTION WITH THIS EULA INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION, LOSS OR CORRUPTION OF DATA OR SOFTWARE, OR LOST PROFITS, WHETHER ALLEGED AS A BREACH OF CONTRACT, TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, OR OTHERWISE, EVEN IF THE BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (B) EACH PARTY'S MAXIMUM LIABILITY SHALL NOT EXCEED A DOLLAR AMOUNT THAT IS EQUAL TO THE AMOUNT OF SOFTWARE FEES PAID PLUS THE AMOUNT OF UNPAID SOFTWARE FEES PAYABLE BY CUSTOMER TO L&J UNDER THE EULA.

### **7. Indemnification.**

**7.1 L&J's Indemnification Obligations.** Subject to the limitations set forth herein and the requirements set forth in **Section 7.3**, L&J shall defend the Customer Indemnified Parties, and shall indemnify the Customer Indemnified Parties from and against any damages finally awarded against them by a court of competent jurisdiction or amounts agreed to be L&J in connection with any settlement, to the extent based on a third-party claim that both: (a) is asserted and enforceable in the United States; and (b) alleges that the Software directly infringes upon, or constitutes a misappropriation of, such third party's patent, copyright, trade secret or other intellectual property right. If such a

claim is made, at its sole option and expense, L&J shall: (a) procure for Customer the right to continue to use the Software; or (b) modify or replace the Software or infringing part thereof with a substantially functional equivalent; or (c) repurchase (based on the Software License Fees actually paid by Customer) the affected Software licenses less depreciation at the rate of twenty percent (20%) for each year (appropriately pro-rated for a partial year) from the Effective Date to the date the affected Software is returned to L&J. If L&J provides a no-cost update or upgrade to the Software that makes the Software non-infringing, Customer shall implement such update or upgrade, and failure to do so shall terminate L&J's obligations under this **Section 7.1**. Notwithstanding any contrary terms that may be contained in this **Section 7.1**, L&J shall have no obligations under this Section to the extent any claim is based upon or arises out of: (d) use of the Software in combination with any software other than the Software licensed by L&J to Customer; or (e) modifications or configurations made to the Software or the operation thereof by anyone other than L&J. This Section sets forth L&J's entire obligation and liability, and Customer's sole and exclusive remedy, with regard to claims of the type described herein.

**7.2 Customer's Indemnification Obligations.** Subject to the requirements set forth in **Section 7.3**, Customer shall defend the L&J Indemnified Parties, and shall indemnify the L&J Indemnified Parties from and against any damages finally awarded against them by a court of competent jurisdiction or amounts agreed to by Customer in connection with any settlement, to the extent based on a third-party claim that arises out of or relates to Customer's failure to comply with the terms set forth in **Section 2** of this EULA.

**7.3 Indemnification Procedures; Settlement Limitations.** Promptly after receiving notice of a third-party claim in respect of which the Indemnified Party will seek indemnification, the Indemnified Party must notify the Indemnifying Party of such third-party claim in writing. The Indemnifying Party must be given immediate and complete control over the defense and/or settlement of the claim, and the Indemnified Parties

must provide reasonable cooperation and assistance in the defense and/or settlement of the claim and must not prejudice the Indemnifying Party's defense and/or settlement of the claim. Notwithstanding any contrary terms that may be contained in this **Section 7**, the terms of any settlement entered into by the Indemnifying Party shall not include an acknowledgment of guilt or fault by, or contemplate the entry of an adverse judgment against, the Indemnified Parties without their written consent, which consent shall not be unreasonably withheld.

**8. L&J's Proprietary Rights.** All L&J materials including, without limitation, the Software, the Documentation, any other computer software, data or information developed or provided by L&J under the EULA, and any ideas, know-how, inventions, methodologies, equipment or processes conceived or developed by L&J, or used by L&J to provide the Software, or other deliverables or services under the EULA including, without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights related to such materials (collectively, the "**L&J Materials**") shall, as between L&J and Customer, be and remain the sole and exclusive property of L&J. To the extent, if any, that ownership of L&J Materials does not automatically vest in L&J by virtue of the EULA, Customer hereby transfers and assigns to L&J all rights, title and interest Customer may have in and to L&J Materials and agrees to execute any and all documents that L&J may reasonably request in connection therewith.

## **9. Confidential Information.**

**9.1 Definition.** "**Confidential Information**" means the Software, the L&J Materials, the Documentation, any Customer documents sent to L&J through the Secure Channel or stored in the Secure Store, and any other materials marked confidential or proprietary by Customer or L&J. Notwithstanding the foregoing, Confidential Information does not include materials or information that are: (a) publicly available through no fault of the recipient; (b) already in the recipient's possession at the time of disclosure and not subject to a confidentiality obligation; (c)

obtained by the recipient from another source without an obligation of confidentiality; or (d) independently developed by the recipient without reference to the discloser's Confidential Information.

**9.2 EULA Terms.** Each party shall treat the terms and conditions, but not the existence or general nature, of this EULA as Confidential Information; however, each party may disclose the terms and conditions of this EULA: (a) in accordance with the terms of **Section 9.3(c)**; (b) to legal counsel of the parties; (c) in confidence to accountants, banks, financing sources and other similar advisors; (d) in connection with the enforcement of this EULA or rights under this EULA; (e) in confidence, in connection with any actual or prospective merger, acquisition or similar transaction.

**9.3 Uses and Disclosures.** The party that receives Confidential Information (the "recipient"):

(a) shall use the Confidential Information of the party that discloses Confidential Information (the "discloser") solely in connection with the parties' business relationship and not for any other purpose;

(b) without the prior written consent of the discloser, shall not disclose the discloser's Confidential Information except: (i) to the employees of the recipient, and in the case of Customer, to Customer Staff (subject to the requirements set forth in the following **subsection (ii)**, when applicable); (ii) to those of the recipient's contractors who or that are: (A) a party to written confidentiality obligations with the recipient that are at least as stringent as the confidentiality obligations set forth in the EULA and that include within scope of confidential information thereunder the Confidential Information to be disclosed, except that no document sent through the Secure Channel or stored in the Secure Store shall be disclosed by L&J to any of its contractors without the prior written consent of Customer; and (B) in the case of Customer's contractors, not an L&J Competitor; or

(c) may disclose the discloser's Confidential Information in response to a court order or other similar process, or otherwise as required by applicable law or regulation, provided that to the extent reasonably possible, the recipient must first provide the discloser with reasonable prior written notice of any such disclosure request so that the discloser may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of the EULA.

**9.4 Standard of Care.** The recipient will use reasonable precautions to safeguard the confidentiality of the discloser's Confidential Information, which precautions minimally must equal those taken by the recipient to protect its own Confidential Information of a like kind.

**9.5 Secure Channel and Secure Store.** L&J offers technical measures for Customer documents that require extra measures of security and/or that, as provided in **Section 9.6**, must be returned or destroyed upon termination of the EULA or upon Customer's request. Customer must adhere to the requirements set forth in **Exhibit A** if it wants to take advantage of such extra measures of security; however, if Customer wants to use the Secure Store (defined in **Exhibit A**) for large numbers of documents, L&J reserves the right to charge Customer additional fees for such use (which fees shall be agreed to by the parties in advance). L&J will in good faith consider any Customer request that L&J implement security measures that are in addition to those described in this Section; however, L&J reserves the right to charge additional fees in connection therewith (which fees shall be agreed to by the parties in advance).

**9.6 Return or Destruction of Confidential Information.** Upon termination of the EULA or at the earlier request of Customer: (a) L&J will destroy all copies of Customer's documents in the Secure Store; and (b) L&J will use commercially reasonable efforts to return or destroy all copies of any other Customer Confidential Information. The following limitation is agreed as to "commercially reasonable" efforts: copies of information that are on cyclical backup disks will be erased when those disks are cycled for re-use, but copies in permanent archival off-site

storage cannot be erased (however, the latter would not be expected to be mounted for reading in a computer system except briefly in case of a disaster-recovery requirement). Upon any termination of the EULA, Customer shall promptly either return or destroy L&J's Confidential Information and provide certification to L&J that all such Confidential Information has been returned or destroyed, other than that held by Customer in limited-access archival or permanent off-site storage.

## **10. Miscellaneous.**

**10.1 Notices.** Any notice required or permitted to be delivered pursuant to the EULA must be in writing and will be deemed delivered: (a) upon delivery if delivered in person; (b) upon transmission if sent via telecopier (with successful send confirmation) or e-mail (electronic read and return receipt requested), in either case with a written confirmation copy sent via overnight mail; and (c) one (1) business day after deposit with a national overnight courier, in each case: (y) for notices to L&J, at the address listed above in this EULA (as the same may be updated by L&J upon written notice given to Customer in accordance with this **Section 10.1**); or (z) for notices to Customer, the address provided by Customer as reflected in L&J's quotation (as the same may be updated by Customer upon written notice given to L&J in accordance with this **Section 10.1**).

**10.2 Assignment.** Upon written notice given to the other party, a party may assign the EULA to an affiliate or to a successor entity by merger, sale or consolidation involving a transfer of all or substantially all of the party's stock, membership interests or assets or, in the case of L&J, upon a sale of all or substantially all of its interests in the Software. Except as provided in the preceding sentence, neither party may assign the EULA without the prior written consent of the other party.

**10.3 Force Majeure.** Except with regard to Customer's payment obligations, neither party shall have any liability to the other party or to third parties for any failure or delay in performing any obligation under the EULA due to cir-

cumstances beyond its reasonable control including, without limitation, acts of God or nature, actions of the government, fires, floods, strikes, civil disturbances or terrorism, or power, communications, satellite or network interruptions, failures or problems.

**10.4 Modifications; Waiver.** Any waiver or modification of the EULA will not be effective unless executed in writing and signed by L&J and Customer. The failure of either party to enforce, or the delay by either party in enforcing, any of its rights under the EULA will not be deemed to be a waiver or modification by such party of any of its rights under the EULA.

**10.5 Severability.** If any provision of the EULA is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other provisions of the EULA.

**10.6 Public Announcements.** Customer grants L&J the right to use Customer's name and/or trade name(s) in product brochures, customer lists and financial reports to indicate that Customer is a customer of L&J and a user of the Software. All other public statements or releases shall require the mutual consent of the parties.

**10.7 Counterparts; Electronic Signatures.** The EULA may be executed in multiple counterparts, each of which will be deemed to be an original and all of which together will constitute one and the same agreement. Counterparts may be executed in either original or electronically transmitted form (*e.g.*, faxed or emailed portable document format (PDF) form), and the parties hereby adopt as original any signatures received in electronically transmitted form.

**10.8 Headings.** The headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

**10.9 Governing Law and Venue.** The EULA will be interpreted and construed in accordance with the laws of the Commonwealth of Virginia without regard to conflict of law principles. **THE PARTIES EACH CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS LOCATED**

**IN LOUDOUN COUNTY, COMMON-WEALTH OF VIRGINIA.**

***10.10 U.S. Government Restricted Rights.*** The Software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c) of the rights in Technical Data and Computer Software clause at DFAR 252.227-7013 and the Commercial Computer

Software Restricted Rights FAR 52.277-19(c)(1) and (2), as applicable. Manufacturer is L&J.

***10.11 Independent Contractor.*** This EULA does not create any relationship of employer/employee, agent/principal or partnership or joint venture between the parties. Neither party may assume, either directly or indirectly, any obligation or liability for the other party.

**EXHIBIT A**  
**SECURE STORE AND SECURE CHANNEL**

***The Secure Store***

L&J maintains a segregated data store (the "***Secure Store***") for documents that require special handling. Documents in the Secure Store are not copied as part of the normal file backup procedures and will not be comingled on backup disks with other files. When a document is placed in the Secure Store, automated or manual procedures will be used to permanently delete any copies from the e-mail servers or other storage areas which are part of the regular backup cycle. As a result, L&J retains the ability to permanently delete all existing copies of such documents.

***The Secure Channel***

L&J has implemented a series of technical measures, the purpose of which is to provide for direct routing to the Secure Store of documents received by L&J from a customer, and the automatic removal of such documents from L&J's e-mail system as soon as they are received. These procedures are referred to collectively as the "***Secure Channel***". If Customer intends to send a document through the Secure Channel, Customer must speak with L&J staff before sending the document so that L&J staff can confirm that the technical procedures are being followed correctly and that the transmission has been properly handled.

If Customer sends documents to L&J by means other than the Secure Channel, and subsequently requests that such documents be moved to the Secure Store, L&J will use commercially reasonable efforts to comply, and to delete any copies that may remain in other active storage locations.