SOFTWARE END USER LICENSE AGREEMENT

This Software End User License Agreement (the "**Agreement**") is a binding agreement between **Anderson Instrument Co., Inc.**, **("Anderson-Negele")** and you, as either individual or entity ("**Customer**").

WHEREAS Customer desires to access one or more of Anderson-Negele's software products and receive services from Anderson-Negele, and Anderson-Negele wishes to grant such access and provide services, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, Customer and Anderson-Negele (each individually is a "Party" and together they are the "Parties") hereby agree as follows:

1.   DEFINITIONS.

Capitalized terms not otherwise defined in this Agreement have the meanings ascribed to them below:

1.1.   "**Affiliates**" means Party and any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a Party hereto.

1.2.   "**Aggregate Data**" means Anonymous Data along with data derived from compiling, combining or incorporating such Anonymous Data with or into other similar data and information available, derived or obtained from other customers, clients, licenses or user of Anderson-Negele.

1.3.   "**Anonymized Data**" is the data or information with all Customer identifiers removed that is transmitted, stored, or processed in any Anderson-Negele Software or System.

1.4.   "**Customer Administrator**" means administrative user of software for Customer who accepts the responsibility of addition and deletion as well as training for customer's users under this Agreement.

1.5.   "**Customer Data**" means all electronic data or information specifically related to and identifiable as the Customer, including data submitted and automatically captured, that is transmitted, stored, or processed in any Anderson-Negele Software or System.

1.6.   "**Customer Locations" or "Plants" or "Sites**" means discrete Customer physical sites owned or operated by Customer from where the System will be used or accessed or where or for which the Services will be performed, as applicable.

1.7.   "**Day**(s)" means calendar day(s) for this Agreement (except when used as part of a proper name, e.g. Memorial Day).

1.8.   "**License Deliverable**(s)" software and services defined in an Order Form or Statement of Work.

1.9.   "**License Period**" means the duration of the license as identified on an accepted Order Form or Statement of Work.

1.10.   "**Order Form**" means the document which contains the details of the System or Software being licensed.

1.11.   "**Services**" means services performed by Anderson-Negele for Customer as set forth in an Order Form or Statement of Work executed by the parties pursuant to the terms and conditions of this Agreement.

1.12.   "**Software**" means the software products identified on an accepted Order Form or Statement of Work executed by the parties, including associated documentation and any upgrades and enhancements. Additional Order Forms or Statements of Work may be executed by the parties from time to time for additional software products. Each executed Order Form or Statement of Work will become a part of this Agreement.

1.13.   "**Statement of Work**" means a document executed by the parties which is subject to the terms in this Agreement and that identifies the Services to be performed; the Units for which the Services will be performed (if applicable), the Fees Customer will pay for the Services, and the estimated duration of the Services.

1.14.   "**System**" means the Software, forms, reports, associated documentation, Anderson-Negele's database, and all software, hardware and systems accessed or utilized by Anderson-Negele, in connection with providing access to Customer under this Agreement.

1.15.   "**Units**" refers to the number of Anderson-Negele hardware device or modules used in conjunction with the Software.

1.16. "**Upgrades and Enhancements**" means code corrections and fixes, updates and new releases to the Software, which are typically identified by changes in the version number to the right of the decimal point, and which are made available by Anderson-Negele generally to all of its customers. Upgrades and Enhancements do not include new optional functionality; net-new functionality or major revision changes to the Software.

1.17. "**Users**" means employees, agents, contractors or equipment suppliers who are authorized by Customer and who have been issued a User ID and password to access and use the System for Customer's internal business.

2. SYSTEM.

2.1. **Grant of Rights.** Subject to the terms and conditions of this Agreement, Anderson-Negele grants to Customer a non-exclusive, non-assignable, non-transferable, limited term right, without the right to sub-license, for the applicable License Period for Users to access, display and use the System remotely via the Internet solely for Customer's internal business purpose(s). Anderson-Negele and its licensors reserve all rights in and to the System not expressly granted to Customer under this Agreement.

2.2. **Restrictions on Use.** Customer will not directly or indirectly (a) reproduce, display, download, modify, create derivative works of or distribute the System, or attempt to reverse engineer, decompile, disassemble or access the source code for the System or any component thereof; (b) use the System, or any component thereof, in the operation of a service bureau to support or process any data of any party other than Customer; (c) permit any party, other than the then-currently authorized Users to access or use the System; (d) transmit the System, in whole or in part, electronically by any means; (e) access the System via any means other than over the Internet using Anderson-Negele's supported technology, a current list of which is available at www.Anderson-Negele.com; (f) access the System or any Anderson-Negele user interface using any automated process or means other than through the use of Anderson-Negele web services; (g) access the System other than through the authorized User ID and password, (h) attempt to circumvent, disable, or otherwise avoid any security elements in the System, (i) use the Service in any way which impedes or disrupts a third party's use of the System, or (j) use the Service in any way which is in violation of this Agreement or any related agreement between the parties. Anderson-Negele reserves the right to include a license key or other means within the System to limit use thereof to the then-currently authorized Users and to enforce the restrictions on use of the System set forth in this Agreement including, without limitation, by disabling access which may be in violation of the Agreement .

2.3. **Authorized Use Only.** Customer is responsible and liable for the acts and omissions of all Users. Customer will implement reasonable controls to ensure that the System is only accessed and used by the then-currently authorized Users. Customer will promptly notify Anderson-Negele of any unauthorized access to or use of the System that becomes known to Customer. Customer will promptly notify Anderson-Negele if a previously authorized user is no longer authorized by Customer to access the System. Customer will take all reasonable steps to ensure that each User's access to and use of the System follows the terms of this Agreement. Customer will be responsible and liable for any breaches by Users and will cooperate with Anderson-Negele in the enforcement of this Agreement against all third-party contractor or equipment supplier Users. Anderson-Negele will have the right to immediately discontinue any User's access to and use of the System if Customer or such User breaches the terms of this Agreement or otherwise impedes or disrupts any third party's use of the System. Where reasonably possible, Anderson-Negele will deliver notice to Customer of the termination of a User's access to and use of the System. Customer shall indemnify and hold harmless Anderson-Negele against any claims, suits, proceedings, expenses, losses, damages or other similar items relating to or arising from its or its Users breaches of this Agreement.

3. SERVICES.

Anderson-Negele will perform the Services pursuant to the applicable Order Form or Statement of Work and this Agreement. Any modification to an executed Order Form or Statement of Work must be approved in writing by the parties and may result in an adjustment to timelines or Fees due.

4. CUSTOMER'S OBLIGATIONS.

Customer will: (a) cooperate with Anderson-Negele on all reasonable requests for information including data, service contract details, and other information important to an effective implementation of the System and performance of the Services; (b) give Anderson-Negele such access to the Customer Locations and site managers as Anderson-Negele may reasonably request upon providing Customer with reasonable notice for the purpose of installing or maintaining the System; (c) allocate one internal employee for a specified period of time to assist in configuring and implementing the System and to ensure proper communication and access to required data; (d) have in place the appropriate browser and other software and hardware for accessing the System (as set forth on *www.Anderson-Negele.com*).

5. **OWNERSHIP.**

Anderson-Negele and its third party licensors retain ownership of all right, title and interest to all copyrights, patents, trademarks, trade secrets and other intellectual property rights in and to all Deliverables, the System, including without limitation the Software, Anderson-Negele's database (and all data therein except for Customer Data), all associated forms, reports and documentation, Upgrades and Enhancements, and all processes, know-how, methodology and the like utilized by or created by Anderson-Negele in performing under this Agreement. The parties also acknowledge and agree that all work product, data, information or otherwise developed in providing the Services or resulting from providing the Services becomes and remains the exclusive property of Anderson-Negele with the exception of Customer Data. Anderson-Negele retains all right, title and interest in and to all methodologies, processes, techniques, ideas, concepts, software, trade secrets, know-how, copyrights, trademarks and other intellectual property rights used by or created by Anderson-Negele in the provision of the Services. Anderson-Negele reserves all rights not granted herein.

6. **CUSTOMER DATA.**

Customer retains ownership of all right, title, and interest in and to the Customer Data. Customer consents to the automated collection of Customer Data and its transmission to and storage by Anderson Negele for use consistent with these terms. Customer grants Anderson-Negele a perpetual, non-exclusive, irrevocable, royalty free license to use the Customer Data to perform its obligations in accordance with the terms of this Agreement and to use Anonymized and Aggregate Data for benchmarking, research, product improvement, data analysis, and other business purposes for Anderson-Negele and its customers. Anderson-Negele will not sell the Customer Data to a third party in either detailed or aggregate form. Customer warrants that it may freely transmit all Customer Data to Anderson-Negele and grant the license described above and has obtained necessary consents and or rights to do so.

7. **DATA SECURITY AND PRIVACY.**

Parties will comply with all applicable privacy and data security laws. Customer hereby consents to the processing of Customer Data by Anderson-Negele, Licensor and the respective agents, contractors, and service providers as described herein. Anderson-Negele reserves the right to aggregate and analyze Customer Data for best practices, technical and commercial reliability and efficacy checks, and possible product enhancements in an anonymized format and to further agree additional data usage and ownership rights with the Customer. The security, privacy and data protection commitment Licensor provides under this Agreement shall only apply to the Licensed Deliverables provided under this Agreement and shall not apply to any services provided by Anderson-Negele or any Anderson-Negele Products. Anderson-Negele shall only disclose Customer Data to law enforcement and other governmental policies to the extent required by law or by order, and if permitted by law, Anderson-Negele must promptly notify the Customer of such requirement or order. Customer shall be responsible for notifying the individual users of the Licensed Deliverables that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities, and Customer shall be responsible for obtaining such users' consents if required.

8. **TERM.**

This Agreement commences on the Effective Date and continues for the initial term and any renewal term(s) for the Software and/or Services specified in an Order Form accepted by Anderson-Negele or mutually executed Statement of Work, as applicable, unless terminated at an earlier date, as set forth below. Any termination of this Agreement terminates all rights to access the System and all obligations to perform Services, regardless of the term specified in the Order Form or Statement of Work.

9. **TERMINATION.**

Either party may terminate this Agreement by written notice to the other party: (a) if the other party materially breaches this Agreement and fails to cure such breach within 30 Days of receiving a written notice of breach from the non-breaching party; (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of any applicable laws; (c) a bankruptcy or other petition is filed, a notice is given, or an order is made, for the winding up of that other party; (d) an application is made to court, or an order is made, for the appointment of an administrator, receiver or trustee, or if an administrator, receiver or trustee is appointed over the other party; (e) a creditor of the other party attaches or takes possession of, the whole or any part of its assets and such attachment or process is not discharged within 14 Days; or (f) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

10. EFFECT OF TERMINATION.

Upon termination or expiration of this Agreement, in addition to the parties' other rights and remedies available at law or equity: (a) Customer will immediately cease use of the System and verify in writing to Anderson-Negele that it has destroyed, permanently erased or returned to Anderson-Negele any portion of Anderson-Negele's Confidential Information in its possession or control (other than information stored in the course of normal backups that is rendered inaccessible); (b) upon Customer's written request, within 30 Days after the effective date of expiration or termination, Anderson-Negele will make available to Customer the Customer Data in a structured format and return or destroy all of Customer's other Confidential Information in Anderson-Negele's possession or control (excluding Customer Data and all data created in accordance with Section 6 or information stored in the course of normal backups that is rendered inaccessible); and (c) all rights granted under this Agreement immediately terminate except for the license set forth in Section 6. Sections 5, 6, 7, 8, 10, 13.3, 14, 15, 16 and 17 survive termination or expiration of this Agreement.

11. SUPPORT SERVICES.

11.1. <u>User Setup</u>. Customer will provide Anderson-Negele with a Customer Administrator. Anderson-Negele will create an initial User ID for the Customer Administrator appointed by Customer. After the initial setup, Customer will setup and manage the additional User accounts.

11.2. <u>Customer Support</u>. Anderson-Negele will provide Customer with help operating the Software and answering general use questions through e-mail (TechService@Anderson-Negele.com). If customer is experiencing hardware issues, contact Anderson-Negele's telephone support number, 800-833-0081 during business hours (8 a.m. to 5 p.m., US Eastern Time, Monday-Friday, except U.S. federal holidays).

11.3. <u>Fault Resolution</u>. If Customer becomes aware of a Critical Fault, Major Fault or a Minor Fault (defined below and together known as "Fault") then Customer will immediately notify Anderson-Negele via the support telephone line or email and provide all of the following information: (a) a clear and full description of the Fault and symptoms; and (b) copies of all relevant supporting documentation in the Customer's possession to include screen shots of any fault codes, page faults, or other clues that may be available, (c) such other information in its possession which may be reasonably requested by Anderson-Negele for the purpose of identifying or addressing the potential Fault. Anderson-Negele is not obligated to correct any Faults related to modifications made by anyone other than Anderson-Negele, including those made by Customer, modifications made by Anderson-Negele at the request of Customer, or improper use by Customer or any third party. Anderson-Negele will respond and escalate its response based on the severity of the Fault. Anderson-Negele will use commercially reasonable efforts to rectify Faults within the resolution times set forth below. Customer acknowledges that these response and resolution times are goals only, and Customer acknowledges that Anderson-Negele cannot commit to resolving every Fault within these timelines. Failure to meet the resolution times below shall not be a breach of this Agreement.

Type of Fault	Response Time After Notification of Fault	Target Resolution Time
Critical Fault – defined as preventing a User from doing her/his designated job task with the System or the System becoming unavailable to any User	2 hours	48 hours
Major Fault – defined as substantially inhibiting a User from doing his/her designated job task with the System.	4 hours	7 Days
Minor Fault – defined as not inhibiting a User type or role from doing his/her designated job task with the System.	Up to 48 hours	Fix within 30 Days or add as request to future development

12. MAINTENANCE SERVICES.

At Anderson-Negele's sole discretion, Anderson-Negele will make Upgrades and Enhancements available in the System as part of maintenance services. New functionality or major revisions to the Software may be available as separate Anderson-Negele products to which Customer can subscribe, when commercially available, for additional Fees.

13. WARRANTIES.

13.1. <u>Service Warranties</u>. Anderson-Negele warrants that any Services provided will be performed in a professional manner and in accordance with generally recognized commercial practices and standards. Customer's sole remedy for Anderson-Negele's breach of this warranty is re-performance of the Services or, at Anderson-Negele's sole discretion, return of amounts paid for Services in breach of this warranty. Anderson-Negele will have no liability for defects or non-conformances resulting from (a) unauthorized, improper or inadequate maintenance or calibration by Customer or any third party; (b) software, hardware, interfacing, or supplies not supplied by Anderson-Negele; (c) Customer's failure to comply with the applicable environmental specifications; or (d) improper site preparation or maintenance by Customer or a third party.

13.2. <u>Limited Software Warranty</u>. Anderson-Negele warrants to Customer that the System utilized by Customer under this Agreement will function substantially in accordance with Anderson-Negele's publicly available specifications for such System. In the event of a breach of the warranty, Anderson-Negele's sole and exclusive responsibility, and Customer's sole and exclusive remedy, is for Anderson-Negele, at Anderson-Negele's sole option, to correct or replace, at no additional charge to Customer, any functionality of the System found to be defective, or terminate Customer's right to use the System and give Customer a refund or credit for the unused Fees actually paid by Customer for the infringing components of the System less an allowance for the period of time Customer has used the System during the Term.

13.3. <u>Warranty Disclaimers</u>. EXCEPT AS EXPRESSLY CONTAINED IN THIS AGREEMENT, ALL WARRANTIES, CONDITIONS AND OTHER TERMS IMPLIED BY STATUTE, COMMON LAW OR IN ANY OTHER WAY, INCLUDING ANY IMPLIED WARRANTIES AS TO QUALITY, PERFORMANCE, TITLE, NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE AND USAGE OF TRADE, ARE EXCLUDED FROM THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. ANDERSON-NEGELE DOES NOT WARRANT THAT THE SYSTEM WILL MEET THE REQUIREMENTS OF CUSTOMER OR ANY USERS OR THAT THE OPERATION OR USE OF THE SYSTEM WILL BE UNINTERRUPTED OR ERROR FREE. WHILE ANDERSON-NEGELE SHALL USE ITS REASONABLE EFFORTS TO MEET DEADLINES FOR PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, TIME FOR SUCH PERFORMANCE SHALL NOT BE OF THE ESSENCE OF THIS AGREEMENT AND ANDERSON-NEGELE SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY DELAY IN PERFORMANCE UNDER THIS AGREEMENT.

14. LIMITATIONS OF LIABILITY.

EXCEPT FOR DAMAGES ARISING FROM BREACHES OF SECTION 16 NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (OR TO ANY PERSON CLAIMING UNDER OR THROUGH THE OTHER PARTY) UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR ANY LOSS OF GOODWILL, WORK STOPPAGE, LOST OR CORRUPTED DATA, LOST PROFITS, LOST SAVINGS, LOST REBATES, LOST BUSINESS OR LOST OPPORTUNITY (WHETHER ARISING DIRECTLY OR INDIRECTLY) OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, TREBLE OR EXEMPLARY LOSSES OR DAMAGES, IRRESPECTIVE OF THE NATURE OR THEORY OF LIABILITY WHICH MAY GIVE RISE TO SUCH LOSSES OR DAMAGES (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY), EVEN IF SUCH PARTY HAS BEEN INFORMED OR WAS AWARE OF THE POSSIBILITY THEREOF. IN NO EVENT WILL ANDERSON-NEGELE'S AGGREGATE LIABILITY UNDER OR AS A RESULT OF THIS AGREEMENT, WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY, STRICT LIABILITY OR ANY OTHER THEORY, EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO ANDERSON-NEGELE IN THE LAST 12 MONTHS FOR THE SYSTEM OR SERVICES TO WHICH THE CLAIM RELATES. THESE LIMITATIONS OF LIABILITY CONSTITUTE AN ESSENTIAL PART OF THIS AGREEMENT, AND ANDERSON-NEGELE WOULD NOT PERMIT CUSTOMER TO ACCESS THE SYSTEM OR RECEIVE SERVICES WITHOUT SUCH LIMITATIONS. THE LIMITATIONS WILL APPLY TO THE FULLEST EXTENT PERMISSIBLE AT LAW.

15. INDEMNIFICATION.

15.1. <u>Anderson-Negele's Obligations</u>. Anderson-Negele will indemnify and defend Customer, and its directors, officers, shareholders and employees from and against any and all claims, losses, damages, expenses, suits, judgments, and costs, including reasonable legal and other professional fees and expenses, arising out of or relating to (a) a claim that the System on its own and without regard to Customer's use of the System, infringes the United States patent or copyrights of a third party; or (b) bodily injury or death of any person or damage to real and/or tangible personal property incurred while Anderson-Negele is performing the Services to the extent solely and proximately caused by the gross negligence or willful misconduct of Anderson-Negele, its personnel or agents in the performance of the Services.

15.2. <u>Anderson-Negele Remedies</u>. If the System becomes, or in Anderson-Negele's opinion is likely to become, the subject of an infringement or misappropriation claim, Anderson-Negele may, at its sole option, and expense, either (a) procure

for Customer the right to continue using the System; (b) replace or modify the System so that it becomes non-infringing or does not use the alleged misappropriated trade secrets; or (c) terminate Customer's right to use the infringing System and give Customer a refund or credit for the unused Fees actually paid by Customer for the infringing components of the System less an allowance for the period of time Customer has used the System during the Term. This Section states Customer's sole and exclusive remedies, and Anderson-Negele's entire liability, for any and all infringement and misappropriation claims and actions.

15.3.   Exceptions. Anderson-Negele has no obligation with respect to any infringement or misappropriation claim related to, arising from, or based upon: (a) use of the System in combination with software or equipment not supplied or directed by Anderson-Negele if such claim would have been avoided by not combining such use; (b) unauthorized modification of the System if such claim would have been avoided by making no such modifications; (c) continued use of the Software or System after Anderson-Negele has notified Customer in writing that such claim would have been avoided by ceasing such use; or (d) the use of the System in violation of this Agreement, or in a manner for which it was not designed or contemplated, where such claim would have been avoided without such use.

15.4.   Customer Indemnifications.   Customer will indemnify and defend Anderson-Negele, and its directors, officers, shareholders and employees from and against any and all claims, losses, damages, expenses, suits, judgments, and costs, including reasonable legal and other professional fees and expenses, arising out of or relating to: (a) a claim alleging that use of Customer Data infringes the rights of (including, but not limited to, the rights of privacy or publicity), or has caused harm to, a third party; (b) a claim alleging intellectual property infringement for which Anderson-Negele has no indemnification liability under section 15.3, (c) Customer's breach of Sections 2.2 or 2.3; or (d) bodily injury or death of any person or damage to real and/or tangible personal property incurred while Anderson-Negele is performing the Services to the extent proximately caused by the gross negligence or willful misconduct of Customer, its personnel or agents in connection with the performance of the Services.

15.5.   Conditions.   The party seeking indemnification will (a) promptly give written notice of the claim to the other party; (b) give the other party sole control of the defense and settlement of the claim (provided that the party providing indemnifications may not settle or defend any claim unless it unconditionally releases the other party of all liability); and (c) provide the other party all available information and assistance.   In the event of a claim of intellectual property infringement, Customer shall, upon Anderson-Negele's request, immediately cease use of any or all of the System as directed by Anderson-Negele.

16.   CONFIDENTIALITY.

16.1.   Definition. Any proprietary information or materials provided by one party to the other party pursuant to this Agreement is considered confidential and proprietary information, including, without limitation, business or technical information, databases, object code, source code and associated documentation in whatever form ("Confidential Information") of the disclosing party.   Without limiting the generality of the foregoing, the System, including without limitation, the Software, Anderson-Negele's database, reports and forms (including all data therein except for the Customer Data), Upgrades and Enhancements and related documentation, are the Confidential Information of Anderson-Negele, and the Customer Data is the Confidential Information of Customer.

16.2.   Use and Non-Disclosure. Each party will: (a) only use the other party's Confidential Information as expressly permitted in this Agreement; (b) protect the other's Confidential Information from unauthorized use or disclosure using at least reasonable care; and (c) not disclose to any third party the other party's Confidential Information except to those employees (and in Anderson-Negele's case, subcontractors and agents) who have a need to know in connection with performing services under this Agreement and who are subject to obligations of confidentiality similar to this Section 18. This Agreement will not prevent either party from disclosing the other party's Confidential Information to the extent required by a judicial order or other legal obligation, provided that the receiving party promptly notifies the other party in writing and in advance of such disclosure to provide the other party the opportunity to contest or minimize the scope of disclosure.

16.3.   Exceptions. The obligations and restrictions contained in this Section do not apply to information: (a) which is now or subsequently becomes publicly available other than by breach of this Agreement; (b) which was already in the recipient's possession and at its free disposal at the time of disclosure and was not obtained directly or indirectly from discloser; or (c) which is independently developed by the recipient without use of the other party's Confidential Information.

17.   GENERAL.

17.1.   <u>Independent Contractor</u>. Anderson-Negele acknowledges that it is an independent contractor, and neither Customer nor Anderson-Negele is or will be construed to be an agent, partner, joint venture or employee of the other. Neither party has any authority to bind or otherwise obligate the other party in any manner, nor may either party represent to anyone that it has a right to do so.

17.2.   <u>Publicity Rights</u>. Customer grants to Anderson-Negele a limited right to use Customer's logo on Anderson-Negele's website at www.Anderson-Negele.com in the format and manner agreed by Customer, with such agreement not to be unreasonably withheld or delayed. Anderson-Negele may publish a press release relating to the relationship between the parties subject to Customer's prior written consent, which consent will not be unreasonably withheld or delayed.

17.3.   <u>Non-Solicitation</u>. During the term of this Agreement and for a period of six (6) months thereafter, neither Anderson-Negele nor Customer will directly solicit employment of any employee of the other who is directly involved in the performance of this Agreement or the delivery, receipt, review or servicing of the System. Notwithstanding the foregoing, this provision shall not preclude a party from hiring such an individual if they are responding to a general solicitation for employment which is not targeted at the employees of the other party.

17.4.   <u>Governing Law; Jurisdiction</u>. This Agreement will be construed and interpreted under the laws of the State of New York, excluding its conflicts of law doctrine. The parties hereby disclaim the application of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Any claim arising from or related to this Agreement must be brought in the state or federal courts located in Albany, New York.

17.5.   <u>Interlocutory/Injunctive Relief</u>. Each party recognizes that its failure to comply with the terms of Sections 2, 5, 6, or, 16 above could cause irreparable damage to the other party. Therefore, if either party breaches or threatens to breach any of such terms of this Agreement, the injured party will be entitled to seek interlocutory or injunctive relief restraining such breach and/or a decree of specific performance, without showing or proving any actual damage, together with recovery of legal and other professional fees and expenses, and other costs incurred in obtaining such equitable relief.

17.6.   <u>Assignment & Subcontracting</u>. This Agreement may not be assigned or transferred by Customer without the prior written consent of Anderson-Negele, such consent which will not be unreasonably withheld, except that this Agreement may be assigned without consent in connection with a merger or sale of substantially all of the assets of Customer. This Agreement may not be assigned or transferred by Anderson-Negele without the prior written consent of Customer, such consent which will not be unreasonably withheld, except that this Agreement may be assigned without consent in connection with a merger or sale of substantially all of the assets of Anderson-Negele. Any prohibited assignment is void. Notwithstanding anything in this Section, Anderson-Negele may subcontract its obligations under this Agreement, provided that Anderson-Negele remains responsible for a subcontractor's compliance with the terms of this Agreement and for the subcontractor's performance of Anderson-Negele's obligations. This Agreement will bind upon and will inure to the benefit of the parties and their respective permitted successors and assigns.

17.7.   <u>Amendments; Waiver; Severability</u>. This Agreement may only be amended or modified in a writing duly executed by authorized representatives of both parties. Any waiver of any breach of any term or any condition of this Agreement will not be construed as a waiver of any subsequent breach of any term or condition of this Agreement. If any part, term or provision of this Agreement will be held to be illegal or unenforceable it will not affect the validity or enforceability of the remainder of this Agreement.

17.8.   <u>Notice</u>. Any notice to be given by one party to the other under this Agreement will be in writing. Delivery will be by (i) tracked express courier delivery service (delivery charge prepaid) to the applicable address set forth in the opening paragraph of this Agreement: for Anderson-Negele, Attention: Contracts/Legal, and for Customer, Attention: _____, or (ii) by email to Anderson-Negele at <u>Contracts@Anderson-Negele.com</u> or to Customer at _____. The notice will be deemed to have been served on actual delivery or if by email, verified by receipt confirmation.

17.9.   <u>Force Majeure</u>. If performance of any obligation hereunder (except payment of monies due) is prevented, restricted or interfered with by any force majeure, including without limitation act of God; fire or other casualty or accident; strikes or labor disputes; war or other violence; unavailability of or delays in procuring materials, power or supplies; any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental or intergovernmental agency or body; or any other act or condition whatsoever beyond the reasonable control of the party affected thereby, the party so affected will be excused from such performance during the time such prevention, restriction or interference persists.

17.10.   <u>Entire Agreement</u>. This Agreement together with any executed Statements of Work and associated schedules constitute the entire and exclusive statement of the mutual agreement and understandings of the parties and

supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of the Agreement.

17.11. <u>Counterparts</u>. This Agreement may be executed in multiple counterparts and delivered by pdf or facsimile transmission, each of which will be deemed an original but all of which will constitute one and the same instrument.

17.12. <u>Acknowledgment of Limitation of Liability</u>. CUSTOMER SPECIFICALLY ACKNOWLEDGES THAT IT HAS REVIEWED AND FULLY UNDERSTANDS THE LIMITATIONS ON ANDERSON-NEGELE'S LIABILITY AND ON ANDERSON-NEGELE'S WARRANTY OBLIGATIONS UNDER SECTIONS 13.3 AND 14 ABOVE.

17.13. <u>Severability</u>. If any term or provision of this Agreement is held to be invalid, illegal or unenforceable in any respect or in any jurisdiction, then such invalidity, illegality or unenforceability will not affect any other provision hereof and such provision will be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable term or provision were not contained herein.