

TERMS AND CONDITIONS

Effective: September 1, 2016

Prior Versions of Terms and Conditions can be found here:

<http://www.newformaprojectcloud.com/terms-of-use/>

<http://www.newforma.com/wp-content/uploads/2014/11/SmartUse-Terms-and-conditions.pdf>

<http://www.newforma.com/newforma-leanplanner-terms-of-use/>

These Terms and Conditions (as amended from time to time, these "Terms and Conditions") are by and between you (together with any legal entity by which you are employed or which you otherwise represent, "you" or "your") and Newforma, Inc., a Delaware corporation with a principal office address of 1750 Elm Street, 10th Floor, Manchester, New Hampshire 03104, USA., or one of its direct or indirect subsidiaries providing the applicable Service (as defined below) on its behalf ("Newforma").

The purpose of these Terms and Conditions is to set forth the general terms and conditions applicable to your use of any Service (as defined below). For the avoidance of doubt, the Services are separate and distinct from the Consulting Services (as defined below). By using a Service, you acknowledge and agree that you are bound by these Terms and Conditions, as amended from time to time in accordance with their terms, with respect to such Service.

THESE TERMS AND CONDITIONS REPRESENT A BINDING AGREEMENT BETWEEN NEWFORMA AND YOU. DO NOT USE, OR CONTINUE TO USE, ANY SERVICE UNTIL YOU HAVE CAREFULLY READ THESE TERMS OF USE.

BY USING A SERVICE, YOU AS AN AUTHORIZED USER ARE AGREEING TO THESE TERMS AND CONDITIONS, INCLUDING THE LIMITATIONS OF LIABILITY SET FORTH HEREIN.

BY PLACING AN ORDER, CUSTOMER IS AGREEING TO THESE TERMS AND CONDITIONS, INCLUDING THE LIMITATIONS OF LIABILITY SET FORTH HEREIN.

If you do not agree with any part of these Terms and Conditions with respect to a particular Service, then you must stop use of such Service immediately. If you have any questions about these Terms and Conditions, then please contact: Newforma, Inc., 1750 Elm Street, 10th Floor, Manchester, NH 03104, U.S.A., Attn: Legal.

1. DEFINITIONS. As used in these Terms and Conditions, the following terms have the following meanings:

- "**Agreement**" shall individually and collectively refer to these Terms and Conditions together with any Order Form (as defined below) and any separate engagement document with respect to Consulting Services as accepted by Customer, if any.
- "**Application**" means any software application owned, developed, licensed and/or maintained by Newforma and made available for download, access and/or use, as the context may require, including, without limitation, the following applications: Newforma® Project Center, Newforma® InfoExchange, Newforma® Project Center Cloud Services, Newforma® Project Cloud, Newforma® LeanPlanner, Newforma SmartUse®, and any Newforma® Mobile Application.
- "**Authorized User**" means, with respect to an Application, you as any natural person, entity, business, enterprise and/or computer application or process that Customer is permitted by Newforma to grant access to such Application, including, without limitation, (a) an employee of Customer, or (b) any third party (including any consultant, subcontractor, agent, vendor, client or other person) Customer may designate to access the Application on behalf of, and/or in connection with, Customer.
- "**Consulting Services**" shall mean certain consulting, implementation, configuration, training and/or technical services that may be provided

by Newforma for Customer in accordance with the Agreement. Again, Consulting Services are separate and distinct from the Services.

- "**Content**" refers to all PDF files, data and any other information or materials uploaded by, or on behalf of, you to an Application or the Site in connection with your use of a Service.
- "**Customer**" means the person or entity that placed an Order.
- "**Device**" means any device upon which an Application can be downloaded, installed, accessed and/or used.
- "**Documentation**" means the online or other documentation provided by Newforma as part of, or in the course of providing, a Service or the Consulting Services, including, without limitation, any documentation describing an Application and/or its use. You shall use the Documentation only as expressly permitted in this Agreement.
- "**Service**" means, individually or collectively, an Application and the Site (as defined below).
- "**Site**" means, individually or collectively, www.newforma.com and all related URLs owned, and/or operated, by Newforma.
- "**Order**" means an order for a Service placed by a Customer and accepted by Newforma, or a proposal for a Service offered by Newforma and accepted by Customer, whether by executing an Order Form, by purchasing access to such Service by downloading the applicable Application and making payment for such access by credit card or other electronic means, if available, or by downloading and/or using the applicable Application for a free trial, if available.
- "**Order Form**" means an order form, proposal, agreement or other document executed by Customer that specifies a Service and certain Consulting Services, if any, purchased by the Customer and such other information reasonably required by Newforma in order to provide such Service and/or Consulting Services, including, without limitation, the Subscription Term, if applicable, fees and payment terms.
- "**Privacy Policy**" means the Newforma Privacy Policy, as amended from time to time in accordance with its terms, and posted to the Site at www.newforma.com/privacy-policy/.
- "**Subscription Term**" means a stated period, if any, of days, weeks, months or years during which a Service may be used by Customer and its Authorized Users, and provided by Newforma, as specified in the Order Form.

2. LICENSE TO USE SERVICES. Upon placing an Order, the following provisions shall apply:

2.1 Service, Grant of License.

(a) Subject to your compliance with the Agreement, during the Subscription Term, if applicable, or such other time period as described or contemplated in the applicable Order Form for a Service, Newforma grants to Customer and each of its Authorized Users a non-exclusive, non-transferable, revocable right to download, install, access and/or use, as the case may be, the Application described in such Order Form on any Device by using a designated e-mail address (or other unique identifier if permitted by Newforma) and password for each Authorized User ("**Credentials**"), and to use the applicable Documentation, all solely in conjunction with Customer's licensed use of the ordered Service.

Except for the limited rights expressly granted to Customer and its Authorized Users hereunder, Newforma reserves all rights, title and interest in, and to, each of the Services, including the underlying software, the Documentation, and the Consulting Services, including, without limitation, all related intellectual property rights inherent therein. Newforma does not grant to Customer or any Authorized User any rights whatsoever in relation to any of the Services other than the rights as expressly set forth in the Agreement. The Application described in such Order may be used on as many Devices as you want.

(b) To register for use of an Application as an Authorized User, you will need to provide an email address (or other unique identifier if permitted by Newforma) and create a password. The Credentials are used by Newforma to authenticate and monitor your use and access of the Application on any applicable Device and your account on the Site, if applicable, and may also be used by Newforma to perform its support obligations under the Agreement. Customer and its Authorized User are responsible for all access granted to, and uses of, the Application or the Site by users that have logged in using such Authorized User's Credentials, including, without limitation, use by others to whom you may have given such Authorized User's Credentials. Customer and its Authorized User shall be responsible for maintaining and protecting such Authorized User's Credentials and the Content. Customer and its Authorized User are solely responsible for any activity of users logged into such Authorized User's account, whether or not such activity was authorized. You should immediately notify Newforma of any unauthorized use of an Authorized User's account or if your email (or other unique identifier if applicable) or password has been hacked, stolen or compromised in any way. If you discover that someone is using your password or account without your consent, then you shall notify Newforma immediately. In such event, Newforma reserves the right to suspend or discontinue all or part of your access to the Services until such time Newforma is reasonably satisfied that someone is not using your password or account without your consent.

(c) So long as Customer or any of its Authorized Users are not in breach of this Agreement, in consideration of the fees paid for a Service, Newforma will provide Customer with all upgrades to such Service made available by Newforma generally to its customers. Customer shall have a right to use such upgrades on these Terms and Conditions. Notwithstanding the foregoing, a Service will not include, and the fees paid for such Service will not cover, any future additional products or packages that are sold separately by Newforma, unless otherwise agreed to in writing by Newforma in its sole discretion.

2.2 Ownership. You acknowledge that (a) all right, title and interest in, and to, the Services, the Applications, the Site and the Documentation, and all patents, copyrights, trade secret rights, trademarks, trade names, services marks and other proprietary rights embodied therein, or associated therewith, are those of, and shall remain with, Newforma and/or its third party licensors, if applicable; (b) this Agreement conveys no right, or interest, in the Services, the Applications, the Site or the Documentation other than a limited right to use the same in accordance with the Agreement; (c) the Services, the Applications, the Site and the Documentation are protected by the copyright laws of the United States and international treaties; and (d) Newforma asserts that the Services, the Applications, the Site and the Documentation embody valuable confidential and secret information of Newforma, the development of which required the expenditure of considerable time and money.

2.3 Your Content (a) You may upload Content through an Application in connection with your use of the applicable Service. Newforma does not own any of your Content. You shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of your Content. Such Content shall be stored and/or backed-up on Customer's servers, Newforma's servers or on servers of third parties, as the case may be, for a particular Application, as reasonably necessary for Newforma to provide its Services. Newforma will not share your Content with non-affiliate third parties without your permission, except to meet its obligations to Customer under the Agreement or as otherwise may be provided in the Privacy Policy.

(b) You represent and warrant that (i) you are the owner, or legal custodian, of all of your Content and have the full authority to transmit and store your Content using a Service; and (ii) you will not upload, record, publish, post, link to, or otherwise transmit or distribute Content that: (A) advocates, promotes, incites, instructs, informs, assists, or otherwise encourages, violence or any illegal activities; (B) infringes, or violates, the copyright, patent, trademark, service mark, trade name, trade secret, or other intellectual property rights of any third party or Newforma, or any rights of publicity or privacy of any party; (C) attempts to mislead others about your identity or the origin of a message or other communication, or impersonates or otherwise misrepresents your affiliation with any other person or entity, or is otherwise materially false, misleading, or inaccurate; (D) promotes, solicits or comprises inappropriate, harassing, abusive, profane, hateful, defamatory, libelous, threatening, obscene, indecent, vulgar, pornographic or otherwise objectionable or unlawful content or activity; (E) is harmful to minors; (F) contains any viruses, Trojan horses, worms, time bombs, or any other similar software, data, or programs that may damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, personal information, or property of another; or (G) violates any law, statute, ordinance, or regulation (including, without limitation, the laws and regulations governing export control, unfair competition, anti-discrimination, or false advertising).

(c) Customer and each Authorized User acknowledges that other Authorized Users may have access to your Content, and you acknowledge the risks in allowing other Authorized Users access to your Content, including the risk that (i) your Content is deleted, modified, corrupted or destroyed by other Authorized Users within a Service; (ii) that files containing your Content are contaminated by viruses or other malware introduced by other Authorized Users; (iii) that confidential information in such Content is made available to other Authorized Users; and (iv) that such Content could be subsequently disclosed or otherwise made available to third parties by other Authorized Users under circumstances where the confidentiality of such Content is not protected. Newforma shall not be responsible for the deletion, modification, corruption, destruction or loss of your Content resulting from any action or inaction of Customer or any other Authorized User.

(d) Customer and each Authorized User acknowledges that the Services are automated (e.g., Content is uploaded and submitted using software tools) and that Newforma personnel may access any Content to provide the Services, including, but not limited to, the following: (i) during any service interruption, as necessary to restore the applicable Content; (ii) to troubleshoot any issue with the Services or to help improve the Services; or (iii) as deemed necessary or advisable by Newforma to ensure compliance with this Agreement or to conform to legal requirements or comply with legal process.

(e) The Services include features that allow you to share Content with others and/or to make it public. There are many things that users may do with that Content (including copying it, modifying it, and/or re-sharing it). Newforma has no responsibility for such activity. You should consider carefully what you choose to share or make public.

(f) If Newforma processes any personal data on Customer's behalf when performing its obligations under the Agreement, Customer and its Authorized Users hereby agree that Customer shall be the data controller and Newforma shall be a data processor and in any such case: (i) Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where Customer and the users of the Service are located in order to provide the Services and to carry out Newforma's other obligations under the Agreement; (ii) Customer shall ensure that Customer is entitled to transfer the relevant personal data to Newforma so that Newforma may lawfully use, process and transfer the personal data in accordance with the Agreement on Customer's behalf; (iii) Customer shall ensure that all relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; and (iv) Customer shall take appropriate technical and organizational measures against unauthorized or unlawful

processing of the personal data or its accidental loss, destruction or damage.

2.4 Restrictions on Use. In connection with your access or use of a Service, you agree to not misuse the Services. For example, you must not, and must not attempt to, use a Service to do any of the following:

- Breach any law, third party rights or any applicable codes or regulations;
- probe, scan, or test the vulnerability of any system or network;
- send unsolicited or unwelcome messages;
- collect or store personal data about others without permission;
- access, tamper with, or use non-public areas of the Site or an Application, shared areas you have not been invited to, or Newforma or any third party computer systems;
- breach or otherwise circumvent any security or authentication measures;
- plant malware or otherwise use the Site or an Application to distribute malware;
- interfere with, or disrupt, any user, host, or network, for example by sending a virus, overloading, flooding, spamming, or mail-bombing any part of the Site or an Application;
- send altered, deceptive or false source-identifying information, including "spoofing" or "phishing";
- publish anything that is fraudulent, misleading, or infringes another's rights;
- undertake promotions or general marketing or sales activity;
- impersonate or misrepresent your affiliation with any person or entity; or
- publish or share materials that are unlawfully pornographic or indecent, or that advocate bigotry or religious, racial or ethnic hatred.

2.5 Certain Obligations. (a) You are responsible, at your expense, for obtaining and maintaining all of the hardware, software, internet and other services that you may need to use a Service. You are responsible for protecting and safeguarding any keys, certificates, passwords, access codes, user ID's or other login information (collectively, "Passwords") that are provided to you or that are generated in connection with your use of a Service.

(b) You (i) shall not interfere, or attempt to interfere, with or disrupt the integrity, security, functionality or proper operation of a Service; (ii) shall not attempt to copy, alter, modify, adapt, translate or create derivative works of any Service, any Application or the Documentation; (iii) shall not attempt to reverse engineer, disassemble, decompile or otherwise attempt to discover the source code of, any Application; (iv) shall not attempt to discover or use any license keys, access codes, passwords or similar information made available to Newforma or others from time to time in connection with any Service; (v) shall not attempt to discover, access, read, alter, destroy, or damage any data or other information stored via any Service by any other party; (vi) shall not disclose or make any Password(s) available to any other person; and (vii) shall use all commercially reasonable efforts to prevent unauthorized access to, or use of, an ordered Service.

(c) You are fully responsible for all user activities that occur on any Service under your Password(s).

(d) Customer and its Authorized Users shall cooperate with any security measures that are provided by Newforma as a part of a Service. Since Newforma's sole intent in implementing such measures will be to prevent the unauthorized use, duplication and/or transfer of the Service, as the case may be, under no circumstances will Newforma employ any such measure to interfere with Customer's normal and permitted operation of the Service.

2.6 Suspension, Limitation or Termination. (a) Newforma shall be entitled in accordance with the terms of the Agreement, without liability to you, to suspend, terminate or limit your access to, or use of, the Services or any portion thereof at any time if you breach any term of the Agreement.

(b) In addition, Newforma shall have the right, without liability to you, to suspend, terminate or limit your access to, or use of, a Service or any portion thereof if such access is suspended, terminated or limited by Newforma's service providers for any reason, including, without limitation, in the event (i) that a service provider determines that such Service is being used in violation of applicable federal, state or local law or ordinance; (ii) that a service provider determines that such Service is being used in an unauthorized or fraudulent manner; (iii) that a service provider determines that your use of such Service violates such service provider's acceptable use policy, (iv) that a service provider determines that the use of such Service adversely affects such service provider's equipment or service to others; (v) that a service provider is prohibited by an order of a court or other governmental agency from providing such Service; (vi) of a denial of service attack or any other event which a service provider determines, in its sole discretion, may create a risk to its service or to any other customers if such Service was not suspended; or (vii) of a security incident or other disaster that impacts such Service or the security of any content stored via such Service. Your access to, and use of, such Service may also be suspended for the duration of any scheduled maintenance or unscheduled downtime or unavailability of any portion or all of such Service for any reason, including as a result of power outages, system or internet failures or other interruptions, or any other acts, omissions or failures on the part of Newforma's service providers.

2.7 Third Party Software. A Service may utilize Third Party Software. As used herein, "Third Party Software" means third party computer programs to which you are provided electronic access in connection with the use of a Service. Your use of Third Party Software in connection with any Service shall be subject to the terms and conditions set forth herein and any other terms and conditions placed on the use of the Third Party Software by its licensor. Customer and its Authorized Users may not use any Third Party Software contained in, or provided with, a Service separately from Customer's use of such Service.

2.8 Consulting Services. (a) With respect to a Service, Newforma will provide Customer with the same basic level of implementation, deployment, configuration and/or training services, as the case may be, that Newforma provides to its customers generally for such Service and as indicated in the applicable Order Form either directly by Newforma or one of its authorized service business partners. Any additional Consulting Services (e.g., training, configuration, consulting, etc.) that are desired during the Subscription Term will be set forth in a mutually agreed upon statement of work. Customer shall provide Newforma with all information, access and cooperation reasonably necessary to facilitate the provision of the Consulting Services. Customer acknowledges and agrees that, unless otherwise specified on the Order Form, any Consulting Services ordered but not performed (other than as a result of Newforma's breach of the Agreement) within twelve (12) months of ordering such Consulting Service will be forfeited by Customer and that Newforma may, at its options and in its sole discretion, perform such Consulting Service after such twelve (12) month period.

(b) Customer acknowledges that Newforma shall be the exclusive owner of all rights set out in 2.2 above, together with all software, designs, technology and inventions made, conceived, or reduced to practice, by, or on behalf of, Newforma or its affiliates in the course of performing Consulting Services and all copyright, patent and other intellectual property rights in such work product (collectively, the "Work Product"). Customer hereby assigns to Newforma all right, title and interest in any Work Product which it may have and will do anything necessary to effect title in, and to, such rights into the name of Newforma. Upon payment in full of any amounts due for Consulting Services, any Work Product which is software for Customer's internal business purposes shall be subject to these Terms and Conditions.

2.9 Support. (a) In consideration of the fees paid for a Service, Newforma will provide Customer's authorized contacts as indicated on an Order Form or such other contacts as agreed upon by Newforma in its sole discretion (each, an "Authorized Contact") the same basic technical and product support to the Customer that Newforma provides to its customers generally for such Service or as otherwise agreed upon

in writing by Newforma and Customer in an Order Form; provided that Newforma shall have no obligation to provide any such support in the event Customer has failed to pay any amounts due to Newforma for a Service or any Consulting Services or in the event Customer has otherwise breached the Agreement and such breach, if curable, has not been cured within thirty (30) days of notice of such breach or such longer period as agreed to in writing by Newforma in its sole discretion.

(b) Support may include the following:

- Online Knowledge Base
- Online Help, including Feature Overviews, FAQs, and downloadable Reference Guides
- Online Video Tutorials
- Email Support
- Chat and Phone

(c) Only Customer's Authorized Contacts will be given password access for any secure administrative rights, if any, for a Service; however, all Authorized Users will have access to all of the public information resources, videos, knowledge base and discussion forums available through www.newforma.com.

(d) Support is available Monday through Friday from 8AM to 5PM Customer's local time (excluding holidays). Unless otherwise agreed to in writing, support for a Service does not include support for any Consulting Services. Support may be provided on behalf of Newforma by one of its authorized business partners. In no event will Newforma be obligated to provide support to outdated versions of an Application or with respect to problems resulting from errors caused by the infrastructure, network or other software or hardware with which the Service is used.

2.10 Newforma® Project Center Specific Terms. Notwithstanding anything to the contrary contained in these Terms and Conditions, Customer agrees to the following terms with respect to an Order for Newforma® Project Center:

(a) If such Application is installed on the premises of Customer or a third party as designated by Customer, then such Application may only be installed, executed and used on one or more servers as purchased by Customer, but deployed by Newforma or one of its authorized service business partners.

(b) Such Application may be used by the maximum number of Authorized Users equal to the lesser of (i) the total number of Customer's employees (including independent contractors providing services directly to Customer) as specified in an Order Form or (ii) the total number of enterprise users specified in an Order Form.

(c) Subject to Newforma's acceptance, Customer may install, execute and/or use such Application on additional quantities of servers, and/or increase the maximum number of Authorized Users at any time during the Subscription Term by executing and delivering to Newforma an Order Form indicating such additional quantities. Newforma may accept such Order Form by issuing to Customer an invoice in the amount of the applicable fees (plus any applicable tax). Every additional Newforma® Project Center or Newforma® InfoExchange server that is added during the Subscription Term to an existing, or new, location of Customer, a "Newforma Deployment of Subsequent Server" fee shall apply in an amount agreed to by Customer and Newforma.

(d) If such Application is installed on the premises of Customer or a third party as designated by Customer, then Customer may make a reasonable number of copies of such Application for archival and back-up purposes only, and only to the extent as permitted by applicable law, provided that Customer includes on each copy all copyright or other proprietary notices contained on such Application.

(e) If such Application is installed on the premises of Customer or a third party as designated by Customer, then in no event will Newforma be obligated to provide support to outdated versions of an Application or with respect to problems resulting from (i) the combination, operation or

use of such Application with equipment, software or data not supplied, or expressly approved in writing, by Newforma; (ii) a modification of such Application that is not done, or expressly authorized in writing by, Newforma; or (iii) errors caused by the infrastructure, network or other software or hardware with which such Application is used.

(f) Customer may not use, or modify, in any way any database management system provided with such Application for any purpose other than for making queries to, and generating reports from, the database and the records in such database that are generated by such Application.

(g) If such Application is installed on the premises of Customer or a third party as designated by Customer, then, for the avoidance of doubt, Customer acknowledges and agrees that: (i) Customer is responsible for conducting regular back-ups of the Newforma MySQL data tables and database; (ii) Customer modification(s) to the Newforma MySQL data tables and database are not supported by Newforma; (iii) extreme care must be exercised with SQL queries or any other tool capable of modifying the Newforma MySQL data tables and database and such modification may result in unrecoverable data damage; (iv) any assistance required by Newforma to address issues caused by Customer tampering or modifying the Newforma MySQL data table or database will be charged back to the Customer at Newforma's then current hourly Consulting Services rates and full repair/recovery of data under these circumstances is not guaranteed; and (v) Customer must consult with Newforma in advance of undertaking any such activities to help ensure that data integrity is protected.

(h) Customer acknowledges and agrees that the specific system requirements and specifications for such Application are described at www.newforma.com. Such requirements and specifications are hereby incorporated into these Terms and Conditions by reference. Customer is responsible for ordering and commissioning any required dedicated hardware and/or virtual machines to meet the minimum requirements and specifications published by Newforma prior to scheduling an agreed upon deployment date with Newforma or Newforma's authorized services business partner, as the case may be. Customer is also responsible for providing any required operating systems and licenses, SSL certificate(s), supporting application software and information technology infrastructure necessary to meet such requirements and specifications.

(i) Customer acknowledges and agrees that it is Customer's responsibility to review the specific system requirements and specifications for such Application described at www.newforma.com prior to Customer submitting any Order Form for additional quantities of servers and/or Authorized Users or an Order Form to renew the then-current Subscription Term.

(j) If such Application is to be installed on the premises of Customer or a third party as designated by Customer, then (i) Customer shall provide Newforma with secure remote desktop or other access to each server on which such Application is installed solely for the purpose of Newforma fulfilling its obligations under the Agreement (e.g., providing support and Consulting Services) in accordance with Customer's reasonable security policies and procedures, (ii) Customer shall allow license and application reporting to be downloaded from each such server on a regularly scheduled basis and (iii) Customer shall supply a SSL certificate for use on any server on which Newforma® Info Exchange is installed.

(k) (i) Customer hereby acknowledges and agrees that by activating a "Newforma to Newforma" connection for a specified project, Customer will be inviting selected Newforma customers who are also users of Newforma® Project Center and who are authorized members of Customer's project team to accept Customer's "Newforma to Newforma" request and/or to also register their Newforma server(s). The process enables Customer and these selected Newforma customers to remotely modify any synchronized folders and their contents that they choose to share with each other for the specified project. It also enables the selected Newforma customers to transfer files and workflow actions, such as RFI's, Submittals, and Action Items, directly to Customer's

internal Newforma® Project Center and project folder environment as new "pending incoming items" for the specified project.

(ii) Customer hereby further acknowledges the risks inherent in allowing third party access to Customer's shared data (including personal data), including, without limitation, the risk that (A) such data is deleted, modified and/or corrupted by such third parties; (B) files containing such data are contaminated by viruses or other malware introduced by such third parties; (C) confidential information of Customer incorporated in such data is made available to such third parties; and (D) such data could be subsequently disclosed or otherwise made available to other parties by such third parties under circumstances where the confidentiality of such data is not protected.

(iii) By activating a "Newforma to Newforma" connection for a project, Customer hereby agrees that (A) the individual activating the connection is authorized by Customer to do so; (B) Customer is willing to accept the risks of having such connection; and (C) Customer has in place appropriate business relationships and/or agreements with such third parties to allow for the sharing of such data (including personal data) and that otherwise protect the confidentiality of Customer's data to the extent deemed necessary by Customer in its sole discretion.

(iv) Customer hereby agrees that Newforma takes no responsibility, and assumes no liability, with respect to damage to, loss of, or use or misuse of, data resulting from Customer's decision to make its data available to third parties via a "Newforma to Newforma" connection.

3. FEES, BILLING AND PAYMENT.

3.1 Fees. Customer agrees to pay Newforma the fees for Services and/or Consulting Services as set forth in an Order Form and any applicable statement of work, as the case may be. Fees and prices applicable for annual or other periodic renewals of a Subscription Term shall be at Newforma's then current list price, unless otherwise agreed to in writing by Newforma in its sole discretion.

3.2 Billing and Payment. Unless otherwise provided in an Order Form or a statement of work, as the case may be, Customer shall pay each invoice within thirty (30) days after the date of such invoice. Fees for Services and Consulting Services shall be invoiced on the estimated date(s) set forth in an Order Form or a statement of work, as the case may be, or as otherwise mutually agreed by Newforma and Customer. All amounts not paid when due will bear interest at the lesser of twelve percent (12%) per annum or the maximum rate permitted by law. Fees shall be invoiced, and shall be payable, in the currency set forth in the Order Form or statement of work, as the case may be, or as otherwise permitted by Newforma in its sole discretion. Customer shall provide its accounts payable contact information in an Order Form or by such other means as reasonably requested by Newforma and promptly provide Newforma with any changes or updates to such information.

3.3 Taxes. Fees for Services and Consulting Services do not include sales, use, withholding, value added, excise or similar taxes unless expressly indicated in an Order Form. Any applicable tax will be added to such fees. Customer shall pay all such taxes relating to the Services and the Consulting Services provided under the Agreement (other than taxes based upon Newforma's gross revenue or net income). If any of such taxes are paid by Newforma, then Customer will, upon request, reimburse Newforma for such taxes, together with any interest charged on such taxes by the applicable taxing authority if not due to Newforma's delay.

4. LIMITED WARRANTY

4.1 Limited Warranty. Newforma warrants solely to Customer (and not to any individual Authorized User) that, during the Subscription Term, if applicable, or such other time period of use as described or contemplated in the applicable Order Form, the ordered Service will conform in all material respect to the description of such Service set forth in its Documentation (the "Service Limited Warranty"). Without limiting the foregoing, Newforma does not warrant that (a) any Service will meet

Customer's requirements; (b) any Service will operate without interruption or be error free; or (c) any Content will be accurate or reliable. Furthermore, Newforma is not responsible for delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet. Customer acknowledges and agrees that a Service may be subject to limitations, delays and other problems inherent in the use of the internet, servers that are hosted by third party providers and such related network and communications infrastructure.

4.2 Exclusive Remedy for Breach of Warranty. If the ordered Service does not conform to the Service Limited Warranty, then Newforma shall, at its option and expense, either: (a) use reasonable efforts to correct any such non-conformities in such Service or provide Customer with a workaround; (b) correct any errors or discrepancies in the Documentation; or (c) refund a pro-rata portion of the fee paid by Customer for such Services based upon the remaining time in the Subscription Term, if any. If the use of such Service is for other than a stated period in the applicable Order Form (e.g., for the duration of an estimated project length), then Newforma will refund to customer a pro-rata portion of the paid fees for such Service as equitably and reasonably determined by Newforma. Newforma shall have no liability for any claim based upon (i) improper use of a Service or use of a Service not in accordance with instructions provided by Newforma; (ii) any modification of a Service that is not done by Newforma; or (iii) errors caused by the infrastructure, network, communications facilities, including the internet, other software or hardware used to access a Service. The foregoing states Customer's sole remedy and the exclusive obligation of Newforma with respect to claims of breach of the Services Limited Warranty.

4.3 Consulting Services Limited Warranty. (a) Newforma warrants solely to Customer (and not to any individual Authorized User) that Consulting Services will be performed with reasonable skill, care and diligence (the "Consulting Services Limited Warranty"). If Customer notifies Newforma in writing that a Consulting Service is not completed in accordance with the Consulting Services Limited Warranty within thirty (30) days after completion of such Consulting Services or such longer period of time agreed to in writing by Newforma, then Newforma will re-perform such Consulting Service to the extent necessary so that such Consulting Service is performed in accordance with the Consulting Services Limited Warranty.

(b) The foregoing states Customer's sole remedy, and the exclusive obligations of Newforma, with respect to claims of breach of the Consulting Services Limited Warranty.

4.4 Disclaimer of Other Warranties. Newforma is not responsible for the accuracy, completeness, appropriateness, or legality of the Content, files, user posts, or any other information you may be able to access using a Service. Ultimately it is your responsibility to check that your Content as displayed on the Site and/or the Application is an accurate rendering of your Content as originally uploaded. **EXCEPT AS EXPRESSLY STATED IN THE AGREEMENT, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, RELATING TO AN APPLICATION, THE SITE OR A SERVICE OR ANY CONSULTING SERVICES. NEWFORMA SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING, BUT NOT LIMITED TO, STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE OF SERVICE, WHETHER MADE BY NEWFORMA EMPLOYEES OR OTHERWISE, WHICH IS NOT CONTAINED IN THE AGREEMENT, SHALL BE DEEMED TO BE A WARRANTY BY NEWFORMA FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY OF NEWFORMA WHATSOEVER. SPECIFICALLY, AND WITHOUT LIMITING THE FOREGOING, NEWFORMA DOES NOT WARRANT OR REPRESENT THAT A SERVICE WILL BE CONTINUOUS, SECURE, RELIABLE, ACCESSIBLE, UNINTERRUPTED OR ERROR-FREE, OR THAT NEWFORMA'S SERVERS, SITE OR APPLICATION ARE FREE OF**

VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT NEWFORMA'S SECURITY PROCEDURES AND MECHANISMS WILL PREVENT THE LOSS OR ALTERATION OF, OR IMPROPER ACCESS TO, PERSONAL INFORMATION OR CONTENT BY THIRD PARTIES.

5. LIMITATION OF LIABILITY. EXCEPT IN CONNECTION WITH A PARTY'S INDEMNIFICATION OR CONFIDENTIALITY OBLIGATIONS HEREUNDER, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE), (a) IN NO EVENT SHALL A PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE A SERVICE OR TO ACCESS CONTENT, LOSS OF BUSINESS, LOSS OF DATA, LOSS OF PROFITS, BUSINESS INTERRUPTIONS, OR THE LIKE), ARISING OUT OF THIS AGREEMENT EVEN IF SUCH PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, AND (b) NEWFORMA'S TOTAL LIABILITY TO CUSTOMER FOR ACTUAL AND/OR DIRECT DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT CUSTOMER PAID FOR THE SERVICE GIVING RISE TO SUCH DAMAGES, IF ANY, FOR THE TWELVE (12) MONTH PERIOD PRECEDING THE CLAIM FOR SUCH DAMAGES. REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE), NEWFORMA'S TOTAL LIABILITY TO CUSTOMER'S AUTHORIZED USERS FOR ACTUAL AND/OR DIRECT DAMAGES UNDER THE AGREEMENT BETWEEN CUSTOMER AND NEWFORMA WILL BE LIMITED TO \$1,000. THE FOREGOING LIMITATIONS SHALL APPLY TO ALL SUCH CLAIMS IN THE AGGREGATE. CUSTOMER AND EACH AUTHORIZED USER AGREES THAT REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF, OR RELATED TO, THE AGREEMENT BETWEEN CUSTOMER AND NEWFORMA MUST BE FILED WITHIN SIX (6) MONTHS AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR BE FOREVER BARRED.

6. INDEMNIFICATIONS.

6.1 By Newforma. (a) Newforma will defend at its expense any third party action brought against Customer only to the extent that it is (i) as a result of Newforma's breach of the Agreement or (ii) based upon a claim that a Service ordered by Customer, when properly used within the scope of the Agreement, infringes a patent, copyright or trademark in the country(ies) where Customer's office locations are located and such Service is used by Customer, and Newforma will pay any damages, costs and reasonable attorneys' fees finally awarded, or agreed to in settlement and in writing, which are attributable to such claim, provided that (A) Customer promptly notifies Newforma in writing of the claim, (B) Customer permits Newforma to assume sole control of the defense and all related settlement negotiations provided that no settlement (I) without a general release of claims for the benefit of Customer, and/or (II) including an obligation of Customer to admit to any liability or make any payment, will be made without the prior written consent of Customer, and (C) Customer provides reasonable cooperation, information and assistance in connection with the claim.

(b) Notwithstanding the foregoing, Newforma shall have no liability to Customer with respect to claims of infringement based upon (i) the combination, use or operation of any Service with equipment, software or data not supplied, or approved in writing, by Newforma if such claim would have been avoided by use of other equipment, software or data, (ii) any modification of any Service that is not done, or expressly authorized in writing, by Newforma, (iii) the use of other than the current version of a Service, if such version was made available by Newforma for no additional fees with notice that such version was being provided in order to avoid an alleged or potential infringement, (iv) compliance by Newforma with Customer's designs, specifications or instructions, or (v) infringement of patents, copyrights, trade secrets and/or other

intellectual property rights of Customer or any of its affiliates (each, an "Excluded Claim").

(c) Newforma's obligations under this Section are conditioned upon Customer's agreement that if a Service, or the use or operation thereof, becomes, or in Newforma's opinion is likely to become, the subject of such a claim, then Newforma may at its expense, either procure the right for Customer to continue using such or, at Newforma's option, replace or modify the same so that it becomes non infringing provided that such replacement or modification does not materially and adversely affect the functionality of the same. If neither of the foregoing alternatives is commercially reasonable in Newforma's reasonable judgment, then Newforma may terminate the Agreement with respect to such infringing Service by providing written notice to Customer. Upon receipt of such notice, Customer will uninstall, and/or cease use, of such Service at which point Newforma will refund to Customer a pro-rata portion of the prepaid fees for such Service for the then-current Subscription Term, if any, based upon the time remaining in the then-current Subscription Term. If the use of such Service is for other than a stated period in the applicable Order Form (e.g., for the duration of an estimated project length), then Newforma will refund to customer a pro-rata portion of the an prepaid fees for such Service as equitably and reasonably determined by Newforma.

(d) The foregoing states the sole remedy, and the exclusive obligations of Newforma, with respect to the infringement, or alleged infringement, of a third party's intellectual property rights.

6.2 By You. (a) You will defend at your expense any third party action brought against Newforma to the extent that it is (i) as a result of your breach of the Agreement or (ii) with respect to Customer only, based upon an Excluded Claim, and you will pay any damages, costs and reasonable attorneys' fees finally awarded, or agreed to in settlement and in writing, which are attributable to such claim, provided that (A) Newforma promptly notifies you in writing of such claim, (B) Newforma permits you to assume sole control of the defense and all related settlement negotiations provided that no settlement without (I) a general release of claims for the benefit of Newforma or (II) including an obligation of Newforma to admit to any liability or make any payment will be made without the prior written consent of Newforma, and (C) Newforma provides reasonable cooperation, information and assistance in connection with such claim.

(b) The foregoing states the sole remedy of Newforma, and the exclusive obligations of you, with respect to the infringement, or alleged infringement, of a third party's intellectual property rights.

7. PRIVACY.

7.1 Policy. The Privacy Policy is expressly incorporated herein by reference. Any information you provide to Newforma, or that is collected in connection with your use and access of a Service is subject to the terms and conditions of the Privacy Policy. The Privacy Policy may be amended from time to time in accordance with its terms.

7.2 Collection and Storage of Personal Information. By using a Service, you agree and acknowledge that any of your personal information obtained by Newforma through your use of the Site or an Application, or in connection with the provision of a Service, may be transferred across national boundaries to any country around the world for storage, backup or process. The type of transferred information may include the location and/or the universally unique identifier of any Devices you use to access an Application and their respective telephone number(s), if any.

7.3 Communications from Newforma. Newforma may send to you service-related emails regarding the functionality or delivery of a Service.

7.4 Tracking. Your use of a Service or portions thereof may be tracked by Newforma in order to provide better Service and for other purposes as set forth in the Privacy Policy.

7.5 Processing of Personal Data. If Newforma processes any personal data on Customer's or an Authorized User's behalf when performing its obligations under the Agreement, Customer and each Authorized User hereby agree that Newforma shall be a data processor and in any such case: (a) Customer and each Authorized User acknowledge and agree that the personal data may be transferred or stored outside the European Economic Area (EEA) or the country where Customer and each Authorized User of the Service are located in order to carry out any services and Newforma's other obligations under the Agreement; (b) Customer and each Authorized User, as the case may be, shall ensure that such party is entitled to transfer the relevant personal data to Newforma so that Newforma may lawfully use, process and transfer the personal data in accordance with the Agreement on such party's behalf; (c) Customer and each Authorized User, as the case may be, shall ensure that all relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; and (d) Customer and each Authorized User shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the personal data or its accidental loss, destruction or damage.

8. TERM AND TERMINATION.

8.1 Term. Unless terminated earlier in accordance with its terms, the Agreement with respect to a particular Service will remain in effect until the end of the Subscription Term for such Service, if any, or such other time period as described or contemplated in the applicable Order Form for such Service.

8.2 Termination by Newforma. This Agreement shall automatically terminate with respect to a particular Service upon the expiration, without renewal, of the Subscription Term for such Service, if any, or the expiration of such other time period as described or contemplated in the applicable Order Form for such Service. You agree that Newforma, in its sole discretion and without notice or liability to you or any third party, may terminate or suspend an Authorized User's account with respect to any or all Services if Newforma believes that an Authorized User has violated, or acted inconsistently with, any term of the Agreement. Newforma may terminate the Agreement with respect to any or all Services upon notice to Customer if Customer or any of its Authorized Users (a) breaches any obligations set forth in Sections 2.4 through 2.8 or attempts to assign this Agreement in violation of the provisions of Section 10.3, or (b) breaches any other obligation under the Agreement and fails to cure such breach within thirty (30) days after notice thereof. Upon such termination, Newforma may terminate the passwords of Customer's Authorized Users and may remove, and discard, any Content uploaded, posted or otherwise stored by you using the Services that gave rise to such breach, if any.

8.3 Termination by You. An Authorized User may terminate such Authorized User's Newforma account, and/or Customer may terminate the Agreement, with respect to any or all Services at any time by providing at least thirty (30) days' advance written notice to Newforma, provided, however, that, unless otherwise agreed to in writing by Newforma, Customer shall not in any event be entitled to any refund of any fees previously paid or be entitled to cancel any obligation to pay any fees that would otherwise become due and payable under an Order Form prior to, or after, such termination.

8.4 Effect of Termination. Upon termination of the Agreement with respect to a particular Service, neither Customer, nor any of its Authorized Users, shall make any further use of such Service. Termination of the Agreement shall not affect any obligations accrued prior thereto, including any payment obligations. Sections 1, 2.2, 2.3(b)-(f), 2.4, 2.5, 2.6, 2.10(k), 3, 4.2, 4.3(b), 4.4, 5, 6, 7, 8, 9 and 10 shall survive termination of the Agreement with respect to any or all Services in accordance with their respective terms.

9. CONFIDENTIALITY.

9.1 "Confidential Information" shall mean all information regarding the technology, products or business of Newforma or Customer (or of such party's customers or suppliers), whether written, oral or graphic, disclosed or made available by one such party (the "disclosing party") to the other such party (the "receiving party") pursuant to the Agreement, (a) which is designated as confidential in writing by the disclosing party prior to, or at the time, any such information or material is disclosed by the disclosing party to the other party, or (b) which is orally or visually disclosed by a party, or is disclosed in writing without an appropriate confidentiality designation, if the disclosing party, within thirty (30) days after such disclosure, delivers to the other party a written document describing the information or material and referencing the place and date of such oral, visual or written disclosure and the names of the persons to whom such disclosure was made and denoting the confidential nature of the information, or (c) as to which it would be apparent to a reasonable person, familiar with the disclosing party's business, that such information is of a confidential nature the maintenance of which is important to the disclosing party. For the avoidance of doubt, Newforma has no obligation of confidentiality to Customer's Authorized Users under the Agreement as between Customer and Newforma.

9.2 Treatment of Confidential Information. The receiving party shall not, without the prior written consent of the disclosing party, disclose any Confidential Information of the disclosing party to any person or entity other than the receiving party's employees or contractors that need to have access to such information. As a condition to any such consent, the disclosing party may require any such third party to enter into the disclosing party's standard non-disclosure and confidentiality agreement. The receiving party shall not, without the disclosing party's prior written consent, disclose any of the disclosing party's Confidential Information to anyone other than the receiving party's employees or contractors that need to have access to such information or, if the receiving party is Newforma, as otherwise described in the Privacy Policy. Each party shall use the Confidential Information of the other party only in a manner consistent with the Agreement and shall otherwise protect such Confidential Information from disclosure to others with the same degree of care accorded to its own proprietary information (but in no event less than a reasonable degree of care).

9.3 Release from Restrictions. The provisions of Section 9.2 shall not apply to any Confidential Information which: (a) was known by the receiving party prior to its date of disclosure to the receiving party without an obligation of confidentiality, as evidenced by the prior written records of the receiving party; or (b) is disclosed to the receiving party without an obligation of confidentiality by sources other than the disclosing party rightfully in possession of the Confidential Information and having the right to disclose the Confidential Information; or (c) becomes published or generally known to the public through no breach of the Agreement on the part of the receiving party or its affiliate; or (d) is independently developed by the receiving party without reliance upon, or reference to, any Confidential Information of the disclosing party; or (e) is required to be disclosed by the receiving party to comply with applicable laws, to defend or prosecute litigation or to comply with governmental regulations, provided that, unless prohibited by law, the receiving party provides to the other party prior written notice of such disclosure and a reasonable opportunity to contest such disclosure, and thereafter reasonably cooperates with the disclosing party to take lawful actions to avoid and/or minimize the degree of such disclosure.

9.4 Return of Confidential Information. Upon termination of the Agreement or at any other time upon a disclosing party's request, the receiving party shall use commercially reasonable efforts to immediately destroy all materials in such receiving party's possession reflecting or containing any Confidential Information of the disclosing party.

9.5 Survival of Obligations. Notwithstanding any termination of the Agreement with respect to all Services, the obligations of the receiving party under this Section with respect to Confidential Information of the disclosing party shall survive for a period of two (2) years from the date of such termination.

10. MISCELLANEOUS.

10.1 Compliance with Laws. You agree to comply with all laws and regulations relating to your use of a Service, including, without limitation, those relating to export and import, privacy and personal data protection.

10.2 Injunctive Relief. All parties acknowledge that in the event of a breach, or threatened breach, of any of the provisions of Sections 2.4 through 2.6, or Section 9 of the Agreement, the aggrieved party may suffer irreparable harm and will therefore be entitled to injunctive relief to enforce those provisions without being required to prove damages or post a bond.

10.3 Assignment. The Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns. You may not assign or otherwise transfer the Agreement or any of your rights or obligations hereunder without the prior written consent of Newforma.

10.4 Governing Law and Jurisdiction. This Agreement shall be governed by, and construed in accordance with, (a) if the Customer's address as set forth in the Order or Order Form is located in Europe, the Middle East or Africa, the substantive laws of England and Wales without regard to its conflict of laws principles and such Customer and its Authorized Users irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Agreement or its subject matter or formation, and (b) if the Customer's address as set forth in the Order or Order Form is not located in Europe, the Middle East or Africa, then the substantive laws of the State of New Hampshire (U.S.A.) without regard to its conflict of laws principles and such Customer and its Authorized Users irrevocably agree that the courts of the State of New Hampshire (U.S.A.) shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Agreement or its subject matter or formation. The parties expressly exclude the provisions of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. No action arising out of, or related to, the Agreement may be brought by Newforma, Customer or any of its Authorized Users more than one (1) year after the cause of action was, or reasonably should have been, discovered or, in the case of an action for nonpayment, more than two (2) years after the date the last payment was due; however, nothing in the Agreement shall limit the ability to bring an action in connection with fraud or intentional or willful misconduct.

10.5 Relationship of the Parties. Nothing in this Agreement shall be construed as making the parties partners or as creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. No party shall make any contracts, warranties or representations or assume or create any other obligations, express or implied, in another party's name or on its behalf.

10.6 Notices. Notices under the Agreement shall be in writing and shall be delivered by hand, sent by facsimile, sent by email, mailed via certified mail, or delivered by commercial courier service. Notices shall be deemed effective when received or upon attempted delivery, in the event that delivery is refused.

10.7 Force Majeure. In no event shall Newforma be liable for any delay or failure to perform any of its obligations if such delay or failure is due to causes beyond its reasonable control, which causes shall include, without limitation, the continued unavailability of storage services provided by third-party service providers engaged to perform such services on behalf Newforma.

10.8 Entire Agreement.

(a) These Terms and Conditions are incorporated by reference into every Order and Order Form. The Agreement shall apply to all Services and any Consulting Services ordered or used by Customer. The Agreement (together, for Customer, with any Order Form or any statement of work) constitutes the complete agreement between the parties concerning the subject matter of the Agreement, and, unless otherwise agreed in writing by Newforma, supersedes all prior or contemporaneous agreements or representations, written or oral,

concerning the subject matter of the Agreement and the use of any Service.

(b) Notwithstanding the foregoing, any separate existing confidentiality agreement entered into between the parties shall remain in full force and effect in accordance with its terms, and to the extent that any of the provisions of any such agreement conflict with the provisions of the Agreement, the provisions of such existing agreement shall prevail and govern and control such conflict.

(c) To the extent that any of the provisions of an Order Form or statement of work and these Terms and Conditions conflict, the provision of such Order Form or statement of work shall prevail and govern and control such conflict.

(d) You agree that Newforma shall license, and provide, a Service only in accordance with the terms and conditions of the Agreement. The terms and conditions set forth in any purchase order or other document submitted by Customer or such Customer's Authorized User shall be null and void and of no force or effect.

(e) If Customer is located in Quebec, Canada, then Newforma and Customer have requested that the Agreement and all related documents be drawn up in English only (i.e., les parties aux présentes ont exigé que le présent contrat et tous les documents qui s'y rattachent soient rédigés en anglais seulement).

(f) In the event of any inconsistency between the English version of any portion of the Agreement and any translation of such portion of the Agreement into another language, the translated version shall prevail and be binding upon Newforma and Customer.

10.9 Connection to the Internet. A Service may cause your Device to automatically connect to the Internet. Your use of the Service may entail third-party costs (such as cellular phone and data connection charges or data plan costs). Newforma disclaims any and all liability for such charges and costs.

10.10 Availability. Newforma tries to ensure that a Service is available 24 hours a day. However, the limitation of liability and disclaimer above apply equally to the availability of a Service. Newforma is not liable if for any reason a Service is unavailable at any time and for any period and for any reason. Notwithstanding any other provision of the Agreement, Newforma may change or add to, a Service, or any portion thereof, at any time with or without notice to you. If any future changes are unacceptable to you, you should discontinue using such changed Service.

10.11 Severability. If any provision of the Agreement is held to be invalid or unenforceable, then such provision shall be construed, as nearly as possible, to reflect the intentions of the parties, and all other provisions will remain in full force and effect.

10.12 Notice to U.S. Government End Users. Notice to U.S. Government End Users. An Application and the Documentation 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 such terms are used in 48 C.F.R. 12.212 or 48 C.F.R. 227.7202, as applicable. Consistent with 48 C.F.R. 12.212 or 48 C.F.R. 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users and U.S. Government contractors (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to these Terms and Conditions.

10.13 Amendment. Newforma shall have the right to amend these Terms and Conditions at any time, without any notice to you, by posting an updated version of these Terms and Conditions on the Site or otherwise making them available through a Service. The Terms and Conditions in effect at any given time will be available to Customer and its Authorized Users. Newforma recommends that you regularly check the Site, or review these Terms and Conditions through a Service to



ensure your familiarity with the terms and conditions governing your continued use of a Service and to inform yourself of any such changes. Notwithstanding the foregoing, changes will only be effective and apply to Customer and its Authorized Users for a particular Service currently being used by such Customer upon the renewal of such Service or upon purchasing an additional Service pursuant to an Order Form referencing these Terms and Conditions, as amended from time to time. Continued use of a Service, whether through any Device or by visiting the Site, after placing such Order shall constitute your consent to such changes.