

## A. SencorpWhite Sales Order General Terms and Conditions

1. **AGREEMENT AND ACCEPTANCE:** These SencorpWhite Sales Order General Terms and Conditions govern all contracts (except to the extent explicitly provided otherwise in the Terms referenced in items B, C and D below) made by SencorpWhite, Inc., and/or by any its direct or indirect subsidiaries, including, without limitation, the following: Intek Integration Technologies, Inc; Minerva Associates, Inc.; and AccuSeal SencorpWhite, Inc. (as applicable, "Seller") with their customers or licensees (as applicable, "Buyer"). Unless otherwise specifically agreed to in writing by Seller, all sales of the goods or services described in any purchase order, proposal, or sales order acknowledgement from Buyer or Seller, are made subject to the provisions of Section 1 to 28 (inclusive) hereof (collectively the "General Terms and Conditions"). Where Buyer and the end user that puts any system or product into production, or as it relates to services received ("End User") are not the same entity, Buyer shall ensure that, and hereby unconditionally and irrevocably guarantees to Seller that: End User shall be subject to, and required to comply with, all terms and conditions and perform all obligations imposed on Buyer under these General Terms and Conditions and the Terms referenced in items B, C and D below; and every reference to Buyer therein shall be deemed to also be a reference to End User (as applicable). Buyer shall be liable for any breach of or noncompliance by an End User with any of these General Terms and Conditions and the Terms referenced in items B, C and D below as though such breach or non-compliance was committed by Buyer and Buyer agrees to indemnify Seller and to pay to Seller, as applicable, on demand, an amount equal to all losses, damages, costs, expenses, charges, penalties and other liabilities (including legal or other professional fees) directly or indirectly incurred or suffered by Seller arising out of or in connection with any breach of or non-compliance with these General Terms and Conditions or the Terms referenced in items B, C and D below by the End User. To the extent that any agreement governed by these General Terms and Conditions or the delivery of systems, or products or services is deemed an acceptance of Buyer's purchase order(s) ("PO"), such acceptance is expressly conditioned on Buyer's assent to the terms contained in these General Terms and Conditions, which may be different from the terms contained in the PO, and acceptance of the products or services sold by Seller shall constitute acceptance by Buyer of these General Terms and Conditions. Seller hereby objects and rejects any and all additional or different terms proposed by Buyer, whether contained in Buyer's shipping documents, PO, release forms, or elsewhere. Seller's failure to specifically object to provisions contained in any communication from Buyer shall not be deemed a waiver of these conditions to Seller's acceptance of the PO. All proposals, negotiations, and representations, if any, that are made prior hereto, are superseded hereby.
2. **PERMITS:** Acceptance of any PO from Buyer is conditional on the granting of any required export licenses and import permits. If required, Seller shall apply for any required export licenses, and Buyer shall obtain and make available to Seller, when required, import permits and other documents necessary to permit prompt exportation from the United States. Buyer is required to accept and pay for the products so ordered if licenses or permits previously granted are invalidated or revoked where new restrictions are imposed preventing the exportation of the products. It is understood that the countries to which the provisions of this Section 2 apply are the countries of ultimate destination of the products and services to be sold hereunder.
3. **EXPENSES:** Seller will not assume responsibility for any labor costs or other expenses for work done in the field by anyone other than Seller, or its authorized representative (with such authorization communicated to Buyer in writing), or for any expenses in connection with parts secured in the field from someone other than Seller or its authorized representative.
4. **QUOTED PRICES:** Quoted prices are in U.S. dollars and are subject to change without notice unless and to the extent a valid PO with agreed-upon prices is accepted by Seller before thirty (30) days after the quotation date. Prices may be adjusted for specifications, quantities, changes in material costs, shipment arrangements, or other terms and conditions which are not a part of the original price quotation. Seller reserves the right to correct all typographical or clerical errors or omissions which may be present in its prices or specifications. The amount of any present or future sales tax, value added tax, customs duties, or other similar taxes or duties applicable to this transaction shall be the sole responsibility of Buyer.
5. **CONFIDENTIALITY:** "Confidential Information" means all information of either party (hereinafter referred to as the "Disclosing Party") disclosed to or accessed by the other party (hereinafter referred to as the "Receiving Party") in connection with any sales hereunder that is either conspicuously marked or otherwise identified as confidential or proprietary at the time of such disclosure or access or should be understood by the Receiving Party to be confidential based on the nature of the information disclosed or accessed or circumstances of such disclosure or access. Confidential Information of Seller includes, but is not limited to, the Licensed Programs and Documentation (as defined in the Software

License Terms). The Receiving Party shall not disclose Confidential Information to any person or entity, or use for any purpose, other than as contemplated by these General Terms and Conditions, provided, however, that the Receiving Party may disclose Confidential Information only to authorized employees and contractors on a need-to-know basis and provided that such employees and contractors are subject to confidentiality obligations at least as restrictive as those set forth in these General Terms and Conditions. Notwithstanding the foregoing, the Receiving Party may disclose to a third-party information that: (a) is available to the public or becomes available to the public other than by a breach of these General Terms and Conditions; or (b) is rightfully received from a third party that does not owe a duty of confidentiality with respect to such information. In addition, the Receiving Party may disclose Confidential Information to the extent that the Receiving Party is legally compelled to disclose such Confidential Information in accordance with applicable laws, regulations, or court, judicial, or other government order, provided that, to the extent feasible and permitted under applicable law, the Receiving Party shall give Disclosing Party reasonable notice prior to such disclosure. Should the Receiving Party breach its obligations under this Section 5, the Receiving Party acknowledges and agrees that Disclosing Party will not have adequate remedy in money damages, and that Disclosing Party shall have the right to obtain immediate injunctive relief in addition to any other legal, equitable or financial remedies to which Disclosing Party may be entitled. The provisions of this Section 5 shall be in addition to, and not in lieu of the terms of any separate non-disclosure agreement between the parties. In the event of any conflict between the provisions of this Section 5 and such other non-disclosure agreement, the more restrictive provision shall apply.

6. **LIMITED PRODUCT WARRANTY:** Except as may otherwise expressly be provided in writing in Seller's order confirmation, Seller warrants for one year following the date that the products are shipped, that its equipment and provided systems will be free of defects in materials or workmanship under normal use ("Limited Warranty"). The criteria for the acceptance of any product as conforming to the Limited Warranty prior to its shipment is design performance, not materials used in acceptance runs. If any product fails to conform to the Limited Warranty, Seller's sole obligation (and Buyer's sole and exclusive remedy) shall be, at the election of Seller, to replace or repair the product such that it conforms to the Limited Warranty or refund the purchase price paid for such product (provided Buyer returns to Seller the nonconforming product with transportation charges prepaid). This limitation of liability applies regardless of the legal theory under which such damages are sought. Under no circumstances will the Limited Warranty apply with respect to improper handling, operation, siting, installation, or maintenance, or where any person other than Seller performs any service or is related to an ancillary product or system not provided by Seller. The Limited Warranty applies only to the original Buyer (including, for the avoidance of doubt, the End User, as applicable) and may not be assigned or transferred to any third party. The Limited Warranty is null and void (a) if the product is used other than in the manner as set forth in Seller's machine manual, instructions or Documentation, or if the product has been altered or repaired by any party other than Seller, (b) with respect to all losses, damages, costs, or claims resulting from natural or normal deterioration or from accident, abuse, misuse or neglect, or failure to maintain the product as provided in the Documentation or Seller's other manuals which have been delivered to Buyer, or (c) in the event that Buyer has failed to provide proper training to machine operators and maintenance personnel. Seller makes no warranty or representation of any kind, whether express or implied, relating to the products (including, without limitation, any hardware or software) of any third-party manufacturer or licensor, which may be supplied to Buyer, and Buyer agrees to rely only on such third party for any warranty claim relating thereto. Any warranty with respect to Seller's software is provided exclusively in the SencorpWhite Software License Terms and not these General Terms and Conditions. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THESE GENERAL TERMS AND CONDITIONS, THE PRODUCTS AND SERVICES ARE SOLD ON AN "AS-IS", "WHERE-IS" BASIS AND SELLER EXPRESSLY DISCLAIMS AND WILL HAVE NO LIABILITY TO BUYER FOR ANY WARRANTIES OR LIABILITIES, INCLUDING ANY IMPLIED WARRANTIES (INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE).
7. **LIMITATION OF LIABILITY:** TO THE EXTENT THAT LIABILITY IS NOT OTHERWISE EXCLUDED IN ACCORDANCE WITH SECTION 6 (LIMITED PRODUCT WARRANTY) ABOVE, SELLER'S MAXIMUM AGGREGATE LIABILITY HEREUNDER SHALL BE LIMITED TO THE PRICE PAID BY BUYER TO SELLER FOR THE PRODUCT(S), SYSTEM(S) AND/OR SERVICE(S) SOLD HEREUNDER. SELLER SHALL NOT BE LIABLE TO BUYER, ITS CUSTOMERS, OR ANY THIRD PARTY UNDER ANY CIRCUMSTANCES OR DUE TO ANY EVENT WHATSOEVER, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT, LOSS OF USE OR BUSINESS STOPPAGE, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. **CANCELLATION OF ACCEPTED ORDER:** Once accepted by Seller, no PO may be cancelled without Seller's written consent which may be withheld in Seller's absolute discretion. Whether or not consented to, Buyer shall indemnify Seller for and against all losses or other damages resulting from such cancellation, in accordance with Section 10 (Termination Costs).
9. **TERMINATION:** Seller may, upon thirty (30) days' written notice, terminate any order or agreement with Buyer, in whole or in part, or the supply of any products and/or services provided hereunder (including termination of the software license specified in Section 1 of the License Terms) if Buyer breaches any representation, warranty, agreement or obligation contained or referred to in any such order or agreement (including these General Terms and Conditions), including, without limitation, the nonpayment of any agreed fees, provided Buyer does not cure said breach within such thirty (30) day written notice period
10. **TERMINATION COSTS:** Buyer shall indemnify and reimburse Seller for all loss or damage resulting from any termination or cancellation by either party in accordance with Section 8 (Cancellation of Accepted Order) or 9 (Termination), including but not limited to Seller's direct costs incurred, overhead, contract profits, costs and all expenses to which Seller has become committed for fulfillment of the order prior to such termination or cancellation. Buyer agrees that termination of the order, in whole or in part, for any reason whatsoever shall not relieve Buyer of its obligations regarding confidentiality under these General Terms and Conditions.
11. **INFRINGEMENT:** In the event that Buyer is charged with infringement of any patent, trademark or copyright held by a third party by reason of any product or service (including Licensed Programs) purchased from Seller, Buyer shall give prompt written notice of such charge to Seller. Buyer agrees that Seller shall have, at its option, the right to repurchase the product or system, or terminate the service, and refund the price paid therefor claimed to infringe at the sales price of such product, system or service set forth in Buyer's PO, in each case less fifteen (15) percent of such sales price for each year or fraction thereof from the date of delivery of such product or service to Buyer to the date the option is exercised by Seller. Buyer further agrees that the repurchase of such product or system, or refund of amounts for service by Seller constitutes a complete and final settlement of any claim Buyer might have against Seller by reason of the claimed infringement or the like. In addition, Buyer agrees to permit Seller, at its option, to assume full and complete control of the defense, with the reasonable cooperation of Buyer at its own expense of any such infringement action or claim brought against Buyer as a result of Buyer's use or sale of such equipment, system or service. Seller agrees to bear the expense of any defense for which Seller has exercised its option to control. In any event, Seller's liability to Buyer resulting from any such action at claim or any settlement thereof, is limited to and shall not exceed the full purchase price paid for the applicable product, system or service minus the price provided herein for the repurchase of such equipment, system or refund of service fees by Seller, if any. Seller shall not be liable to Buyer for any claim(s) based upon the use of the product, system or services in combination with equipment or devices not made by Seller or in a manner for which the product or systems were not designed, or from designs or specifications provided by Buyer. No costs or expenses shall be incurred for the account of Seller without its written consent. The foregoing states the entire liability of Seller with respect to such infringements by the products or any part thereof or by their operation.
12. **PAYMENT:** Unless otherwise agreed between the parties or specified in the invoice, Buyer shall pay to Seller the fees and any other amount specified in a validly issued invoice, within 30 days of receipt of such invoice (or, in the case of a deposit invoice, promptly upon receipt). In the event that Buyer fails to promptly remit the full and complete fees in accordance with this Section 12, Buyer shall pay Seller interest on the unpaid balance computed at the rate of one and one half (1 1/2) percent per month (effective annual interest rate of eighteen (18) percent) from the date the balance becomes overdue until paid in full, subject to the maximum interest rate permitted by applicable law. In addition, Buyer shall pay to Seller all reasonable attorneys' fees and related expenses in connection therewith and in connection with any litigation initiated to enforce the provisions hereof.
13. **INDEMNITY:** Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all losses, damages, claims, suits or judgments arising out of or resulting in whole or in part to the extent attributable to: (a) any modification, alteration or other change made by Buyer, its servants, agents, employees and/or independent contractors, to the products or systems sold to Buyer, without the express written consent of Seller; (b) any product or system of Buyer (including, without limitation, under any product liability claim based upon such product); (c) any failure of Buyer to follow Seller's written recommendations or to properly train and supervise machine operators and maintenance personnel in the handling, operation and maintenance of the product or system sold hereunder; or (d) any act or omission of Buyer. In addition to the foregoing, and not in replacement thereof, any third party that purchases or otherwise receives any product, system and/or services purchased from Seller shall, effective as of the date of such resale or transfer, be subject to the obligations

to indemnify Seller as set forth in this paragraph as applicable to such transferee, and in connection therewith, Buyer further agrees to cause such transferee, as a condition precedent to such resale, to execute a confirmatory letter addressed to Seller to this effect.

14. **SHIPPING:** All products will be shipped F.O.B., Seller's factory in Hyannis, Massachusetts (or such other Seller factory, as may be notified to Buyer). Risk of loss for the products or systems shall transfer to Buyer as soon as they are placed in the hands of the carrier, and all insurance and transportation charges will be paid by Buyer. If Buyer fails to designate a carrier for shipment after notice that the products or systems are ready for delivery, Seller is authorized to select and arrange with a carrier for the shipment and to invoice Buyer therefor. By so doing, Seller will not thereby assume any liability in connection with shipment, nor shall the carrier in any way be constructed to be Seller's agent.
15. **EXPORT CONTROLS:** Buyer's purchases of products, systems and services from Seller are subject to applicable export and re-export controls (including, without limitation, under export control laws, regulations and orders of the United States of America and any agency, subdivision or instrumentality thereof). Buyer will not directly or indirectly take any prohibited action or fail to take any required action so as to violate these controls. Buyer represents that the products are being purchased with the purpose of exportation to only those countries specified in Buyer's purchase order, and Buyer covenants that the products will be shipped to that destination and shall furnish, if required by Seller, a certificate duly executed by the customs authority at the port of importation, certifying that the goods have been landed and entered at that port. Buyer will maintain complete records of its sales of products and systems, including records of sales showing customer name, ultimate destination, product designation, serial number and date of sale of all Buyer products, and will make these records available to Seller upon request. Buyer will have sole responsibility for obtaining any necessary foreign governmental approvals relating to the products sold or services rendered by Seller.
16. **INTELLECTUAL PROPERTY:** Buyer acknowledges and agrees that Seller is and shall remain the sole and exclusive owner of all right, title and interest in and to any and all software (including Licensed Programs and Documentation), as defined in the Software License Terms, designs, specifications and other documentation and information provided or made available to Buyer in connection with any goods, systems or services provided to Buyer (the "Product Information"), as well as all technology, know-how and other intellectual property related to the Product Information or the development, design, manufacture, sale, installation, configuration and use of such goods, systems and services and the same is and shall remain Seller's proprietary and confidential information and intellectual property. To the extent that Buyer has any rights in any Product Information or any modifications or improvements, Buyer hereby assigns, conveys, and transfers all rights in and to the Product Information to Seller. Buyer agrees to (i) hold all Product Information in the strictest confidence and not to disclose any Product Information to anyone, except that Product Information may be disclosed to Buyer's officers, directors, employees, agents, and representatives (collectively, "Representatives") on a "need to know" basis for the purpose of using the applicable goods or services provided to Buyer in accordance with these terms, provided that such Representatives agree in writing to be bound by these terms and agree in writing not to disclose such Product Information to any other person and (ii) not, and will not employ, cause, direct or assist any other person to, duplicate, reverse engineer, or otherwise produce products or systems which rely on any Product Information or any of Seller's, technology, know-how or other intellectual property.
17. **AMENDMENT AND WAIVER:** Any modification or waiver of any provision of these General Terms and Conditions must be in writing and signed by authorized representatives of both parties. The failure of either party to enforce at any time for any period the provisions of or any rights deriving from these General Terms and Conditions shall not be construed to be a waiver of such provisions or rights or the right of such party thereafter to enforce such provisions. Notwithstanding the foregoing, and in accordance with Seller's established policy of constant improvement, Seller reserves the right to amend the specifications and designs at any time without notice.
18. **ADDITIONAL CONDITIONS:**
  - (a) Facility. To the extent applicable for implementation services, Buyer agrees to provide a safe working environment at Buyer's site in a heated and lighted office space with reasonable access to a telephone, fax machine, photo copier, and internet access.
  - (b) Limitations. No action, regardless of form, arising out of any purchase order or other agreement to which these Terms and Conditions apply may be brought by either party more than two (2) years after the cause of action has arisen.

19. **GOVERNING LAW:** The law of the Commonwealth of Massachusetts, without resort to its choice of law principles, will govern all matters arising under or pertaining to these Terms and Conditions, and to any agreement governed by these General Terms and Conditions. The United Nations Convention on the International Sale of Goods shall not apply to any transaction governed by these General Terms and Conditions.
20. **DISPUTE RESOLUTION:** Any controversy or claim arising out of or relating to any transaction governed by these General Terms and Conditions or the breach of any agreement related thereto, shall be settled by arbitration, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA Rules"). The site of the arbitration shall be Boston, Massachusetts. There shall be a sole arbitrator, who shall be chosen in accordance with the AAA Rules. The language in which the arbitration proceeding shall be conducted shall be English. A final award shall be rendered within one year of the notice of the arbitration. To the extent that litigation must be pursued in aid of or related to an arbitration under this Section, Buyer submits to the jurisdiction and venue of the Courts of the Commonwealth of Massachusetts, as well as to the jurisdictions of all courts from which an appeal may be taken from the aforesaid courts for the purpose of any litigation, action or other proceeding arising hereunder and expressly waives any and all obligations that it may have to jurisdiction and/or venue in such courts. Buyer hereby irrevocably and unconditionally waives any right of immunity from legal proceedings, including without limitation, prejudgment attachments, provisional measures, suits, judgments and execution, on grounds of sovereignty, which it or its property may hereafter enjoy. No action, regardless of form, arising out of any agreement governed by these General Terms and Conditions may be brought by either party more than two (2) years after the cause of action has arisen.
21. **SUSPENSION AND TERMINATION FOR BANKRUPTCY:** Insistence by Buyer on suspension of manufacture or shipment, if not acquiesced in by Seller, may be treated by Seller as a wrongful termination of the agreement related thereto, and Buyer shall thereupon be liable for all losses and damages arising out of any such suspension or termination. In the event of any default under any agreement with Buyer, Seller may accelerate all payments to be made thereunder and all such payments shall be due as one lump sum payable on the date of such default. If before the fulfillment of any order, either party commits an act of bankruptcy, notifies any of its creditors that it is unable to meet its debts or that it has suspended payment or that it is about to suspend payment of its debts, convenes, calls or holds a meeting to pass a resolution to go into liquidation or apply for an official moratorium, has a petition presented for winding up or to have a receiver appointed, or becomes insolvent, the other party, by giving notice in writing, notwithstanding the bankruptcy or liquidation, shall be entitled to terminate its agreement with the other party, by reselling or rebuying as the case may be, and seeking the difference, if any, in the rebuy or the resale costs so incurred. Should the other party be dissatisfied by such resale or repurchase price, the matter shall be referred to arbitration. If no such resale or repurchase takes place, the closing out price shall be the market price of the product on the day following that on which one of the aforementioned circumstances arises. Failing mutual agreement, the market price shall be fixed by arbitration.
22. **INSPECTION:** Inspection by Buyer of the products or systems must be made at Seller's factory. Reasonable facilities will be afforded to inspectors representing Buyer to make such inspection and to apply, prior to shipment, tests in accordance with the Limited Warranty and to which Seller has previously agreed.
23. **SECURITY:** Seller reserves the right to require payment in advance as satisfactory security or a guarantee that an invoice will be promptly paid when due if at any time Buyer's financial responsibility becomes impaired or unsatisfactory to Seller. Buyer grants Seller, and Seller reserves, a purchase-money security interest in each product purchased from Seller and in any proceeds therefrom, for the full amount of fees payable to Seller. Buyer agrees that Seller may file financing statements or take any other actions Seller deems reasonably necessary to perfect its security interest, and Buyer will reasonably cooperate with such efforts. Payment in full of the purchase price of any product or system purchased from Seller, shall release the security interest on that product.
24. **ASSIGNMENT:** Neither Party may assign or otherwise transfer any purchase order that has been accepted or any other agreement with the other Party or any of their respective rights thereunder in whole or in part without the prior written consent of the other Party, which will not be unreasonably withheld, provided however that either party may assign any such purchase order or other agreement in connection with a merger, sale of stock sale of assets or similar event without the need for any such consent, provided notice of such event is furnished prior to the closing of such transaction, and provided that in a sale of assets transaction, the buyer affirmatively agrees to assume the assignor's obligations hereunder. Any such agreement or assignment shall inure to the benefit of the other party, its successors, administrators, heirs and permitted assigns.

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25. **FORCE MAJEURE:** Seller shall not be in default or liable for any failure in performance or loss or damage under any agreement with Buyer due to any cause beyond its reasonable control. Without limiting the foregoing, estimates as to time required for shipment are based on conditions prevailing at the time of quotation. All agreements as to delivery are subject to all the contingencies of force majeure, including but not limited to floods, fires, strikes, accidents, documented supply chain delays, delay in transportation, any other commercial impracticability or other causes of delay beyond Seller's control. Any failure by a party under any purchase order or other agreement (other than payment of money due) due to a force majeure shall not be deemed to be a default and the time of performance shall be extended for a period of time equal to the period of delay and its consequences.
  26. **AUDIT:** Seller may at reasonable times and upon 24 hours' notice, inspect Buyer's premises and equipment to verify that all the terms and conditions of these General Terms and Conditions are being observed.
  27. **SURVIVAL AND INVALIDITY:** The provisions contained herein which would by their nature survive the termination or expiration of any agreement between Buyer and Seller governed by these General Terms and Conditions shall so survive. If any provision of these General Terms and Conditions is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of these General Terms and Conditions will remain in full force and effect. Any of these General Terms and Conditions held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
  28. **NOTICE:** Notices or demands hereunder shall be in writing and deemed given when personally delivered or when deposited in the U.S. mail, certified, first class postage prepaid, to the relevant party at the address set forth below their signature. Either party may change its address for the giving of notice by so notifying the other party by written notice given in the manner set forth in this Section.

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## **SencorpWhite Software License Terms**

In addition to the SencorpWhite Sales Order General Terms and Conditions, these SencorpWhite Software License Terms shall apply to, and govern Buyer's purchase, and Seller's provision, of the Licensed Programs (as defined below) and all rights, obligations and responsibilities related thereto by SencorpWhite, Inc., and/or by any of its direct or indirect subsidiaries, including, without limitation, the following: Intek Integration Technologies, Inc; Minerva Associates, Inc.; and AccuSeal SencorpWhite, Inc. (as applicable, "Seller") with their customers or licensees (as applicable, "Buyer"). In the event of any conflict or inconsistency between the terms and conditions of the General Terms and Conditions and these Software License Terms, the terms and conditions in the Software License Terms shall prevail to the extent of such conflict or inconsistency, but only with respect to the Licensed Programs, services and obligations set forth in these Software License Terms. Capitalized terms not defined herein are defined in the General Terms and Conditions.

### **1. License**

1.1 Subject to the terms and conditions of its agreement with Buyer (including these Software License Terms) and in consideration of the license fee ("License Fee") specified in the written proposal or sales order acknowledgement from Seller that is accepted by Buyer ("Proposal") Seller hereby grants Buyer a personal, nonexclusive, non-sublicensable license to use one copy of the current version of the software programs described in the Proposal and agreed between the parties and any software updates and modifications thereto ("Licensed Programs"), and one copy of the current version of operational, supervisory and technical manuals provided with the Licensed Programs ("Documentation"), solely for Buyer's own internal data processing and computer needs.

1.2 Buyer may use the Licensed Programs solely in machine-readable object code format, solely on a single computer system, which may be a single computer or single server (which may be on premise or hosted by the Buyer or a third party or Seller) ("Designated Server") and solely at the premises occupied by Buyer at the address specified in the Proposal ("Site(s)"). Buyer may use the Documentation solely in connection with the Licensed Programs in accordance with these Software License Terms.

1.3 The total number of work stations or mobile devices on which the Licensed Programs are operating at any given time shall not exceed the number specified in the Proposal ("Total Concurrent Users"), as controlled and authorized by a license key. Buyer may increase the Total Concurrent Users by notifying Seller, in writing, and paying the appropriate Concurrent User License Fee or modified annual subscription fee, as applicable, for each additional concurrent user.

1.4 Buyer will take all steps reasonably necessary to protect Seller's and its licensors' proprietary rights in the Licensed Programs and the Documentation. Buyer will, at its own cost and expense, keep the Licensed Programs and the Documentation free and clear of Buyer's creditors' claims, liens and processes.

### **2. Right to Make Copies**

2.1 Buyer may make a single archival back-up copy of each version release of the Licensed Programs. Buyer may also make one temporary copy of the Licensed Programs as necessary to implement updates to the Licensed Programs provided by Seller, and one copy for its own internal data processing and computing needs in a non-production test environment, provided Buyer has paid the license fee for a test license and has been issued a test license key. Buyer may use this test license in a training or testing environment, solely for training its employees and/or for testing modifications and changes, prior to releasing such modifications and changes into a properly licensed production environment.

2.2 Any and all copies of the Licensed Programs or Documentation shall be subject to the terms and conditions of these Software License Terms. Buyer must reproduce and include any copyright, trade secret, trademark, or proprietary data notices, and other legends and logos on any and all copies. Buyer must maintain an accurate record of the location of all copies at all times.

### **3. Restrictions**

Buyer shall not: (a) transfer, assign or license the use of, or provide access to, all or any portion of the Licensed Programs to any third party or entity without the express written permission of Seller; (b) except as expressly provided herein, make any copies of the Licensed Programs or Documentation (or any part thereof) unless explicitly authorized by Seller in writing; (c) modify, adapt, translate, create derivative works of, reverse engineer, alter, disassemble, decompile or otherwise attempt to

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derive the source code for, the Licensed Programs and/or Documentation, including but not limited to unmodified sub-routines, functions, libraries or other binary code segments of the Licensed Programs; (d) reverse engineer, decode, hack, or otherwise compromise Seller issued license files, license keys, or license data, or make any attempt to utilize software modules that are not licensed to Buyer by Seller or make any attempt to allow more users to utilize the software than Buyer is authorized to by Seller; (e) merge the Licensed Programs with other software or other content, whether online or otherwise; (f) sub-license, distribute, sell, provide for service bureau use, lease, rent or loan the Licensed Programs to any third party or entity; (g) remove or alter any notices in the Licensed Programs and/or Documentation; or (h) copy or transfer the Licensed Programs to any computer system other than the Designated Server, provided, however, that if any part of the Designated Server becomes temporarily inoperable, Buyer may transfer the Licensed Programs to a backup computer system until operable status of the Designated Server is restored (at which time Buyer will delete the Licensed Programs from the backup system). Buyer may also transfer the Licensed Programs to a server that replaces the Designated Server, provided that the Licensed Programs are deleted from any replaced server.

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

The license granted in Section 1.1 of these Software License Terms continues until the earlier of termination of (i) the software license (including cessation of any applicable subscription terms); or (ii) these Software License Terms. Buyer may terminate the software license by notifying Seller in writing and destroying all copies of the Licensed Programs and the Documentation.

#### **5. Warranty and Limitations**

5.1 **Warranty.** Except as otherwise provided in these Software License Terms, or as may otherwise expressly be provided in a separate written Software License Agreement or System Support Terms, Seller warrants and represents that the Licensed Programs shall perform substantially in accordance with the Documentation (“Software Warranty”) for a period of 90 days after completion of installation of the Licensed Programs on the Designated Server except to the extent Buyer has contracted for support services or an annual subscription, in which event the period of the Software Warranty shall extend to the end of such support or subscription term, as the case may be. Seller’s entire liability and Buyer’s exclusive remedy for any breach of the Software Warranty shall be for Seller, at its option, either to: replace the Licensed Programs or any part thereof that does not meet the Software Warranty and which is returned to Seller with its original distribution media; or, to correct any errors which Buyer finds in the Licensed Programs during this Software Warranty period and which prevents the Licensed Programs from substantially performing as described in the Documentation. Any replacement Licensed Program shall be warranted on the terms herein for the longer of either the remainder of the original Software Warranty or 30 days from such replacement or correction (as applicable).

5.2 **Limitations on Warranty.** The Software Warranty is null and void if Buyer modifies or changes the Licensed Programs in any way except as permitted under these Software License Terms or if the failure of the Licensed Programs has resulted from use of the Licensed Programs for a purpose for which they were not intended. Seller does not warrant that the functions contained in the Licensed Programs will meet Buyer’s requirements or that the operation of the Licensed Programs will be uninterrupted or error free. Seller shall not be required to correct errors during the warranty period attributable to: equipment malfunction; products other than the Licensed Programs; use of the Licensed Programs in conflict with or contravention of the Documentation or the terms of these Software License Terms; or accident, neglect, misuse or abuse of the Licensed Programs.

5.3 **Indemnification.** Subject to the provisions of Section 7 (Limitation of Liability) and 11 (Infringement) of the General Terms and Conditions, Seller agrees to indemnify and hold Buyer harmless from any third-party claim that the Licensed Programs infringe the intellectual property rights of such third party, unless such third party is attempting to perfect a claim using improperly disclosed Confidential Information of Seller’s to make the claim.

#### **6. Update and Maintenance Policy**

Seller may, in its sole discretion, advise and offer to Buyer any updates to and new releases of the Licensed Programs at the then-current prices. All updates and new releases that are provided to Buyer shall be governed by the terms of these Software License Terms.

#### **7. U. S. Government Restricted Rights**

The Licensed Programs and Documentation are provided with restricted rights. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subdivision (b)(3)(ii) of The Rights in Technical Data and Computer Software clause at 252.227-7013. The contractor / manufacturer is one or more of: SencorpWhite, Inc., AccuSeal Sencorpwhite,



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Inc., Intek Integration Technologies, Inc., or Minerva Associates, Inc, (as the case may be) 400 Kidds Hill Road, Hyannis, MA 02601, U.S.A. Telephone: (508) 771-9400.

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## SencorpWhite Implementation Services Terms

In addition to the SencorpWhite Sales Order General Terms and Conditions, these SencorpWhite Implementation Services Terms shall apply to, and govern Buyer's purchase, and Seller's provision, of the Services (as defined below) and all rights, obligations and responsibilities related thereto by SencorpWhite, Inc., and/or by any its direct or indirect subsidiaries, including, without limitation, the following: Intek Integration Technologies, Inc; Minerva Associates, Inc.; and AccuSeal SencorpWhite, Inc. (as applicable, "Seller") with their customers or licensees (as applicable, "Buyer"). In the event of any conflict or inconsistency between the terms and conditions of the General Terms and Conditions and these Implementation Services Terms, the terms and conditions in these Implementation Services Terms shall prevail to the extent of such conflict or inconsistency, but only with respect to the implementation services and obligations set forth in these Implementation Services Terms. Capitalized terms not defined herein are defined in the General Terms and Conditions.

### 1. Nature of the Transaction

Seller shall provide Buyer with the Licensed Programs, Hardware and Services, as specified in the written proposal or sales order acknowledgement from Seller that is accepted by Buyer ("Proposal"). Seller will configure, integrate, and implement the Software System for Buyer at the Site. In addition, Seller will provide services to assist Buyer in the data conversion, system training, testing, and system start up to put the Software System into production.

Seller shall be responsible for providing only those Services specifically identified as being provided by Seller in the Proposal. Any hardware, software or service that is identified in the Proposal without pricing, that is not specifically noted as being provided by the Seller, or is omitted from the Proposal, will be the Buyer's responsibility to acquire and maintain during the term of any agreement incorporating these Implementation Service Terms, at its cost.

### 2. Definitions

- a) "Hardware" means the system hardware components listed in the Proposal and related documentation.
- b) "SRS" means, as applicable, Seller's standard System Requirements Specification document or, where the parties specifically agree that Seller shall perform "Operational Analysis" services (as outlined below), such other System Requirements Specification document produced specifically for the Buyer as a result of the Operational Analysis service conducted by Seller (a "Buyer-Specific SRS"). This document provides the detailed description of how the Software System will be configured, integrated, implemented and tested as part of the implementation, and details on how the Services will be provided to Buyer. The SRS, as signed and accepted by the parties, is incorporated into these Implementation Service Terms by reference. In the event of any conflict or inconsistency between the terms and conditions of these Implementation Service Terms and the SRS, the terms and conditions of these Implementation Service Terms shall prevail to the extent of such conflict or inconsistency.
- c) "Software System" means the Licensed Programs, Hardware and, to the extent permitted by the terms governing Buyer's use of third-party software, certain third-party software that is integrated with or used in conjunction with the Ascent Warehouse Logistics (AWL) System and any other software program or system offered by Seller to Buyer hereunder.

### 3. Scope of Services

Seller shall provide the Buyer with some or all of the following services, as specifically agreed between the parties in writing or as expressly included in the relevant Proposal ("Services"). Without such written agreement or express inclusion in the relevant Proposal, Seller shall not be required to provide any such Services. Except where specified otherwise in these Implementation Service Terms:

- a) *Operational Analysis*. The "Operational Analysis" services means those consulting and analysis, design, research and documentation services, to be performed by Seller on-site and/or remotely as required to prepare two draft versions, and one final version, of the SRS. Seller shall perform such agreed-upon Operational Analysis services for the estimated hours specified the Proposal or these Implementation Service Terms. All travel and living expenses incurred for such on-site time are billed at cost to Buyer. Any additional consulting, analysis, engineering, meetings or additional document drafts, will be billed as incurred at Seller's standard hourly rates as out of scope work. The SRS shall be reviewed, approved and accepted by the Buyer prior to installing the Licensed Programs. In the absence of any formal acceptance criteria for the

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Software System, the Buyer shall “accept” the Software System where Buyer reasonably determines that the Software System performs in accordance with the standard functionality as defined in the SRS and Documentation as defined above.

- b) *Project Management*. “Project Management” means the planning, scheduling, coordination, status reporting, and related communication necessary to manage the project for the duration of the project as defined in the project schedule associated with the SRS. Seller shall provide the Project Management services for the estimated hours specified in the Proposal. This service covers all project management activities that are not conducted on-site. All on-site Project Management will be billed as an Implementation Service (as defined below). Once an implementation schedule has been established and agreed upon in the SRS, any additional Project Management services provided by Seller as a result of delays in the implementation schedule, to the extent such delay is attributed to or as a result of the Buyer, will incur additional Project Management fees, at Seller’s standard hourly rates. This includes but is not limited to project re-scheduling as a result of a failed or rejected readiness evaluation or to limit Buyer’s operational impact or service, resource availability of the Buyer, or any other delays out of Buyer’s control.
- c) *Slotting Analysis*. The Slotting Analysis service is a fixed price service based on the number of SKUs to be slotted. As specified in the Proposal or these Implementation Service Terms, Seller will provide within the scope of the fixed price up to three iterations of the velocity analysis, cube analysis and location assignments prior to creation of the final results used to map the locations in the system. Any additional analysis and location assignment iterations will be billed at Seller’s standard hourly rates. Any data manipulation required to ensure that the data provided by the Buyer meets the defined specifications for slotting data import will be billed on a time and materials basis as out of scope work.
- d) *Implementation & Consulting Services*. Except as outlined below, Implementation Service and Consulting Services are billed as incurred at Seller’s standard hourly rates. “Implementation Services” means any work performed by Seller in the implementation of the Software System on-site or at Seller’s offices. Implementation Services may include, as Seller considers reasonably necessary, data conversion support, host interface consultation and testing, pre-installation readiness certification, installation and testing, user operator training, on-site start-up support, post start-up support, Software Modification release and testing, and any Operational Analysis services or Software Modification design performed after completion of the SRS (as applicable), and any supplemental Site support. Unless otherwise specified by Seller, Implementation Services and Consulting Services are subject to minimum billing of eight hours for single day Site visits, and a minimum of four hours per day for multi-day Site visits will apply to travel days or partial Site days. Any work performed off Site will incur a minimum billing of one hour. Seller may, from time to time, notify Buyer that certain small systems services shall be performed at a fixed fee, for a certain number of hours. In such event, any services performed beyond such certain number of hours shall be subject to a change order. Premiums will be applied to the hourly rates for all services performed on-site for Graveyard, Weekend or Holiday Hours. “Graveyard Hours” are defined as 10 PM to 6 AM Monday through Sunday and will be charged at two (2.0) times the base rate. “Weekend Hours” are defined as 6 AM to 10 PM on Saturday and Sunday and will be charged at one and a half (1.5) times the base rate. “Holiday Hours” are defined as the entire 24 hours of any Recognized Seller Holiday and will be charged at two (2.0) times the base rate. All associated travel and living expenses are billed as incurred at cost to the Buyer. “Recognized Seller Holiday” means the following days, recognized in the United States: New Years’ Day, President’s Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving, the day after Thanksgiving, Christmas Eve and Christmas Day.
- e) *Software Modifications*. “Software Modifications” means a fixed price service provided by Seller to add functionality to the Licensed Programs for use at the Site. The proposed modifications required for the Software System and proposed prices are estimates only. Seller will provide firm fixed pricing for the required Software Modifications upon completion and Buyer’s acceptance of the SRS or associated Software Modification design document. Upon completion of the Software Modification, all release and testing services for all Software Modifications will be billed as an Implementation and Consulting Service in accordance with paragraph d) above. All Software Modifications are subject to the terms and conditions of the Software License Terms. Modifications to reports and label formats are not considered Software Modifications and are not included as part of the implementation unless specifically identified in the Proposal or these Implementation Service Terms. Any required modifications to reports or label formats to be performed by Seller will be billed as an additional and out of scope Implementation or Consulting Service.
- f) *Readiness Evaluation Acceptance*: If specified in the Proposal or these Implementation Service Terms and if Seller has produced a Buyer-Specific SRS, prior to go-live, Seller will perform a “Readiness Evaluation” which will be published and accepted by the Buyer. Seller shall not perform any “Readiness Evaluation” if Seller has not produced a Buyer-Specific SRS. Upon acceptance of the Readiness Evaluation, if Seller does not perform the Readiness Evaluation and Buyer goes-live without such Readiness Evaluation, or Buyer declines to accept the Readiness Evaluation and goes live against Seller’s recommendations in the Readiness Evaluation report, or if Seller has not produced a Buyer-Specific SRS, Buyer assumes full responsibility for the Software System and Seller shall not be liable for any losses suffered by Buyer or any third party

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in relation to the operation or use of the Software System. Unless formal system acceptance criteria is specifically defined in the System Requirements Specification referenced in paragraph a) above, the Buyer, by their decision to go-live, acknowledges that the system as delivered and tested, has been accepted by the Buyer.

#### **4. No Third-Party Product Warranty**

Seller makes no warranty or representation of any kind, whether express or implied, relating to the products (including, without limitation, any hardware or software) of any third-party manufacturer or licensor, which may be supplied under the Proposal or these Implementation Service Terms, and Buyer agrees to rely only on such third party for any warranty claim relating thereto.

#### **5. Hosting; Computer Hardware and Third-Party Software**

Unless otherwise specifically agreed to in writing by the parties, any hosting services pertaining to the Licensed Program is the responsibility of Buyer.

Buyer must not acquire any software or hardware product from a third party that is to be integrated with or used in conjunction with the Software System unless such manufacturer and/or distributor of the third-party software or hardware is approved by Seller in writing.

Seller may obtain certain third-party software or hardware for Buyer. The prices Seller has provided for such third-party software or hardware may change from those specified in the Proposal or these Implementation Service Terms. This is primarily due to normal price fluctuations in such software or hardware. In the event the prices for such software or hardware change, Seller will pass the price increase or decrease along to the Buyer or provide the Buyer with the option of sourcing such software or hardware directly.

Neither the Proposal nor these Implementation Service Terms includes support for features of third-party software or hardware. More in-depth training sessions on the use of advanced features of third-party software may be arranged under a separate contract or provided on a time-and-materials basis at the hourly rates agreed between the parties plus travel and out-of-pocket expenses at cost. This includes but is not limited to report writing software, database tools of any kind or bar code label customization software.

#### **6. Buyer Responsibilities**

- a) *Host Interface, Data Conversion and Testing*: The Buyer shall be responsible for the ERP, MRP or other business, order management, e-commerce site, accounting, EDI system's portion of the host interface to the Software System as it relates to the generation of transactions for download to the Software System, the processing and posting of transactions generated by the Software System, and transport or transmission of the transactions from and to the Software System. The Buyer shall be solely responsible for data conversion, map file creation, data entry, and verification of supplied data. The Buyer is responsible for testing the system with their data and specific configurations as well as their host interface prior to go-live.
- b) *Network Infrastructure*: Buyer is responsible for the network infrastructure that includes but is not limited to the wiring, routers, hubs, switches, wireless access points and associated physical installation. Should Seller provide any networking hardware such as wireless access points, these will be configured with basic security protections suitable to operate the Software System in pilot mode for training and testing. Any additional security requirements or work required to incorporate the Software System into the Buyer's network or security protocol's will be billable on a time-and-materials basis by Seller and considered out of scope work.

#### **7. Delivery**

The delivery schedule for the Software System will be finalized and defined in the applicable SRS or otherwise agreed between the Parties. The SRS and associated delivery schedule represent the only delivery schedule for the Software System. All schedules and schedule estimates provided to the Buyer prior to delivery of the SRS are considered estimates only and are in no way binding upon Seller or Buyer.

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## **SencorpWhite System Support Terms**

In addition to the SencorpWhite Sales Order General Terms and Conditions, these SencorpWhite System Support Terms shall apply to, and govern Buyer's purchase, and Seller's provision, of the system support services described below and all rights, obligations and responsibilities related thereto by SencorpWhite, Inc., and/or by any its direct or indirect subsidiaries, including, without limitation, the following: Intek Integration Technologies, Inc; Minerva Associates, Inc.; and AccuSeal SencorpWhite, Inc. (as applicable, "Seller") with their customers or licensees (as applicable, "Buyer"). In the event of any conflict or inconsistency between the SencorpWhite General Terms and Conditions and these SencorpWhite System Support Terms, the terms and conditions in these System Support Terms shall prevail to the extent of such conflict or inconsistency, but only with respect to the support services and obligations set forth in these System Support Terms. Capitalized terms not defined herein are defined in the SencorpWhite General Terms and Conditions.

### **1. Priority Response Time**

Under these System Support Terms, Buyer will receive a response to all support requests and malfunction reports within two hours or sooner during regular support hours as defined in Schedule A ("Regular Support Hours"). Seller shall use reasonable efforts to resolve, or schedule a prompt resolution of, all non-critical issues within ten working days after notification of such issue, including sufficient backup detail to duplicate the issue. Seller reserves the right to implement software bug fixes to non-critical issues to only the current version of the System. If an issue is of a critical nature (i.e. a non-functioning System) then Seller will use reasonable efforts to resolve the issue within twenty-four hours of notification. Examples of issues of a critical nature include anything that completely prevents basic operations, such as receiving, order management, picking, put away, or shipping. Examples of non-critical issues include improperly formatted screens, invalid information presented on the operator's screens, and spurious errors that happen infrequently and without pattern that do not significantly interrupt operations.

### **2. Covered Services**

#### **2.1 Production Support.**

Seller will provide production support via telephone and remote internet support during Regular Support Hours, so long as Buyer grants Seller rights and security passes sufficient to use remote support software. Buyer is responsible for ensuring that corporate firewalls do not block access to Seller's remote internet support. The objective of production support is to maintain the performance of the System as originally installed and accepted by Buyer. Examples of production support are:

- corrections to the System data (database adjustments), only when authorized by Buyer in writing or email.
- answering questions on the use of the System or System functionality for previously trained System Supervisors.
- error condition resolution as it relates to the System.
- assistance in the rebuilding of damaged database files to the extent possible via remote access, only when authorized by Buyer in writing or email.
- guidance for previously trained System Supervisors in the proper use of the System.
- assistance in investigating and determining the source of System malfunctions, except where those System malfunctions are determined to be the result of hardware, the network or third-party software.

#### **2.2 Software Enhancements.**

Seller will provide Buyer with support (via telephone or email) regarding potential operational changes and potential configuration changes associated with the System during Regular Support Hours. Buyer may contact Seller's customer support staff to discuss the feasibility of modifications and enhancements to the current System to meet evolving business processes. Buyer may request a rough order of magnitude estimate for the desired modification or enhancement. If a rough order of magnitude estimate is not feasible without significant design and research, then Seller will propose the required design cost to produce the estimate. Once Buyer has approved the rough order of magnitude estimate, Buyer may then engage Seller in a formal design and prototype phase which will be billable on a time-and-materials basis at the rates specified in Schedule A plus (for on-site work) travel and out-of-pocket expenses as set forth in these System Support Terms. Upon completion of the design and prototype phase, Seller will provide a formal proposal (including pricing) for the development, testing and deployment of the functionality.

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### 2.3 Software Updates (Minor).

“Software Updates” means enhancements, corrections, modifications, and additions to the licensed version of the System that are generally made available to Seller’s customers for use in a production environment. For the duration of any agreement incorporating these System Support Terms, subject to on-time payment of the Annual Fee for the relevant Support Term, Buyer will receive for its use all Software Updates to the licensed version of the System. Such Software Updates shall be licensed under and subject to the Software License Terms. Support provided to install and configure Software Updates will be at no additional charge to Buyer provided that Buyer has an established test environment set up of the System and Buyer’s internal resources are capable of testing the Software Updates with Buyer’s specific System configurations and data. In the event that Buyer does not have the established test environment set up or Seller is required to assist in Buyer-specific configuration and data testing, all testing and verification performed on-site or at Seller’s offices remotely will be billable on a time-and-materials basis at the rates specified in Schedule A plus (for on-site work) travel and out-of-pocket expenses as set forth in these System Support Terms.

### 2.4 Software Upgrades (Major).

“Software Upgrades” means major version releases of the System that require the installation of new versions of all previously licensed System modules and that are generally available to Seller’s customers for use in a production environment. For the duration of any agreement incorporating these System Support Terms and subject to on-time payment of the Annual Fee, Buyer will receive for its use all Software Upgrades to the licensed version of the System. Such Software Upgrades shall be licensed under and subject to the Software License Terms.

All support (on-site or remotely from Seller’s offices) required to install and configure the Software Upgrade will be billable on a time-and-materials basis at the rates specified in Schedule A plus (for on-site work) travel and out-of-pocket expenses as set forth in Section 6 (Fees) of these System Support Terms.

### 2.5 Support of Third-Party Software.

Seller will provide production support in accordance with Section 2.1 (Production Support) with respect to third-party software that is supplied by Buyer and that is integrated with or used in conjunction with the System, except in those instances where Buyer has a direct support agreement with the third-party software provider, in which case the support will be provided by the third-party software provider. These System Support Terms do not include support for features of third-party software not integrated with or used in conjunction with the System, which includes but is not limited to the following: antivirus software, backup software, etc.

More in-depth training sessions on the use of advanced features of third-party software may be arranged under a separate contract or provided on a time-and-materials basis at the hourly rates defined in Schedule A plus travel and out-of-pocket living expenses as set forth in Section 6 (Fees) of these System Support Terms.

Seller is not responsible for any upgrade charges for third-party software or any time-and-materials charges related to upgrading third-party software to newer versions.

### 2.6 Annual Site Visit.

Upon Buyer’s request, and not more than once during any Support Term, a Seller engineer shall attend the Site for a single day (during Regular Support Hours, not to exceed a maximum of 8 hours), at no additional charge to Buyer (provided, however, that Buyer shall reimburse Seller for all reasonable travel and out-of-pocket expenses incurred by Seller or such engineer, including but not limited to, airfare, ground transportation, rental vehicles, lodging, meals, and other reasonable expenses incurred as a normal process of doing business, where such costs have been preapproved by Buyer) to assess Buyer’s operations and monitor the System’s performance and functionality on-site. While on-site, the Seller engineer shall perform routine and preventive maintenance that it deems necessary.

Examples of support performed during an annual Site visit are:

- verifying that Buyer is properly performing System back-ups.
- inspecting System hardware for exceptional age, optimum performance, and redundancy.
- confirming proper use of the System by employees.

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- performing refresher training for previously trained System Supervisors.
  - reviewing operations and support for the previous period.
  - reviewing operations and business processes as they relate to the System and make recommendations to meet evolving business requirements.

Any performance or functional issues discovered during a Site visit will be reported in writing to Buyer.

The Site visit is an optional activity that Buyer is not required to exercise. In the event Buyer wishes to take advantage of this service, arrangements should be made with a Customer Service Representative for scheduling of this activity. The annual Site visit can be extended, or additional Site visits can be provided on a time-and-materials basis at the rates specified in Schedule A.

### **3. Buyer Responsibilities.**

Buyer will notify Seller promptly of any System failures, problems, or nonstandard functionality. Buyer will notify Seller in writing (which may include email) of significant System changes including but not limited to the following: changes in network configuration, hosting environment, movement of or changes to work stations, movement of or changes to peripherals, changes in software settings or configuration, server OS patches, updates or upgrades, client OS patches, updates or upgrades, regularly scheduled virus definition updates or installation of new product installations or versions of virus / spyware software, or any change which may impact the performance or functionality of the System.

During Site visits, Buyer will provide safe, full access to the System and its components, hardware as well as software. Buyer will provide adequate working space, electrical outlets, heat, and light. Buyer will provide the Seller personnel with access to a work station with access to the System, telephone and internet while on-site.

Buyer is solely responsible for the security, integrity and administration of its data and databases, and for ensuring that the data has been properly backed up. This includes additions, deletions, and modifications made to the data using the System, or third-party software, by Buyer, Seller or another other person. Buyer is solely responsible for all third-party back-up software and hardware.

Buyer will appoint one or more System Supervisors and ensure their proper training and expertise with the System to act as liaison between Buyer's users and Seller's customer service staff as defined in Section 4 (System Supervisor).

Buyer will empower and duly authorize the designated System Supervisor(s) to engage Seller in out-of-scope support that is billable at the rates defined in Schedule A, and instruct, authorize or otherwise request Seller to make additions, deletions or modifications to Buyer's System data.

### **4. System Supervisor.**

The System Supervisor(s) will be Buyer's primary support contact(s) for the System. Their responsibilities include but are not limited to the following: 1) responsible for all end user training and procedures, 2) responsible for all System administration, 3) responsible for hardware support and third-party software support, 4) responsible for System and database backups, 5) responsible for all duplication, testing and documentation of System bugs and errors, and 6) responsible for all support-related communications with Seller's support department. Buyer shall ensure that all System Supervisors are adequately qualified and trained and are capable of fulfilling their responsibilities. All requests for technical support from Seller pursuant to these System Support Terms shall be made by a System Supervisor.

Prior to installation of the Software, Buyer shall notify Seller, in writing, of Buyer's designated System Supervisor(s). Buyer agrees to notify Seller, in writing, upon a change in the designated System Supervisor(s).

4.1 Buyer may designate other employees as secondary points of contact provided those employees have been through and completed the Seller's System Supervisor Training.

4.2 All requests for service or support shall be communicated through a designated System Supervisor.

4.3 At least one System Supervisor will be available during Regular Support Hours.

4.4 At least one System Supervisor will be available to assist Seller personnel during the troubleshooting, diagnosis and duplication of issues and at all times when Seller personnel are providing support on-site.

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4.5 Buyer agrees to designate employees who are appropriately qualified, trained in the System and competent in its use. End-user training is the responsibility of Buyer's System Supervisor.

## **5. Services Not Covered.**

Under these System Support Terms, Seller is not responsible for providing any of the following services:

- Maintenance, repair, troubleshooting, training or upgrade of any third-party software unless specifically provided for in these System Support Terms.
- Maintenance, repair, troubleshooting, training or upgrade of System hardware , network components, or Buyer-provided hosting environment.
- Support of MS-SQL or Oracle Staging Tables interface stored procedures and triggers customized by the Buyer or a third party.
- Data conversion of any kind or facility move support or training of any kind.
- On-site or remote training or retraining of end users.
- Training of System Supervisors, either on-site or remotely.
- Recovery assistance due to extraordinary events other than Seller developed software, including but not limited to physical damage to computers, peripherals, or Buyer-provided hosting environment, modifications or removal of Seller supplied software by non-Seller personnel, loss of data or System integrity due to malicious software or third parties, or modification of data by third-party software.
- Installation, implementation, integration, testing, training, consulting or support for additional purchased modules or software modifications not included in the support renewal year or purchased after the annual support was invoiced and paid.
- Recovery assistance due to third-party software, hardware, Buyer-provided hosting environment, or any network components.
- Database administration.

Any of the above-mentioned or other out-of-scope support may be provided at Seller's sole discretion on a time-and-materials basis at the rates defined in Schedule A.

## **6. Fees.**

### **6.1 Annual Fee for Support Services.**

To the extent that the Proposal provides for Support Services during Regular Support Hours in the upcoming Support Term, Buyer shall pay to Seller in addition to the up-front license fee, the Annual Fee for Support Services upon the Effective Date (for the initial 12 month period), and thereafter, at least 30 days prior to the start of each Support Term. Support calls that result in Support Services provided on-site or outside of Regular Support Hours will incur additional charges (as described in Section 6.3 below).



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## 6.2 Subscription

To the extent the Proposal provides for an annual subscription, then as part of such subscription Support Services shall be provided during Regular Support Hours during the subscription term. Support calls that result in Support Services provided on-site or outside of Regular Support Hours will incur additional charges (as described in Section 6.3 below)

## 6.3 Fees for Support Provided On-site or Outside Regular Support Hours.

Buyer may have access to Seller support personnel outside of Regular Support Hours, via cell phone or beeper, provided that the services hereunder are being provided on a subscription basis that includes 24/7 or extended hours or in the event that Buyer has paid the additional annual fee to provide 24/7 or extended hours support access via cell phone or beeper, as defined in Schedule A ("Annual Fee for Extended Support"). Seller may provide such support outside Regular Support Hours in its absolute discretion. Except as specified below, in addition to subscription payments or payment of the Annual Fee for Extended Support, as the case may be, any such support provided by Seller to Buyer will be billable on a time-and-materials basis at the rate of one and one-half (1.5) times the applicable rate defined in Schedule A, with a minimum of a one-hour charge. Any support provided on-site or remotely during:

- a) Weekend Hours will be billable on a time-and-materials basis at the rate of 1.5 times the applicable rate;
- b) Graveyard Hours or Holiday Hours will be billable on a time-and-materials basis at the rate of 2.0 times the applicable rate.

## 6.4 Expenses.

Travel and out-of-pocket expenses will be charged to Buyer at the actual cost to Seller (including but not limited to airfare, ground transportation, rental vehicles, lodging, meals, and other charges incurred as a normal process of doing business).

## 6.5 Additional Requests.

Buyer may request additional services for the design, installation, implementation, data conversion, integration, testing, training, or consulting for additional purchased modules, or already purchased modules not set up or in production or new software modifications. These services shall be provided in the sole discretion of Seller and are subject to minimum billing of eight hours for single-day Site visits, and a minimum of four hours per day for multi-day Site visits will apply to travel days or partial Site days. Any work performed off Site will incur a minimum billing of one hour. The premiums detailed above will be applied to the hourly rates for all services performed outside of Regular Support Hours and for Graveyard, Weekend or Holiday Hours. All associated travel and out-of-pocket expenses are billed as incurred at cost to Buyer.

## 7. Extended Warranty.

These System Support Terms extend the Software Warranty (as defined in the SencorpWhite Software License Terms) for the duration of any Support Term.

## 8. Term.

These SencorpWhite System Support Terms shall remain in effect during any applicable subscription term or any Support Term, as the case may be. Seller retains the right to modify these System Support Terms and Schedule A in connection with each new Support Term. Buyer understands that failure to pay the annual subscription fees in accordance with these System Support Terms will terminate any rights to continued use of the System and the Software and a revocation of the software license. Any failure to pay an Annual Fee for any Support Term support in accordance with these System Support Terms will result in a loss of support for the System and will terminate any rights to Software Updates and Software Upgrades as defined in these System Support Terms.

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## **9. Suspension of Service.**

Service provided under these System Support Terms will be suspended at Seller's option when any of the following conditions exist:

- Buyer has any outstanding invoice from Seller that is overdue by more than 30 days.
- Buyer has not maintained the System on the most current release or the last two major releases.
- Buyer does not have a trained and competent System Supervisor.
- Buyer's Software License is terminated.
- Buyer is not in compliance with terms and conditions of these System Support Terms.

NOTE: Seller, at its sole discretion, may elect to charge a reinstatement fee where a subscription fee or the Annual Fee for any Support Term, as the case may be, is not received within 30 days prior to the start of such annual subscription period or Support Term, as the case may be, whether or not service has been suspended.

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## System Support Terms - Schedule A

Payment of the support fee shown on this Schedule A amends, confirms acceptance and renews the System Support Terms with Seller for the date range identified below on this Schedule A.

**1. System:**

The System means the Licensed Programs (as that term is defined in the Software License Terms between the parties).

**2. The Site**

The Site means the Site(s) (as that term is defined in the Software License Terms between the parties).

**3. Coverage Dates & Annual Fee:** The Services will be offered on either a subscription basis or an up-front license fee basis with supplemental support

Subscription Arrangements

Dates of Coverage: Upon Software Installation (“Start Date”) and continuing in effect for subscription term.

**B. Supplemental Support Services**

Current Agreement Expires:            New Agreement

Dates of Coverage:                    Upon Software Installation (“Start Date”) and for twelve (12) months thereafter.

Annual Fee:                                \_\_\_\_\_ (if blank, Annual Fee is as specified in the Proposal)

**4. Hourly Rates for Services:**

Engineer Rate:                            \$225 / hour

Request Rate:                             \$250 / hour

Note: Customer shall be charged one of the above Hourly Rates for Services, as agreed in the applicable Statement of Work or Purchase Order between the parties.

Some engineer requests are based on availability. Prior to commencing such work, Seller will quote the hourly rate for the requested task, service and duration of the task. The quoted rate will be at or above the \$225 / hour rate defined above.

**5. Regular Support Hours:**

Seller’s “Regular Support Hours” for support under these System Support Terms are defined as 6:00 AM to 4:30 PM Pacific Standard or Daylight Time as observed, excluding Graveyard Hours, Weekend Hours and Holidays Hours.

**6. Seller Observed Holidays:**

New Year’s Day  
Good Friday  
Memorial Day  
Independence Day

Labor Day  
President’s Day  
Thanksgiving  
Day after Thanksgiving

Christmas Eve  
Christmas Day

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