

# MASTER TERMS

**Version: DSG26.0**

**1.1 APPLICABILITY.** These terms ("Master Terms") shall only be applicable to Order Forms which incorporates it by reference, including with the specific version code, and are in addition to any other terms and conditions provided under the Order Form.

## **2 ACCESS AND USER ACCOUNTS**

### **2.1 Access to Descartes products and services.**

Access to Descartes products or services may require an individual to be authenticated against a User Account before being provided with access. The processing of any personal data that may be provided by individuals to Descartes in setting up a User Account is governed by Descartes privacy policy, accessible at <https://www.descartes.com/privacy-center/commercial-relationship-privacy-policy>.

**2.2 Administrative User.** Where the Descartes product or service permits the use of an Administrative User, the Administrative User shall only set up User Accounts for Permitted Users. Customer understands and agrees that it will be solely liable in the event an Administrative User improperly sets up a User Account, creates a User Account for the wrong person, or otherwise accesses, modifies, deletes, or resets any User Account. Customer acknowledges that Descartes relies solely on User Accounts to validate if a person is permitted to access Descartes products or services.

**2.3 Security of User Accounts.** Customer shall be solely responsible and liable for ensuring its Permitted Users are properly securing their User Account credentials. Customer shall be responsible for any actions arising from Customer, Administrative User, or Permitted User improperly storing or securing their User Account credentials. Permitted Users may not share, transfer, provide, or otherwise intentionally allow any other person or third party to access their User Account unless otherwise specifically permitted under the Agreement.

**2.4 Defeating or Circumventing Access Controls.** Customer shall not knowingly take any actions that is designed to or which the Customer ought reasonably know would result in defeating, circumventing, or otherwise avoiding any controls Descartes may have in place to restrict, control, or enforce any account limitations on the use or access of any Descartes products or services.

## **3 CONNECTIONS, THIRD-PARTY TECHNOLOGY, AND INTEGRATIONS**

**3.1 Connections with other systems.** Some Descartes products and services may allow for exchanging or receiving specific information and data with systems, networks, or applications owned by, controlled by, or maintained by a third party to which Customer has some type of commercial or contractual relationship ("External Data"), including but not limited to Customer's vendors, suppliers, technology providers, partners, agents, or contractors (collectively "Data Providers"). Descartes products and services may include modules that are intended solely to allow External Data to be exchanged with Data Providers. Such modules may be identified in the Order Form with the solution type of "Connector". Where

Customer subscribes to or licenses a Connector, Descartes' obligation shall be limited only to providing the necessary infrastructure or data exchange protocols or connections necessary to allow External Data to be exchanged with a Data Provider through the Connector.

**3.2 Relationship with Data Providers.** Customer understands that Descartes may not have, and is under no obligation to have or enter into, a direct relationship or agreement with any Data Providers. Where Descartes does enter into any such agreement at the request of the Customer, Customer shall be responsible for any losses or damages suffered by Descartes as a result of any such agreement. Descartes is not responsible for the performance, or lack thereof, of any Data Providers. Customer confirms that, as it relates to External Data, Descartes may consider a Data Provider to be Customer's agent.

**3.3 Responsibility for External Data.** As it relates to the provision of External Data, Customer shall be solely responsible for ensuring, as between Descartes and Customer only, that:

- (a) Customer has legally obtained all necessary licenses, rights, or permissions to provide External Data to Descartes and to permit Descartes to Use the External Data to perform its obligations under the Agreement, including, without limitation, rights to store, transmit, and reproduce External Data as would reasonably be required, and Descartes is entitled to treat any External Data received from a Data Provider solely as Customer Data;
- (b) External Data is suitable for Customer's needs and that Data Providers will provide External Data in a compatible format and through compatible secure communication protocols or data exchange methods;
- (c) the External Data will be accurate, complete, and regularly updated as is reasonably required;
- (d) any required communication or coordination with the Data Provider will be managed by Customer who will be responsible for any associated delays that may arise from the lack of adequate communication or coordination with the Data Provider;
- (e) any data provided to Data Providers by Descartes is stored and handled securely, in a manner consistent with industry standards;
- (f) the usage by Data Providers of External Data or Customer Data requested or provided through a Connector or under this Agreement is consistent with Customer's expectations or intentions.

**3.4 Third-Party Technology.** Certain Descartes products and services allow Customers to Use additional functionality that is made available by third parties ("Technology Providers"). Products or services that are provided by a Technology Provider may be identified in the Order Form with the solution type of "Third Party Technology" or alternatively "Third-Party Technologies" and may only be used in combination with the Descartes products or services associated with it. As Third-Party Technology is provided by independent Technology Providers, the length of term applicable to products or services identified as Third-Party Technology may be shorter than the length of term for Descartes products and services and Third-Party Technology may be subject to shorter

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termination notice provisions. Descartes will use reasonable efforts to provide to Customer advance notice of any such termination, dependent on the amount of notice provided by Technology Providers to Descartes. Customer agrees not to attempt to modify, decompile, disassemble, or reverse engineer any portion of the Third-Party Technology. Where the Third-Party Technology includes any copy marks, trademarks, watermarks, or other such similar indicators, Customer agrees not to remove, obscure, or otherwise alter any such indicators in any way that would cause a reasonable person to believe that Customer owns the intellectual or moral rights to the Third-Party Technology. Unless otherwise provided for in the Order Form, Third-Party Technology shall be considered the Confidential Information of Descartes and subject to the same restrictions provided under the Agreement.

**3.5 Technology Provider Policies.** Customer understands that some Technology Providers who provide Third-Party Technology may require Customer to agree to user terms, acceptable use policies, or other similar policies ("Technology Provider Policies") which will be provided to Customer in advance of Use. If Customer, acting reasonably, is unable to comply with any Technology Provider Policies, and Descartes is unable to or unwilling to provide a reasonable substitute, the Customer may, as its sole remedy and upon thirty (30) days written notice to Descartes, terminate without penalty the applicable portions of the Agreement related to the Third-Party Technology only.

**3.6 Integrated Technology.** Certain Descartes products or services may incorporate or include technology, including but not limited to code libraries, data, or scripts, that is intended to be seamlessly integrated with the Descartes products or services ("Integrated Technology") but which is sourced from a third-party that is not customarily identified by Descartes in its general descriptions of its products or services ("Integrated Technology Providers"). Descartes shall be responsible for the performance, or lack thereof, of the Integrated Technology as well as ensuring that the Integrated Technology Providers comply with all applicable restrictions that might arise from this Agreement, including but not limited to any restrictions on their use or storage, if any, of any data they may have access to. Accordingly, in the event Customer believes it has suffered any damages as a result of an Integrated Technology Provider, Customer will pursue those claims against Descartes only. Integrated Technology does not include tools or technology used by Descartes solely to create a product or service but which is itself not included within the product or service, including but not limited to any code editors, design tools, or general office software.

**3.7 Substitution of Integrated Technology.** Descartes may substitute any Integrated Technology provided the substitution does not reasonably result in a material loss in functionality, features, or data security to the Customer in the Descartes product or service.

**3.8 Maps.** Where certain Descartes products or services utilize maps, map data, or map content (collectively "Maps"), Customer understands that there are

inherent limitations in Maps for which Descartes expressly disclaims any liability for. Such limitations may include but are not limited to:

- (a) Maps reflect conditions as they existed at various points in time. Accordingly, Maps may contain inaccurate or incomplete data or information due to the passage of time, road construction, changing conditions, and otherwise.
- (b) Maps are comprised of compilations of data and information from government and other sources which may contain errors and omissions. Accordingly, such Maps may contain inaccurate or incomplete data and information due to the nature and processing of such sources.
- (c) Unless specifically stated otherwise in the Order Form, Maps do not contain, include, analyze, process, consider or reflect any of the following categories of information: neighborhood quality or safety; population density; availability or proximity of law enforcement, emergency, rescue, medical or other assistance; construction work, zones or hazard; road and lane closures; legal restrictions (such as vehicular type, weight, load, height and speed restrictions); road slope or grade; bridge height, width, weight or other limits; road, traffic or traffic facilities safety or conditions; weather conditions; pavement characteristics or conditions; special events; traffic congestion; or travel time.
- (d) Descartes may, upon written notice to Customer and provision to Customer of any Technology Provider Policies in advance, substitute Maps provided by one vendor with Maps provided by another vendor where Descartes reasonably believes that a particular Map vendor will be unable to provide necessary or adequate Maps to meet the requirement of the Descartes product or service.

**3.9 External Links.** Certain Descartes products or services may, as part of their intended functionality, provide links to information which Descartes reasonably identifies as being maintained or provided by a third party or hosted on the general internet. The presence of any such links do not constitute an endorsement, sponsorship, recommendation, association, or affiliation by or with any such third party or any content, service, or products that the third party may produce. Customer's access and use of this external content is at Customer's own risk and it is Customer's responsibility to take all protective measures to guard against viruses and other destructive elements. Descartes disclaims any liability that may arise from Customer's use or access to any such third party links as described in this section.

## 4 FEES AND PAYMENT

**4.1 Fees.** The following terms and conditions shall apply in respect of payment of Fees by Customer:

- (a) Customer shall pay Descartes the Fees in the amounts and on such terms as set out in the Order Form.
- (b) Unless otherwise expressly provided in the Order Form, all Fees are expressed in United States Dollars (\$USD).
- (c) At Descartes' option, Descartes may assess a late payment fee equal to one and one half per cent (1.5%) of the unpaid amount for each succeeding

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thirty (30) day period or portion thereof in which Descartes has not received payment from Customer of Fees when due, unless those unpaid Fees have been disputed as per subsection (d) below. If unpaid for a twelve months' period, the effective rate of interest would be 19.56% per annum.

- (d) Customer shall promptly and carefully review statements and invoices provided or made available by Descartes to Customer reflecting transaction activity. If Customer believes any adjustments are needed with respect to any amounts due to Descartes, or if Customer has any other questions or concerns regarding any statement or report provided by Descartes, Customer will notify Descartes in writing within ninety (90) days after such invoice or report is received. If Customer fails to notify Descartes within such time frame, Descartes will not be required to investigate the matter or effect any related adjustment, absent any willful misconduct by Descartes. If Customer notifies Descartes after such time period, Descartes may still, in its sole discretion and at Customer's cost, investigate the matter addressed in Customer's notice, but Descartes will not have any liability to effect any related adjustment absent any willful misconduct by Descartes.
- (e) At Descartes' option, Descartes may suspend provision of any Descartes products and services if Descartes has not received payment of undisputed Fees from Customer when due upon five (5) days written notice.
- (f) Failure by Customer to pay undisputed Fees when due shall be deemed to be a material breach of the Agreement.
- (g) All Fees payable to Descartes are exclusive of any taxes, assessments or duties that may be assessed, including, without limitation, sales, use, excise, value added, personal property, electronic/internet commerce, export, import and withholding taxes, but not including taxes based upon Descartes' income. Customer shall directly pay any such taxes assessed against it, including without limitation all taxes that arise out of transactions completed by Customer using the Descartes products or services. Customer shall promptly reimburse Descartes for any such taxes payable or collectable by Descartes. If any tax in the nature of withholding tax is payable on any sums payable to Descartes under this Agreement, Customer shall pay Descartes such amount as is necessary to ensure that the net amount received by Descartes after such withholding shall be equal to the amount originally due.
- (h) Where Fees are presented by Descartes in an Order Form or any other written or electronic document, for Descartes products or services which Customer has not subscribed to or licensed upon the Agreement becoming effective (an "Optional Service"), the fee rates for the Optional Service shall be binding only during the Initial Term of the Agreement. For greater certainty, unless specifically stated otherwise in the Agreement, the fee rate for Optional Services presented in any Order Form or other written or electronic document

shall be the fee rate offered during the Initial Term of the Agreement and Descartes may, at its sole discretion, offer a different fee rate during any Renewal Term or in any other Order Form or other written or electronic document.

- 4.2 **Overage Fees.** Where the Order Form provides for only a fixed quantity of transactions, uses, or events ("Quantity"), and is silent on any usage beyond the Quantity ("Extra Usage"), Extra Usage will be invoiced to Customer in arrears as an overage fee. The above described overage fee, unless otherwise specified in the Order Form, will be calculated as follows:  $(Extra\ Usage) \times \left( \frac{Extended\ Amount}{Quantity} \times 1.25 \right)$ . Unless otherwise specified in the Order Form, overage fees will be calculated and invoiced on the same billing cycle as the product or service to which it relates.
- 4.3 **Collection Expenses.** Unless otherwise prohibited or limited by law, Customer agrees to reimburse Descartes for any and all collection related expenses, including reasonable attorney fees, incurred by Descartes in the collection of any past due amounts owed to Descartes pursuant to the Agreement.
- 4.4 **Credit Card or ACH Payments.** Customers paying Fees by either credit card or automated clearing house ("ACH") debit entries, shall provide all necessary credit card or account information (the "Payment Information") to facilitate payment. Customer shall submit its Payment Information to Descartes through an account at <https://shop.descartes.com>, or other similar sites as specified by Descartes, and will promptly update the Payment Information if it changes. Customer authorizes Descartes and gives permission to Customer's financial institution to use the Payment Information for the purpose of paying the Fees payable under this Agreement, including any late, early termination, default, processing, overuse, penalty, insufficient funds or NSF, or interest fees owed under the Agreement. Customer agrees to be bound by any rules Customer's own financial institution requires for pre-authorized electronic funds payments and is responsible for all fees charged by Customer's own financial institution associated with the Payment Information. If Customer's Payment Information is inaccurate and Descartes is unable to withdraw or charge Customer using its Payment Information for the Fees due, Customer may be subject to applicable late or interest fees, chargeback fees, and any other fees or charges assessed by Customer's financial institution or Descartes. Neither Descartes or any of its subsidiaries or affiliates shall bear any liability or responsibility for any losses of any kind that Customer may incur as a result of services incorrectly billed, for any delay in the actual date on which a Customer's payment is debited or charged by Descartes or any services charges levied by Customer's financial institution.
- 4.5 **Appointment of Billing Agent.** Descartes may, at its sole discretion, designate an Affiliate of Descartes or other third party as a Billing Agent. Customer acknowledges and agrees that the Billing Agent is only an agent of Descartes and is not themselves a party to the Agreement between Customer and Descartes. Descartes shall be responsible for any Billing Agent it appoints. Descartes reserves the right, at its sole discretion, to revoke the appointment of a Billing Agent at any time and for any reason, upon provision

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of thirty (30) days' notice to Customer, at which point all tasks and duties that were delegated to the Billing Agent will automatically and immediately revert back to Descartes.

**4.6 Accounts Payable Services.** Where Customer makes use of a third-party service to handle the receipt of invoices, the payment of fees, or other functions related to the payment of accounts on Customer's behalf (an "AP Service"), Descartes shall not be obligated to agree to or accept any terms that would create new obligations on Descartes or modify any of Descartes' existing rights and obligations as set out under this Agreement. To the extent the AP Service charges any fees to Descartes, Customer agrees to reimburse Descartes for all such fees. A refusal by Descartes to agree to any terms and conditions imposed by the AP Service or to submit invoices or accept payment from an AP Service shall not excuse Customer from its obligations to pay fees owing under this Agreement.

**4.7 Responding to Audits and Legal Requests.** Unless otherwise prohibited by law, where Descartes receives any subpoena, search warrant, court order, governmental or regulatory request, audit, or other similar compulsory process that arises out of or relates to Customer, Customer's Use of the Services, any Permitted User, Descartes' status as a vendor to Customer, or seeks access to any Customer Data, Customer shall reimburse Descartes for any and all reasonable costs and expenses (including internal administrative costs and reasonable attorneys' fees) which are incurred by Descartes in reviewing, responding to, or otherwise complying with any such request. Such amounts may be invoiced by Descartes as they are incurred and shall be payable in accordance with the terms of this Agreement.

## 5 TERM AND TERMINATION

**5.1 Term.** The Agreement shall be in force for the Term unless earlier terminated as provided by the Agreement.

**5.2 Termination by Either Party.** The Agreement may be terminated by a party if the other party is subject to an Insolvency Event, or by a non-breaching party in the following circumstances:

(a) if the other party commits a material breach of the Agreement (including, without limitation, the failure to pay any Fees due to Descartes in accordance with the Agreement) and such breach remains uncured thirty (30) days after the other party has been notified of that breach, as per the notice obligations described in section 13.1; and

(b) immediately upon material breach by either party of any obligations set forth in section 9 (Confidentiality).

**5.3 Termination by Descartes.** Descartes may terminate the Agreement immediately upon a material breach by Customer of section 6 (Ownership of Intellectual Property). Descartes may terminate the Agreement on one-hundred and twenty (120) days' notice in the event that Descartes discontinues provision of the product or service described in the Order Form to all customers of such product or service.

**5.4 Consequences of Termination.** Upon and after expiration or termination of the Agreement, all

licenses or rights to use to any Descartes products or services shall immediately terminate and Customer shall immediately cease the Use of those Descartes products and services. If title in Hardware has not passed to Customer, Customer's right to possession of such Hardware shall immediately terminate.

**5.5 Survival.** Notwithstanding the foregoing and any expiration or termination of the Agreement, in addition to any provisions in the Agreement which are expressly stated to survive termination, the following provisions of the Master Terms shall survive such expiration or termination: sections 4 (Fees and Payment), 5.5 (Survival), 6 (Ownership of Intellectual Property), 7 (Warranties), 8 (Limitation of Liability), 9 (Confidentiality), 11 (Indemnification), 12 (Indemnification Procedure), 13 (Miscellaneous) and 15 (Definitions).

## 6 OWNERSHIP OF INTELLECTUAL PROPERTY

**6.1 Ownership.** Descartes and its licensors shall have and retain all right, title and interest, including any copyrights, patents, trade secrets, trademarks, moral rights and other Intellectual Property Rights in and to any product or service licensed or provided under an Agreement, and any software, documentation, algorithms, formulas, data models, processes or methodology produced by, used by, or derived by Descartes in the provision of the product or service, including, without limitation, any modifications, enhancements, changes or additions to any product or service. To the extent of any interest of Customer therein (including, to the extent that any services performed by Descartes may constitute a "work made for hire"), Customer irrevocably agrees to assign and, upon its creation, automatically assigns to Descartes the ownership of such Intellectual Property Rights absolutely and without the necessity of any additional consideration. Customer agrees to do and perform such other acts and things and to execute and file such other agreements, documents, certificates or instruments as may be considered reasonably necessary or advisable by Descartes in order to carry out the intent of this provision and should Customer be unable or unwilling to do so, Customer irrevocably appoints Descartes and its duly authorized officers as Customer's agent and attorney to do all such acts and things and to execute and file all such aforementioned documents.

**6.2 No Sale.** Notwithstanding any use of the terms "sale" or "purchase" herein, in the Agreement or in any documentation, Customer acknowledges that Customers is only provided a license or right to use the Descartes product or services, and that nothing in the Agreement should be construed as transferring of ownership to Customer of any Descartes products or services or any underlying Intellectual Property Rights therein.

**6.3 Scraping, Repurposing, Resale, or Derivative Usage of Application Data.** As between Customer and Descartes, Descartes retains all rights to Application Data. Customer may not reuse, repurpose, create derivative works from, or otherwise use Application Data for any purpose other than those that would reasonably be connected to the intended usage of the Descartes product or service. Customer may not cache, store, retain, save, scrape, extract, or

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otherwise maintain Application Data for later consumption or use, except where such storage is only incidental to or is a byproduct of a reasonable automated data backup or disaster recovery process. Customer may not resell, whether for compensation or otherwise, or provide Application Data to any third party without Descartes' express prior written consent.

**6.4 Feedback or Suggestions.** Nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement, except where this section is specifically disclaimed, will restrict Descartes' right to use, profit from, disclose, publish, keep secret, or otherwise exploit any Feedback, nor require Descartes to compensate or credit Customer or any individual providing such Feedback.

**6.5 Customer Data.** Descartes does not claim any title or ownership rights over any Customer Data. Where Customer authorizes any Affiliate or any other person or entity to be a Permitted User, Customer confirms that Descartes may, without any obligation to receive further permission, share Customer Data with those Permitted Users, including take instruction on the Use, handling, and disposition of any of Customer Data from those Permitted User. Further, Customer understands and agrees that Customer shall be solely responsible for obtaining from those Permitted Users all necessary consents and permissions, as may be required by applicable law, to allow Descartes to make available to Customer, through the Descartes products and services, any data about or provided by those Permitted User.

## 7 WARRANTIES

**7.1 EXPRESS WARRANTIES.** In addition to any express warranties made in the Order Form, the parties make the following express warranties:

(a) Each Party warrants that: i) it is duly organized, validly existing and in good standing under the laws of the state, province, or country, as the case may be, under which it is organized; (ii) it has the power and authority to enter into this Agreement and to perform fully its obligations hereunder; (iii) the individual executing this Agreement on its behalf has the authority to do so; and (iv) the obligations created by this Agreement, insofar as they purport to be binding on it, constitute legal, valid and binding obligations enforceable in accordance with their terms.

(b) Descartes warrants that Descartes products and services provided under this Agreement shall perform substantially in accordance with a reasonable interpretation of Documentation.

**7.2 IMPLIED WARRANTIES.** EXCEPT AS EXPRESSLY PROVIDED IN THE ORDER FORM, DESCARTES AND DESCARTES LICENSORS MAKE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCT OR SERVICE THAT MAY BE DELIVERED OR PROVIDES AS PART OF THE AGREEMENT OR OTHERWISE, AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, DESCARTES SPECIFICALLY DISCLAIMS ANY COLLATERAL WARRANTIES AND ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-

INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, DESCARTES DOES NOT REPRESENT OR WARRANT THAT THE PRODUCTS OR SERVICES WILL OPERATE UNINTERRUPTED OR THAT THEY WILL BE FREE FROM DEFECTS OR ERRORS, OR THAT THE PRODUCTS OR SERVICES ARE DESIGNED TO MEET CUSTOMER'S BUSINESS REQUIREMENTS. CUSTOMER ACKNOWLEDGES AND AGREES THAT DESCARTES' PRODUCTS AND SERVICES WERE NOT DESIGNED FOR USE IN ANY SITUATION WHICH MAY LEAD TO INJURY OR DEATH, INCLUDING BUT NOT LIMITED TO BEING USED TO CONTROL SELF DRIVING VEHICLES OR ANY FORM OF HUMAN MASS TRANSIT.

## 8 LIMITATION OF LIABILITY

**8.1 AGGREGATE LIABILITY.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE MAXIMUM AGGREGATE LIABILITY ON THE PART OF EITHER PARTY UNDER AN AGREEMENT (INCLUDING FOR BREACH OF ANY PROVISION OF THE AGREEMENT, FUNDAMENTAL BREACH OR ANY OTHER BREACH GIVING RISE TO LIABILITY OR ARISING OUT OF OR RELATED TO THE AGREEMENT OR ANY DESCARTES PROVIDED PRODUCTS OR SERVICES IN ANY OTHER WAY), FOR ANY CAUSE OF ACTION WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION (INCLUDING BREACH OF CONTRACT, TORT OR ANY OTHER LEGAL OR EQUITABLE THEORY), SHALL BE LIMITED TO THAT PARTY'S ACTUAL DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL FEES PAID UNDER THIS AGREEMENT TO DESCARTES BY CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM.

**8.2 CONSEQUENTIAL DAMAGES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY, OR DESCARTES' LICENSORS OR SUPPLIERS, BE LIABLE TO ANY OTHER PARTY OR ANY OTHER PERSON, FIRM, CORPORATION OR ENTITY FOR SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, MULTIPLE, CONSEQUENTIAL, OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL OR BUSINESS PROFITS, LOSS OF REVENUE, WORK STOPPAGE, DATA LOSS OR COMPUTER MALFUNCTION, OR ANY DAMAGES IN THE NATURE OF LOST OPPORTUNITY COSTS OR COSTS FOR PROCUREMENT OF AN ALTERNATIVE TO DESCARTES' PRODUCTS AND SERVICES PROVIDED UNDER THE AGREEMENT, WHETHER SUCH DAMAGES ARE ALLEGED IN TORT, CONTRACT OR OTHERWISE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BOTH PARTIES AGREE THAT IN NO EVENT WILL THE OTHER PARTY'S DIRECTORS, OFFICERS, EMPLOYEES, MEMBERS, OR SHAREHOLDERS BE LIABLE FOR ANY DAMAGES, INCLUDING DIRECT, INCIDENTAL, ORDINARY, PUNITIVE, EXEMPLARY, INDIRECT, SPECIAL, CONSEQUENTIAL OR ANY OTHER DAMAGES ARISING OUT OF THE AGREEMENT.

**8.3 EXCLUSION FROM LIMITATION OF LIABILITY.** NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED IN THE AGREEMENT SHALL LIMIT: A) EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING SOLELY FROM THAT PARTY'S WILLFUL ACTIONS OR GROSS NEGLIGENCE; B) ANY

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LIABILITY ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THAT PARTY; C) CUSTOMER'S LIABILITY UNDER SECTION 8.1 FOR NON-PAYMENT OF FEES OWED UNDER THIS AGREEMENT; D) CUSTOMER'S LIABILITY ARISING FROM ANY INFRINGEMENT OF DESCARTES INTELLECTUAL PROPERTY RIGHTS CAUSED BY CUSTOMER; E) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11.1 or 11.2.

**8.4 TIME FOR COMMENCEMENT OF ACTION.** NO ACTION AGAINST DESCARTES OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES OR SHAREHOLDERS, REGARDLESS OF FORM (INCLUDING NEGLIGENCE), ARISING OUT OF ANY CLAIMED BREACH OF THE AGREEMENT OR TRANSACTIONS UNDER THE AGREEMENT OR IN ANY OTHER WAY RELATED TO THE AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS FIRST ARISEN.

**8.5 IMPROPER RELIANCE.** DESCARTES PRODUCTS AND SERVICES ARE NOT INTENDED TO REPLACE CUSTOMER AND ITS PERMITTED USERS' OWN JUDGMENT, DUE DILIGENCE, OR DECISION-MAKING ABILITIES AND DESCARTES EXPRESSLY DISCLAIMS ANY REPRESENTATION, STATEMENT, SUGGESTION, OR INFERENCE TO THE CONTRARY. CUSTOMER IS EXPRESSLY ADVISED THAT THEY SHOULD NOT BE RELYING ON DESCARTES' PRODUCTS OR SERVICES TO MAKE DECISIONS ON CUSTOMER'S BEHALF. ACCORDINGLY, AND NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, DESCARTES SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY CONSEQUENCE ARISING FROM ANY DECISION, ACTION, OR INACTION, INCLUDING BUT NOT LIMITED TO ANY DELIVERY OR FAILURE OF ANY DELIVERY, THAT COULD HAVE BEEN AVOIDED OR REASONABLY MITIGATED BY CUSTOMER OR A PERMITTED USER ENGAGING IN REASONABLE DUE DILIGENCE IN THE USE OF DESCARTES PRODUCTS OR SERVICES OR ANY RESULTS GENERATED BY DESCARTES PRODUCTS OR SERVICES.

## 9 CONFIDENTIALITY OF DATA

**9.1 Discloser, Recipient.** In the performance of the Agreement, each party may disclose to the other party certain Confidential Information. For the purposes of the Agreement, (i) "Discloser" means the party that is providing Confidential Information to the other party to the Agreement; and (ii) "Recipient" means the party that is receiving Confidential Information from the other party to the Agreement.

**9.2 Non-Disclosure.** Recipient acknowledges and agrees that the Confidential Information provided by Discloser shall remain the sole and exclusive property of Discloser or the third party providing such information to Discloser. Recipient shall not disclose, reproduce, use, distribute, or transfer, directly or indirectly, in any form, by any means, or for any purpose, the Confidential Information provided by Discloser, except as may reasonably be required pursuant to, or for performance of, the Agreement, and including for greater certainty the purpose of assessing Recipient's actual or potential obligations under the Agreement or how to meet any such obligations. Recipient may disclose Confidential Information only to those employees of Recipient or

Recipient's Affiliates that have a legitimate need to know the Confidential Information. Recipient shall ensure that any employee it discloses Confidential Information to abides by these confidentiality restrictions and Recipient shall only allow Recipient's independent contractors to receive Confidential Information of Discloser if such contractors have executed a nondisclosure agreement with restrictions no less protective of the Confidential Information than those contained in herein.

**9.3 Exceptions to Non-Disclosure.** Nothing in the Agreement shall prohibit or limit Recipient's disclosure or use of information if Recipient can establish that (i) at the time of disclosure such information was generally available to the public; (ii) after disclosure by Discloser and prior to any disclosure by Recipient, such information becomes generally available to the public, except through breach of the Agreement by Recipient; (iii) such information was in Recipient's possession prior to the time of disclosure by Discloser and was not acquired directly or indirectly from Discloser; (iv) the information became available to Recipient from a third party who, to the knowledge of Recipient, does not owe a confidentiality obligation to Discloser; (v) the information was developed by or for Recipient independently of the disclosure of such information by Discloser; (vi) the Confidential Information is disclosed by Recipient pursuant to a requirement of a governmental agency or by operation of law, provided that, with respect to item (vi), Recipient shall first, if permitted by law to do so, notify Discloser prior to disclosure in order to give Discloser an opportunity to seek an appropriate protective order and/or waive compliance with the terms of the Agreement and shall disclose only that part of the Confidential Information which Recipient is required to disclose or (vii) the information relates to the tax treatment or the tax structure of the transactions contemplated herein, where "the tax treatment or the tax structure" is limited to any facts relevant to the U.S. federal income tax treatment of the transaction and does not include information relating to the identity of the parties.

**9.4 Ownership of Confidential Information.** The disclosure of Confidential Information to Recipient does not confer upon Recipient any license, interest, or rights of any kind in or to the Confidential Information, except as expressly provided under the Agreement.

**9.5 Protection of Confidential Information.** Recipient shall implement appropriate physical, administrative, organizational, technical, and personal security measures based on the type and nature of the Confidential Information and the level of risk associated with it, in order to protect the Confidential Information provided to Recipient by Discloser. Recipient shall retain all such Confidential Information, including Confidential Information that is contained on back-up media, in a logically secure environment that protects it from unauthorized access, modification, theft, misuse and destruction. Recipient shall ensure that platforms hosting the Discloser's Confidential Information are configured to conform to industry standard security requirements and that hardened platforms are monitored for unauthorized change. Recipient's security policy shall

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not allow Confidential Information received by Discloser in electronic format to be stored on personal desktops, laptops, or removable data storage devices, unless the device is password protected and the Confidential Information is encrypted using industry standard encryption technology. Where Recipient's measures to protect its own Confidential Information affords greater protection and care, then Recipient shall use those same measures instead to protect the Confidential Information provided by Discloser.

**9.6 Destruction of Confidential Information.** Upon termination of this Agreement and upon request from the Discloser, the Recipient shall promptly destroy, according to industry best practices, all Confidential Information of Discloser that is in Recipient's possession or control and discontinue all further use of that Confidential Information, except copies of Confidential Information as may be necessary to be retained by reason of legal, archival or regulatory requirements, which shall remain subject to the confidential obligations of the Agreement for as long as such copies remain in the possession of the Recipient. Upon the Discloser's request, the Recipient shall promptly confirm in writing these actions have been taken.

## **10 PERSONALLY IDENTIFIABLE INFORMATION.**

**10.1 Processing as a Controller.** Where Descartes has collected directly from an individual, or where Descartes is the deemed by law or regulation to be the entity responsible for determining the purposes and means of the processing of personally identifiable information, the handling of that information will be performed as per Descartes' applicable privacy policy, available at: <https://www.descartes.com/privacy-center/commercial-relationship-privacy-policy>.

**10.2 Processing on Customer's Behalf.** Where personally identifiable information is provided by Customer and Descartes agrees to process that personally identifiable information on Customer's behalf, processing will be performed as per Descartes standard Data Processing Terms, available at: <https://www.descartes.com/legal/customer-agreements/data-processing-agreement>.

**10.3 Processing of Personally Identifiable Information for the Management of the Contractual Relationship.** In the context of this Agreement, any personally identifiable information provided by or collected by either Party and provided to the other solely for the purposes of administering or managing this Agreement, including but not limited to the sending and receiving of invoices, will be processed as per that party's own privacy policies. Where that individual or the processing of their personal information is subject to the General Data Protection Regulation (Regulation (EU) 2016/679), and the information is not provided directly by that individual, Customer undertakes to provide to the individual an information notice directing them to Descartes commercial relationship privacy policy, found at <https://www.descartes.com/privacy-center/commercial-relationship-privacy-policy>, or to otherwise provide them a similar information notice compliant with Article 14 of the General Data Protection Regulation (Regulation (EU) 2016/679).

## **11 INDEMNIFICATION**

**11.1 Descartes Indemnification.** Subject to the Indemnification Procedure, Descartes shall defend Customer, at Descartes' expense, from and against any claim brought by a third party alleging that any Descartes products or services provided by Descartes to Customer under the Order Form infringe any (i) European Union, United Kingdom, United States, or Canadian patent, (ii) European Union, United Kingdom, United States, or Canadian trademark, (iii) copyright, or (iv) trade secret, and shall indemnify Customer against all damages and costs assessed against Customer that are payable as part of a final judgment or settlement. Should the Descartes products or services provided by Descartes to Customer under the Order Form become, or in Descartes' opinion be likely to become, the subject of a claim of infringement, Descartes may, at its sole option and/or election use reasonable commercial efforts to (a) obtain for Customer the right to continue using the Descartes product or service pursuant to the terms and conditions of the Agreement, (b) replace or modify the Descartes product or service so that they become non-infringing but functionally equivalent or (c) where either (a) or (b) are not practicable, terminate the Agreement. The indemnification obligation shall not apply to any claim arising out of (i) the combination of the Descartes product or service with other products not claimed to be owned, developed or deployed by or on behalf of Descartes, (ii) the modification of the Descartes product or service, or any part thereof, unless such modification was made by or for Descartes, (iii) unauthorized use of the Descartes product or service, (iv) Customer's failure to update or Use the most recent version of the Descartes product or service, or (v) any infringement caused by any action of Customer. THIS INDEMNIFICATION PROVISION STATES THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF DESCARTES, AND ITS LICENSORS TO CUSTOMER AND CUSTOMER'S SOLE REMEDY WITH RESPECT TO THE INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

**11.2 Customer Indemnification.** Subject to the Indemnification Procedure, Customer shall defend, indemnify and hold Descartes and Descartes' officers, directors, employees, agents and shareholders harmless against any liability, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) from any third party claims or claims brought by Permitted Users or any of Customer's employees, agents, or consultants or any other entity Customer provides access to the Descartes products or services against Descartes arising out of (i) Use of any Descartes provided products or services by Customer or a Permitted User, (ii) misuse of or distribution of User Accounts by Customer to anyone other than Permitted Users, (iii) any contract, other than this Agreement, that is dependent on or involves the Use of any Descartes products or services, (iv) the results of any Professional Services provided by Descartes to Customer in which Descartes is following mutually agreed upon directions, designs, or general instructions of Customer, or (v) where Descartes has agreed to host or display any logos, trademarks,

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branding, or images on Customer's behalf as per Customer's reasonable instructions; provided that this indemnification shall not apply in respect of those matters for which Descartes may have an indemnification obligation under the Agreement.

## 12 INDEMNIFICATION PROCEDURE

**12.1 Notice of Indemnification.** A party seeking indemnification pursuant to the Agreement (an "Indemnified Party") from or against the assertion of any claim by a third person (a "Third Person Assertion") shall give prompt notice (a "Notice of Claim") to the party from whom indemnification is sought (the "Indemnifying Party"); provided, however, that failure to give prompt notice shall not relieve the Indemnifying Party of any liability hereunder (except to the extent the Indemnifying Party has suffered actual material prejudice by such failure).

**12.2 Assumption of Defense.** Within twenty (20) business days of receipt of a Notice of Claim from the Indemnified Party, the Indemnifying Party shall have the right exercisable by written notice to the Indemnified Party, to assume the defense of a Third Person Assertion. If the Indemnifying Party assumes such defense, the Indemnifying Party may select counsel, which shall be reasonably acceptable to the Indemnified Party.

**12.3 Failure to Defend.** If the Indemnifying Party (a) does not, within the time limited, assume the defense of any Third Person Assertion after receipt of a Notice of Claim or (b) having so assumed such defense, unreasonably fails to defend against such Third Person Assertion, as reasonably determined by the Indemnified Party, then, upon twenty (20) days' written notice to the Indemnifying Party, the Indemnified Party may assume the defense of such Third Person Assertion. In such event, the Indemnified Party shall be entitled as part of its damages to indemnification for the reasonable costs of such defense.

**12.4 Conflicts of Interest.** If the Indemnifying Party has been advised by the written opinion of counsel to the Indemnified Party that the use of the same counsel to represent both the Indemnified Party and the Indemnifying Party would present a conflict of interest, then the Indemnified Party may select its own counsel to represent the Indemnified Party in the defense of the matter and the reasonable costs of such defense shall be borne by the Indemnifying Party. The Indemnifying Party shall be entitled to continue to handle its own representation in such matter through its own counsel.

**12.5 Settlement.** The party controlling the defense of a Third Person Assertion shall have the right to consent to the entry of judgment with respect to, or otherwise settle, such Third Person Assertion with the prior written consent of the other party, which consent shall not be unreasonably withheld.

**12.6 Participation.** Notwithstanding the assumption of the defense of a Third Person Assertion by either party in accordance with the Agreement, the other party shall agree to cooperate, as necessary, in the defense or prosecution of any Third Party Assertion and shall be entitled to participate, at its own expense, in the defense or settlement of any Third Person Assertion.

## 13 NOTICES AND COMMUNICATION

**13.1 General Notices.** Any notices, demands and other communications pursuant to the Agreement shall be in writing and shall be delivered either in person, mailed by first class mail and postage prepaid (registered or certified to the extent available, and via airmail if overseas), couriered overnight, or transmitted electronically in a PDF or similar document-scanning file format to the party to receive the notice at the applicable address, set out on in the Agreement or at such other address as may be designated in writing by the receiving party, or electronically to Customer's registered users via the notification mechanism contained within applicable Descartes products or services or Descartes' customer support portal. Any notices of fee increases or changes in payment methods may, in addition to the above, be provided with or within a regularly scheduled invoice. All such notices shall be effective upon receipt.

**13.2 Security Notices.** Notwithstanding anything to the contrary under this Agreement, Descartes will only send notices related to the security or integrity of Descartes' network, products, services, systems, or any data managed by or under the care of Descartes to Customer via the "Security Contact" as designated by Customer in Descartes' online support portal. Such notices may be provided electronically or through Descartes' support portal. Customer agrees that notices in this manner shall satisfy any requirement to provide notice in writing.

**13.3 Operational Communications.** Customer affirms and agrees that Descartes may use any contact details or information provided to Descartes by Customer or Customer's Permitted Users as part of any account registration process or other similar such process in order to communicate with Customer and its Permitted Users regarding Descartes products or services, including but not limited to service notices, operational updates, and product-related updates and information. Customer grants affirmative consent, on behalf of itself and its Permitted Users, to receive such communications and confirms that all individuals whose contact details are shared with Descartes have also consented to be contacted for these purposes.

## 14 MISCELLANEOUS

**14.1 Successors and Assigns.** The Agreement shall be binding upon and inure to the benefit of the parties to the Agreement, and their respective successors and permitted assigns.

**14.2 Entire Agreement.** The Agreement constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior proposals, agreements and understandings between the parties, whether oral or written, with respect to the subject matter. Except for the addition by Descartes of any customer, transaction, or other internal reference numbers, no amendments or modifications to the Agreement shall be binding unless: a) Descartes makes a written offer to add on to an existing agreement and that offer is duly executed by Customer; or b) any other written amendment or modification executed by duly authorized representatives of all parties to the Agreement. The

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terms of any purchase order or other document submitted by Customer to Descartes from time to time shall be of no force or effect to the extent that they are inconsistent with the terms of the Agreement.

**14.3 Appendices.** Any appendices, attachments and schedules referred to in the Order Form or these Master Terms and attached hereto or thereto are incorporated herein or into the Agreement by reference to the same extent as if set forth in full in the Agreement. In the event of any inconsistency between any appendix, attachment or schedule and the main body of the Agreement, the terms and conditions of the main body of the Agreement shall prevail unless otherwise expressly provided to the contrary in such appendix, attachment, schedule, or in these Master Terms.

**14.4 Construction.** Each provision of the Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of the Agreement shall be prohibited or invalid, such provision shall be ineffective only to the extent of such prohibition or invalidity and shall not invalidate the remainder of such provision or the remaining provisions of the Agreement in that or other jurisdictions which provisions shall continue in full force and effect.

**14.5 Waiver.** Neither party hereto shall, by mere lapse of time without giving notice or taking other action hereunder, be deemed to have waived any breach by the other party of any provision of the Agreement. Failure by either party to enforce any term of the Agreement shall not be deemed a waiver of future enforcement of that or any other term in the Agreement.

**14.6 Multiple Counterparts.** The Agreement may be executed in several counterparts, all of which taken together shall constitute one single Agreement between the parties.

**14.7 Electronic Documents and Execution.** The use of electronic signatures (including, without limitation, DocuSign™ and AdobeSign™) and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity, and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law. Any requirement to provide an original executed documents shall be deemed to be met by the provision of an electronically signed copy of that document.

**14.8 Compliance With Law.** Each party agrees to comply with all applicable laws, regulations, and ordinances relating to its performance under the Agreement. Customer is solely responsible for ensuring its intended use of Descartes products and services is compliant with all applicable laws, regulations, and ordinances.

**14.9 Corporate Compliance.** Descartes agrees to comply with Descartes Code of Business Conduct and Ethics, Descartes Anti-Corruption Policy, and any other policy or code which may be posted from time to time by Descartes on the following webpage: <https://www.descartes.com/legal/compliance>.

**14.10 Dispute Resolution.** Except for the right of either party to apply to a court of competent jurisdiction for

interim or interlocutory relief or other provisional remedy to prevent irreparable harm pending final determination or to pursue a claim for infringement of any intellectual property right, any dispute or controversy between the parties arising out of or relating to the Agreement (each, a "Dispute") shall be resolved by first attempting good faith negotiations between the parties which negotiations shall not terminate until the Dispute has been considered by a senior officer of each party.

## **14.11 Compliance with Sanctions and Trade Laws.**

**(a)** In connection with this Agreement, Customer agrees to comply with all applicable import, re-import, sanctions, anti-boycott, export, and re-export control laws and regulations, including all such laws and regulations that apply to the Descartes products and services or to a U.S. company, such as the Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control (OFAC) (collectively, "Trade Laws"). For clarity, Customer is solely responsible for compliance with applicable Trade Laws related to the manner in which Customer chooses to use the Descartes products or services.

Customer represents and warrants that Customer and Customer's financial institutions, or any party that owns or controls Customer or its financial institutions, is not subject to sanctions or otherwise designated on any list of prohibited or restricted parties pursuant to applicable Trade Laws, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (including OFAC, the U.S. Department of Commerce, and the U.S. Department of State), the European Union or its Member States, or other applicable government authority. Where Descartes reasonably determines that provision of the products or services would be contrary to any applicable Trade Laws due to Customer, an Affiliate of Customer, or Customer's country of registration or location, being or becoming at any time during the term of the Agreement designated or otherwise subject to economic sanctions or restrictions by Canada, the United States of America, the United Kingdom, or any international trade organization, including but not limited to the European Union or the United Nations, Descartes may immediately terminate the Agreement for breach on ten (10) days' notice to Customer, or such shorter period as may be required under applicable law.

**14.12 Government Departments.** In the event that Customer is a governmental entity, only those departments or agencies listed in the Order Form shall have the right to use the Descartes products or services. Governmental departments or agencies not listed must have a separate license agreement and pay additional license fees.

**14.13 Assignment.** Neither party may assign or transfer the Agreement, or any obligation incurred hereunder, except: i) with the prior written consent of the other party, which will not be unreasonably withheld; or ii) to an Affiliate of the party provided that all, and not just some, of the rights and obligations under the Agreement are assigned provided notice of that

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Assignment has been sent to the other party in advance.

**14.14 Acknowledgment.** Customer publications in which Descartes products or services are implicitly or explicitly mentioned shall include an acknowledgment that those products or services "are a proprietary product of The Descartes Systems Group Inc. or its subsidiaries". In addition, Customer agrees to provide Descartes with a copy of the proposed publication not less than 10 days prior to the publication thereof.

**14.15 Announcements.** Neither party may issue, publish, or otherwise cause to be publicized any announcement indicating that the parties have entered into a commercial relationship of any kind without the express written permission, email being satisfactory, of the other party consenting to both the form and content of the announcement.

**14.16 Governing Law.** This Agreement shall be governed by and construed under the laws of the province of Ontario, Canada and the parties hereby submit to the sole and exclusive jurisdiction of the courts of that jurisdiction. Unless specifically stated otherwise, the parties agree that any reference to the conflicts of law principles of the governing jurisdiction shall be excluded and the parties specifically disclaim the United Nations Convention on Contracts for the International Sale of Goods.

**14.17 Further Assurances.** The parties hereto shall with reasonable diligence do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated in the Agreement, and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary or desirable to effect the purpose of the Agreement and carry out its provisions.

**14.18 English Language Provision.** The parties acknowledge having required that the Agreement and all documents, notices and judicial proceedings entered into, given or instituted pursuant thereto, or relating directly or indirectly thereto, be drawn up in English.

**14.19 Force Majeure.** "Force Majeure" means an act of God, war, natural disaster, epidemic or pandemic, governmental regulations, communication or utility failures or casualties. A party (the "Claiming Party") will not be in breach of this Agreement or otherwise liable to the other party (the "Non-claiming Party") for any delay in performance or any non-performance of any obligations under this Agreement (and the time for performance will be extended accordingly) if and to the extent that the delay or non-performance is owing to Force Majeure. This clause only applies if (i) the Claiming Party could not have avoided the effect of the Force Majeure by taking precautions which, having regard to all matters known to it before the occurrence of the Force Majeure and all relevant factors, it ought reasonably to have taken but did not take; and (ii) to the Claiming Party if the Claiming Party has used reasonable endeavours to mitigate the effect of the Force Majeure and to carry out its obligations under this Agreement in any other way that is reasonably practicable. The Claiming Party shall promptly notify the Non-claiming Party of the nature and extent of the circumstances giving rise to Force Majeure. If the Force Majeure in question

prevails for a continuous period in excess of three (3) months after the date on which the Force Majeure begins, the Non-claiming Party shall be entitled to give notice to the Claiming Party to terminate this Agreement. The notice to terminate must specify the termination date, which must be not less than thirty (30) clear days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, the Agreement will terminate on the termination date set out in the notice.

**14.20 No Agency.** Nothing in the Agreement shall constitute or be deemed to constitute one party as agent of the other, for any purpose whatsoever, and neither party shall have the authority or power to bind the other, or to contract in the name of or create a liability against the other, in any way or for any purpose.

**14.21 Descartes is a Non-Party.** Customer agrees that Descartes shall not be considered to be a party to any commercial agreement between Customer and any third party, notwithstanding that Customer may have used or intends to use Descartes' product or services to fulfill their obligations under that commercial agreement or that the commercial agreement arose due to the Use of or was brokered or otherwise arranged through the Use of any Descartes product or service.

## 15 DEFINITIONS

**15.1 "Administrative User"** means a user account provided to Customer which is permitted to allow for that account to create other user accounts within the Descartes products and services.

**15.2 "Affiliate"** of a party shall mean any corporation that (a) is controlled, either directly or indirectly, by a party; (b) is under common voting control, either directly or indirectly, with the party; or (c) that controls the party; as the case may be. For the purposes of this definition "control" means the ability to vote greater than fifty percent (50%) of the outstanding voting securities in such corporation.

**15.3 "Agreement"** means the combination of an Order Form, these Master Terms, and any additional terms as specified in the Order Form or which the Order Form incorporates by reference.

**15.4 "Application Data"** means any data or information generated by or provided by any Descartes product or service, but does not include any of the following: a) data or information in its original form provided by Customer; b) data provided by third parties for the express purpose of being transferred through or made available to Customer via a Descartes product or service, including the Descartes Global Logistics Network; and c) data provided to Customer via a reporting tool or report feature built into a Descartes product or service but only those parts of the report that relate directly to the Customer.

**15.5 "Billing Agent"** means an entity designated by Descartes to act on Descartes behalf in the billing, invoicing, and collection of Fees, costs, or expenses owed by Customer to Descartes.

**15.6 "Confidential Information"** means any information disclosed by a party hereunder to another party hereunder relating to an Agreement or a proposed amendment to an Agreement which consists of information (including any copies, extracts,

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summaries or adaptations of such information), regardless of the form of its disclosure, that, by its nature or by the circumstances in which it is disclosed, ought reasonably to be considered to be confidential, but which excludes any information that is, at the time of disclosure, publicly available. Notwithstanding the foregoing, Descartes products and services along with its related Documentation as well as the service levels, specifications, performance restrictions and data configuration requirements of Descartes products and services, the results of any tests run on Descartes products and services, the contents of any security audit or certification conducted on any Descartes systems, facilities, or products or services, any information provided through Descartes' technical support portals or websites about any of Descartes products or services, any information or commentary on future changes or functionality of any Descartes products or services, and any pricing for Descartes' products and/or Services shall be deemed to be Confidential Information of Descartes.

- 15.7 "Customer Data"** means the data that can be connected to data provided by Customer, or by any other party on Customer's behalf, to Descartes as part of Customer's reasonable Use of the Descartes products and services, but shall not include any data that Customer has provided which Descartes has not requested or otherwise noted in the Documentation as being required or necessary to Use the Descartes products and services as they were designed.
- 15.8 "Descartes GLN"** means the physical hardware architecture and communication infrastructure operated by Descartes over which Descartes makes its network-based services generally commercially available, including the operating system, system and network interfaces, internal network, databases, disk storage, central applications, engines, warehouses and internal communications backbone.
- 15.9 "Documentation"** means any end-user instructional or supplementary materials related to the Descartes products or services, in human or machine readable form, that are provided by Descartes to Customer, but only to the extent that Descartes, in its sole discretion, makes such materials generally available for commercial distribution.
- 15.10 "Effective Date"** means the date that the Agreement becomes effective, as identified in the Order Form and, in the absence of a specific effective date being so set out, the date of signature on the Order Form by Descartes.
- 15.11 "Extended Amount"** means the amount listed under the column heading of "Extended Amount" of the table contained in Section 1 of the Order Form. Where an Order Form does not have an "Extended Amount" column and instead has a "Billing Amount" column, then the Extended Amount shall be determined by dividing the Billing Amount by the number of months in the unit of time listed under the Billing Frequency column, then multiplying that amount by the number of months in the unit of time listed under the Unit of Measure column.
- 15.12 "Feedback"** means any suggestion, response, advice, or idea for improving or otherwise modifying any Descartes products, services, process, or strategy. Where Feedback includes Customer's existing Confidential Information, only the specific

information or parts that references Customer's Confidential Information shall be excluded from the definition of Feedback and the Feedback as a whole shall not be deemed or designated as Customer's Confidential Information.

- 15.13 "Fees"** means the amounts to be paid by Customer to Descartes pursuant to the Agreement.
- 15.14 "GLN Services"** means the GLN Services as defined under the Order Form.
- 15.15 "Hardware"** means any device, including but not limited to any computer, scanner, reader, tag, or mobile phone, which Descartes agrees to or has provided to Customer under this Agreement.
- 15.16 "Indemnification Procedure"** means the procedure set out in section 12 of the Master Terms.
- 15.17 "Insolvency Event"** means (i) the Customer transfers the whole or a substantial part of its assets for the benefit of its creditors, is unable to pay its debts as they fall due, has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, convenes a meeting of creditors, enters into liquidation except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, has a receiver and/or manager or an administrator or administrative receiver appointed of its undertaking or any part of it, has a resolution passed or a petition presented to any court for its winding up or for the granting of an administration order in respect of it, suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it; or (ii) any other analogous step, process or procedure is taken in relation to the Customer in any jurisdiction, or the other Customer becomes subject to the laws relating to insolvency, bankruptcy or liquidation in any jurisdiction.
- 15.18 "Intellectual Property Rights"** means patent and other patent rights (including patent disclosures and applications and patent divisions, continuations, continuations-in-part, reissues, reexaminations, and extensions thereof), copyrights, and other rights in works of authorship (including registered and unregistered copyrights and unpublished works of authorship), trade secrets, and all other forms of Intellectual Property in existence on the Effective Date.
- 15.19 "Order Form"** means any document issued by Descartes and identified as an Order Form, GLN Services Agreement, Software License Agreement, Supplemental Order Form, Add-on Order, Statement of Work, Enhancement Statement of Work, or any other similar such ordering document, including but not limited to any online ordering document or online order page, but for the purposes of these Master Terms does not include any documents that are incorporated by reference into the Order Form.
- 15.20 "Permitted Use"** means Use for internal business in accordance with and subject to any written Scope of Use and Documentation, and which may be modified from time to time where necessary to prevent abuse, fraud, or misuse, but only on reasonable written notice to Customer. Except where expressly provided for in the Order Form, "Permitted Use" does not include redistribution, remarketing,

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loaning, renting, sublicensing or otherwise making any Descartes products or services available or accessible to any third party.

- 15.21 "Permitted User"** means i) those individuals or classes of individuals identified by Customer as being employees or consultants of Customer, or if permitted in the Order Form ii) employees or consultants of Affiliates, as defined under the Master Terms, or other entities, whom Customer is permitted under the Order Form to authorize to Use the Descartes products and services subject to the terms of the Agreement.
- 15.22 "Professional Services"** means those services that Descartes has expressly agreed in the Order Form to provide to Customer, which may include but is not limited to consulting services, project management, training services, and implementation services, but for greater clarity, shall not include GLN Services or anything that would be commonly understood to be a "software-as-a-service".
- 15.23 "Scope of Use"** means the scope for which the Descartes products and services can be Used, including restrictions on such Use, as identified in the Agreement.
- 15.24 "Software"** means Software as defined under the Order Form.
- 15.25 "Term"** shall mean the period of time identified in the Order Form as being the term of the Agreement, along with any renewal period if provided for in the Order Form.
- 15.26 "Third Party Technology"** means content or technology that is identified as being provided by a third party, either in writing on the Order Form or by virtue of the Customer being required to comply with a Technology Provider Policy. Notwithstanding the foregoing, Maps and Telematics Services, as defined under these Master Terms or identified in the Order Form, shall be considered Third Party Technology.
- 15.27 "Use"** means to load, execute, employ, utilize, store or display. Use is deemed to occur where any such process occurs or at any computer terminal or workstation that initiates or is activated by any such process.
- 15.28 "User Accounts"** means the information necessary to establish a unique identifier for the purpose of controlling access to Descartes products and services, including but not limited to a username, passcodes, security questions and answers, and security tokens.

[End of Master Terms.]