

PredictionProbe Standard Software License Terms and Conditions

PredictionProbe, Inc.

PREDICTIONPROBE STANDARD SOFTWARE LICENSE TERMS AND CONDITIONS

This software license agreement (the "Agreement") consists of the applicable PredictionProbe Software License Order Form (the "Order"), these PredictionProbe Standard Software License Terms and Conditions (the "Terms and Conditions") and the Specifications defined below. The parties to this Agreement are PredictionProbe, Inc. as licensor ("PredictionProbe") and the party designated as licensee in the Order ("Licensee"). The Agreement is entered into, on the one hand, by Licensee signing the Order and submitting the Order to PredictionProbe by any manner whatsoever, or by Licensee submitting the Order electronically to PredictionProbe via PredictionProbe's website, and, on the other hand, by PredictionProbe signing the Order or a copy of the Order submitted by Licensee ("Order Acceptance"), or by Licensee receiving that certain software described in the Order (the "Licensed Software") in any manner whatsoever (the "Software Receipt"). The "Effective Date" of this Agreement is the date of occurrence of the earlier of Order Acceptance or Software Receipt.

Background

PredictionProbe owns, or has rights to, the "Licensed Software", which it developed using various published and proprietary methodologies, including, but not limited to, probabilistic methods, statistical approaches, and numerical algorithms with broad application to many processes in various industries. The Licensed Software may potentially enhance Licensee's modeling and analysis capabilities, not substitute for same. The Licensed Software is subject to the U.S. Government's technology transfer and export controls. PredictionProbe offers the Licensed Software for use by Authorized Users, including related materials and documentation, at Licensee's Designated Locations on Designated PCs and Designated LANs as described in the Order.

License Terms and Conditions

PredictionProbe and Licensee agree as follows:

1. Additional Definitions

- a. "*Academic License*" means a Term License for the installation and utilization of the Licensed Software provided for academic and/or instructional use by Authorized Users only. The Academic License may be used for teaching, non-funded research activities, or funded research activities from noncommercial sources (e.g., National Science Foundation or NSF). Licensee of an Academic License represents and warrants that (i) Licensee Data related to research are not intended primarily for the benefit of a third party; (ii) the Licensee Data are made available to the public without any restriction on use, copying or further distribution; (iii) any copies of the Licensee Data are furnished for no more than the cost of reproduction and shipping, and (iv) the Academic License will not be used for commercially funded research activities and/or consulting purposes. An Academic License which is issued as a Node Lock License will be referred to in the Order as a Node Lock Academic License or "NLACL." An Academic License which is issued as a Floating License will be referred to in the Order as a Floating Academic License or "FACL." An Academic License which is issued as a Limited Network License will be referred to in the Order as a Limited Network Academic License or "LNACL." An Academic License which is issued as a Network License will be referred to in the Order as a Network Academic License or "NACL."
- b. "*Annual License*" means a renewable Term License to use the Licensed Software for one year as provided herein. An Annual License which is issued as a Node Lock License will be referred to in the Order as Node Lock Annual License or "NLAL." An Annual License which is issued as a Floating License will be referred to in the Order as a Floating Annual License or "FAL." An Annual License which is issued as a Limited Network License will be referred to in the Order as a Limited Network Annual License or "LNAL." An Annual License which is issued as a Network License will be referred to in the Order as a Network Annual License or "NAL."
- c. "*Authorized Users*" means, with respect to all licenses other than Limited Network Licenses or Academic Licenses, Licensee's employees and/or Contract Users working at the Designated Location(s). In the case of the Limited Network License, Authorized Users are further restricted to Named Users. With respect to Academic Licenses, Authorized Users means all enrolled students, faculty members, research staff performing non-funded research activities or funded research activities from noncommercial sources, and academic staff such as teaching assistants of the Licensee at the Designated Location and authorized by Licensee to use the Licensed Software.

PredictionProbe Standard Software License Terms and Conditions

- d. “*Confidential Information*” means (a) the source, object and executable codes of the Licensed Software, (b) PredictionProbe’s proprietary algorithms, methods, approaches, and data including the Dynamic Link Libraries of the Licensed Software, and trade secrets, (c) other confidential and proprietary information of PredictionProbe whether in printed, written, graphic or digital form and marked as “Confidential,” “Proprietary,” “Restricted” or similarly, and (d) documents without such marking, which have been identified as trade secrets, confidential or proprietary by PredictionProbe by providing notice of the nature of such documents in writing within thirty days after disclosure of the documents to Licensee. Confidential Information also includes information disclosed orally by PredictionProbe to Licensee that is identified at the time of dissemination as confidential and thereafter, in writing to the Licensee as confidential within thirty days of the oral disclosure. Confidential Information does not include information that:
- i. was generally known to the public or to the relevant industry at the time of disclosure, or thereafter becomes generally known to the public or to the relevant industry in either case through no fault of the receiving party ; or
 - ii. was lawfully known to Licensee at the time of disclosure as shown by documentary evidence; or
 - iii. is used or disclosed by Licensee with the prior written approval of PredictionProbe; or
 - iv. becomes lawfully known to Licensee without similar restrictions from a source other than PredictionProbe.
 - v. It is further agreed that the above exceptions are to be narrowly construed and that Licensee’s obligations imposed under this Agreement are relieved solely with respect to those specific portions of Confidential Information that fall within the above exceptions and not with respect to related portions, other combinations, or characteristics of Confidential Information, including without limitation its advantages, operability, specific purposes, or uses.
- e. “*Contract User*” means an individual or entity , not an employee of the Licensee, who or which is engaged or compensated by Licensee to perform services for Licensee and is authorized to use the Licensed Software under the terms of his or her engagement.
- f. “*Custom Application*” means one or more specific applications of the Licensed Software developed by PredictionProbe at Licensee’s request and expense in a separately agreed to writing signed by authorized representatives of the parties.
- g. “*Demo License*” or “*DEMO*” means a Term License for the installation and utilization of a special version of the Licensed Software with limited capabilities provided for demonstration purposes (“Demo Software”) only. Demo Software may not require a Security Key and may be installed on one or more personal computers. A Demo License will be referred to in the Order as a Demo License or “DEMO.”
- h. “*Development License*” means a Term License for the installation and utilization of the Licensed Software provided for development, demonstration, and/or testing of interfaces between the Licensed Software and Licensee’s and/or any third party software. A Development License which is issued as a Node Lock License will be referred to in the Order as a Node Lock Development License or “NLDL.” A Development License which is issued as a Floating License will be referred to in the Order as a Floating Development License or “FDL.” A Development License which is issued as a Limited Network License will be referred to in the Order as a Limited Network Development License or “LNDL.” A Development License which is issued as a Network License will be referred to in the Order as a Network Development License or “NDL.”
- i. “*Evaluation License*” means a Term License provided solely for installation and evaluation of the Licensed Software. An Evaluation License which is issued as a Node Lock License will be referred to in the Order as a Node Lock Evaluation License or “NLEL.” An Evaluation License which is issued as a Floating License will be referred to in the Order as a Floating Evaluation License or “FEL.” An Evaluation License which is issued as a Limited Network License will be referred to in the Order as a Limited Network Evaluation License or “LNEL.” An Evaluation License which is issued as a Network License will be referred to in the Order as a Network Evaluation License or “NEL.”
- j. “*Floating License*” means a license under which the Licensed Software may be installed on one or more personal computers at the Designated Location but the use of the Licensed Software is restricted by one Security Key to one Authorized User at a time.
- k. “*Licensee Data*” means the data, other information, research, or processes that Licensee intends to analyze using the Licensed Software, and the results and conclusions of any such analysis.
- l. “*License Key*” means a code issued using a security and control program for the Licensed Software that regulates access to the Licensed Software over a Local Area Network (“LAN”), other networks, or specific personal computer (“PC”). License Keys may impose limitations on the Licensed Software such as commencement and expiration dates, reduced capabilities, locking the Licensed Software to the Designated PCs and/or Designated LANs, export control compliance, the number of concurrent users, certain Named

PredictionProbe Standard Software License Terms and Conditions

Users, the number of concurrent tasks that may be performed by Authorized Users and similar types of protections.

- m. *"Limited Network License"* means a license for installation and utilization of the Licensed Software on one server or personal computer on a Designated LAN. Any Named User may use the Licensed Software on the Designated LAN up to the maximum number of Seats that can access the Licensed Software concurrently. The number of Named Users cannot exceed three times the number of licensed Seats that can access the software concurrently.
- n. *"Marketing License"* means a Term License solely for purposes of marketing and/or demonstrating the Licensed Software. A Marketing License which is issued as a Node Lock License will be referred to in the Order as Node Lock Marketing License or "NLML." A Marketing License which is issued as a Floating License will be referred to in the Order as a Floating Marketing License or "FML." A Marketing License which is issued as a Limited Network License will be referred to in the Order as a Limited Network Marketing License or "LNML." A Marketing License which is issued as a Network License will be referred to in the Order as a Network Marketing License or "NML."
- o. *"Named User"* means an Authorized User whose name is specified in the Order.
- p. *"Network License"* means a license for installation and utilization of Licensed Software on a server or PC on a Designated LAN up to the maximum number of Seats that can access the Licensed Software concurrently. Any Authorized User on the Designated LAN may use the Licensed Software.
- q. *"New Release"* means a new release or material upgrade of any component of Licensed Software that includes new features, functionality or enhanced performance that is designated by a new version number to the left of the decimal point (e.g., from version 1.11 to version 2.0). A New Release will require an additional license fee and terms and conditions determined at the time of the New Release. New Releases are issued from time to time in PredictionProbe's discretion. In the absence of a separate licensing agreement for the New Release, this Agreement, including its limitations and obligations imposed upon the Licensee, will be applicable to any New Releases submitted or distributed to Licensee.
- r. *"Node Lock License"* means a license under which use of the Licensed Software is locked to a Designated PC, and use of the Licensed Software is prohibited on any PC other than the Designated PC.
- s. *"Perpetual License"* means a license to install and use the Licensed Software in perpetuity. A Perpetual License which is issued as a Node Lock License will be referred to in the Order as a Node Lock Perpetual License or "NLPL." A Perpetual License which is issued as a Floating License will be referred to in the Order as a Floating Perpetual License or "FPL." A Perpetual License which is issued as a Limited Network License will be referred to in the Order as a Limited Network Perpetual License or "LNPL." A Perpetual License which is issued as a Network License will be referred to in the Order as a Network Perpetual License or "NPL."
- t. *"Published License Fee"* means the then current published fees for various license types of the Licensed Software, as may be adjusted from time to time by PredictionProbe in its absolute and sole discretion.
- u. *"Security Key"* means a hardware security device provided by PredictionProbe that restricts use of the Licensed Software to one or more personal computers, Named Users, Designated PCs, Designated LANs, and/or other similar restrictions.
- v. *"Seat"* means one copy of the Licensed Software on a Designated PC or a Designated LAN operated by a single Authorized User.
- w. *"Specifications"* means the requirements for normal use of the Licensed Software at Designated Locations and on Designated PCs and/or Designated LANs as stated in the Order, the functional specifications for the Licensed Software described in the documentation delivered to Licensee following execution of an Order, all on-line help material included with the Licensed Software and all user, technical and training guides, materials and documents in whatever media published by PredictionProbe with respect to the Licensed Software.
- x. *"Software Updates"* means a revision to a component of Licensed Software that includes updates, bug fixes, corrections, patches and revisions containing enhancements and modifications to the Licensed Software that is reflected by a new version number to the right of the decimal point (e.g., from version 1.6 to 1.7) . Software Updates are released from time to time in PredictionProbe's discretion.
- y. *"Term License"* means a license to use the Licensed Software with a term that commences on the Start Date and ends on the End Date as specified in the Order. A Term License which is not Academic License, Demo License, Development License, Evaluation License, Marketing License, or Annual License and is issued as a Node Lock License will be referred to in the Order as Node Lock Term License or "NLTL." A Term License which is not Academic License, Demo License, Development License, Evaluation License, Marketing License, or Annual License and is issued as a Floating License will be referred to in the Order as a Floating Term License or "FTL." A Term License which is not Academic License, Demo License, Development License, Evaluation License, Marketing License, or Annual License and is issued as a Limited Network

PredictionProbe Standard Software License Terms and Conditions

License will be referred to in the Order as a Limited Network Term License or “LNTL.” A Term License which is not Academic License, Demo License, Development License, Evaluation License, Marketing License or Annual License and is issued as a Network License will be referred to in the Order as a Network Term License or “NTL.”

Terms not defined herein have the meanings given to them in the Order.

2. Licensee Systems, Evaluation License and Final Acceptance

- a. *Licensee Systems.* Licensee is responsible for ensuring that the Designated PCs, Designated LANs and Designated Locations stated in the Order meet the minimum requirements described in the Specifications. Licensee is responsible for its own hardware and related software, including upgrades, maintenance, warranty repairs, etc. used or needed to run the Licensed Software in accordance with the Specifications to analyze Licensee Data.
- b. *Evaluation License.* It is expected, but not required, that all Licensees will first take an Evaluation License for at least thirty days (as stated in the Order for Evaluation License) for the purpose of assessing the Licensed Software and Licensee’s related requirements and objectives.
- c. *Installation.* Licensee will install the Licensed Software at the Designated Location(s) upon the Designated PCs and/or Designated LANs in accordance with the Specifications and at its own expense.
- d. *Final Acceptance.* Following the later of the end of the applicable Evaluation License term, or immediately after receipt of Licensed Software, Licensee will have ten days to test the Licensed Software for final acceptance against the Specifications. (“Final Acceptance”).
- e. *License or Return.* At the end of the ten-day Final Acceptance period, unless Licensee rejects the Licensed Software and returns it, all Security Keys, and all Confidential Information to PredictionProbe at Licensee’s risk and expense, Licensee will be deemed to have finally accepted the Licensed Software for the term stated in the Order and is limited to warranty or Software Maintenance (defined below) remedies thereafter.
- f. *Training.* At Licensee’s request, PredictionProbe will provide Licensee training on the Licensed Software at a mutually agreeable location at then-prevailing rates.

3. License

- a. *Grant.* PredictionProbe grants to Licensee a non-exclusive, non-transferable, end-user license of the type(s) and restricted to the Number of Seat(s) and/or Named Users stated in the Order, which license is to use the Licensed Software to analyze and generate Licensee Data (the “License”). PredictionProbe grants Licensee no title or rights of ownership in the Licensed Software. The rights granted to Licensee hereunder are restricted exclusively to Licensee and may not be assigned, shared, subleased, sublicensed, sold, or otherwise transferred. The Licensed Software cannot be exported from the United States without specific authorization from the appropriate agency of the US Government and PredictionProbe. Upon termination of this Agreement for any reason, all rights licensed revert to PredictionProbe.
 - i. Licensee will only permit the Licensed Software to be accessed by Authorized Users on Designated PCs and/or Designated LANs at Designated Locations, and in the case of the Limited Network License, by Named Users. Under no circumstances will the Licensee permit the number of Authorized Users, and in the case of the Limited Network License, permit anyone other than a Named User, to simultaneously operate, employ, or utilize the Licensed Software or exceed the number of Seats as stated in the Order. The Licensee will not be permitted to make any changes to the Designated PCs, Designated LAN(s), Named Users, and/or Designated Location(s) except with the prior written consent of PredictionProbe. Changes may require payment by Licensee of a reasonable fee, to be established at the absolute and sole discretion of PredictionProbe. No change in Designated PCs, Designated LANs, Named Users or Designated Locations will change the other terms of this Agreement (e.g., the number of Seats)
 - ii. Licensee is prohibited from permitting remote access to, or application service provider or service bureau use of, the Licensed Software.
 - iii. Licensee will not take any action to jeopardize, limit or interfere with PredictionProbe’s rights with respect to Confidential Information including but not limited to its intellectual property in the Licensed Software, Specifications, and related documentation .
 - iv. Licensee is expressly prohibited from modifying, de-compiling, reverse engineering or otherwise inspecting the functionality or deriving the source code version of the Licensed Software (or any component thereof) or of any License Key or creating any derivative works thereof.

PredictionProbe Standard Software License Terms and Conditions

- v. Academic, Demo, Developmental, Evaluation and Marketing Licenses are limited to noncommercial use. Any commercial use of any of the foregoing licenses by Licensee automatically converts the license to an Annual License effective as of the date of first commercial use, with all applicable fees immediately due and payable.
- vi. PredictionProbe reserves the right to terminate, or not to renew the Academic, Demo, Developmental, Evaluation and Marketing Licenses for any reason at its absolute and sole discretion.
- b. *Academic License.* With respect to any Academic License,
 - i. Licensee agrees that written credit will be given to PredictionProbe and the Licensed Software in any published Licensee Data, and/or within any oral presentation or writings provided or shown in connection with oral presentations of Licensee Data.
 - ii. Licensee will not allow another department to use the Licensed Software, other than the department(s) stated in the Order.
 - iii. Within 30 days of each anniversary of the Start Date Licensee will provide PredictionProbe with a comprehensive report on how the Licensed Software was used during the preceding year, including a general description of any research projects. Licensee's failure to timely provide such report will be grounds, at PredictionProbe's absolute and sole discretion, for terminating, or not renewing the Academic License.
 - iv. In the event that Licensee materially breaches its representations and warranties herein, the Academic License may be converted, at PredictionProbe's absolute and sole discretion, to a Perpetual License, with all applicable fees and charges immediately due and payable. Such fees will be paid by Licensee in addition to any damages that PredictionProbe may incur as a result of such breach.
 - v. Notwithstanding anything to the contrary herein, Licensee is not entitled to Technical Support, except in PredictionProbe's absolute and sole discretion.
- c. *Proprietary Markings.* Licensee agrees not to alter, remove or destroy any proprietary markings or proprietary legends on or contained within the Licensed Software. Additionally, Licensee agrees to include PredictionProbe's proprietary and copyright notices on any and all permitted copies of the Licensed Software and related materials, or any portion thereof.
- d. *Title to Licensed Software.* Title to the Licensed Software remains with PredictionProbe. At all times Licensee will keep the Licensed Software at the Designated Location(s) free and clear of any and all third party liens, claims or encumbrances resulting from the acts or omissions of Licensee.
- e. *Protection of and Access to Licensed Software.* PredictionProbe reserves the right to audit Licensee's use of the Licensed Software. Licensee agrees to grant PredictionProbe reasonable access to the Licensed Software at the Designated Location(s), upon reasonable request and notice by PredictionProbe.
- f. *Backup and Recovery.* Licensee is permitted to copy the Licensed Software only for backup and disaster recovery purposes and such copies will be stored and treated in accordance with Licensee's policies and procedures for Licensee's own confidential information.
- g. *Export Controls.* The Confidential Information, including but not limited to Licensed Software, and Licensee Data generated from its use are subject to United States Government technology transfer laws and export controls. Licensee must comply with all U.S. Export Administration Laws and Regulations and not export, re-export or otherwise transmit, directly or indirectly, any software, information, data or other materials received under this Agreement or generated by use of the Licensed Software unless authorized by the appropriate government agency to do so. Licensee certifies that it is not and will not be involved in nuclear, missile, chemical or biological weapons activities in violation of U.S. Export Regulations. Licensee agrees to indemnify, defend and hold harmless PredictionProbe from any loss, liability, cost or expense (including reasonable legal fees) related to any action arising from Licensee's failure to comply with U.S. Export Administration Laws and Regulations. Licensee's duties with respect to the Confidential Information, including but not limited to Licensed Software, under U.S. law are independent of this Agreement and survive its termination or expiration.
- h. *U.S. Federal Government Contractors.* The Licensed Software is licensed strictly under the terms and conditions of this Agreement and includes only those rights customarily available to licensees. Licensee is not authorized to disclose or permit disclosure to any agency or other part of the federal government that exceeds in any way the use and disclosure rights (i) conveyed to Licensee in this Agreement, or (ii) provided in FAR 12.212 (Computer Software) and (for Department of Defense use or disclosure) DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation), whichever set of rights provided in (i) or (ii) are the more restrictive.

PredictionProbe Standard Software License Terms and Conditions

- i. *Custom Applications.* Any Custom Applications will be separately bargained for and agreed upon in writing signed by the parties. Any Custom Application separately agreed to is subject to these Terms and Conditions except as specifically agreed upon in writing.
- j. *Joint Marketing and Publicity.* It is agreed that both parties will publicize, advertise and otherwise make known, the relationship and use of the Licensed Software with the intent to improve each party's competitive position. It is also agreed that PredictionProbe will have the right to use Licensee as a reference in presentations and documents. In all cases, it is agreed that neither party will use the other's trademarks or service marks without the prior written consent of the other party.

4. Proprietary Rights

- a. *Proprietary Rights.* The Licensed Software contains trade secrets, inventions, ideas, data, source, object, and executable codes, and other works of authorship protected by copyright and trade secret laws. All Software Updates, New Releases, Software Maintenance, as defined below, and any other enhancements and modifications to the Licensed Software are proprietary to PredictionProbe. All rights not expressly licensed in this Agreement are reserved.
- b. *Notice of Unauthorized Access.* Upon knowledge of any unauthorized possession or use of, or access to, the Licensed Software, Licensee must notify PredictionProbe as soon as possible, but in any event, no later than the next business day. Licensee will promptly furnish PredictionProbe with full details of such situation, assist in preventing any recurrence thereof, and cooperate at PredictionProbe's expense in any litigation or other proceedings reasonably necessary to protect the intellectual property rights of PredictionProbe and its licensors.
- c. *Infringement by Third Parties.* Licensee will promptly notify PredictionProbe of any known infringements or misappropriation by third parties of PredictionProbe's intellectual property rights in, but not limited to, the Confidential Information.

5. Protection Features

The Licensed Software may come with Security Keys, License Keys, software protection features and procedures that, in the event of unauthorized use, may limit access to the Licensed Software. The protection features including but not limited to the Security Keys are manufactured by a third party and used to control access to the Licensed Software. At Licensee's request, PredictionProbe can make available manufacturer information about the Security Key and/or the License Keys. Licensee will not modify or reproduce any protection features including but not limited to License Key and/or the Security Key provided with the Licensed Software in any way. If software protection procedures have been enabled when there is no unauthorized use by Licensee, PredictionProbe will, on a highest priority basis, assist Licensee in returning normal operations at no charge to Licensee. All protection features, including but not limited to, the Security Keys are the property of PredictionProbe and must be returned to PredictionProbe at the expiration of the applicable term of the License. Licensee is responsible for loss of or damage to Security Keys. Within ten days after the termination of this Agreement for any reason, or within ten days subsequent to the written request of PredictionProbe, Licensee will return the Security Keys and/or other protection features. In the event all the Security Keys and/or other protection features are not returned within ten days, Licensee is deemed to have renewed the License as a Perpetual License and all fees and charges for a Perpetual License will immediately be due and payable. Licensee's obligations to pay such fees and charges are in addition to its obligation to cover any damages that PredictionProbe may incur as a result of the failure to return.

6. Maintenance

- a. *Software Maintenance, Customer Support, New Releases and Updates.* PredictionProbe will maintain the current release of the Licensed Software in all material respects in accordance with the then-applicable Specifications ("Software Maintenance"). The Specifications are subject to amendment from time to time to conform to functionality contained in Software Updates and New Releases of the Licensed Software. Provided that Licensee has paid current Maintenance Fees, as defined in Section 7 herein, PredictionProbe will provide Licensee with telephonic, e-mail and/or bulletin board customer support, ("Customer Support"), Software Maintenance and all Software Updates (collectively the "Technical Support") distributed by PredictionProbe during the Maintenance Period as defined below. Technical Support will be provided to a Licensee with an Annual License during the duration of such Annual License without payment of an additional Maintenance Fee. Any other type of License granted under this Agreement will not receive Technical Support, unless the Licensee pays the then-current Maintenance Fee. All Software Updates become part of the Licensed Software.

PredictionProbe Standard Software License Terms and Conditions

- i. Licensee must select and identify in the Order a suitably qualified and responsible person as Licensee's "Technical Support Coordinator" or "TSC" for purposes of all technical communications and liaison, including Customer Support. PredictionProbe's responsibility to provide Technical Support will be limited to TSC. The TSC is responsible, within Licensee's organization, for providing technical support to Licensee's Authorized Users. Any change in TSC must be promptly communicated to PredictionProbe. In the absence of any such notification PredictionProbe may reasonably select and rely upon any employee of Licensee as TSC.
- b. *Maintenance Period.* Maintenance Period means the period of time during which a Licensee who pays Maintenance Fees or who has an Annual License is entitled to receive Technical Support. With respect to an Annual License, the Maintenance Period is the same as the Initial Term (as defined in Section 13), plus any extensions provided pursuant to Section 13 herein, of the Annual License. With respect to other types of licenses, the Maintenance Period shall commence with the Start Date and end with the End Date applicable to Technical Support as stated in the Order.
- c. *Maintenance Response.* If Licensee notifies PredictionProbe of a problem with the Licensed Software during the Maintenance Period, PredictionProbe's obligation to Licensee is, at PredictionProbe's option to: (a) provide suggestions to modify, correct, or work around existing procedures in order to resolve the problems, or (b) modify the Licensed Software to conform substantially to the Specifications; or (c) use commercially reasonable efforts to identify and reproduce the problem and then correct it; or (d) modify the Specification to accurately reflect the Licensed Software's actual operation, all at PredictionProbe's expense. Licensee's reasonable cooperation and assistance is expected in any such project.
- d. *Limitations.* PredictionProbe's obligation to provide Software Maintenance, if any, will apply to the most current version or release of the Licensed Software unless otherwise specified under this Agreement. Licensee must provide notice to PredictionProbe in sufficient detail to allow PredictionProbe to replicate reported problems. Should PredictionProbe fail to provide such correction, Licensee's sole and exclusive remedy will be to receive a proportional refund of Maintenance Fees, as defined below, paid for the non-conforming software for the period during which the non-conformance occurred.
- e. *Exclusions.* PredictionProbe disclaims all responsibility for maintaining or supporting prior releases of the Licensed Software. PredictionProbe can require Licensee to purchase and install the New Release and/or necessary Software Updates prior to providing Software Maintenance and Customer Support. PredictionProbe does not support the Licensed Software on any operating system not included in the Specifications. PredictionProbe will have the right to discontinue Technical Support at any time for the Licensed Software if it no longer supports the operating system version for such Licensed Software. No notice need be given by PredictionProbe prior to the discontinuation of Technical Support for any such software.

7. License Fees, Maintenance Fees, Taxes, and Payment Terms

- a. *License Fees.* "License Fees" means the applicable fees for the Licensed Software selected in the Order, as may be adjusted by PredictionProbe in its absolute and sole discretion, effective as of the Effective Date and/or each license renewal date defined as the date of the day following the then current applicable End Date (the "License Renewal Date"). The Licensee must pay PredictionProbe the License Fees and other charges in the Order in consideration and as a condition for granting the License for the Initial Term, as defined in Section 13 herein. License Fees are subject to change from time to time at the absolute and sole discretion of PredictionProbe and without any notice to Licensee. Perpetual License Fees are for a fully paid-up Perpetual License. In the event there are any third party fees or costs of any kind that are not specified in the Order, including but not limited to bank fees, credit card fees, or wiring fees, such fees are the responsibility of and must be paid by the Licensee. In the event and each time that the License is automatically renewed pursuant to Section 13 herein, the Licensee agrees to pay the then current Annual License and Maintenance Fees and other charges.
- b. *New Releases.* New Releases will be offered to Licensee on the same terms and at the same time offered to all licensees of the Licensed Software. New Releases will require an additional license fee determined at the time of the New Release at the absolute and sole discretion of PredictionProbe. New Releases may be provided or made available by PredictionProbe at such times as determined by PredictionProbe in its discretion. In the absence of a separate licensing agreement for the New Release, this Agreement, including its limitations and obligations imposed upon the Licensee, will be applicable to any New Releases submitted or distributed to Licensee. All New Releases become part of the Licensed Software.
- c. *Maintenance Fees.* "Maintenance Fee" means that amount as may be adjusted by PredictionProbe in its absolute and sole discretion effective as of Effective Date and/or each maintenance renewal date defined as

PredictionProbe Standard Software License Terms and Conditions

the date of the day following the then current Maintenance Period for any license other than an Annual License (the "Maintenance Renewal Date") in consideration and as a condition for PredictionProbe providing Technical Support during the Maintenance Period. Licensee must pay the Maintenance Fee described in the Order prior to receiving any Technical Support. The amount of the Maintenance Fee is subject to change from time to time at the absolute and sole discretion of PredictionProbe and without any notice to Licensee.

- d. *Taxes.* Licensee is responsible for all taxes (including sales, use, property, excise, value-added and gross receipts, but not including taxes based on PredictionProbe's net income) and import duties and fees levied on the Licensed Software and Maintenance provided under this Agreement. Licensee will pay, and PredictionProbe will collect and remit, all applicable taxes as required by applicable law.
- e. *Payment Terms.* Payment terms are as stated in the Order or any subsequent Order, subject to PredictionProbe's continuing credit approval. Past due uncontested amounts will bear interest of one and one-half percent per month from the due date or the highest rate permitted by law if less.
- f. *Non-refundable.* All payments made hereunder are non-refundable except as specifically provided otherwise in this Agreement.

8. Confidentiality

- a. *Nondisclosure.* The Confidential Information, including but not limited to Licensed Software, contains confidential information of PredictionProbe. Licensee acknowledges and agrees that it will not disclose Confidential Information to any third party, directly or indirectly, either in writing or orally. Licensee will use the same care to avoid disclosure of such Confidential Information as it uses with its own similar confidential information which it does not wish to disclose, but such standard of care will not be less than a reasonable standard of care.
 - i. If Licensee needs to permit access to Confidential Information by any Contract User, Licensee covenants that (a) Licensee is responsible for that individual's and/or entity's compliance with this subsection and (b) access will be conditioned upon all such individuals and entities agreeing in writing only to perform services for Licensee and to be bound by this Agreement.
- b. Licensee agrees that a breach of its confidentiality obligations will cause immediate and irreparable monetary damage to PredictionProbe and will entitle PredictionProbe to seek injunctive relief in addition to all other remedies.
- c. *Notification.* Licensee will immediately notify PredictionProbe upon discovery of any loss or unauthorized disclosure of Confidential Information.

9. Limited Warranty, Warranty Exclusions and Disclaimers, Exclusive Remedies, Limitation of Liability, and Limitation of Damages

- a. *Limited Warranty.* PredictionProbe warrants to Licensee only, and not to Licensee's customers, clients or to third parties, that for a period of ninety days following Final Acceptance (the "Limited Warranty Period"), the Licensed Software provided under an Annual License or a Perpetual License will perform substantially in accordance with the Specifications in effect at Final Acceptance under normal operating conditions. PredictionProbe does not warrant that the Licensed Software will operate uninterrupted or error free. Technical Support is included in the Limited Warranty during the Limited Warranty period.
 - i. The media containing the Licensed Software programs is warranted for a period of ninety days after Licensee's receipt of same. Licensee's sole and exclusive remedy, and PredictionProbe's sole responsibility, is to replace the media.
- b. *Warranty Exclusions and Disclaimers.*
 - i. Notwithstanding anything to the contrary in this Agreement, PredictionProbe does not warrant Software provided under Academic Licenses, Demo Licenses, Development Licenses, Evaluation Licenses, Marketing Licenses, or any licenses granted without a License Fee.
 - ii. PredictionProbe will not provide any warranty for the Licensed Software on any operating system not included in the Specifications.
 - iii. PredictionProbe will not provide any warranty if the Licensee is in material uncured breach of any part of this Agreement.
 - iv. Licensee is solely responsible for Licensee's Data and Licensee's decisions and actions taken before, during or following use of the Licensed Software. The Licensed Software cannot be tested in advance in every possible operating combination and environment; and was not written for Licensee's specific requirements. PredictionProbe expects Licensee to use the Licensed Software and Licensee Data in conjunction with other analyses, software and information available to Licensee to consider or make decisions.

PredictionProbe Standard Software License Terms and Conditions

- v. Licensee acknowledges and agrees that PredictionProbe does not warrant the accuracy or the applicability of the Licensed Data or other results obtained from the use of the Licensed Software or the related documentations. Licensee is responsible for identifying all factors to take into account before acting with respect to Licensee Data.
 - vi. PredictionProbe has no responsibility for problems in the Licensed Software or Licensee Data that are caused by unauthorized modifications or changes by Licensee, or by a third party (including but not limited to “hackers” and harmful codes or viruses), arising out of the malfunction of Licensee’s System, or that are caused by third party hardware or software not part of the Licensed Software. The warranties provided in this section will only apply to the most current version or release of the Licensed Software provided to Licensee and no warranty, either implied or express, is provided for any software which is not the most current version of such software.
 - vii. PredictionProbe has not tested or certified its products for use in high risk applications including, without limitation, medical life support, medical device, direct physical patient contact, water treatment, nuclear facilities, weapon systems, mass and air transportation control, flammable environments, critical parts design or development, or any other potentially life critical uses. The U.S. Government acknowledges and agrees that PredictionProbe makes no assurances, representations, or warranties that the products are suitable for any high-risk uses.
 - viii. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PREDICTIONPROBE DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, FOR MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE, OR ANY ACCESSIBILITY STANDARDS, WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING.
- c. *Exclusive Remedies.* For any breach of warranties contained in Section 9 of this Agreement, Licensee’s exclusive remedy is as follows:
- i. at PredictionProbe’s option to: (a) provide suggestions to modify, correct, or work around existing procedures in order to resolve the problems, or (b) modify the Licensed Software to conform substantially to the Specifications; or (c) use commercially reasonable efforts to correct, at no charge, any material non-conformances in the Licensed Software of which PredictionProbe receives written notification during the Warranty Period.
 - ii. In the event that PredictionProbe cannot resolve the problem within the Warranty Period, PredictionProbe will continue to work on it during the Maintenance Period provided that Maintenance Fees are paid or, in its discretion, will refund to Licensee the proportional value of the License Fees paid and terminate this Agreement.
- d. *Limitation of Liability.* PREDICTIONPROBE HAS NO LIABILITY FOR LICENSEE’S USE OF THE LICENSED SOFTWARE, LICENSEE DATA OR DECISIONS MADE BY LICENSEE OR AUTHORIZED USERS.
- e. *Limited Damages.* EXCEPT FOR THE SPECIFIC INDEMNIFICATION PROVISIONS CONTAINED IN THIS AGREEMENT BELOW, UNDER NO CIRCUMSTANCES WILL PREDICTIONPROBE BE LIABLE TO PAY LICENSEE OR ANY OTHER PARTY ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OR FOR LOSSES OR INJURIES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR GOODWILL WHICH MAY OCCUR AS A RESULT OF PREDICTIONPROBE’S BREACH OF THIS AGREEMENT OR THE USE BY LICENSEE OF, OR INABILITY OF LICENSEE TO USE, THE LICENSED SOFTWARE WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, EVEN IF PREDICTIONPROBE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL PREDICTIONPROBE BE LIABLE TO LICENSEE FOR A MONETARY AMOUNT GREATER THAN THE TOTAL AMOUNTS RECEIVED BY PREDICTIONPROBE IN CONNECTION WITH THE LICENSED SOFTWARE. THE LIMITATIONS SET FORTH IN THIS SECTION WILL APPLY EVEN IF ANY REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

10. Indemnities

- a. *Intellectual Property.* For all licenses other than Academic Licenses, Demo Licenses, Development Licenses, Evaluation Licenses, Marketing Licenses, or any licenses granted without a License Fee, PredictionProbe will indemnify, defend and hold Licensee harmless from and against any loss, cost, damage, liability, or expense (including reasonable legal fees) suffered or incurred by Licensee in connection with any U.S. patent, or any copyright or other intellectual property infringement claim by any third party with respect to the Licensed Software. This indemnity obligation will apply only to the extent that Licensee promptly notifies PredictionProbe after Licensee becomes aware of such claim, grants to PredictionProbe the authority to

PredictionProbe Standard Software License Terms and Conditions

defend, compromise or settle the claim of infringement, and provides PredictionProbe any Licensee information relevant to such claim.

- b. *Exclusions.* PredictionProbe will have no liability for any claims of infringement that are based on (i) an unauthorized modification to the Licensed Software, (ii) the use of a prior or modified version or release if the infringement claim could have been avoided by the use of a current unmodified release of the Licensed Software, (iii) upon a use of the Licensed Software in a manner not contemplated by the Specifications, (iv) the combination of the Licensed Software with third party software, hardware or Licensee Data, (v) Licensee Data, or (vi) the use of Licensed Software by Licensee under an Academic License, Demo License, Development License, Evaluation License, Marketing License, or any license granted without a License Fee.
- c. *Remedies.* For all licenses other than Academic Licenses, Demo Licenses, Development Licenses, Evaluation Licenses, Marketing Licenses, or any licenses granted without a License Fee, PredictionProbe further agrees that if Licensee is prevented from using the Licensed Software due to an actual or claimed infringement, then at PredictionProbe's option, PredictionProbe will promptly either: (i) procure for Licensee, at PredictionProbe's expense, the right to continue to use the Licensed Software; (ii) replace or modify the Licensed Software, at PredictionProbe's expense, so that the Licensed Software becomes non-infringing; or (iii) terminate the Agreement as it relates to the infringing Licensed Software and return Licensee's License Fees for the infringing Licensed Software in the event that neither (i) or (ii) are reasonably feasible.
- d. *Exclusive Remedy.* Subsections a, b and c of this Section constitute PredictionProbe's entire obligation to Licensee with respect to any claim of infringement.
- e. *By Licensee.* Licensee will defend, indemnify and hold PredictionProbe, its affiliates, employees, officers, directors and agents harmless from and against any and all claims, costs, liability and damages (including reasonable attorney's fees) arising directly or indirectly from Licensee's use or misuse of the Confidential Information including but not limited to the Licensed Software, or Licensee Data as well as Licensee's decisions and actions (or Licensee customer or client decisions and actions) taken or made with respect to Licensee Data.

11. Allocation of Risk

The parties agree that the sections on limited warranty, exclusive remedy, limited liability, warranty disclaimers, warranty exclusions and indemnification allocate certain risks between the parties. This allocation is reflected in the License Fees, Maintenance Fees, and charges in the Order and is an essential element of the basis of the bargain between the parties.

12. Limitation on Actions

Any dispute Licensee may have against PredictionProbe with respect to this Agreement must be brought within two years after the cause of action arises.

13. Term and Termination

- a. *Term.* The initial term of this Agreement is that period of time for each type of Software License, excluding a Perpetual License, commencing upon the Start Date and terminating upon the End Date, as specified in the Order (the "Initial Term"). A Perpetual License has a perpetual term provided that Licensee is not in material uncured breach of the Agreement. Technical Support begins with the Start Date if applicable Maintenance Fees are paid. An Annual License and Technical Support will automatically be renewed for successive one-year terms unless earlier terminated in accordance with the terms of this Agreement or by giving the other party not less than 90 days' prior written notice of termination.
- b. *Termination for Breach.* If either party materially breaches this Agreement, the other party may give written notice of its desire to terminate and the specific grounds for termination and, if such default is capable of cure and the party in default fails to cure the default within thirty days of the notice, the other party may terminate this Agreement. If such default is incapable of cure, the other party may terminate this Agreement immediately upon written notice of its desire to terminate.
- c. *Insolvency.* This Agreement may be terminated by either party on written notice to the other in the event of any assignment by the other party for the benefit of creditors, or if a receiver, trustee in bankruptcy or similar officer is appointed to take charge of a material portion of the other party's property or if the other party files a voluntary petition under federal bankruptcy laws or similar state statutes or such a petition is filed against the other party and is not dismissed within ninety days.
- d. *Other Remedies.* Termination of this Agreement, or any portion of it, will not limit either party from pursuing other remedies available to it, including injunctive relief. Such termination will not relieve Licensee of its obligation to pay all fees that have accrued or are otherwise owed by Licensee under the Order.

PredictionProbe Standard Software License Terms and Conditions

- e. *Destruction or Return of Licensed Software.* Upon termination, Licensee's license to use the Licensed Software will be immediately revoked, and the Licensed Software, Confidential Information, and Security Keys, and other supporting materials must be returned to PredictionProbe within ten days, with an affidavit supplied to PredictionProbe certifying complete return.
- f. *Survival.* Notwithstanding any termination or expiration of this Agreement, the following Sections will survive indefinitely: 3, 4, 8, 9, and 10. The termination or expiration of this Agreement will not relieve either party of any liability it may have to the other party arising out of acts or omissions occurring prior to such termination or expiration.

14. General

- a. *Notices.* All notices, demands, requests, consents, approvals or other communications (collectively, "Notices") required or permitted to be given hereunder or which are given with respect to this Agreement will be in writing and may be personally served, by confirmed facsimile or by reputable overnight courier to the Administrator Contact named in the Order if for the Licensee, or to the representative of PredictionProbe named in the Order at the address shown therein, if for PredictionProbe, or such other address or person as either party will have specified most recently by written notice provided in accordance with this Section. Notice will be deemed given on the date of service if personally served or sent by confirmed facsimile. Notice mailed as provided herein will be deemed given on the next day if sent by overnight courier.
- b. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute but one and the same instrument.
- c. *Modifications and Amendments.* This Agreement may not be modified, amended, changed or supplemented, nor may any obligations hereunder be waived or extensions of time for performance granted, except as expressly provided in this Section. This Agreement may be modified only by a written amendment executed by duly authorized officers or representatives of PredictionProbe and Licensee. Any modifications to these Terms and Conditions must be specific, identifying this Agreement, the Order defined in this Agreement, the License Agreement Number defined in the Order, the provisions that are affected, and further expressly state its intent to either supersede, modify, or delete the provisions that are affected.
- d. *Licensee's Agent.* In the event that Licensee uses a third party as a middleman ("Licensee's Agent") to facilitate the Parties entering into this Agreement, Licensee acknowledges and agrees that Licensee's Agent is serving as its agent in connection with this Agreement, and not PredictionProbe's representative or agent. Licensee further agrees that Licensee will be responsible and liable to PredictionProbe in the event Licensee's Agent misappropriates or discloses the Licensed Software, License Keys, Security Keys, or any Confidential Information or takes any other action contrary to this Agreement while such License Keys, Security Keys or Confidential Information is in the custody or control of Licensee's Agent.
- e. *Waivers and Extensions.* No waiver of any breach of any agreement or provision herein contained will be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or provision herein contained. No extension of time for performance of any obligations or acts will be deemed an extension of the time for performance of any other obligations or acts.
- f. *Attorneys' Fees.* Should any party institute any action or proceeding to enforce this Agreement or any provision hereof, or for damages by reason of any alleged breach of this Agreement or of any provision hereof, or for a declaration of rights hereunder, the prevailing party in any such action or proceeding will be entitled to receive from the other party all reasonable costs and expenses, including, without limitation, attorneys' fees and disbursements, incurred by the prevailing party in connection with such action or proceeding.
- g. *Consents and Approvals.* Whenever the consent or approval of either party is provided for in this Agreement, such consent or approval will be given in writing to the requesting party.
- h. *Further Assurances.* Each party agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as the other party may reasonably require to consummate, evidence or confirm the agreements contained herein in the manner contemplated hereby.
- i. *Entire Agreement.* The terms of this Agreement are intended by the parties as a final expression of their agreement with respect to its subject matter and may not be contradicted by evidence of any prior or contemporaneous agreement. No extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding, if any, involving this Agreement. The terms and conditions contained herein will supersede any conflicting provisions contained in the Order. No purchase order, addendum, amendment or other document issued by Licensee, whether or not signed or acknowledged by PredictionProbe, and notwithstanding such purchase order's language providing that it takes precedence over any other agreement

PredictionProbe Standard Software License Terms and Conditions

between the parties, will be effective to contradict, modify, delete from or add to any provisions of this Agreement in any manner whatsoever, unless such document is prepared pursuant to the Section 12c herein.

- j. *Independent Contractor.* Each party hereto is and at all times will be deemed to be an independent contractor and will be wholly responsible for the services performed by it under this Agreement. Nothing contained herein will be construed as creating the relationship of employer/employee or principal/agent. Each party hereto assumes full responsibility for the actions of its employees as related to the services provided under this Agreement. Neither party is a legal representative of the other party and neither may assume or create any obligation, representation, warranty or guarantee, express or implied, on behalf of the other party for any purpose whatsoever.
- k. *Governing Law and Jurisdiction.* This Agreement will be governed by and construed in accordance with the internal laws of the State of California without reference to the conflict of laws principles. Jurisdiction of any dispute arising out of this Agreement lies solely in the Superior Courts of the State of California, and proper venue lies in Orange County Superior Court.
- l. *Assignments and Successors.* Licensee cannot assign this Agreement to any third party without prior written consent of PredictionProbe. Any assignment without PredictionProbe's prior written consent is void. This Agreement is otherwise binding upon and inure to the benefit of the parties hereto and their respective successors and authorized assigns.
- m. *Severability.* If any provision of this Agreement will be deemed invalid by a court of competent jurisdiction, or by any arbitrator(s) so authorized to rule upon such issue, such provision will be ineffective only to the extent of such invalidity without invalidating the remainder of this Agreement.
- n. *No Third Party Beneficiaries.* This Agreement is personal to Licensee and no third party has any rights or claims against PredictionProbe by virtue of this Agreement.