

## **MENTICE GENERAL TERMS AND CONDITIONS**

THESE MENTICE GENERAL TERMS AND CONDITIONS (these “Terms”) constitute the terms and conditions upon which Mentice, Inc., a Delaware corporation, with a principal address of 820 W. Jackson Street, Suite 250, Chicago, IL 60607 (“Mentice”) shall provide any goods or services to a “Customer” subject to the below Scope of Applicability.

1. **Scope of Applicability**. These Terms shall apply to the (i) rental, purchase and sale, or other provision of equipment (“Product(s)”) from Mentice to Customer, (ii) any software supplied by Mentice either stand-alone or an integrated component of a Product (“Software”), and (iii) the provision of professional services by Mentice for Customer (“Services”), or (iv) any other requisition of services or equipment by Customer from Mentice or an affiliate of Mentice which refer to or incorporate these Terms, and for which a Master Services Agreement or other stand-alone agreement has not been entered for the scope of such Purchase Order. Unless otherwise indicated herein, the term “Product” shall include any “Software” provided in connection with these Terms. It is the expectation of the parties that any Products or Services provided hereunder shall be pursuant to a formal purchase order, engagement letter or similar authorizing document containing the specific scope of work and pricing for any performance hereunder (each, a “Purchase Order”); however, absent an express rejection of the terms of these Terms, these Terms shall apply to any Services or Products provided by Mentice for or on behalf of Customer even in the absence of a Purchase Order. The performance of Mentice hereunder, which may include providing Product(s) and/or Services, shall collectively and all-inclusively be referred to as “Deliverables”. Upon mutual approval of any Purchase Order, the terms thereof shall be deemed incorporated by reference into these Terms.

2. **Purchase Orders/Prices**. The price for any Deliverables shall be as set forth in the applicable Purchase Order. Customer acknowledges that the pricing of the Deliverables and the other terms of these Terms have been set based on the terms and conditions of these Terms providing for an agreed allocation of the risk for any defective Deliverables between the parties; Customer further acknowledges that the pricing and terms would have been different if there had been a different allocation of the risk. Any terms not expressly affirmed by the parties, including but not limited to any terms and conditions of a Customer-provided purchase order, are hereby rejected and shall have no application hereto. In the event of an irreconcilable conflict between a specific provision of these Terms and of a Purchase Order, the provision of the Purchase Order shall govern.

3. **Taxes**. Except as otherwise expressly stated herein, the prices do not include federal, state or local sales, use, goods and services, excise or other similar taxes or duties applicable to goods or services involved in this transaction. All such taxes shall be paid by Customer, unless Customer provides Mentice with evidence satisfactory to Mentice of exemption from such taxes. When Mentice is required by law or regulation to collect such taxes, Customer agrees that Mentice will add such taxes to the sale price of the goods.

4. **Delivery/Title**.

(a) Delivery or shipping dates are approximate only and merely represent Mentice’s best estimate of the time required to make delivery or shipment. Mentice will not be liable for loss or damages due to any delay in delivery.

(b) Shipping terms, including pricing, shall be set forth in each applicable Purchase Order; if none are stated, then shipping terms shall be EXW, premises of Mentice or an affiliate thereof in Chicago, Illinois Gothenburg, Sweden, whichever is closer (INCOTERMS 2010) via a carrier selected by Customer at its option, or otherwise by Mentice, and will be packed in Mentice’s standard commercial shipping packages. In the event Mentice assists Customer in arranging transportation and insurance, title and risk of loss or damage will pass to Customer upon Mentice’s delivery of the Products to the carrier for shipment to Customer. Customer shall reimburse Mentice for any and all costs for transportation, insurance and, in respect of the period after the date Mentice is prepared to make delivery, storage incurred by Mentice.

5. **Payment Terms**. Payment terms shall be as set forth in the applicable Purchase Order, and if not so stated, then payment terms shall be due in full upon signing of Purchaser Order. All payments shall be made

in the currency stated on invoice. Customer shall pay any bank fees and charges and reasonable administration costs. No discounts or setoffs shall be made by Customer against any invoices unless approved in advance by Mentice. Any invoiced amount which is not paid when due may bear interest at the rate of 1.5% per month or the highest rate then permitted by law, whichever is less, until paid in full. Mentice reserves the right to exercise any of its lawful remedies if Customer does not make payments when due. Customer shall promptly reimburse Mentice for all costs and expenses, including attorneys' fees, incurred by Mentice in collecting sums due it hereunder.

6. **Equipment Rentals.** The rental of Equipment by Customer shall be subject to the terms of these Terms and the applicable Purchase Order (which may have an alternative title.) If a specific location is designated in the Purchase Order, then Customer agrees that, absent an emergency such that the Equipment is in imminent risk of damage, Customer will not permit the Equipment to be moved to an alternative location with the prior written consent of Mentice. Customer will maintain the Equipment in a secure and suitable work environment, and shall be responsible for any damage sustained by the Equipment until such time as it is back in the possession of Mentice; Customer will further ensure that any use of the Equipment is overseen by competent staff trained on it use. Customer shall also make express provision that the Equipment is covered under Customer's insurance for the Equipment's full retail price.

7. **Acceptance and Returns.** Customer shall inspect Products promptly upon receipt. Subject to Customer's rights pursuant to the Custom Software Warranty set forth in Section 11(c) below, unless Customer notifies Mentice within five business days after receipt of a Products of any nonconformity, describing the nonconformity in reasonable detail, Customer shall be deemed to have accepted the Products. Acceptance as aforesaid shall constitute acknowledgment of full performance by Mentice of all its obligations hereunder. No Products shall be subject to returns (other than pursuant to a valid warranty claim) except upon (a) written approval of Mentice and (b) payment of a fair and equitable restocking charge as determined by Mentice's restocking charge policy at the time of return.

8. **Cancellation and Reschedules.** No executed Purchase Orders shall be subject to cancellation except upon (a) written approval of Mentice and (b) payment of a fair and equitable compensation, including profit margin, as determined by Mentice at the time of cancellation. Customer may only reschedule an order with Mentice's written consent, which may be granted or withheld in Mentice's sole discretion. A reschedule should not extend further than an additional 30 calendar days from original ship date requested. Reschedules may be subject to a 10% fee, as determined by Mentice, based on total amount of the order or portion of the order rescheduled.

9. **Customer Credit.**

(a) If the financial condition of Customer at any time becomes unsatisfactory to Mentice, in Mentice's sole discretion, or if Customer fails to make any payment when due, in addition to any other rights Mentice may have, Mentice may defer or decline to make any shipment or shipments hereunder or may condition any such shipment upon receipt of satisfactory security or cash payments in advance.

(b) In the event any Deliverables are purchased hereunder per credit extended by Mentice to Customer, Customer hereby grants to Mentice a security interest and right of repossession in all Products and all proceeds and products thereof until all amounts due or to become due hereunder have been paid. Any repossession and removal of Products shall be without prejudice to any of Mentice's other remedies at law or in equity. Customer agrees, at any time and without further consideration, to do or cause to be done, executed and delivered, all such further acts and instruments (including without limitation financing statements appropriate for filing) as Mentice may reasonably request in order to perfect Mentice's security interest.

10. **Software License.** Mentice hereby grants Customer a limited, non-exclusive, non-transferable, non-assignable, personal license for use for any Software subject to the terms and conditions of these Terms (the "Software License"), and specifically as set forth below in this Section; the Software License expressly excludes source code.

(a) The Software License is contingent upon timely payment of all amounts owed by Customer to Mentice hereunder; if Customer fails to make all payments when due, Mentice may suspend or terminate the Software License upon 15 days' prior written notice if amounts remains unpaid.

(b) Customer's use of any third party Software, as same may be identified by Mentice, shall be subject to Customer's agreement to the license terms applicable for such third party software.

(c) The Software may embody trade secrets of Mentice or a third party owner; accordingly, all Software shall be considered as trade secrets and the Customer agrees not to disclose such trade secrets to any third party.

(d) Customer shall use the Software only (i) in connection the designated Mentice Product, (ii) with the proper inclusion of Mentice's copyright and/or proprietary notice(s), and (iii) if applicable, only at the designated Customer site.

(e) No ownership rights are assigned to Customer hereunder for any Software beyond the limited rights granted per the Software License. Customer shall not decompile, reverse engineer or otherwise reduce or attempt to reduce object code to source code program form. Customer agrees not to modify, adapt, translate or create derivative works based on Software and accompanying documentation and not to distribute copies of the Software or accompanying documentation to any third party in violation of these Terms.

#### 11. **Limited Warranty.**

(a) Except as otherwise stated herein or in an order acknowledgment (if any) delivered to Customer, Mentice warrants to Customer (the "Limited Warranty") that the Products (excluding customized Software, which is addressed in paragraph (c) below) shall be: (i) free of defects in materials and workmanship for a period of 12 months from the date of installation, but in no case later than 14 months from the date of delivery to Customer ("Warranty Period"); and (ii) free of liens and encumbrances when shipped to Customer.

(b) Customer shall notify Mentice in writing promptly (and in no case later than 15 calendar days after discovery) of a suspected claim under the above Limited Warranty, describing in commercially reasonable detail the symptoms associated with such suspected failure, and shall provide to Mentice the opportunity to inspect such Products as installed, if possible. The notice must be received by Mentice during the Warranty Period. Within a reasonable time after receipt of the allegedly defective Products and verification by Mentice that the Products fail to meet the Limited Warranty, Mentice shall correct such failure by, at Mentice's option, either (i) modifying or repairing the Product, or (ii) replacing the Product. Such modification, repair or replacement and the return shipment of the Products to Customer shall be at Mentice's expense. If Mentice is unable to modify, repair or replace Products to conform to the Limited Warranty, then Mentice shall, at Mentice's option, either refund to Customer or credit to Customer's account in the event of and to the extent of an outstanding balance, the purchase price of the Products.

(c) With respect to Software customized for Customer, Mentice grants Customer a warranty that said Software will be operational in accordance with its express purpose (the "Custom Software Warranty"). The Custom Software Warranty shall be limited to a duration of 90 days following delivery, during which warranty period, Mentice will design, code, check-out, document and promptly deliver any amendments or alterations to the Software that may be required to correct errors present at the time of its shipment and which materially affect performance in accordance with the specifications. The Custom Software Warranty is contingent upon: (i) Customer promptly notifying Mentice in writing of any errors or problems with the Software; (ii) the Software is being used only in conjunction with the Product specified for such Software; and (iii) there having been no alterations, modifications or enhancements to the Software which were not approved in writing by Customer. In the event Mentice is unable to remedy the defect in accordance with the Custom Software Warranty, Mentice may, at its expense, either: (A) repair and/or replace the Software with functionally equivalent Software; or (B) remove the Software and refund the purchase price for the Software.

(d) Mentice specifically excludes from any warranty hereunder, the uninterrupted or error-free use of any Software. Mentice shall have no liability in respect of third party software. Any of the following

shall void the Limited Warranty and/or Custom Software Warranty, whichever may be applicable: (i) improper installation or testing, (ii) failure to provide a suitable operating environment, (iii) use of the Product for purposes other than that for which it was designed, (iv) failure to monitor or operate the Product in accordance with applicable Mentice specifications and good industry practice, (v) unauthorized attachment or removal or alteration of any part of the Product, (vi) unusual mechanical, physical or electrical stress, (vii) modifications or repairs done by other than Mentice or a Mentice-authorized contractor, (viii) use of non-Mentice or Mentice-authorized spare parts, consumables, software, or (ix) any other abuse, misuse, neglect or accident. Following the relevant warranty period, Customer may be permitted to purchase extended Product maintenance and support services; support services may be provided by an affiliate of Mentice.

(e) The remedies set forth in this Section 11 shall be Customer's exclusive remedies in the event the Products are nonconforming/breach of warranty. **EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, MENTICE MAKES NO OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS, EXPRESSED AND IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE DELIVERABLES, THEIR FITNESS FOR ANY OTHER PURPOSE THAN STATED BY MENTICE, THEIR QUALITY, THEIR MERCHANTABILITY OR OTHERWISE.** IN NO EVENT SHALL MENTICE BE LIABLE FOR COST OF PROCUREMENT OR INSTALLATION OF SUBSTITUTE GOODS BY CUSTOMER OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING DATA LOSS OR LOST PROFITS. Customer is solely responsible for any and all representations and warranties regarding the Deliverables made or authorized by Customer.

12. **Ownership of Developments.** Mentice retains all ownership and title to all intellectual property, including patents, copyrights, trade and services marks, trade secrets, ideas and concepts, know-how, methods, techniques, templates, and computer software and/or code (collectively, "IP") provided or created in connection with or pursuant to these Terms, notwithstanding the disclosure and/or delivery to Customer of said IP. Customer agrees that an update or enhancement of Software developed by Mentice, whether or not requested and/or paid for by Customer, and whether or not developed in conjunction with Customer's employees or agents, shall be the exclusive property of Mentice. Customer further agrees that updated or enhanced versions or releases of the Services are not "works for hire" as defined under the Copyright Act of 1976, as amended, do not constitute a program different from the Service, and do not create any ownership rights by Customer in the Services except as otherwise agreed in writing by the Parties.

13. **Limitation of Liability; Indemnity.**

(a) Customer and Mentice ("Indemnifying Party") shall defend, indemnify and holds harmless the other and their respective owners, directors and employees (each, an "Indemnified Party") from and against all claims, costs (including but not limited to reasonable attorney's fees and associated legal costs), damage and liability arising from or relating to a third party claim for personal injury or tangible property damage arising out of the negligence or intentional misconduct of the Indemnifying Party.

(b) NOTWITHSTANDING ANY OTHER PROVISION HEREIN OR IN ANY OTHER DOCUMENT OR COMMUNICATION TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING BUT NOT LIMITED TO PRODUCT LIABILITY), WHETHER ARISING OUT OF CONTRACT, STRICT LIABILITY, TORT OR OTHERWISE, EVEN IF THE PARTY HAD BEEN ADVISED OF THE POTENTIAL HARM.

14. **Intellectual Property Infringement.**

(a) Subject to the terms and limitations set forth in this Section 14, Mentice shall indemnify, defend and keep Customer harmless from and against any third party claim that any Product provided hereunder infringes upon said third party's rights per intellectual laws of the U.S. or E.U..

(b) If any Product is held to infringe any valid U.S. or E.U. patent and the use of the Product is enjoined or in case it may, in the opinion of Mentice, be held to constitute such infringement, Mentice may at its expense and in its sole discretion (a) procure for Customer the right to continue using the Product; (b)

replace the Product with a suitable non-infringing Product; (c) suitably modify the Product, while maintaining its conformance to all product descriptions and specifications agreed to by the parties; or (d) remove the Product and refund the purchase price and transportation costs for the Product, less deduction for depreciation equal to 20% of the purchase price for each year of use since purchase.

(c) Notwithstanding the above, Mentice shall not be obligated to indemnify Customer under these Terms to the extent (i) the allegedly infringing Product is modified or combined with other devices not provided by Mentice without Mentice's written approval, (ii) the alleged infringement arises out of any modification or customization of any Product per the request or directions of Customer, (iii) the Product is utilized in a manner or for a purpose other than its express intended purpose, or (iv) the claimant alleging infringement is an affiliate of Customer, and in the event of any claim under (i) through (iv), Customer shall indemnify and defend Mentice.

(d) The foregoing states the entire liability of Mentice and the exclusive remedy of Customer, with respect to any alleged intellectual property infringement in connection with these Terms.

15. **Proprietary Information.** As used herein, the term "Proprietary Information" includes any information, material or apparatus, of a confidential or proprietary nature obtained from the disclosing party and any information obtained from the disclosing party which is not readily available to the disclosing party's competitors and which, if known by a competitor of the disclosing party, might lessen any competitive advantage of the disclosing party or give such competitor a competitive advantage. The disclosing party retains ownership of that party's Proprietary Information, whether written, oral, electronic, visual, graphic, photographic, observational or otherwise, and all documentation, which contains Proprietary Information. The receiving party shall not disclose, duplicate or reproduce any Proprietary Information, in whole or in part, nor shall the receiving party use any Proprietary Information other than in the course of performing its obligations hereunder. The receiving party shall take all reasonable steps to prevent the disclosure, duplication or reproduction of any Proprietary Information.

16. **Assignability.** Without the express prior written consent of the other party, except as provided otherwise below neither party shall assign any of its rights under these Terms without the prior written consent of the other party; provided, however, that either party may assign these Terms to an affiliated party or in the event of a merger, change of control or the sale of substantially all of its assets. The subcontracting of services by Mentice shall not be deemed an assignment of these Terms and is expressly permitted hereunder but without the release of Mentice for its performance hereunder. These Terms shall be binding upon the parties, their successors, and assigns, and shall inure to the benefit of the parties, their successors, and permitted assigns.

17. The following provisions shall survive any termination of a Purchase Order and continue to apply, along with any remedy for the breach thereof: Sections 10 (Software License), 11 (Limited Warranty), 12 (Ownership of Developments), 13 (Limitation of Liability; Indemnity), 14 (Intellectual Property Infringement), 15 (Proprietary Information), and 19 (Miscellaneous).

18. **Force Majeure.** If the performance of these Terms by either party should be prevented, delayed, restricted, or interfered with by acts of God, acts of public enemies, strikes, riots, war, serious fire, flood, earthquake or other natural catastrophe, or any other circumstances outside the control of the Parties, recognized under international commercial practice as constituting force majeure, then the party so affected shall, upon giving prompt notice of the same, be excused from such performance to the extent of such prevention, delay, restrictions, or interference, provided that the party so affected shall use commercially reasonable efforts to avoid or remove such causes of nonperformance and promptly resume performance hereunder when such causes have been removed.

19. **Miscellaneous.**

(a) *Waiver.* The failure of either party to enforce at any time any provision of these Terms or to exercise any option which is herein provided or to require or to fail to require at any time performance by the other party of any provision hereof shall in no way affect the validity of these Terms or any part hereof or the

right of such forbearing party thereafter to enforce its rights hereunder, nor shall it be taken to constitute a waiver of the default or acquiescence of any other or subsequent default or breach by the other party.

(b) *Notices.* Any writing or notice required or provided for herein shall be delivered in person, sent by email, fax, certified or registered mail, or otherwise delivered to the appropriate party at the address first herein set forth or to such subsequent address or contact information as may have been given by prior notice to the other party. Notice shall be deemed given when personally delivered to an authorized representative of the receiving party, dispatched by fax upon confirmation of transmission on a business day or the first business day after transmission if not sent on a business day at the location of the recipient party, by email upon confirmation of receipt by the intended recipient, or upon delivery if sent by registered or certified mail.

(c) *Publicity.* Mentice reserves the right to refer to Customer as a user of its Products or customer of Mentice in sales materials (in any form and medium and any sales related situation).

(d) *Disputes.* Any dispute, controversy or claim arising out of or in connection with these Terms shall be settled by arbitration in accordance with the Rules of the American Arbitration Association for expedited arbitration procedure; however, Mentice shall alternatively have the right to file a claim in any court of competent jurisdiction for a claim of payment by Customer hereunder. Arbitration proceedings shall be conducted in English and take place in a mutually acceptable venue situated in Cook, DuPage or Lake County in the State of Illinois. These Terms shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to principals governing conflicts of law. The prevailing party in any dispute shall be entitled to an award of reasonable attorney's fees and related costs.

(e) *Severance.* If any provision of these Terms, or the application thereof to any person or circumstance should, for any reason and to any extent, be deemed invalid or unenforceable, the remainder of these Terms and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by applicable law.

(f) *No Agency or Partnership.* Neither Customer nor Mentice shall not be deemed a legal agent or partner of the other for any purpose whatsoever, and accordingly, neither Customer nor Mentice have the authority to assume or to incur any obligation or responsibility, express or implied, for or on behalf or in the name of the other, nor to bind the other in any other matter except as may be expressly stated in these Terms.

(g) *Benefits and Contributions.* Neither Mentice nor any of its employees or agents is entitled to or eligible for any benefits that Customer may make available to its employees, such as group insurance, profit-sharing, or retirement benefits, and Mentice hereby waives any right to such benefits. Because Mentice is an independent contractor, Customer will not withhold or make payments for social security, make unemployment insurance or disability insurance contributions, or obtain workers' compensation insurance on behalf of Mentice or any of its employees or agents.

(h) *No Other Agreement; Amendments.* These Terms and all provisions relating to sales terms and conditions supersede any and all prior agreements and understandings, whether oral or written, including any subsequent sales terms issued by either party pursuant to any order or order acknowledgement. These Terms may only be amended by a written instrument signed by authorized personnel of both parties.

*[End of Mentice General Terms and Conditions]*