

SCHEDULE A

SOFTWARE LICENSE AGREEMENT

1. DEFINITIONS

Capitalized terms not otherwise defined in this Software License Agreement will have the meaning specified on the Cover Page to which this Software License Agreement is attached.

“**Customizations**” means any customizations to the Licensed Software developed by Colligo on behalf of Client pursuant to a Statement of Work (as defined in Section 2.1 of this Professional Services Agreement) or otherwise and shall include, without limiting the foregoing, custom reports, integrations, functionality and features.

“**Documentation**” means the documentation provided or made available by Colligo to Client relating to the Licensed Software, including without limitation with respect to the use, technical specifications or functionality thereof.

“**Intellectual Property Rights**” means inventions, patents, copyrights, trade-marks, service marks, industrial designs, design patents, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information, trade or business names and any other intellectual property rights, now or in the future, on a worldwide basis.

“**License Fees**” means the license fees to be paid by Client to Colligo pursuant to this Software License Agreement, as specified on the Cover Page and subject to modification from time to time in accordance with the terms of this Agreement. For clarity, the term “License Fees” shall include, without limiting the foregoing, license fees due and payable by Client to Colligo in relation to, as applicable, a perpetual subscription term, an Initial Subscription Term (as defined in Section 2.6 of this Software License Agreement) and/or any Renewal Subscription Term (as defined in Section 2.6 of this Software License Agreement).

“**Licensed Software**” means the licensed software described on the Cover Page and any Customizations, Update Releases and Version Releases, as well as the associated Documentation.

“**Maintenance Fees**” means the support and maintenance fees to be paid by Client to Colligo pursuant to the Support and Maintenance Agreement, as specified on the Cover Page and subject to modification from time to time in accordance with the terms of this Agreement. For clarity, the term “Maintenance Fees” shall include, without limiting the foregoing, support and maintenance fees due and payable by Client to Colligo in relation to, as applicable an Initial Maintenance Term (as defined in Section 3.1 of the Support and Maintenance Agreement) and/or any Renewal Maintenance Term (as defined in Section 3.1 of the Support and Maintenance Agreement).

“**Object Code**” means computer code that is readable and usable by machines but not generally readable by humans without reverse assembly, reverse compiling or reverse engineering.

“**Project Fees**” means the professional service fees to be paid by Client to Colligo pursuant to the Professional Services Agreement. For clarity, the term “Project Fees” shall include, without limiting the

foregoing, professional service fees due and payable by Client to Colligo in relation to any Statement of Work (as defined in Section 2.1 of the Professional Services Agreement), as, and subject to the terms and conditions, set out in Section 4 of the Professional Services Agreement, and subject to modification from time to time in accordance with the terms of this Agreement.

“**Source Code**” means computer code and related system documentation that is in human-readable form, including, but not limited to, all comments and any procedural code such as job control language.

“**Update Release**” means a new update release of the Licensed Software that is issued by Colligo and becomes available to all of Colligo’s customers, which Client is entitled to receive pursuant to the terms and conditions of the Support and Maintenance Agreement.

“**Version Release**” means a new version release of the Licensed Software that is issued by Colligo and becomes available to certain of Colligo’s customers, which Client is entitled to receive pursuant to the terms and conditions of the Support and Maintenance Agreement.

2. GRANT OF LICENSE

2.1 License. Subject to the terms and conditions of this Agreement, including without limitation, full and timely payment of all amounts owing by Client to Colligo pursuant to this Agreement, Colligo hereby grants to Client and Client hereby accepts, for the term specified in Section 2.6 of this Software License Agreement, a limited, non-exclusive, non-transferable, non-sublicensable, revocable license (the “**License**”) to use the functionality of the Licensed Software as licensed and described on the Cover Page only for up to the maximum number of users specified on the Cover Page and only for the internal business purposes of Client.

2.2 Scope of Use. Client will use the Licensed Software only as permitted in this Agreement. Any additional or other use by Client will require an additional license from Colligo and payment of additional License Fees and may also result in an increase in Maintenance Fees and Project Fees payable hereunder.

2.3 Object Code Only. Client acknowledges and agrees that this Agreement does not grant Client any rights with respect to the Source Code to the Licensed Software. Client covenants and agrees not to translate, create derivative works of, reverse engineer, decompile or disassemble the Licensed Software in whole or in part. Client shall not: (a) alter, modify, enhance, adapt, re-arrange, reverse engineer, decompile, disassemble, make works derived from the Licensed Software or attempt to generate or access the Source Code for the Licensed Software, whether by converting, translating, decompiling, disassembling or otherwise; or (b) enter or manipulate data or information within any database underlying the Licensed Software other than via the Licensed Software. Client shall not attempt to aggregate users or otherwise circumvent Colligo’s licensing restrictions via technical means, including, but without limitation, the use of any interface between the Licensed Software and another program that performs functionality substantially similar to the Licensed Software.

2.4 Modification. Client may not modify the Licensed Software without the prior written authorization of Colligo.

2.5 No Sale or License by Client. Client may not sell, loan, lease, rent, license, sublicense, grant a security interest in, distribute, or otherwise transfer rights to or possession of the Licensed Software in whole or in part to any person or entity, or use the Licensed Software in any service bureau or time sharing arrangement, or facility management or other arrangement where Client monitors the power consumption or otherwise utilizes the Licensed Software for the benefit of a third party.

2.6 License Term. Subject to the termination provisions in Section 7 of this Software License Agreement, this Software License Agreement, including without limitation the License granted hereunder, shall take effect as of the Effective Date and shall continue for the Licensed Software term specified on the Cover Page. If on the Cover Page, Client selected an initial subscription term (the “**Initial Subscription Term**”), then the Initial Subscription Term shall automatically renew for successive one year terms (each, a “**Renewal Subscription Term**”), unless a party gives written notice of termination to the other party at least thirty (30) days before the expiration of the Initial Subscription Term or the then-current Renewal Subscription Term.

2.7 Additional Software. Additional licenses of the Licensed Software which are larger in scope, number of users or otherwise than as set forth on the Cover Page shall be agreed upon between the parties in writing, and any such additional Licenses shall incorporate the terms and conditions of this Agreement. Fees for additional licenses will be at the then-current price list published from time to time by Colligo and the purchase of additional licenses may also result in an increase in Maintenance Fees and Project Fees payable hereunder.

2.8 Ownership, Protection and Security. Colligo and Client acknowledge and agree that as between Colligo and Client, Colligo owns and will retain title and ownership of all Intellectual Property Rights and other interests in and to the Licensed Software and Documentation (and all copies of the Licensed Software and Documentation) including, but not limited to, any improvements thereto whether designed, created and/or developed by Colligo, Client or its, or their, agents or contractors, subject to the license rights specifically granted to Client in this License Agreement. Client does and shall assign, and shall cause its agents to assign, to Colligo, on a worldwide basis in perpetuity, any and all right, title and interest it, or they, might have in, and to, any improvements to the Licensed Software and/or Documentation and any and all Intellectual Property Rights therein. Client furthermore does and shall waive, and shall cause its agents to waive any moral rights it, or they, might have in, and to, any of the foregoing.

2.9 Hardware & Third Party Software. This Agreement does not include the provision of hardware or third party software licenses to Client.

2.10 Trial Period. At Colligo’s exclusive discretion, it may offer free or discounted pricing for use of the Licensed Software (a “**Trial Program**”). Once any Trial Program has terminated or expired, Client agrees that regular License Fees shall apply. Client agrees to comply with any additional terms, restrictions or limitations (including limitations on the total amount of usage) Colligo imposes in connection with any Trial Program. Colligo may cancel any Trial Program at any time in its sole discretion, without liability to Client. If a Trial Program is offered to a prospective customer with reference

to this Agreement, it is understood that: (a) during the term of such Trial Program and thereafter, the customer shall have and shall comply with all of the obligations of the “Client” under this License Agreement and the General Terms and Conditions attached to this Agreement, including without limitation the confidentiality obligations, Intellectual property ownership terms, and use restrictions with respect to the Licensed Software contained herein; and (b) the representations, warranties, covenants and obligations of Colligo under this Agreement, including without limitation any warranties or indemnities made hereunder with respect to the Licensed Software, and the terms of the Support and Maintenance Agreement and Professional Services Agreement shall not apply to such Trial Program.

3. DELIVERY AND INSTALLATION

3.1 Delivery of the Licensed Software: Colligo will deliver the Licensed Software to Client as Colligo stipulates.

3.2 Installation. Client shall be responsible for installing the Licensed Software. Installation services may be purchased from Colligo in accordance with the Professional Services Agreement.

4. WARRANTIES AND LIMITATIONS OF LIABILITY

4.1 Limited warranty for Licensed Software. Subject to Section 4.2 of this Software License Agreement, Colligo warrants that for a period of 30 days (the “**Warranty Period**”) following the Effective Date, the Licensed Software will substantially conform to the functional specifications contained in the Documentation. Colligo does not warrant that the Licensed Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect its performance, or that the applications and functionality contained in the Licensed Software are designed to meet Client’s business requirements. Client’s exclusive remedy and Colligo’s exclusive liability for any breach of the warranty made in Section 4.1 of this Software License Agreement will be that Colligo will use commercially reasonable efforts to repair or replace the affected portion of the Licensed Software and/or the Documentation, at Colligo’s sole cost and expense.

4.2 Restrictions. The warranty set forth at Section 4.1 of this Software License Agreement shall not apply if: (a) the Licensed Software is not used strictly in accordance with the Documentation; (b) the performance failure of the Licensed Software is attributable in substantial part to Client materially deviating from the operating instructions specified by Colligo for Client’s use of the Licensed Software; (c) Client or another party (other than Colligo or an authorized agent of Colligo) has modified the Licensed Software; (d) the performance failure of the Licensed Software is attributable in any way to the combination of the Licensed Software with, another product or products that have not been approved in writing by Colligo for such use, or with hardware or an operating environment that is not controlled by Colligo; or (e) Client does not provide notice in writing to Colligo within the Warranty Period specifying the breach of warranty in reasonable detail.

4.3 Other Warranties Excluded. EXCEPT AS PROVIDED IN SECTIONS 4.1 AND 4.2 OF THIS SOFTWARE LICENSE AGREEMENT, THE LICENSED SOFTWARE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS AND CLIENT AGREES THAT CLIENT’S USE OF THE LICENSED SOFTWARE SHALL BE AT CLIENT’S SOLE DISCRETION AND RISK. THE WARRANTY SET FORTH AT SECTION 4.1

AND 4.2 OF THIS SOFTWARE LICENSE AGREEMENT IS IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS. EXCEPT AS PROVIDED IN SECTIONS 4.1 AND 4.2 OF THIS SOFTWARE LICENSE AGREEMENT, COLLIGO AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, DISCLAIM ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS, EXPRESS OR IMPLIED OR STATUTORY, IN CONNECTION WITH THE LICENSED SOFTWARE AND CLIENT'S USE THEREOF, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES, REPRESENTATIONS OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPLETENESS, PERFORMANCE, HARDWARE COMPATIBILITY, QUIET ENJOYMENT, TITLE AND NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER WRITTEN OR ORAL, OBTAINED BY CLIENT FROM COLLIGO OR ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS SHALL CREATE ANY WARRANTY, REPRESENTATION OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT. FURTHERMORE COLLIGO DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND TO CLIENT WITH RESPECT TO ANY HARDWARE OR THIRD PARTY SOFTWARE.

4.4 Limitation of Liability. EXCEPT WITH RESPECT TO ANY BREACH OF CLIENT'S CONFIDENTIALITY OBLIGATIONS AND/OR COLLIGO'S INTELLECTUAL PROPERTY RIGHTS UNDER THIS AGREEMENT, THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY TO THE OTHER PARTY FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATED TO THIS SOFTWARE LICENSE AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES SUFFERED BY THE OTHER PARTY, NOT TO EXCEED THE LICENSE FEES PAID OR PAYABLE BY CLIENT TO COLLIGO DURING THE THREE MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

5. PAYMENT

5.1 License Fees. Client will pay to Colligo the License Fees in accordance with the terms of this Agreement, which payment shall be without set-off or deduction whatsoever, except as otherwise set out in this Agreement. Client will pay to Colligo the License Fees, in advance, in relation to, as applicable, a perpetual subscription term, an Initial Subscription Term and/or each Renewal Subscription Term, within thirty (30) days of the date of invoice for such License Fees. Client's obligation to pay the License Fees as set out in Section 5.1 of this Software License Agreement is unconditional and absolute.

5.2 Modification of License Fees. In addition to any other terms of this Agreement which may modify the License Fees payable hereunder, Colligo may modify the License Fees for any Renewal Subscription Term by providing Client with notice of any such modifications at least sixty (60) days before the expiration of the Initial Subscription Term or the then-current Renewal Subscription Term.

5.3 Non-Payment of License Fees. If payment is not received in accordance with the payment terms of this Agreement, Colligo shall have the right to discontinue the License without any liability to Client, until such time as Client pays the due and payable License Fees in full, and may pursue any other remedies which it may have under this Agreement or otherwise at law.

5.4 Customization Fees. Nothing in this Software License Agreement shall oblige Colligo to provide Customizations to Client. Customizations may be performed by Colligo at extra cost to Client, as described in a Statement of Work to be mutually agreed between the parties pursuant to the Professional Services Agreement. If indicated in such Statement of Work, the License Fees payable hereunder may be increased by Colligo upon shipment of such Customizations.

5.5 Increase to Number of Users. Client acknowledges and agrees that an increase in the maximum number of users specified on the Cover Page may result in an increase to the License Fees, Maintenance Fees and/or Project Fees payable hereunder. Unless otherwise agreed to between the parties, Client shall pay all such increased License Fees, Maintenance Fees and/or Project Fees immediately upon the effective date of such increase in such maximum number of users.

6. INTELLECTUAL PROPERTY INFRINGEMENT

6.1 Intellectual Property Indemnity. Notwithstanding Section 4.3 and 4.4 of this Software License Agreement, Colligo will defend Client and its employees, officers and directors in a lawsuit or other judicial action, and pay the amount of any adverse final judgment, or settlement to which Colligo consents, arising from any third party claim against Client, based on an assertion that the Licensed Software, or any portion thereof, infringes any United States or Canadian copyrights, patents, trade secrets, or trademarks, provided Client: (a) gives Colligo timely notice in writing of the institution of such claim; (b) permits Colligo to defend, compromise or settle such claim; and (c) provides, at Colligo's request and expense, all available information, assistance and authority to so defend, compromise or settle such claim. Colligo will have sole control of the defense of any such claim, suit or proceeding including, but not limited to, appeals and of all negotiations for settlement, including, but not limited to, the right to effect the settlement or compromise thereof. Notwithstanding the foregoing, Client shall not be entitled to the benefit of the indemnity set out in Section 6.1 of this Software License Agreement if the Client and/or any of its agent's (in any way) contributed or gave rise to such claim being made or proceeding being initiated against Client, including without limitation through:

- (a) Client's, and/or any of its agent's, failure to comply with any term or condition of this Agreement;
- (b) Client's, and/or any of its agent's, use of a prior or modified version or release of the Licensed Software, if such claim could have been avoided by the use of a current or unmodified version or release of the Licensed Software;
- (c) Client's, and/or any of its agent's, use of the Licensed Software in a manner not contemplated by the Documentation;
- (d) Client's, and/or any of its agent's, negligence;
- (e) Colligo's, and/or any of its agent's, compliance with or use of designs, requirements, specifications, instructions or alterations supplied, developed or requested by Client, or any of its agent's; or
- (f) Client's and/or any of its agent's, use of the Licensed Software, or any component thereof, in

combination with another product or products that have not been approved in writing by Colligo for such use.

6.2 Remedies for Infringement. Colligo further agrees that if Client is prevented from using the Licensed Software due to an actual or claimed infringement under Section 6.1 of this Software License Agreement, or if Colligo believes the Licensed Software so infringes, then at Colligo's sole discretion, Colligo may:

(a) procure for Client, at Colligo's expense, the right to continue to use the Licensed Software;

(b) replace or modify the Licensed Software, at Colligo's expense, so as to become non-infringing, provided that such replaced or modified version of the Licensed Software will operate in a substantially similar manner as the version licensed to Client immediately prior to such replacement or modification; or

(c) terminate this License Agreement as it relates to the infringing Licensed Software and return the portion of the License Fees for the infringing Licensed Software, calculated on a pro rata basis, representing the lesser of: (i) the remainder of the Initial Subscription Term or the then-current Renewal Subscription Term, as and if applicable; and (ii) the remaining useful life of the Licensed Software, based on a useful life for the Licensed Software of five years.

6.3 SECTION 6 OF THIS SOFTWARE LICENSE AGREEMENT WILL CONSTITUTE COLLIGO'S ENTIRE OBLIGATION TO CLIENT AND CLIENT'S SOLE REMEDY WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OF THE PROPRIETARY OR INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES RESPECTING THE LICENSED SOFTWARE.

7. TERMINATION

7.1 Termination by Colligo. Notwithstanding anything to the contrary in this Agreement, Colligo, by written notice to Client, may terminate this Software License Agreement or suspend Colligo's further performance under the Software License Agreement without terminating this Agreement if: (a) Client terminates or suspends doing business; (b) Client becomes subject to any bankruptcy or insolvency proceeding under applicable law (unless removed or dismissed within sixty (60) days from the filing thereof), or becomes insolvent, becomes subject to direct control of a trustee, receiver or similar authority, or makes an assignment for the benefit of creditors; (c) Client fails to pay to Colligo any amount when due hereunder and fails to remedy such failure within five (5) days after receiving written notice thereof from Colligo; or (d) Client commits a material breach or failure of any of its other obligations under this Agreement and, except for any breach of Client's confidentiality obligations or a breach of Colligo's Intellectual Property Rights, has not cured such breach (or, if the breach or failure is such that its cure would take a longer period, has not commenced and diligently proceeded to cure such breach or failure) within fifteen (15) days after receiving written notice from Colligo specifying such breach or failure.

7.2 Termination by Client. Notwithstanding anything to the contrary in this Agreement, Client, by written notice to Colligo, may terminate this License or suspend Client's further performance without terminating this Agreement if: (a) Colligo terminates or suspends doing business; (b) Colligo becomes subject to any

bankruptcy or insolvency proceeding under applicable law (unless removed or dismissed within sixty (60) days from the filing thereof), or becomes insolvent, becomes subject to direct control of a trustee, receiver or similar authority, or makes an assignment for the benefit of creditors; or (c) Colligo commits a material breach or failure of any of its obligations under this Agreement and, except for any breach of Colligo's confidentiality obligations, has not cured such breach (or, if the breach or failure is such that its cure would take a longer period, has not commenced and diligently proceeded to cure such breach or failure) within fifteen (15) days after receiving written notice from Client specifying such breach or failure.

7.3 Survival. Sections 4.3, 5.1, 7.3, 7.4, 8.1 and such other provisions of this Software License Agreement as may reasonably be expected to remain in force will survive the expiry or termination of this License or the Agreement and will remain in full force and effect following such expiry or termination. The expiry or termination of this License or the Agreement will not affect the rights of any party to make a claim for damages arising from a breach of any provision of this Agreement which occurred prior to such expiry or termination.

7.4 Effect of Termination. Upon any expiration or termination of this License or the Agreement: (a) Client will immediately cease any and all use of the Licensed Software and Documentation; (b) Client will immediately return to Colligo or destroy all copies of the Licensed Software and Documentation in Client's possession and delete any copies of the Licensed Software stored on any of Client's computers; and (c) each party will return to the other party any and all Confidential Information (as defined in the General Terms and Conditions attached hereto) of the other party provided in connection with this Agreement in its possession or control and, upon request from the other party, each will deliver a certificate of an officer of the party certifying the completeness of same. Client furthermore acknowledges and agrees that, notwithstanding termination, by Colligo or Client, of this License, this Software License Agreement or this Agreement, Client shall not be entitled to any refund, set-off or deduction of any monies paid or payable by Client to Colligo hereunder or any pro rata portion of any monies paid or payable by Client to Colligo hereunder.

8. AUDIT

8.1 Audit. During the term of this License and for twelve months after termination or expiry, Client will permit Colligo and its representatives and agents to conduct periodic audits of Client's relevant books, records and computer systems in order to verify Client's compliance with the terms and conditions of this Agreement. Such audits will be conducted at Client's place of business and/or where the Licensed Software is or was located during Client's normal business hours with reasonable advance notice. Colligo will pay for the cost of the audit unless Colligo reasonably determines from the audit that Client has materially breached this Agreement, in which case Client will reimburse Colligo for the cost of the audit. Client will immediately pay to Colligo all additional amounts owed to Colligo as determined by the audit, together with interest thereon as provided for in this License Agreement. The remedies provided to Colligo under Section 8 of this Software License Agreement are not exclusive and any such remedy will be in addition to and not limit any other remedy which Colligo is entitled to seek at law, in equity, by statute or under this Agreement.

End of Software License Agreement