LEVI, RAY & SHOUP, INC.
GENERAL TERMS AND CONDITIONS FOR PERPETUAL LICENSE AGREEMENT
Version X2.1

These General Terms and Conditions ("General Terms") will apply between Levi, Ray & Shoup, Inc., an Illinois Corporation ("Licensor") and Licensee. These General Terms will be effective as of the Effective Date. Agreements to license additional Software may be accomplished by executing additional License Schedules incorporating these General Terms.

1.0   Definitions.

1.1   **Affiliate** means in relation to a party, any Company controlling, controlled by, or under common control with that party. Control means the power to direct the management and policies of an entity either directly or indirectly through ownership of fifty percent (50%) or more of the voting securities, contract, or otherwise.

1.2   **Agreement** means a License Schedule signed by Licensor and Licensee that references and incorporates these General Terms pursuant to which Licensor licenses Software to Licensee.

1.3   **Company** means any natural person or any corporation, partnership, trust, association, or any other type of legal entity.

1.4   **Critical Problem** means a problem caused by the Software resulting in a material interruption to the Licensee's business operations.

1.5   **Designated Server** means any server upon which the Software is installed and which is enabled by a license key provided by Licensor.

1.6   **Documentation** means the technical information and user manuals pertaining to the Software which are made available to Licensee pursuant to the Agreement and the Maintenance Plan.

1.7   **Effective Date** in reference to an Agreement is the earliest signature date on the applicable License Schedule.

1.8   **Enhancement** means generally available improvements, fixes, modifications, changes, filters, or new releases or versions of the Software and any accompanying Documentation.

1.9   **Installation Location(s)** is Licensee's facility(ies) located at the address(es) listed on or identified pursuant to the applicable License Schedule indicating where the Software may be installed.

1.10   **License Schedule** means a document signed by Licensor and Licensee that incorporates these General Terms and by which Licensor licenses Software to Licensee.

1.11   **Licensee** means the entity other than the Licensor who has signed a License Schedule.

1.12   **Licensor** means Levi, Ray & Shoup, Inc.

1.13   **Maintenance** shall mean the maintenance and support services described in the Maintenance Plan.

1.14   **Maintenance Due Date** means the date upon which maintenance fees are due for the Software and shall be the Effective Date and each subsequent anniversary of the Effective Date.

1.15   **Maintenance Plan** shall mean the agreement titled Maintenance Plan for Perpetual License that describes the Maintenance and associated rights and obligations.

1.16   **Software** means the software product(s) listed on the License Schedule and such term shall also include the Documentation and Enhancements.

1.17   **Warranty Period** means the time period beginning on the Effective Date and ending one year thereafter.

2.0   Pricing and Payment Terms.

2.1   <u>License Fees</u>. The license fees for the Software shall be set forth on the applicable License Schedule.

2.3   <u>Interest</u>. Licensor reserves the right to charge interest at the rate of 1.5% per month, or the maximum amount allowed by law, whichever is less, on such unpaid amounts for each calendar month or fraction thereof that any payment to Licensor is more than forty-five (45) days in arrears.

2.4   <u>Taxes</u>. All fees payable to Licensor hereunder shall be exclusive of all applicable taxes based or measured thereon, or on this transaction, and Licensee shall be responsible for the payment of all such taxes, excluding taxes based on Licensor's income. Licensor's invoice shall not include any amount for taxes unless the same are listed apart from the fees and Licensor is authorized to collect the same.

2.5   <u>Tax Exempt Licensee</u>. If Licensee is tax exempt, Licensee will not be responsible for, nor will it be invoiced for any tax, provided Licensor receives a copy of Licensee's tax exempt certificate prior to the issuance of the applicable invoice.

3.0   Grant of License. Subject to the terms and conditions of the Agreement, Licensor grants, and Licensee accepts, a non-exclusive, nontransferable license to use the Software perpetually.

4.0   Restrictions on Use/Audit Rights.

4.1   The Software shall be used only in machine-readable form and only by the Licensee for the internal business purposes of the Licensee and its Affiliates. Notwithstanding anything to the contrary stated herein, Licensee shall not use the Software for the benefit of unaffiliated third parties who pay, directly or indirectly, for its benefit.

4.2   Licensee may allow its contractors temporary access to the Software and Documentation, but only to the extent such access is necessary to allow the Licensee to directly use the Software or its computer systems effectively and provided that such contractors have signed a nondisclosure agreement which effectively prohibits such contractors from disclosing or disseminating to third parties, or using for their own benefit, all or part of the Software and Documentation. Such nondisclosure agreements do not have to specifically name the Software and Documentation in order to comply with this section.

4.3   Licensee may keep such copies of the Software as is customary and necessary as part of its automated back-up system. In addition, Licensee may keep one other copy of the Software for archival purposes.

4.4   No more than annually, upon written request by Licensor, Licensee shall provide Licensor with a certified statement which describes how and where the Software is being used and such certified statement shall include any records, reports, or other information reasonably requested by Licensor to determine Licensee's compliance with the licensing restrictions set forth in the Agreement. Further, no more than annually, upon prior written notice, Licensor may visit Licensee's places of business in order to determine compliance with this Agreement.

5.0   Protection of Software and Licensee's Confidential Information.

5.1   <u>Acknowledgment of Trade Secrets</u>. The Agreement does not transfer any ownership or title in the Software or the Documentation to Licensee, and all ownership rights will remain in Licensor or its suppliers. Licensee acknowledges Licensor's representation that the Software and its Documentation contain valuable trade secrets and are protected by United States and international copyright laws and treaties. Licensee may not disclose or make available to third parties the Software, Documentation, or any portion thereof without Licensor's prior written approval, except as specifically allowed under Section 4.0. Licensor has the exclusive right to modify and enhance the Software and its Documentation, and the Licensee hereby agrees that it will make no effort to reverse engineer, reverse assemble, decompile, or otherwise attempt to derive source code from the Software except as expressly authorized by applicable law for purposes of achieving interoperability. Licensee shall not make any attempt to circumvent the technological measure(s) that controls access to, or use of, the Software.

5.2   <u>Delete Copies</u>. Upon termination of the Agreement, or any Software license granted pursuant to the Agreement, that is not superseded by another Agreement, Licensee shall immediately delete or otherwise destroy all copies of the applicable Software and Documentation other than copies which have been created pursuant to automatic archiving or back-up processes that cannot reasonably be deleted. Upon request, Licensee shall certify in writing to Licensor its compliance with this paragraph within five (5) days after such request.

5.3   <u>Proprietary Notices</u>. All copies of the Software, in whole or in part, shall contain all restrictive and proprietary notices as they appear on the copy of the Software provided by Licensor. In no event may Licensee copy in whole or in part the Software or the Documentation without the Licensor's prior written consent except as allowed in the applicable License Schedule.

5.4   <u>Licensee's Confidential Information</u>. All information, documents, or records to which Licensor has access as a result of the Agreement and in which the Licensee has rights, or which is marked as confidential shall be treated by Licensor as the Licensee's proprietary information and shall not be disseminated or disclosed to third parties without Licensee's prior written consent.

5.5   <u>Injunctive Relief</u>. Nothing contained in the Agreement shall prohibit either party from seeking injunctive relief or specific performance for violation or threatened violation of Section 5.0, as both

parties agree that a material breach of Section 5.0 would give rise to irreparable harm not adequately compensable by money damages.

6.0   Warranty Against Infringement.
  6.1   <u>Warranty/Exclusive Remedy</u>. Licensor warrants that the Software will be delivered free of the rightful claim of any third party by way of infringement or misappropriation of rights arising under the laws of the country in which the Software is licensed. LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF THIS WARRANTY IS SET FORTH IN SECTIONS 6.2 AND 6.3.
  6.2   <u>Licensor's Duty To Indemnify</u>. If a claim is made by a third party against Licensee that alleges a breach of the warranty set forth in Section 6.1, then Licensor shall defend against such claim at its own expense and shall indemnify Licensee and hold it harmless against any settlement or any final judgment, including an award of attorneys' fees, that may be awarded by a court of competent jurisdiction against Licensee as a result of the foregoing; provided that Licensee shall give Licensor prompt written notice of such claim, allows Licensor to control the defense, and provide Licensor with all reasonable cooperation. Provided Licensor assumes the defense of the infringement claim in a timely fashion, Licensor shall have no obligation to pay Licensee's attorneys' fees. Further, Licensor shall have no liability or duty to Licensee for any claim of infringement pursuant to this Section if the claim is based on Licensee's, or third party's addition or modification to the Software when the claim of infringement is based on the addition or modification and the addition or modification was not authorized in writing by Licensor.
  6.3   <u>Licensor's Right To Correct</u>. If a claim is made by a third party against Licensee that alleges a breach of the warranty set forth in Section 6.1, or if Licensor believes that a likelihood of such a claim exists, Licensor shall, in Licensor's sole discretion, procure for Licensee the right to continue using the Software, modify it to make it non-infringing but continue to meet the Software's functionality, or replace it with non-infringing software of like functionality; provided, however, if none of the foregoing is reasonably available to Licensor, either party may terminate the applicable Agreement, in which case the Licensee shall return the Software to Licensor pursuant to Section 5.2 and Licensee will be refunded a sum equivalent to one sixtieth (1/60th) of the license fee paid, multiplied by the number of months remaining in the first five years of the Agreement.

7.0   Licensee Obligations. Licensee will: (a) Ensure that the Software is used only as set forth in the Agreement and operated and maintained in accordance with its Documentation; (b) Ensure that only adequately trained, competent, and authorized persons are allowed to operate the Software; (c) In the event of an actual or apparent malfunction of the Software, take all reasonable actions to document or record the form, nature, apparent cause, or symptoms of the malfunction. Upon request, such documents or records shall be supplied or provided to Licensor during the course of problem resolution.

8.0   Date Mechanism. The Software may contain a mechanism that will cause the Software to cease to operate on the date that is set by Licensor. Upon receipt of the License Schedule properly signed by Licensee and the full payment of license fees for the Software, Licensor shall provide Licensee license key(s) that will disable the date mechanism. Licensor has no remote access to the Software.

9.0   Warranties, Disclaimers, Remedy.
  9.1   <u>Limited Warranty</u>. Licensor warrants that during the Warranty Period, the Software will function substantially in accordance with its Documentation. Licensor does not warrant that the Software will be error free.
  9.2   <u>NO OTHER WARRANTIES</u>. EXCEPT FOR THE WARRANTIES CONTAINED IN SECTIONS 6.0 AND 9.0 OF THIS AGREEMENT AND IN THE MAINTENANCE PLAN, IF IN EFFECT, LICENSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, CONCERNING THE SOFTWARE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, ACCURACY, OR FITNESS FOR A PARTICULAR PURPOSE.
  9.3   <u>EXCLUSIVE REMEDY</u>. LICENSEE'S EXCLUSIVE AND SOLE REMEDY FOR THE BREACH OF THE WARRANTY CREATED IN THIS SECTION 9.0 IS LIMITED TO REPAIR OF DEFECTS, REPLACEMENT OF SOFTWARE, OR LICENSEE MAY TERMINATE THE LICENSE FOR THE APPLICABLE SOFTWARE AND RECEIVE A REFUND OF LICENSE FEES ACTUALLY PAID TO LICENSOR FOR THE APPLICABLE SOFTWARE UNDER THE AGREEMENT.

10.0 **Exclusions**. Licensor's limited warranties in Section 9.1 and in the Maintenance Plan, if in effect, will be void and its service obligations in Maintenance Plan will not apply when: (a) A hardware failure or fault occurs and causes corruption or loss of the Software or data, although Licensor personnel will use reasonable efforts to assist if such problems arise; (b) Licensee or a third party interferes with or modifies the Software and the interference or modification causes corruption or loss of the Software or data, unless such modification is allowed in the Documentation or with Licensor's written permission; (c) Licensee fails to implement recommendations to correct faults previously advised by Licensor or to install an Enhancement made available under the Maintenance Plan; or, (d) Licensee is in material breach of the Agreement.

11.0 **LIMITATION OF LIABILITY AND CONSEQUENTIAL DAMAGES/INDEPENDENT CLAUSES.**

11.1 EXCEPT FOR CLAIMS UNDER SECTIONS 2.0, 5.0, 6.0, OR 15.6, EITHER PARTY'S TOTAL LIABILITY FOR CLAIMS IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY (INCLUDING CONTRACT, TORT, OR WARRANTY), IS LIMITED TO THE AGGREGATE AMOUNT OF LICENSE FEES SET FORTH IN THE LICENSE SCHEDULE. IN NO EVENT, EXCEPT FOR A CLAIM UNDER SECTIONS 5.0, 6.0 AND 15.6, SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF DATA, LOSS OF USE, OR CLAIMS OF THIRD PARTIES) THAT MIGHT OCCUR AS A RESULT OF THE PERFORMANCE OR BREACH OF THE AGREEMENT OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT.

11.2 SECTION 11.1 IS INDEPENDENT OF SECTION 9.3 AND SHALL BE VALID AND ENFORCEABLE WHETHER OR NOT SECTION 9.3 FAILS OF ITS ESSENTIAL PURPOSE OR IS FOUND TO BE UNCONSCIONABLE.

11.3 No action, regardless of form, arising out of the Agreement may be brought by either party more than two (2) years after the cause of action has arisen.

12.0 **Assignment.** A party may assign the Agreement without the prior written permission of the other only in the following circumstances: 1) to an Affiliate; 2) where all or substantially all of the assets of a party are sold to, or merged or consolidated with, another Company; or, 3) only in the case of the Licensor, where all or substantially all of the Software licensed hereunder is sold to another Company. Any other attempted assignment shall be invalid and void. Notwithstanding anything to the contrary stated herein, no assignment allowed hereunder shall be valid until the other party receives a valid assignment signed by both the assignor and assignee transferring all rights and obligations hereunder to the assignee.

13.0 **Termination/Remedies.**

13.1 <u>Termination</u>. Licensee may terminate the Agreement upon written notice to Licensor. Either party may terminate the Agreement if the other party is in breach of the Agreement and such party fails to remedy such breach within thirty (30) days after written notice thereof by the non-breaching party. Further, either party may terminate the Agreement immediately upon written notice of a breach of Section 5.0.

13.2 <u>Force Majeure</u>. Notwithstanding anything to the contrary stated herein, neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fire, earthquakes, tornadoes, nuclear disasters, acts of terrorism, insurrection or riots, wrecks or delays in transportation, inability to obtain supplies, or regulation of civil or military authority (an "Event of Force Majeure"). If a default due to an Event of Force Majeure shall continue for more than three (3) months, then either party may terminate the Agreement without cause or liability, except that which may have accrued up to the Event of Force Majeure.

13.3 <u>Effect of Termination</u>. Sections 4.3, 5.0, 6.0, 11.0, 15.6, and 15.10 shall survive the termination of the Agreement, and termination of the Agreement is without prejudice to the rights and obligations of the parties that have accrued up to and including the date of termination. No refund of fees paid under the Agreement shall be made in the event of termination unless caused by Licensor's breach.

13.4 <u>Remedies</u>. All rights and remedies of the parties shall be cumulative but shall always be limited by Sections 6.0, 9.2, 9.3, and 11.0.

14.0   Severability/Final Agreement/Conflicts.

14.1   <u>Severability</u>. If any provision of the Agreement or the application of a provision to any Company or circumstance is held invalid, the remainder of the Agreement, or the application of the provision to Companies or circumstances, other than those as to which it is held invalid, will not be affected. But if a court rules that any part of Section 5.1 is not enforceable because it is invalid, then the Agreement in its entirety may terminate at Licensor's option and Licensee must immediately return all copies, in whole or in part, of the Software and Documentation. Under these circumstances, Licensor will refund to Licensee a sum equivalent to one-sixtieth (1/60) of the license fee paid, multiplied by the number of months remaining in the first five years of the Agreement.

14.2   <u>Final Agreement/Conflicts</u>. The Agreement constitutes the complete, final and exclusive expression of the parties' agreement, and supersedes all proposals and other communications made between the parties concerning the subject matter hereof. The Agreement cannot be modified except by a written agreement signed by the parties except as set forth in the applicable License Schedule. If there is a conflict between these General Terms and any License Schedule, the terms of the License Schedule shall control and prevail. All capitalized terms in any License Schedule shall have the same meaning as set forth in these General Terms, unless otherwise defined therein.

15.0   Miscellaneous Clauses.

15.1   <u>Notice</u>. All notices or demands relating to indemnification, warranty, or any breach, default, violation, or dispute shall be in writing and shall be delivered personally or sent by certified mail with return receipt requested or a nationally recognized overnight courier service. Any such notice or demand shall be deemed to have been delivered on the date of delivery or refusal as set forth on the return receipt. Any other notice or demand required hereunder shall be sufficient if sent via facsimile and shall be deemed to have been delivered on transmittal with documented facsimile transmission confirmation. The parties agree that any such faxed notice sent by the Licensee and received by Licensor shall be deemed an authentic original and any signature thereon will be deemed genuine.

15.2   <u>Parties Bound</u>. The Agreement shall be binding upon the parties, their successors, permitted assigns, and legal representatives.

15.3   <u>No Intended Third Party Beneficiaries</u>. The Agreement is for the sole benefit of the parties hereto and their successors and permitted assigns and the Agreement shall not be construed as conferring any rights or remedies on any other Company.

15.4   <u>Applicable Law</u>. The Agreement shall be governed by the laws of the State of Illinois, without giving effect to its choice-of-law provisions. The Agreement shall not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods.

15.5   <u>Export Compliance</u>. Licensee agrees to comply with all applicable export laws and regulations of the United States, the EU, the UN and the country of the Installation Location (collectively, "Export Controls"). Licensee will not, directly or indirectly, export, re-export, divert, or transfer the Software to any locations, to any end-user, or for any end-use, without complying with the Export Controls. Without limiting the foregoing, the Licensee specifically agrees that it will not export or re-export the Software (1) to any embargoed country, currently including Cuba, Iran, North Korea, Sudan, and Syria, (2) to any person or Company listed on the denied or restricted party list, or (3) for any restricted end-use related to the development, design, production, or use of nuclear, chemical, or biological weapons or missiles.

15.6   <u>Attorneys' Fees</u>. The parties agree that should there be any litigation arising out of the Agreement or to enforce any portion of the Agreement that the losing party agrees to pay the prevailing party any reasonable attorneys' fees and other costs incurred in said litigation.

15.7   <u>Headings, Gender</u>. All section headings contained in the Agreement are for convenience of reference only, do not form a part of the Agreement and shall not affect in any way the meaning or interpretation of the Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires. Further, reference to a single section number ending in a zero, e.g., 5.0, shall be a reference to all of the sections starting with the same number. For example, a reference to Section 5.0 is a reference to Sections 5.1, 5.2, 5.3, 5.4, and 5.5 as well.

15.8   <u>Waiver</u>. A waiver of a breach of any term of the Agreement shall not be construed as a waiver of any later breach or as a waiver of the provision itself. A party's performance after the other party's breach shall not be construed as a waiver of that breach.

15.9   <u>Confidentiality</u>. The pricing, usage restrictions, warranty, and liability terms of the Agreement, specifically including pricing, are confidential, and both parties agree not to disclose such terms to third parties without the prior written consent of the other party.

15.10   <u>Electronic Delivery</u>. The Software and Documentation (and any previously licensed software products and documentation) will be made available to Licensee only by electronic or another mode of intangible delivery. Licensor reserves the right to change the mode of delivery if such change is generally applicable to all of its licensees. Certain states under certain circumstances do not assess sales or use tax on software licenses and software maintenance where the software, maintenance, and documentation are delivered electronically. For all such electronic transactions, Licensor will not assess sales or use tax in applicable states. Notwithstanding Section 2.4, Licensee hereby agrees to reimburse Licensor for any and all use or sales tax and attendant interest and penalties, if any, that may be assessed against Licensor by the local taxing authority for such electronic transactions should Licensor be required to pay the local taxing authority on Licensee's behalf.

15.11   <u>Infrastructure and No Charge Code</u>. Any client-based code of the Software may be installed on the applicable client whether inside or outside of the Installation Location. All infrastructure and other no-charge code that is shipped or bundled with the Software is automatically licensed as Software pursuant to this Agreement. To the extent that the Documentation specifies usage rights for the infrastructure and other no-charge code that are broader than the usage rights specified in this Agreement, such broader usage rights shall become part of this Agreement as it applies to such code. Similarly, all fonts that are bundled as a part of the Software product without charge are licensed as set forth in the Documentation. All supported scripts, utilities, or other software code that are provided to Licensee pursuant to a trial, evaluation, or proof of concept agreement signed by the parties are automatically licensed as Software pursuant to this Agreement unless agreed otherwise in a services agreement or statement of work signed by the parties.

15.12   <u>Third Party Software</u>. The Software may include software programs under the licenses from third parties ("Third Party Software" and "Third Party License"). Any Third Party Software is licensed to Licensee subject to the terms and conditions of the corresponding Third Party License. The Third Party Licenses are located in the Documentation. If the Third Party Licenses include licenses that provide for the availability of source code (such as the GNU General Public License) and the corresponding source code is not included with the Software, then contact Licensor support to learn how to obtain such source code.

15.13   <u>No Credit Card</u>. The License fees and all other amounts due under this Agreement cannot be paid by credit card.