

AVEVA SOFTWARE SCHEDULE – ETAP PRODUCTS

This AVEVA Software Schedule - ETAP Products (the “Software Schedule”) supplements and is incorporated into and made a part of that certain Order Form, by and between AVEVA and Customer, in which this Software Schedule is referenced. Capitalized terms used in this Software Schedule without definition have the same meanings ascribed to them in the Order Form, the AVEVA General Terms and Conditions (the “GTCs”), or the Software and Support Addendum as applicable.

1. APPLICABILITY

- a. This Software Schedule governs the use of the Software licensed or purchased by Customer as specified in the Order Form.
- b. The relevant terms in this Software Schedule apply solely to the specific Software in this Software Schedule only and prevail over any conflicting terms in the GTCs.
- c. The Software can be ordered individually or collectively on an Order Form, and the Software is subject to the relevant terms of the Order Form in which the Software Schedule is referenced.

2. ADDITIONAL DEFINITIONS. The following capitalized terms used in this Software Schedule shall have the respective meanings specified below:

- a. “Software Agreement” means the respective Software Agreements for the software products from ETAP as referenced in Section 3 below, and as further defined here: the ETAP Software License Agreement in Exhibit 1a shall apply to ETAP Software only; the “End User” Licence Agreement for CANECO SOFTWARE SUITE in Exhibit 1b shall apply to CANECO Software only; and the General Conditions End User License Agreement for Software Products Published by the IGE+XAO Group in Exhibit 1c shall apply to SEE Software only.
- b. “Software” means the Software delivered by ETAP, including ETAP, SEE or CANECO, as identified in the Order Form.
- c. “Term” means the number of years purchased by Customer beginning on the Order Form Effective Date for access to Software in the Order Form.

3. SOFTWARE AND ADDITIONAL TERMS AND CONDITIONS.

- a. Licensing Models. Licenses for the Software are for a set Term, and subject to the commercial metrics and amounts purchased by Customer per year of the Term, as indicated in the Order Form, and subject to Customer’s acceptance of the relevant Software Agreement for the respective ETAP Product in Exhibit 1, as referenced in Customer’s Order Form.
- b. In addition to the GTCs, each Customer must agree to the terms of the respective Software Agreement, as attached to this Software Schedule in Exhibit 1, in order to subscribe to and gain access to the relevant Software.

Exhibit 1 – ETAP Products Software Agreements
Exhibit 1a – ETAP

IMPORTANT: READ CAREFULLY

Please read the terms of this Agreement carefully. By Clicking “I Accept,” (or similar button or checkbox), You agree to be bound by and become a party to this agreement. If you do not agree to all of the terms of this Agreement, then do not click the “I Accept” button, install, download, access, or use the Software.

A. **NOTICE.** IF LICENSEE HAS PREVIOUSLY NEGOTIATED AND EXECUTED A SOFTWARE LICENSE AGREEMENT (“PRE-EXISTING AGREEMENT”) WITH LICENSOR FOR THE SOFTWARE (AS DEFINED BELOW), AND TO THE EXTENT THAT THE PRE-EXISTING AGREEMENT CONFLICTS WITH THE TERMS OF THIS AGREEMENT, THE PRE-EXISTING AGREEMENT SHALL GOVERN YOUR RIGHTS AND OBLIGATIONS WITH REGARD TO THE PORTION(S) OF SUCH SOFTWARE BEING INSTALLED AT THIS TIME. HOWEVER, ANY TERMS OF THIS AGREEMENT WHICH DO NOT CONFLICT WITH THE PRE-EXISTING AGREEMENT WILL APPLY AND GOVERN YOUR USE OF THE SOFTWARE AND BY INSTALLING, ACCESSING, OR USING THE SOFTWARE YOU AGREE THAT SAME IS SUFFICIENT TO SATISFY ANY “WRITTEN CONSENT” REQUIREMENT WITH REGARD TO ANY AMENDMENT OR MODIFICATION OF THE PRE-EXISTING AGREEMENT. BY CLICKING THE “I ACCEPT” BUTTON, (A) YOU INDICATE YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS STATED IN THE ETAP AGREEMENT BELOW ON BEHALF OF THE ENTITY FOR WHICH YOU ARE AUTHORIZED TO ACT (E.G., AN EMPLOYER OR PRINCIPAL) AND ACKNOWLEDGE THAT SUCH ENTITY IS LEGALLY BOUND BY THIS AGREEMENT, OR IF THERE IS NO SUCH ENTITY FOR WHICH YOU ARE AUTHORIZED TO ACT, YOU ACCEPT THIS AGREEMENT ON BEHALF OF YOURSELF AS AN INDIVIDUAL AND ACKNOWLEDGE THAT YOU ARE LEGALLY BOUND BY THIS AGREEMENT, (B) YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ACT ON BEHALF OF AND BIND SUCH ENTITY (IF ANY) OR YOURSELF, AND (C) YOU ACKNOWLEDGE AND CERTIFY THAT YOU OR THE ENTITY YOU ARE SIGNING FOR ARE NOT A DIRECT COMPETITOR AS DEFINED BELOW. IF YOU ARE NOT AUTHORIZED TO ENTER INTO THE AGREEMENT BELOW, OR IF YOU DO NOT CLICK “I ACCEPT”, THEN YOU MUST CLICK ON THE “CANCEL” BUTTON, YOU MUST NOT INSTALL, ACCESS, COPY OR USE ANY PART OF THE SOFTWARE, AND YOU MUST RETURN THE SOFTWARE AND ACCOMPANYING DOCUMENTATION TO LICENSOR.

B. **GENERAL TERMS AND CONDITIONS.** This Agreement is effective as of the date You accept the terms hereof (unless returned as specified above or in the case of the existence of a Pre-Existing Agreement) (the “Effective Date”), and is entered into between Licensor and Licensee. The parties agree as follows:

1. **Definitions.** As used in this Agreement, the following terms are defined as follows and other defined terms shall have the meaning ascribed to them in this Agreement:

- a. **“Agreement”** means this ETAP software license agreement covering all the existing and future capabilities and enhancements to the Software, including updates, manufacturer library data, and UDM construction (whether created by Licensor or Licensee).
- b. **“Deliverable”** means the Software/Hardware Key, Documentation, and any other materials delivered under this Agreement.
- c. **“Direct Competitor”** means any owner, shareholder, employee, agent, consultant, or affiliate of any person or entity that offers or provides power systems software that is used by industries, sectors, institutions, and individuals to model, design, analyze, optimize and/or operate, automate, and control electrical power systems.
- d. **“Documentation”** means collectively: (a) all of the written, printed, electronic, or other format materials published or otherwise made available by Licensor that relates to the functional, operational, and/or performance capabilities of the Software; and (b) all user, operator, system administration, technical, training,

support, and other manuals and all other written, printed, electronic, or other format materials published or otherwise made available by Licensor that describe the functional, operational, and/or performance capabilities of Software. Documentation shall not include Source Code.

- e. **“Intellectual Property Rights”** mean Licensor’s rights to patents, trademarks, Deliverables, trade names, service marks, domain names, copyrights and all applications and registration of such worldwide, schematics, industrial models, inventions, know-how, trade secrets, Documentation, computer software programs, any UDM construction created for the Licensee by the Licensor, and other intangible proprietary information.
 - f. **“Licensee”** or **“You”** means the individual or entity as defined in the Order that is expressly granted the right to use the Deliverables under this Agreement. Licensee represents that it is not a Direct Competitor. Licensee understands and acknowledges that Direct Competitors may not Use the Software, Hardware Key, or Documentation, except upon Licensee’s full disclosure to Licensor of any potential Direct Competitor and with Licensor’s prior written consent thereto.
 - g. **“Licensor”** means Operation Technology, Inc. d/b/a ETAP, a California corporation with its principal place of business located at 17 Goodyear, Irvine, CA 92618.
 - h. **“Object Code”** means the binary machine-readable version of the Software.
 - i. **“Order”** means Licensor’s ordering documentation or any other purchasing documents referencing this Agreement.
 - j. **“Portion”** means parts of the Software licensed by Licensor to Licensee and expressly and specifically identified in the Order (whether dated before or after the Effective Date).
 - k. **“Software”** means the computer program known as “Electrical Transient Analyzer Program” or ETAP®, as well as the ETAP® Solution Family. Software also includes all components, such as the installation package, installation media, licensing, device drivers, utilities, and the Object Code contained in such components.
 - l. **“Solution Family”** means Licensor owned or licensed products, including the desktop, web applications and mobile applications that may be associated with each product including but not limited to ETAP Real-Time™, eProtect™, and etapAPP™. Solution Family also includes the Licensor provided software code and logic included in ICE™ controllers such as ILS™, µgrid™, Nanogrid, or eWAMS.
 - m. **“Source Code”** means computer software in the form of source statements for the Software including, without limitation, all software in the form of electronic and printed human-readable, mnemonic or English-like program listings, including descriptions of the design of such software including, without limitation, data definition models, indices, structure tables, system flow charts, program flow charts, defined terms, file layouts, program narratives, global documentation (including global variables) and program listings.
 - n. **“UDM”** means User-defined Dynamic Modeling (whether created by Licensor or Licensee).
 - o. **“User Support”** means a reasonable amount of instructions on the use of the Software provided by Licensor to Licensee by means of telephone, online helpdesk, or email communication.
 - p. **“Use”** means the ability to run, execute, and display the Software in its Object Code form.
2. **License Grant.** Licensor grants a revocable, non-transferable, non-sublicensable, and non-exclusive right to Licensee to use Portions of the Software and/or any Deliverable, subject to the terms and conditions of this Agreement (“License”), for Licensee or Licensee’s employees and authorized users by any means such as computers, processors, servers, terminals and other computer equipment (“Physical Machines”) or software-based or cloud-based virtual servers, computers, and processors (“Virtual Machines”) equal to or less than the number of licenses licensed by Licensee (pursuant to an Order). For example, if Licensee has licensed four (4) licenses, Licensee may only access or use the Software on a total of four (4) Physical Machines and/or Virtual Machines at any given time. The Software shall not be used in any manner not specifically granted in this Agreement, including, but not limited

to, use on any network, cloud and/or virtual machine application. The Software is not licensed for commercial hosting. Any use of the Software in a manner inconsistent with the terms of this Agreement shall result in immediate termination of this Agreement. Unless agreed to in writing by the Parties, this Agreement shall apply to all Portions of Software provided by Licensor to Licensee at any time. If Licensee becomes aware that its use of the Software on Physical and/or Virtual Machines exceeds the number of licenses Licensee has licensed, Licensee is required to immediately stop such unauthorized use and notify Licensor of such unauthorized use.

3. **Ownership of Title and Intellectual Property Rights.** Full ownership and title of the Software and Deliverables shall at all times remain with the Licensor. The Software is made available on a limited license basis, and no ownership right is conveyed to Licensee, irrespective of the use of terms such as “purchase”. Licensor has and retains all right, title and interest, including all Intellectual Property Rights, in and to the Software and Deliverables. Licensee agrees not to re-sell, share, transfer, sub-license, or otherwise make the Software or other Deliverables available to any third person or entity.
4. **Trade Secrets.** Methods of computation, computer coding, and other processes and information contained or implemented in the Software are proprietary and confidential and shall be considered Licensor’s trade secrets. Licensee shall not nor shall it permit or enable any third party to (a) reproduce, modify, adapt or create derivative works of any part of the Software; (b) rent, lease, distribute, sell, sublicense, transfer, or provide access to the Software to a third party; (c) incorporate the Software into a product to be provided to a third party; (d) interfere with any license key mechanism in the Software or otherwise circumvent mechanisms in the Software intended to limit your use; (e) translate, reverse engineer, decompile, recompile, alter, update, or modify all or any part of the Software or any of the Deliverables or merge the Software into any other software or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs to the Software; (f) remove or obscure any proprietary or other notices contained in the Software; (g) use the Software for competitive analysis or to build competitive products. Licensee shall not nor shall it permit any third party to disassemble, decompile, or alter the Software and/or Hardware Key, nor shall Licensee write or develop any software program based upon the Software received from Licensor or any part thereof.
5. **Privacy.** Licensee acknowledges and agrees that Licensee (and third parties acting on Licensee’s behalf) may provide, and Licensor may obtain, certain information and data with respect to Licensee (including, without limitation, personal information) and Licensee’s use of the Software in connection with this Agreement, including, without limitation, information and data provided to or obtained by Licensor through forms completed during the use of the Software and/or through other automated means, in connection with registration, activation, updating, use, validating entitlement to, and management of the relationship with Licensee. Such information may include, without limitation, personal information and other identifying information related to the Software and/or the user or domain from which the Software is being used. Licensee hereby consents to Licensor maintaining, using, storing and disclosing such information and data (including, without limitation, personal information, if any) in conformity with Licensor’s policies on privacy and data protection, as such policies may be updated from time to time, including without limitation Licensor’s Privacy Policy, as currently located at <https://etap.com/privacy-policy>. Without limitation of the generality of the foregoing, Licensee acknowledges and agrees that: (a) Licensor may provide information and data, including, without limitation, information and data about Licensee’s use of the Software, to Licensor subsidiaries and affiliates, Resellers and other third parties in connection with the provision of maintenance, administration or usage of Software or in connection with enforcement of any agreements relating to the Software; and (b) Licensor may make cross-border transfers of such information and data, including to jurisdictions with privacy or data protection laws that are less protective of Licensee than the jurisdiction in which Licensee is domiciled. Licensee acknowledges and agrees that such policies may be changed from time to time by Licensor and that, effective upon

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7. **Identifying Marks.** Licensee shall not remove any copyright legend or identifying mark from any materials supplied by Licensor that identifies such material as belonging to or developed by Licensor.
8. **Unauthorized Use.** Licensee shall not allow any third party (including but not limited to vendors, independent contractors or other consultants contracting with Licensee) to have any access to or use of the Deliverables without Licensor’s prior written consent, even if such access or use occurs on Licensee’s network.
9. **ASSUMPTION OF RISK. LICENSEE ASSUMES ALL RISK REGARDING THE QUALITY, PERFORMANCE, AND CORRECTNESS OF RESULTS OF THE SOFTWARE**
10. **NO WARRANTIES. THE ENTIRE RESPONSIBILITY FOR THE USE AND APPLICATION OF THE SOFTWARE IS WITH THE LICENSEE. LICENSOR DOES NOT GUARANTEE THAT THE SOFTWARE OR DELIVERABLES WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT LICENSOR WILL CORRECT ALL PROGRAM ERRORS. EXCEPT AS EXPRESSLY STATED OTHERWISE IN THIS AGREEMENT, TO THE MAXIMUM EXTENT ALLOWED BY LAW, LICENSOR DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES OF ANY KIND, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, WARRANTIES OF TITLE OR AGAINST INFRINGEMENT, AND ANY WARRANTIES THAT MIGHT OTHERWISE BE DEEMED TO ARISE FROM THE USE OF THE SOFTWARE, OR PORTIONS THEREOF, OR FROM ANY OF LICENSOR’S DOCUMENTATION OR FROM ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO LICENSEE UNDER THIS AGREEMENT.**
11. **No Known Infringement.** To the best of Licensor’s knowledge, the use of the Software by Licensee does not infringe on any United States patent, copyright, trade secret or other proprietary rights of any third party.
12. **Indemnification.**
 - a. **General Indemnification.** Licensee shall indemnify, defend, and hold harmless Licensor against any loss, costs, fees (including attorney’s fees), liability or damages arising out of any claim by a third party in connection with Licensee’s use of the Software.
 - b. **Intellectual Property Indemnification.** If a third-party makes a claim against Licensee that any Software or Deliverable furnished by Licensor and used by the Licensee infringes its intellectual property rights, the Licensor will indemnify the Licensee against the claim if the Licensee does the following:
 - i. notifies the Licensor promptly in writing, not later than 30 days after the Licensee receives notice of the claim (or sooner if required by applicable law);
 - ii. gives the Licensor sole control of the defense and any settlement negotiations; and
 - iii. gives the Licensor the information, authority, and assistance the Licensor needs to defend against or settle the claim.

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services not provided by Licensor. This section contains the parties' exclusive remedy for any infringement claims or damages.

13. **LIMITATION OF DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR PUNITIVE LOSS, DAMAGE OR EXPENSES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOST GOODWILL, BUSINESS INTERRUPTION, LOST BUSINESS, FAILURE OF SECURITY MECHANISMS, LOST SAVINGS, LOST OPPORTUNITY, LOST DATA, USE OF INACCURATE INFORMATION, OR DELAYS IN PERFORMANCE), EVEN IF IT HAS BEEN ADVISED OF THE LIKELIHOOD THEREOF AND REGARDLESS OF WHETHER SOUGHT IN ANY ACTION AT LAW OR IN EQUITY AND REGARDLESS OF WHETHER BROUGHT AS A CONTRACT ACTION, TORT, STRICT LIABILITY, STATUTORY CLAIM, OR OTHERWISE.
14. **AGGREGATE LIABILITY.** EXCEPT FOR LICENSOR'S INDEMNIFICATION OBLIGATIONS HEREIN, IN NO EVENT SHALL LICENSOR'S CUMULATIVE LIABILITY TO LICENSEE UNDER THIS AGREEMENT OR RELATED CLAIMS, INCLUDING ANY FUTURE MODIFICATION OR EXTENSION OF THIS AGREEMENT, EXCEED THE AMOUNT PAID BY LICENSEE UNDER THIS AGREEMENT TO LICENSOR WITHIN THE TWELVE (12) MONTHS PRIOR TO THE EVENT, ACTION, OR CIRCUMSTANCES GIVING RISE TO THE LIABILITY OR, IF THERE ARE MULTIPLE EVENTS, ACTIONS OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY, THE MAXIMUM CUMULATIVE AMOUNT PAID BY LICENSEE UNDER THIS AGREEMENT TO LICENSOR IN ANY CONSECUTIVE PERIOD OF THREE (3) YEARS. LICENSOR DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY THIRD-PARTY PRODUCTS OR SERVICES (WHETHER SUPPORT, AVAILABILITY, SECURITY OR OTHERWISE) OR FOR THE ACTS OR OMISSIONS OF ANY THIRD-PARTY PROVIDERS OR VENDORS.
15. **Access Key.**
 - a. The Software may be licensed with a USB security key to use the Software ("Security Key"). If the Security Key is defective or damaged, it can be replaced by returning the defective Security Key to the Licensor for replacement. However, the Security Key cannot be replaced if it is lost or stolen.
 - b. The Software may be licensed with a keyless license manager to use the Software ("Keyless License.") Licensee agrees to follow the required procedure (which is available upon request) when transferring data to a different server at the risk of losing the access to the Keyless License. The Keyless License will not be replaced if the server upon which the Keyless License is installed becomes inaccessible or unable to uninstall the Keyless License for any reason. Licensee will lose access to the Software and will be required to obtain a new licensed copy of the Software as a replacement.
16. **License Type.** The Software can be licensed as a Single, Site, or Corporate License with stand-alone or concurrent-user (Network-LAN or -WAN) configurations. The license type and capabilities shall be agreed upon in writing by Licensee and Licensor.
 - a. **A Single License** is defined as: A single copy of the Software for use with a single Security Key on a single CPU (Central Processor Unit) which is either wholly-owned or leased and operated by Licensee and which is located on the specified premises of Licensee.
 - b. **A Site License** is defined as: Multiple copies of the Software for use on multiple CPU's which are either wholly owned or leased and operated by Licensee and which are located at one specified location of Licensee. With the purchase of a Site License, Licensee has the right to license unlimited copies at a discounted price (per copy fee) for a single location. WAN copies cannot be licensed under the Site License.
 - c. **A Corporate License** is defined as: Multiple copies of the Software for use on multiple CPU's which are either wholly owned or leased and operated by Licensee and which are located at more than one specified location. Licensee shall provide to Licensor a list showing the location and the contact person at each location where the Software is installed. All locations where the Software is installed must be wholly-owned by Licensee. With the purchase of a Corporate License, Licensee has the right to license unlimited copies at a discounted price (per copy fee) for multiple locations.
- d. **A Stand-Alone Configuration** is defined as: A stand-alone copy of the Software used with a single Security Key connected directly to the USB port of the CPU on which the software is installed. CPU must be wholly-owned and operated by Licensee and located at the specified premises of Licensee.
- e. **A Concurrent-User (Network-LAN) Configuration** is defined as: Multiple copies of the Software for use with a single Security Key on a single local area network (LAN) which is wholly-owned and operated by Licensee and which is located at one specified location of Licensee. The number of simultaneous users is based on the configuration licensed by Licensee.
- f. **A Concurrent-User (Regional WAN) Configuration.** Multiple copies of the Software for use with a single Security Key on a single wide area network ("WAN") which is wholly owned and operated by Licensee. The Security Key must be located at one specified location of Licensee. The Regional WAN License can be accessed at multiple, wholly owned locations of Licensee within the same country. The number of simultaneous users is based on the configuration licensed by Licensee.
- g. **A Concurrent-User (Network-WAN) Configuration** is defined as: Multiple copies of the Software for use with a single Security Key on a single wide area network (WAN) which is wholly-owned and operated by Licensee and which is located at one specified location of Licensee. The WAN License can be accessed at multiple, wholly owned locations of Licensee. The number of simultaneous users is based on the configuration licensed by Licensee.
17. **Errors.** Licensee shall notify Licensor about any suspected errors in the Software or Deliverables. Such discoveries shall be delivered to Licensor along with complete data and sample runs indicating the error. Licensor shall not be responsible or liable for any costs, losses, delays, associated damages, or any other charges, which may be the result of such problems. Licensor's entire liability in all situations involving performance or nonperformance of the Software or Deliverables furnished under this Agreement is limited to the correction by Licensor of the defects.
18. **Upgrade and User Support ("UUC").** Licensor agrees to deliver (at no additional charge to Licensee) updates or new versions of the Software, limited to Portions licensed by Licensee and User Support, during a period of one (1) year from the original date of delivery of the Software, but only if such updates and new releases become available to other licensees during that time. Licensee may purchase additional UUC after this one year of complimentary UUC. UUC renewals rates are subject to the applicable Software and will be charged at the then-current rates. Any additional updates and enhancements delivered to the Licensee as a part of the UUC will remain within the scope of this Agreement. Assistance with UDM construction may incur additional charges on a time and materials basis and is not included in UUC.
19. **Training.** Instructions on use of the Software are included in the Documentation. Licensee site training in the use of the Software is not part of this Agreement. Such training will be agreed upon in a separate writing by the Parties and provided at Licensor's standard training rates.
20. **Confidentiality Obligations.**
 - a. **Definition of Confidential Information.** For purposes of this Agreement, "Confidential Information" shall mean all tangible and intangible information or material disclosed by the Disclosing Party or otherwise made available or accessible to the Receiving Party, whether intentionally or inadvertently regardless of the manner or medium of disclosure or access (e.g. visual, oral, writing, electronic form) that is described as proprietary or confidential or considered as proprietary or confidential by the Disclosing Party and shall include, but is not limited to, the following types of information and other information of a similar nature: trade secrets, plans, discoveries, ideas, concepts, papers, software and software in various stages of development, database rights, inventions, designs, drawings, products, mask works, semiconductor topography rights, utility models, specifications, techniques, models, prototypes, data, source code, object code, algorithms, documentation, manuals, diagrams, flow charts, schematics, research, processes, procedures, functions, "know-how", registered and unregistered design rights, manufacturing processes, procedures and related technology, all aspects of manufacture related to products or other related services, materials and equipment, capacities, marking

- techniques and materials, all marketing and development plans, all business plans and services (past, existing and future and any resolution thereto), business process information, customer names and other information related to customers or patients, prices and pricing policies, budgets, financial information, information related to manufacturing, production and training information, licensing and/or distribution arrangements, the terms of or existence of any business discussions between the parties, feedback, information regarding the skills and/or compensation of employees or contractors of the Licensor, information disclosed by any third party which information the Disclosing Party is obligated to treat as confidential or proprietary information, and any copies, compilations, summaries or other information or material produced by the Licensor or any third party that is based on or includes any part of the Confidential Information referenced above
- b. **Treatment of Confidential Information.** Each Receiving Party shall treat all Confidential Information of the Disclosing Party with the same degree of care it accords its own Confidential Information of like nature, but not less than reasonable care. Neither party may reverse engineer, disassemble, or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to a party hereunder. Recording, copying, photographing, or any other reproduction is prohibited without the prior written approval of an authorized representative of the Disclosing Party. The Receiving Party's obligations under this Agreement with respect to any portion of the Disclosing Party's Confidential Information shall cease to thereafter apply to the extent that Receiving Party can document to the Disclosing Party's reasonable satisfaction that the Confidential Information: (i) is now or subsequently becomes publicly known through no act or fault on the part of Receiving Party; (ii) was rightfully in the possession of Receiving Party prior to receipt or access from Disclosing Party; (iii) is hereafter rightfully furnished to Receiving Party by a third party without breach of any direct or indirect obligation of confidence to the Disclosing Party or a party in privity to the Disclosing Party; or (iv) was developed by the Receiving Party independently and without reference to such Confidential Information. Each Receiving Party agrees not to disclose Confidential Information of the Disclosing Party to anyone other than those employees, affiliates, contractors of the Receiving Party (except that Receiving Party shall not disclose Disclosing Party's Confidential Information to competitors of Disclosing Party without prior written permission) who need to know such Confidential Information for the purpose set forth above and who have entered into binding obligations of confidentiality substantially similar to the obligations set forth herein.
- c. **Return of Confidential Information.** All Confidential Information, existing in written form or recorded in any other tangible medium, shall be returned to Disclosing Party or irretrievably destroyed if requested by the Disclosing Party in writing, including non-tangible forms of Confidential Information, together with any reproductions or copies thereof. The Disclosing Party has the right to audit the Receiving Party to confirm that all Confidential Information has been returned or destroyed as instructed by the Disclosing Party, provided that the audit takes place during regular business hours, at a mutually convenient time.
- d. **No License.** All Confidential Information disclosed by the Disclosing Party shall remain the property of the Disclosing Party. The Disclosing Party does not grant to Receiving Party any rights of any kind under any patent, copyright, trademark, trade secret or other intellectual property rights which Disclosing Party may now have or may hereby obtain with respect to the Confidential Information.
- e. **Non-Competition.** Licensee hereby warrants and represents that it shall not disclose any information received from Licensor (including, but not limited to Confidential Information, any trade secrets, software codes and impressions, security keys, passwords, access keys and ability in any way to access Licensor software products, marketing materials, descriptions, personal recollection and impressions of look and feel for Licensor software products) to any of the Licensor's competitors, who shall be determined by OTI in its sole discretion.
- f. **Confidentiality Remedies.** The parties agree that the Disclosing Party may suffer irreparable harm if the Receiving Party fails to comply with its obligations set forth herein and further agrees that monetary damages may be inadequate to compensate Disclosing Party for any such breach. Accordingly, Receiving Party agrees that Disclosing Party will, in addition to any other remedies available to it at law or in equity, be entitled to the issuance of injunctive relief to enforce the provisions hereof.
- g. **Required Disclosure.** The terms of this Agreement are confidential and shall not be disclosed to third parties without the written consent of the non-disclosing party, except to the extent required by a court or regulatory agency of competent jurisdiction, provided that the disclosing party gives the non-disclosing party prompt notice and cooperates with the non-disclosing party if it attempts to prevent or limit such disclosure.
21. **Governing Law; Dispute Resolution.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, USA, without giving effect to that state's conflict of laws provision. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration, and judgment on the award rendered by a sole arbitrator may be entered in any court having jurisdiction thereof. The venue for arbitration shall be Orange County, California, United States of America. The arbitration shall be conducted pursuant to the AAA Commercial Arbitration Rules of the American Arbitration Association ("AAA") in effect at the time arbitration demand is made.
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