

IMPORTANT / READ CAREFULLY: THIS END USER LICENSE AGREEMENT IS A LEGAL AGREEMENT BETWEEN URNER BARRY PUBLICATIONS, INC. ("UB" OR "LICENSOR") AND THE PARTY IDENTIFIED AS COMPANY (HEREINAFTER "LICENSEE" OR "YOU") ON THE ONLINE SUBSCRIPTION FORM COMPLETED AND SUBMITTED TO UB AFTER ACCEPTANCE OF THESE TERMS AND CONDITIONS. THE TERMS AND CONDITIONS SET FORTH IN THIS END-USER LICENSE AGREEMENT, TOGETHER WITH THE INFORMATION, TERMS AND CONDITIONS SET FORTH IN THE SUBSCRIPTION FORM AND DATA QUESTIONNAIRE, CONSTITUTE THE COMPLETE AGREEMENT (COLLECTIVELY "AGREEMENT") BETWEEN UB AND LICENSEE FOR THE LICENSED USE OF THE UB PRODUCTS THAT ARE IDENTIFIED ON THE SUBSCRIPTION FORM.

UB PROVIDES THE UB PRODUCT(S) SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT LICENSEE ACCEPTS AND COMPLIES WITH THEM. BY CLICKING THE "ACCEPT" BUTTON, OR CHECKING THE "ACCEPT" BOX ON THE SUBSCRIPTION FORM, YOU (A) ACCEPT THIS AGREEMENT AND AGREE THAT LICENSEE IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT: (I) YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) IF LICENSEE IS A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, THE PERSON SIGNING HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF LICENSEE AND BIND LICENSEE TO ITS TERMS. IF LICENSEE DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, LICENSOR WILL NOT AND DOES NOT LICENSE THE UB PRODUCT(S) TO LICENSEE AND YOU MUST NOT DOWNLOAD OR ACCESS THE UB PRODUCT(S).

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR YOUR OR LICENSEE'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NO LICENSE IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION, OR OTHERWISE) UNDER THIS AGREEMENT, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY UB PRODUCT(S) THAT LICENSEE DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OR USE OF UB PRODUCT(S).

UB RESERVES THE RIGHT, AT ANY TIME, TO UPDATE, REVISE, SUPPLEMENT AND OTHERWISE MODIFY THIS AGREEMENT AND TO IMPOSE NEW OR ADDITIONAL TERMS AND CONDITIONS ON YOUR USE OF UB'S SERVICES AND PRODUCTS.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, ACKNOWLEDGE THAT YOU ARE AUTHORIZED TO BIND LICENSEE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THE SERVICES AND PRODUCTS ORDER AND THAT LICENSEE AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

DEFINITIONS.

For purposes of this Agreement, the following terms have the following meanings:

"**Authorized User(s)**" means solely those individuals or entities authorized to use the UB Product(s) pursuant to the license granted under this Agreement, as set forth on the Order Form.

"**Derived Users**" means any user or Person that directly or indirectly views or uses the UB Product(s) as a result of Licensee's license.

"**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"**Licensee**" has the meaning set forth in the preamble.

"**License Fee(s)**" means the subscription and/or license fees, including all taxes thereon, paid or required to be paid by Licensee for the license granted under this Agreement.

"**Licensor**" means Urner Barry Publications, Inc.

"**Order Form**" means the order form filled out and submitted by or on behalf of Licensee, and accepted by UB, for Licensee's purchase of the license for the UB Product(s) granted under this Agreement.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

"**Term**" has the meaning set forth in Section 4.1.

"**Third Party**" means any Person other than Licensee or Licensor.

1. LICENSE.

- 1.1 **License Grant.** UB hereby grants to Licensee, under UB applicable Intellectual Property Rights, and Licensee hereby accepts, a non-exclusive, nontransferable, revocable (as set forth in Section 4.2 below), non-sublicensable right and limited license, during the Term (as defined in Section 4.1 below) and subject to and conditioned upon payment of the applicable License Fee, to access and use the UB Product(s) (including any associated documentation ("Documentation") delivered therewith) identified in the Services and Products Order, (such UB Products, Documentation and data and their associated designs and compilations being hereinafter collectively referred to as the UB Products) solely and exclusively for the authorized purpose of facilitating Licensee's own internal business management and decision-making goals (the "Business Purpose"), subject to the further conditions and restrictions on use set forth in Section 1.2 (the "UB License").
- 1.2 **Terms and Restrictions of User.** The Licensee is permitted to use and, in the case of electronic subscriptions, print or download reasonable portions of the UB Products, exclusively for use in carrying out the Business Purpose. Licensee and its Authorized Users shall not, directly or indirectly, allow any other Third-Party to use or access the UB Products, and shall not, directly or indirectly, use or permit the use of UB Products for any purpose other than the Business Purpose. Without limiting the foregoing, Licensee is expressly prohibited from:
 - (a) selling, renting, sublicensing, leasing or otherwise making available the UB Products for Third-Party training, commercial time-sharing, rental or service bureau use, or outsourcing services for the benefit of any third parties;
 - (b) reverse engineering, disassembling, or decompiling the UB Products, except to the extent otherwise expressly permitted by applicable law;
 - (c) modifying or making any derivative works of the UB Products not specified in this Agreement;
 - (d) using or data-mining the UB Products in any way for the purpose of designing or developing competing software and/or data or informational products, or any other purpose that is to UB's commercial disadvantage;
 - (e) externally distributing the UB Product(s) without acquiring the appropriate license(s) (pricing available on request), making the UB Product(s) publicly available, reproducing or storing in, or transmitting, the UB Products to any Third-Party website, newsgroup, mailing list, or electronic bulletin board; or
 - (f) use of the UB Product(s) or Documentation in violation of any law, regulation, or rule.
- 1.3 **Notices of Unauthorized Use or Alleged Infringement.** Licensee agrees to notify UB immediately if it becomes aware of any unauthorized use or disclosure of the UB Products or if it becomes aware of any alleged facts that, if true, would support a claim that (i) a Third-Party is infringing the rights of UB in UB Products or (ii) that the UB Products infringe any intellectual property rights or other proprietary rights of a Third-Party. Licensee will advise UB of the specific details of the unauthorized use or infringement claim.
- 1.4 **Reservation of Rights.** Any use of the UB Products not specifically permitted by this Section 1 is expressly prohibited. All rights not expressly granted hereunder by UB are expressly reserved by UB or its licensors, and no other license or right is granted to Licensee by implication, estoppel or otherwise.

2. OWNERSHIP; PROPRIETARY RIGHTS; CONFIDENTIALITY; COMPLIANCE.

- 21 **Ownership.** Licensee acknowledges and agrees that the UB Products contain valuable trade secrets and confidential information of UB and its licensors and are protected or able to be protected by domestic and international trade secret, copyright, and patent laws and other forms of proprietary rights. Licensee acknowledges and agrees that, as between the parties hereto, UB and its licensors shall be the sole and exclusive owner of all right, title and interest in and to the UB Products, subject to the terms of the UB License granted hereunder. Although some tangible objects may be delivered by UB to Licensee in connection with this Agreement, this Agreement does not constitute a sale of the UB Products or any portion or copy thereof.
- 22 **Proprietary Rights Notices.** Licensee may not remove, obscure or modify any copyright, trademark or other form of proprietary notices on the UB Products. Licensee shall have the limited right to use UB's trademarks and service marks and other indicia of origin in conjunction with the UB Products, solely for the purpose of ensuring the identification of UB as the owner thereof, and any such use shall inure exclusively to the benefit of UB and its successors and assigns. No other use of UB's trademarks, service marks and other indicia of origin may be made by Licensee absent prior written consent of UB in each case.
- 23 **Confidentiality.** At all times, Licensee agrees to maintain the UB Products, in strict confidence as confidential and proprietary materials of UB, and agrees not to disclose, duplicate or otherwise reproduce, directly or indirectly, said items in whole or in part or any materials relating thereto (except that, during the Term, Licensee may make a reasonable, limited number of copies of the UB Products, as may be necessary to carry out the Business Purpose and for archival or back-up purposes). Licensee shall safeguard all UB Product(s) (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access. Licensee shall promptly notify UB if Licensee becomes aware of any infringement of UB's Intellectual Property Rights in the UB Product(s) and fully cooperate with UB in any legal action taken by UB to enforce its Intellectual Property Rights. Licensee shall be liable to UB for any unauthorized access to, or use of, the UB Products, and further agrees to indemnify, defend and hold harmless UB against any third-party claims that may arise out of the same.
- 24 **Injunctive Relief.** In the event of any unauthorized use or disclosure of confidential information by Licensee, UB may elect to terminate this Agreement and the UB License as provided in Section 4.2 below. Because any unauthorized use, disclosure or transfer of the UB Products may diminish substantially the value of such materials and may irrevocably harm UB and/or its licensors, if Licensee breaches the provisions of this Section 2 and/or the scope of the UB License granted in Section 1, UB and/or its licensors will be entitled to injunctive and/or other equitable relief, in addition to other remedies afforded by law, without any requirement for the posting of a bond.
- 25 **Compliance Measures.**
- a. On a semi-annual basis, and otherwise on Licensor's written request, Licensee shall conduct a review of its and its Authorized Users' use of the UB Product(s) and certify to Licensor in a written instrument signed by an officer of Licensee that it is in full compliance with this Agreement or, if Licensee discovers any noncompliance:
 - (i) Licensee shall immediately remedy such noncompliance and provide Licensor with written notice thereof. Licensee shall provide Licensor with all access and assistance as Licensor requests to further evaluate and remedy such noncompliance.
 - (ii) If Licensee's use of the UB Product(s) exceeds the number of Authorized Users permitted under the license, Licensor shall have the remedies set forth in Section 2.5(c).
 - b. During the Term, Licensor may, in Licensor's sole discretion, audit Licensee's use of the UB Product(s) to ensure Licensee's compliance with this Agreement. The Licensee shall fully cooperate with Licensor's personnel conducting such audits and provide all access requested by the Licensor to records, systems, equipment, information, and personnel, including machine IDs, serial numbers, and related information. Licensor shall only examine information directly related to the Licensee's use of the UB Product(s). Licensor may conduct audits only during Licensee's normal business hours and in a manner that does not unreasonably interfere with the Licensee's business operations. If any audit reveals that Licensee has underpaid any License Fees or other amounts payable to UB, Licensee shall be invoiced for such underpaid fees based on UB's then current License Fees or other prices in effect at the time the audit is conducted. If the underpaid License Fees are in excess of five percent (5%), then Licensee shall pay UB's reasonable costs of conducting the audit. Audits shall be made no more than twice per calendar year.
 - c. If the audit determines that the Licensee's use of the UB Product(s) exceeds or exceeded the use permitted by this Agreement then:
 - (i) Licensee shall, within seven (7) days following the date of Licensor's written notification thereof, pay to Licensor the retroactive License Fees for such excess use and, unless Licensor terminates this Agreement pursuant to Section 4.2, obtain and pay for a valid license to bring Licensee's use into compliance with this Agreement. In determining the Licensee Fee payable pursuant to the foregoing, (x) unless Licensee can demonstrate otherwise by documentary evidence, all excess use of the UB Product(s) shall be deemed to have commenced on the commencement date of this Agreement or, if later, the completion date of any audit previously conducted by Licensor hereunder, and continued uninterrupted thereafter, and (y) the rates for such licenses shall be determined without regard to any discount to which Licensee may have been entitled had such use been properly licensed prior to its commencement (or deemed commencement).
 - (ii) Licensee shall also pay to Licensor, within seven (7) days following the date of Licensor's written request therefor, Licensor's costs incurred in conducting the audit.
 - (iii) Licensor shall also have the right to terminate this Agreement and the license granted hereunder, effective immediately upon written notice to Licensee.
 - d. Licensor's remedies set forth herein are cumulative and are in addition to, and not in lieu of, all other remedies the Licensor may have at law or in equity, whether under this Agreement or otherwise.

3. LICENSE FEES; PAYMENT; RECORDS.

- 31 **License Fee(s).** In consideration for the UB License, Licensee will pay to UB the License Fee(s) identified in the Services and Products Order, in accordance with the terms and manner of payment set forth therein. Any amounts paid or due and payable to UB hereunder are non-cancelable and nonrefundable. All License Fees are to be inclusive of all Derived Users.
- 32 **Invoicing.** Unless otherwise expressly provided to the contrary in the Services and Products Order, UB will deliver an invoice in U.S. Dollars to Licensee for the License Fee(s) and any other amounts due and payable under this Agreement. Licensee will pay these amounts within thirty (30) days of the applicable invoice date. Licensee agrees to pay to UB a late payment charge equal to the lesser of: (a) one and one-half percent (1.5%) per month, compounded; or (b) the maximum amount allowed by applicable law on all accounts which are not paid on or before thirty (30) days from the billing date found on the invoice. The License Fee(s) and any other charges due and payable by Licensee shall not be subject to set off for any claims against UB. Licensee also agrees to pay any additional attorneys' fees and costs of collection incurred by UB for failure to pay any amounts owed hereunder when due. The Licensee agrees to pay any bank fees incurred with payment of the invoice via electronic transfer.
- 33 **Taxes.** Licensee will pay for any applicable sales, use or similar taxes, custom fees or duties, and import, export or value-added taxes or charges, however designated, levied or based (excluding only taxes based on the net income of UB), on the charges for the UB Products rendered under this Agreement ("Applicable Taxes"). Licensee agrees to pay any such taxes directly to the taxing jurisdictions and shall be held liable for same. Please note that state sales tax is added to invoices for NJ. If UB is directly assessed for such taxes, or additional taxes, interest, penalties which may be due with respect to the UB Products provided under this Agreement, Licensee agrees to pay UB within fifteen (15) days of receipt of invoice for such items, or if the tax is not due, provide evidence reasonably satisfactory to UB of same. Licensee further agrees to indemnify, defend and hold harmless UB from and against any claims, damages or penalties based on Licensee's failure to pay any Applicable Taxes.
- 34 **Records.** Licensee shall maintain books and records (including network and server logs) in connection with its use of the UB Products and all related activities under this Agreement during the Term and for a period of one (1) year thereafter. Such records shall also include at a minimum the number and identities of the employees Licensee designates as authorized employees from time to time during the Term. The Licensee is responsible for providing complete and accurate billing and contact information and to notify UB of any changes to such information. The Licensee must notify UB of any adjustments to the Authorized User(s) information as soon as they occur.

4. TERM; TERMINATION; SURVIVAL.

- 41 **Term.** This Agreement shall continue in effect for the subscription term as set forth in the Services and Products Order. Thereafter, this Agreement will be automatically renewed for additional one (1) year periods ("the Renewal Term"). The subscription term together with any Renewal Terms are collectively referred to herein as the "Term". Notwithstanding the foregoing, this Agreement and its Term shall be subject to earlier termination by mutual written agreement of the parties at any time, or otherwise in accordance with the provisions set forth in Section 4.2 below. Licensee acknowledges that this Agreement is non-cancelable during the Term, except as provided in Section 4.2 below, and any breach or attempted breach of this provision by Licensee shall render payments for all periods remaining within the current Term immediately due and payable and non-refundable.
- 42 **Termination.**
- (a) **By Either Party.** Either party may terminate this Agreement, effective upon written notice thereof (i) if the other party (a) files a petition in bankruptcy or is the subject of an involuntary petition in bankruptcy that is not dismissed within thirty (30) days after the effective filing date thereof, or becomes insolvent, or makes an assignment for the benefit of its creditors, or a receiver is appointed for the other party or its business; or (b) ceases to do business in the normal course; or (ii) upon the occurrence of a material breach of this Agreement by the other party if such breach is not cured within thirty (30) days of the breaching party's receipt of written notice, identifying the matter constituting the material breach.

- (b) By UB. Notwithstanding anything in this Section 4 to the contrary, UB may terminate this Agreement at any time and effective immediately upon written notice thereof in the event that: (i) the data types delivered through the UB Product(s) that are the subject matter of this Agreement become no longer available to UB, or (ii) Licensee breaches any restrictions on the scope of the UB License as set forth in Section 1 or its obligations of confidentiality under Section 2.
- (c) By Subscriber. Subscriber can terminate subscription effective on anniversary date by providing written notice to UB of their intention not to renew. Notice must be received by UB no less than 60 days prior the expiration of the current term.
- 43 Effects of Termination: Survival. Immediately upon any termination or expiration of this Agreement for any reason, (i) the UB License granted hereunder shall also terminate, (ii) Licensee shall immediately cease all use of the UB Product(s) and their associated documentation and data, (iii) Licensee will promptly remove or delete all UB Product(s) and data included in the UB Product(s) from all computer equipment and any related memory locations, (iv) Licensee will within one (1) month of termination return all tangible copies of the UB Product(s) and associated documentation to UB, and execute and deliver to UB a certificate evidencing its compliance with the foregoing. Upon any expiration or termination of this Agreement for any reason, all rights and obligations of the parties under this Agreement shall cease except for (i) the obligations of Licensee to pay to UB any License Fees or other amounts payable that have accrued as of or prior to the effective date of such termination or expiration, (ii) the rights and obligations of the parties under Sections 2, 4, 6, 7 and 8, which shall survive for an unlimited period, and (iii) the rights and obligations of the parties under any other provision of this Agreement which, by its expressly stated terms, is intended to survive the termination of this Agreement for a specified period, in which case such provision shall survive such termination or expiration for such specified period.

5. LIMITED WARRANTIES; DISCLAIMER

- 51 Representations and Warranties. Each of the parties hereto represents and warrants to the other party that (a) it has full power and authority to execute, deliver and perform under this Agreement and the obligations hereunder, (b) upon execution and delivery hereof, this Agreement shall constitute the valid and binding obligations of such party enforceable in accordance with its terms, and (c) the execution, delivery and performance of this Agreement (i) have been duly approved and authorized by all necessary corporate actions of such party, (ii) do not contravene any law, regulation, rules or order binding on such party, and (iii) do not contravene the provisions of or constitute a default under any contract or other agreement or instrument to which such party is a signatory.
- 52 Disclaimers of Warranties.
- (a) EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS SECTION 5, EACH PARTY HERETO MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR BASED ON COURSE OF DEALING, USAGE OR TRADE.
- (b) FURTHERMORE, WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY PROVIDED IN SECTION 5.2, THE UB PRODUCTS ARE LICENSED EXCLUSIVELY ON AN "AS IS" BASIS, AND UB DOES NOT WARRANT THAT THE UB PRODUCTS WILL BE FREE FROM ERRORS OR THAT THEIR USE WILL BE UNINTERRUPTED OR MAKE ANY OTHER REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF SUCH UB PRODUCTS IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR SUITABILITY FOR LICENSEE'S BUSINESS, TECHNICAL OR OPERATIONAL REQUIREMENTS, OR OTHERWISE.
- (c) LICENSEE EXPRESSLY ACKNOWLEDGES THAT THE UB PRODUCTS, OR PORTIONS THEREOF, ARE DERIVED FROM THIRD-PARTY SOURCES WHICH MAY INCLUDE, BUT ARE NOT LIMITED TO, THE U.S. GOVERNMENT AS WELL AS SHIP MANIFESTS AND OTHER DOCUMENTS SUBMITTED BY STEAMSHIP COMPANIES TO THE U.S. CUSTOMS SERVICE. CONSIGNEES AND SHIPPERS MAY BE MANUFACTURERS, AGENTS, FREIGHT FORWARDERS, TRADING COMPANIES, DISTRIBUTORS, FURTHER PROCESSORS, PROCESSORS, ETC. FURTHERMORE, THIRD-PARTY CONTENT AND DATA ARE NOT NECESSARILY THE OPINIONS NOR REPRESENTATIVE OF THE VIEWS OF UB. ACCORDINGLY, UB, ITS AFFILIATES, LICENSORS AND SUPPLIERS DO NOT AND CANNOT GUARANTEE THE ACCURACY, CONTENT, OR TIMELINESS OF THE UB PRODUCTS, THE USE OF WHICH LICENSEE ACKNOWLEDGES IS SOLELY AT ITS OWN RISK. THE QUOTATIONS CONTAINED IN UB PRODUCTS REPRESENT TO THE BEST OF REPORTERS' KNOWLEDGE PREVAILING WHOLESALE VALUES IN THE SPECIFIED CUTS AND GRADES OF EACH COMMODITY. THE USE OF QUOTATIONS FOR CONTRACTUAL OR OTHER PURPOSES IS BEYOND THE PUBLISHER'S CONTROL AND THEY WILL IN NO CASE ASSUME ANY RESPONSIBILITY FOR SUCH USE OR FOR ANY DAMAGES THAT MAY RESULT FROM SUCH USE. THE FOREGOING WARRANTIES DO NOT APPLY, AND LICENSOR STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY MATERIALS.

6. INDEMNIFICATION.

- 6.1 Licensee agrees to indemnify, defend and hold harmless UB, its affiliates, licensors, suppliers and their respective officers, directors, employees, agents, and contractors, (collectively the "Indemnified Parties"), from and against any and all claims, suits, damages and expenses (including without limitation all attorney, accountant and expert fees and related costs of investigation) asserted against or incurred by any of the Indemnified Parties that, directly or indirectly, arise out of, or relate in any manner to, the use, misuse, or inability to use the UB Product(s) or their associated documentation and data by Licensee or any of its officers, directors, employees, agents, contractors and/or customers; provided Licensee is promptly notified in writing of any such suit or claim against any such Indemnified Parties and further provided that UB provides all reasonable assistance to Licensee, at Licensee's expense, in the defense of such claim.

7. LIMITATIONS OF LIABILITY.

- 7.1 EXCEPT AS PROVIDED IN SECTION 7.2, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL UB, OR ANY OF THE INDEMNIFIED PARTIES, BE LIABLE TO LICENSEE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFIT OR GOODWILL, FOR ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER, REGARDLESS OF WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, EXCEPT AS PROVIDED IN SECTION 7.2, UB'S TOTAL LIABILITY TO LICENSEE FOR ANY DAMAGES WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF THIS AGREEMENT SHALL NOT EXCEED THE AGGREGATE AMOUNT OF LICENSE FEES PAID BY LICENSEE TO UB UNDER THIS AGREEMENT. THE RIGHTS OF THE LICENSEE IN THIS SECTION 7.1 SHALL BE THE LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR ANY DAMAGES OF ANY NATURE RELATING TO THIS AGREEMENT OR THE UB PRODUCTS.
- 7.2 THE LIMITATIONS SET FORTH IN THIS SECTION 7 WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE AMOUNTS PAYABLE HEREUNDER REFLECTS THE AGREED-UPON ALLOCATION OF RISK BETWEEN THE PARTIES.

8. GENERAL AND MISCELLANEOUS PROVISIONS.

- 8.1 Relationship of the Parties. The parties to this Agreement are independent contractors. It is expressly agreed that in exercising its rights granted hereunder, each party is acting as an independent contractor and not as agent or employee of the other party, and nothing contained in this Agreement shall be construed to create an agency, joint venture, or partnership between the parties. Neither party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party.
- 8.2 Use of Names; Publicity. Except as required by law, neither party shall use the name of the other party or any of their respective officers, employees, consultants, or agents in any press release, promotional material or other publicity without the prior written consent of the other party, which consent will not be unreasonably withheld, delayed or conditioned.
- 8.3 Notices. Any notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally, sent by reputable overnight delivery service (such as Federal Express or Airborne Express) or sent by first class certified United States mail, postage prepaid, addressed to a party at the address set forth in the Services and Products Order or to such other address of which the parties may have given subsequent notice. Unless otherwise specified herein, such notices or other communications shall be deemed received (a) on the date delivered, if delivered personally, (b) one business day after being sent, if sent by reputable overnight delivery service or (c) three business days after being sent, if sent by certified mail. For all notices to UB, a copy shall be sent to: ROCK, FUSCO & CONNELLY, LLC | Attn: Matt Connelly | 321 N. Clark Street, Suite 2200 | Chicago, IL 60654.
- 8.4 Force Majeure. UB, its affiliates, licensors, and its information providers shall not be liable or deemed to be in default for any delay or failure in performance or interruption of the delivery of UB Products resulting directly or indirectly from any cause or circumstance beyond its or their reasonable control, including but not limited to failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, computer viruses, unauthorized access, theft, operator errors, severe weather, earthquakes, or natural disasters, strikes or other labor problems, wars, acts of terrorism, or governmental restrictions.
- 8.5 Governing Law. This Agreement shall be governed by the laws of the United States of America and the State of Illinois, as if the Agreement were a contract wholly entered into and wholly performed within the state of Illinois and between Illinois residents, without reference to the choice of law provisions thereof. Each of the parties hereto irrevocably agrees that any action at law or in equity arising out of or relating to this Agreement shall be filed only in state or federal court located in Illinois, Cook County, U.S.A., and each party hereby irrevocably and unconditionally consents and submits to the exclusive personal jurisdiction and venue of such courts over any suit, action or proceeding arising out of this Agreement. The parties further agree that United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

- 86 Export Administration. Licensee agrees to comply fully with all relevant export laws and regulations of the United States (“Export Laws”) to assure that neither the UB Products, nor any direct product thereof are (1) exported, directly or indirectly, in violation of Export Laws; or (2) are intended to be used for any purposes prohibited by the Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation. Licensee agrees to indemnify, defend and hold harmless UB against any claims arising out of any breach by Licensee of the foregoing obligation.
- 87 Restricted Rights. The UB Product(s) are deemed to be “commercial computer software” and/or “commercial computer software documentation” pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, duplication, modification or disclosure by the United States Government is subject to the restrictions set forth in these clauses.
- 88 Entire Agreement; Amendments. This Agreement, together with the Services and Products Order, represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings between such parties. This Agreement may not be modified or amended except by a written agreement duly executed by both parties hereto.
- 89 Waivers. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any waiver on the part of any party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise of any other such right, power or privilege. No waiver of any of the provisions of this Agreement shall be binding unless in writing and signed by an officer authorized to take such action on behalf of the waiving party. Further, unless otherwise agreed by the parties, no modification, waiver, termination, rescission, discharge or cancellation hereof shall affect the rights of either party to enforce any claim against the other which accrued prior to the date thereof. The rights and remedies of any party based upon, arising out of or otherwise in respect of any inaccuracy in or breach of any representation, warranty, covenant or agreement contained in this Agreement shall in no way be limited by the fact that the act, omission, occurrence or other state of facts upon which any claim of any such inaccuracy or breach is based may also be the subject matter of any other representation, warranty, covenant or agreement contained in this Agreement (or in any other agreement between the parties) as to which there is not inaccuracy or breach.
- 810 Assignment. This Agreement may not be assigned or otherwise transferred by Licensee without the prior written consent of UB. Any purported assignment in violation of this Section shall be null and void. Any permitted assignee shall assume all obligations of its assignor under this Agreement in writing.
- 811 Section Headings. The section headings are for the convenience of the parties and in no way alter, modify, amend, limit, or restrict the contractual obligations of the parties.
- 812 Severability. If any part of this Agreement is ruled to be invalid, illegal, or unenforceable by a court or other body of competent jurisdiction, the remainder of this Agreement shall continue in full force and effect and shall be deemed modified to the minimum extent necessary to make it enforceable. The effect of any such ruling in question shall be strictly limited to the jurisdiction of the body making the ruling. If any such ruling in question is subsequently overruled or obviated by legislative or other action, the severed provisions of this Agreement shall return to full force and effectiveness.
- 813 Third Party Beneficiaries. The parties hereto agree that this Agreement is not intended to create any third-party beneficiaries, other than the Indemnified Parties pursuant to Section 6.

The use of Urner Barry services is contingent on the acceptance of these terms and constitutes an acknowledgment that you have read and understood this Agreement’s Terms and Conditions.