



## **LOFTWARE END-USER LICENSE AGREEMENT**

By clicking yes, or installing and using this software, you have agreed to the terms and conditions of this **Loftware End-User License Agreement**. This Loftware End-User License Agreement (“Agreement”) governs your use of the software product(s) described on the related invoice or purchase order and any Enhancements and Upgrades (as defined in the Support Agreement) to that software (collectively, the “Loftware Software”), and is a binding agreement between Loftware, Inc. (“Loftware”) and you (“Licensee”). This Agreement shall be binding upon and inure to the benefit of Loftware’s and Licensee’s respective successors and permitted assigns. Licensee shall not assign or transfer this Agreement or the license rights granted hereunder without the prior written consent of Loftware.

(1) Definitions. For purposes of this Agreement, each word or phrase listed below shall have the meaning designated. Other words or phrases used in this Agreement may be defined in the context in which they are used, and shall have the respective meaning there designated.

“Integration” means connection(s) from a Source Application to the Loftware Software for use in a Production environment, Non-Production environment and/or disaster recovery environment at a single Site.

“Non-Production” means an environment in which the Loftware Software is used by or on behalf of Licensee to output labels and documents for test, development, Quality Assurance and/or back-up purposes, but not to run Licensee’s business operations or for any other commercial use.

“Print Seat” means a unique printer or logical printer device licensed by Licensee for Production, Non-Production or disaster recovery use.

“Production” means an environment in which the Loftware Software is used by or on behalf of Licensee to output labels and documents to run Licensee’s business operations.

“Server” means the Loftware Print Server.

“Site” means a single physical or virtual location.

“Source Application” means a non-Loftware software application located at a single Site.

“User” means an individual authorized by Licensee to access and use the Loftware Software in accordance with this Agreement.

(2) Ownership of Loftware Software. Licensee is being provided a limited license to use the Loftware Software in the manner described below. The Loftware Software and any and all related documentation is the sole and exclusive property of Loftware or its suppliers. It is an express condition of this license that title to, ownership of, and all intellectual property rights (including patents, copyrights, trademarks and trade secrets) in the Loftware Software (including permitted copies) shall remain with Loftware or its suppliers and shall not transfer to Licensee or any other party. Nothing herein shall be deemed to constitute a sale of the original or any copies of the Loftware Software.

(3) License Grant. Loftware grants to Licensee a worldwide, non-exclusive, non-transferable, perpetual right and license to use the Loftware Software and its related documentation to run its business operations for that number of Users, Print Seats, Integrations, Servers and other functionality licensed by Licensee for Production, Non-Production or disaster recovery use. Licensee may transfer additional Users, Print Seats, Integrations and/or other functionality beyond the capability included in



the base editions of the Servers licensed by Licensee from one licensed Server to another; provided, however, that Licensee shall not transfer Users, Print Seats, Integrations and/or other functionality from (1) a Non-Production or disaster recovery environment to a Production environment, or (2) a disaster recovery environment to a Non-Production environment. Licensee may make adequate copies of (i) the Loftware Software for archival or back-up purposes as deemed necessary by Licensee and (ii) the related documentation for archival or training purposes as deemed necessary by Licensee. All titles, trademarks, copyright and other proprietary rights notices shall be reproduced on all copies so made. All such copies shall be subject to the terms and conditions of this Agreement.

(4) Unauthorized Use. Licensee shall not: (i) attempt to circumvent any security device or licensing restriction contained in the Loftware Software; (ii) use any Non-Production or disaster recovery Loftware Software licenses in a Production environment or for Production purposes, or any disaster recovery licenses in a Non-Production environment; (iii) allow access to the Loftware Software or its related documentation by unauthorized third parties (provided that Licensee may authorize its third-party service providers and suppliers to access and use the Loftware Software solely to provide services to, or in connection with the internal business operations of, Licensee, and provided further that Licensee shall be responsible and liable for each such third party service provider's or supplier's compliance with the terms and conditions of this Agreement); (iv) copy the Loftware Software or its related documentation; (v) modify, adapt, alter, translate, localize or create derivative works of the Loftware Software or its related documentation; (vi) reverse engineer, decompile, disassemble or otherwise attempt to derive the source code for the Loftware Software; (vii) distribute, transfer, sublicense, sell, use for service bureau, hosting or time sharing processing operations, reuse for any other purpose, lease, rent or loan the Loftware Software or its related documentation; (viii) remove, alter, cover or obfuscate any copyright notice or other proprietary rights notice placed in or on or displayed by the Loftware Software or its related documentation, whether in machine language or human readable form; or (ix) otherwise exercise any rights in or to the Loftware Software and its related documentation except as expressly permitted under this Agreement. Failure to comply with this Section 4 or use of the Loftware Software in any manner other than as expressly authorized herein will result in an immediate and automatic termination of Licensee's license rights and will make available to Loftware all other legal and equitable remedies.

(5) Third Party Software. The Loftware Software licensed hereunder may include certain third party software products ("Third Party Software") that require additional notices, disclaimers and/or terms and conditions. A document containing such additional Third Party Software notices, disclaimers and/or terms and conditions may be accessed at the root level of the physical media or Internet download of the Loftware Software and, to the extent applicable, Licensee accepts and agrees to comply with such notices, disclaimers and/or terms and conditions in connection with the Third Party Software to which they pertain.

(6) Limited Warranty; Exclusive Remedy. Loftware warrants to Licensee that the Loftware Software will operate substantially in accordance with its related documentation for a period of ninety (90) days from the date of delivery to Licensee (the "Software Warranty"). The Software Warranty is void if failure of the Loftware Software has resulted from abuse or use in a manner or for a purpose not authorized by this Agreement or the related documentation, or to the extent that Licensee makes any modifications to the Loftware Software. Loftware's entire liability and Licensee's exclusive remedy for breach of the Software Warranty shall be, at Loftware's option, either: (i) repair or replacement of the non-conforming Loftware Software; or (ii) refund of the amount actually paid to Loftware for such non-conforming Loftware Software and termination of the license.

EXCEPT FOR THE SOFTWARE WARRANTY SET FORTH IN THE PRECEDING PARAGRAPH, LOFTWARE DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE AND FITNESS FOR A PARTICULAR PURPOSE, FOR THE LOFTWARE SOFTWARE AND ALL ACCOMPANYING WRITTEN MATERIALS. EXCEPT FOR THE SOFTWARE WARRANTY SET FORTH IN THE PRECEDING PARAGRAPH, THE LOFTWARE SOFTWARE AND



ALL ACCOMPANYING WRITTEN MATERIALS ARE PROVIDED TO LICENSEE ON AN “AS IS” BASIS. LICENSEE UNDERSTANDS AND AGREES THAT LOFTWARE’S AGGREGATE LIABILITY FOR ANY LOSSES, DAMAGES OR OTHER LIABILITY SUFFERED OR INCURRED BY LICENSEE UNDER ANY THEORY OR BASIS SHALL BE LIMITED TO THE AMOUNTS PAID TO LOFTWARE BY LICENSEE UNDER THIS AGREEMENT IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE EVENT THAT CAUSED SUCH LOSS, DAMAGE OR LIABILITY. IN NO EVENT SHALL LOFTWARE BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR SIMILAR DAMAGES OF ANY KIND WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTIONS, LOSS OF BUSINESS DATA, OR ANY OTHER PECUNIARY LOSS, ARISING OUT OF THE USE OF OR INABILITY TO USE THE LOFTWARE SOFTWARE, EVEN IF LOFTWARE HAS BEEN ADVISED OF, OR OTHERWISE SHOULD HAVE BEEN AWARE OF, THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE LEGAL THEORY OR BASIS FOR SUCH CLAIM.

(7) Support and Maintenance. A copy of Loftware’s Software Support Services Agreement (the “Support Agreement”) has been provided to Licensee and may be accessed at the root level of the physical media or Internet download of the Loftware Software. Licensee understands and agrees that unless it has elected to purchase a Support Agreement by (i) submitting to Loftware a purchase order for a Support Agreement or otherwise communicating to Loftware its intention to purchase a Support Agreement and (ii) paying to Loftware the applicable annual software support fee related to a Support Agreement, Licensee will not be provided with on-going software technical support services or Enhancements and Upgrades to the Loftware Software.

(8) Audit Rights. Loftware or its designee shall have the right to audit Licensee’s use of the Loftware Software to ensure compliance with the terms of this Agreement. Licensee shall provide Loftware or its designee with reasonable assistance and access to information in connection with any such audit. Loftware shall not be responsible for any costs incurred by Licensee in cooperating with any such audit (whether conducted by Loftware or its designee). In the event the audit reveals that Licensee owes Loftware additional license fees or other amounts, Licensee shall promptly pay all such amounts to Loftware.

(9) Miscellaneous. This Agreement is governed by the laws of the State of New Hampshire, without regard to its conflicts of laws principles. The parties expressly disclaim the applicability of, and waive any rights based upon, the Uniform Computer Information Transactions Act. No provision of this Agreement shall be amended, modified, supplemented or waived except by written agreement signed by the parties hereto. This Agreement sets forth the entire understanding and agreement between the parties with respect to the subject matter set forth herein, and supersedes any prior or contemporaneous discussions, understandings, orders, requests or statements regarding such subject matter, other than the pricing and payment terms contained on the related invoice. In the event of a dispute between Loftware and Licensee where the parties are unable to reach a mutually agreeable resolution, the dispute shall be submitted to binding arbitration under the expedited commercial arbitration rules of the American Arbitration Association (“AAA”) then in effect; provided, however, that Loftware shall be entitled to avail itself of injunctive and other equitable rights and remedies in a court of competent jurisdiction in order to protect its rights and interests. Arbitrations shall take place in Portsmouth, New Hampshire. There shall be one (1) arbitrator mutually agreed to by both parties (or, if the parties are unable to agree on a single arbitrator, the arbitrator shall be chosen in accordance with the rules of the AAA); such arbitrator shall have experience in the area of software technology. After the hearing, the arbitrator shall decide the controversy and render a written decision setting forth the issues adjudicated, the resolution thereof and the reasons for the award. The award of the arbitrator shall be conclusive. Payment of the expenses of arbitration, including attorneys’ fees and the fee of the arbitrator, shall be assessed by the arbitrator based on the extent to which each party prevails. The Loftware Software is a “commercial computer product” as that term is described in DFAR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer product and/or commercial computer product documentation subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Products) and 12.11 (Technical Data) of the Federal Acquisition Regulations (“FAR”) and its successors. If acquired by or on behalf of any agency within the Department of Defense (“DOD”), the U.S. Government acquires this



**LOFTWARE**  
ENTERPRISE LABELING SOLUTIONS

commercial computer product and/or commercial computer product documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors. The manufacturer is Loftware, Inc., 249 Corporate Drive, Portsmouth, NH 03801. The Loftware Software and any technical data delivered under this Agreement may be subject to U.S. export control laws, rules and regulations and may be subject to export or import laws, rules and regulations in other countries. Licensee agrees to comply strictly with all such laws, rules and regulations and acknowledges that it has the responsibility to obtain such licenses to export, re-export or import as may be required after delivery of the Loftware Software. The provisions of this Agreement which by their sense and context are intended to survive the termination of this Agreement or Licensee's license rights shall so survive and continue to bind the parties.

**V. 2015 10-28**