

MARTELLO

Powering Network Performance

End User License Agreement (EULA)

Savision 2019

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SAVISION, Inc., a Delaware corporation, with offices at 320 Decker Drive, Suite 100, Irving, TX 75062, if CUSTOMER is located in the United States, or SAVISION Canada Limited, a Canadian corporation, with offices at 110-390 March Road, Kanata, Ontario, K2K 0G7, if CUSTOMER is located in Canada, and all related or wholly owned subsidiaries, hereinafter referred to as 'SAVISION', either directly or through its PARTNER, grants CUSTOMER the license set forth in this EULA to use the Licensed Product(s) set out in the Order Form, subject to the rights and obligations as specified herein.

1. Definitions

In this EULA, the following terms, whether used in the singular or the plural, shall have the following meaning:

'CUSTOMER':	CUSTOMER set out in the Order Form and each agent, employee or End-User of CUSTOMER using the Licensed Product(s) pursuant to this EULA, as applicable.
'Data':	(a) the information CUSTOMER provides to SAVISION in the course of ordering, purchasing and using the Licensed Products, including name, billing address (including postal code), email address, phone number, payment card, account number, or account verification code, payment card commencement date and expiration date, the account password CUSTOMER selects for its account with SAVISION, and (other) billing Data as defined in SAVISION'S Privacy Policy; (b) information SAVISION collects in the course of processing and fulfilling CUSTOMER orders, including Internet service provider, CUSTOMER Internet Protocol (IP) address; and (c) information about CUSTOMER'S installation and use of the Software.
'Documentation':	documentation, whether in written or electronic form, developed or owned by SAVISION that accompanies the Software.
'End-User'	the end user permitted to use the Licensed Product(s) pursuant to this EULA.
'EULA':	this End-User License Agreement.
'Intellectual Property Rights':	SAVISION'S intellectual property rights granted or recognized under any United States, Canadian or foreign legislation or any other statutory provision or common law or civil law principle in the Licensed Product(s), including but not limited to patents, copyrights, moral rights, trade name rights, trademark rights, database rights, know-how, whether registered or unregistered, including rights in any application, registration, renewal or extension and in whatever form.
'License Fee':	the fee(s) due by CUSTOMER to SAVISION to use the Licensed Product(s) as specified in the Order Form.
'Licensed Product(s)':	Software and Documentation as set forth in the Order Form.
'Order Form':	the order form, which details the Licensed Product(s), the Support and Maintenance, and the License Fee(s).

‘PARTNER’:	the third party through whom CUSTOMER has obtained the Licensed Product(s), which includes channel partners or service providers of SAVISION.
‘Software’:	those software programs developed, owned, licensed or otherwise made available by SAVISION, and as specified in the Order Form in object code form only.
‘Support and Maintenance’:	the support and maintenance services provided by SAVISION pursuant to a Support and Maintenance Agreement or other appropriate support agreement, and which may include the provision of upgrades, updates, new versions and help desk support.

2. Effective Date of this EULA

- 2.1 This EULA between CUSTOMER and SAVISION shall automatically take effect upon the earlier occurrence of one of the following events: (i) CUSTOMER installs, accesses or uses the Licensed Product(s), whether or not having signed the Order Form or paid a License Fee; (ii) CUSTOMER enters into an agreement with SAVISION, for instance by returning a signed Order Form, pursuant to which CUSTOMER obtains (the right to use) the Licensed Product(s); (iii) CUSTOMER enters into an agreement with a PARTNER pursuant to which CUSTOMER obtains (the right to use) the Licensed Product(s); or (iv) CUSTOMER clicks “I agree” or otherwise signifies his or her intention to be bound by this EULA. If the individual accepting this EULA is an agent, employee or End-User of an entity, he or she represents and warrants that: (a) he or she is duly authorized to accept this EULA on such entity’s behalf and to bind such entity; and (b) such entity has full power, corporate or otherwise, to enter into this EULA and perform its obligations hereunder.

3. License Grant and Restrictions

- 3.1 The Software is licensed, not sold. Pursuant to the terms and conditions of this EULA, SAVISION grants to CUSTOMER a non-transferable, non-exclusive, non-assignable right to use, display, copy (as set out in this EULA), load and run the Software, either (i) on any compatible computer platform at CUSTOMER’s location and use the Documentation for its internal business purposes; or (ii) as the parties may agree otherwise, for instance pursuant to a software as a service license model. CUSTOMER shall not lend, lease or rent out the Software. SAVISION’s software is restricted to a named management group, named instance, or named machine provided by CUSTOMER at time of purchase. All other such licensing restrictions will be specified within the Order Form or email containing CUSTOMER’s license key provided at the time of purchase. CUSTOMER shall use the Software only in full compliance with the agreed scope of the license terms.
- 3.2 Unless the parties agree otherwise in the Order Form, CUSTOMER first obtains a temporary license for a maximum of sixty (60) days. Upon completion of payment, a license will be issued according to the scope set forth in the Order Form.

- 3.3 For termed licenses, the use of the Software and the license grant pursuant to this EULA will expire at the moment the term expires, and without any notice being due. Termed licenses cannot be terminated for convenience prior to expiry.
- 3.4 For perpetual licenses, the license grant pursuant to this EULA will continue for an indefinite period of time. CUSTOMER understands and acknowledges that termination of Support and Maintenance may result in degradation of the Software functions and use.
- 3.5 CUSTOMER is entitled to make one (1) back-up copy of the Software. CUSTOMER is not entitled to make more copies of the Software than specified in this EULA, unless specifically allowed by applicable law.
- 3.6 CUSTOMER shall not modify, translate, reverse engineer, reverse compile, decompile, disassemble, decode, otherwise reduce the Software to human perceivable form, work around technical limitations, use components of the Software not running on the Software or alter the Licensed Product(s) in any manner, except to the extent that such prohibition is expressly prohibited under applicable law notwithstanding a contractual obligation to the contrary. CUSTOMER shall not copy or create derivative works of the Software or Documentation. CUSTOMER shall not by-pass or delete any of the copy protection methods that prevent the unauthorized copying or use of the Software. CUSTOMER shall not license, timeshare, electronically distribute, lease, rent, share or otherwise transfer, or grant a security interest in, the Software or Documentation, or export or import the Software and Documentation in violation of applicable law.
- 3.7 If a license to use the Licensed Product(s) was issued to CUSTOMER for an evaluation period, then such evaluation period commences on the date of delivery of the Software to CUSTOMER and automatically expires no more than sixty (60) days later at no charge to CUSTOMER, or, if CUSTOMER advises SAVISION it no longer wishes to evaluate the Licensed Product(s), upon SAVISION receiving such notice. CUSTOMER expressly acknowledges that the Licensed Product(s) will be rendered inoperative upon expiry of the evaluation period and will be responsible to remove these from its systems. Should CUSTOMER continue use of the Licensed Product(s) after the evaluation period, then the License Fee shall be due and payable, the terms of this EULA shall govern such use and SAVISION shall provide CUSTOMER a permanent key to enable CUSTOMER using the Licensed Product(s).
- 3.8 In order to ensure that the Software functions properly, from time to time SAVISION publishes updates to the Licensed Product(s) on its web pages. These updates improve the workings of the Software, ensure the Licensed Product(s) comply with minor Microsoft updates or remove any bugs known to SAVISION at the time of issuing of the update. CUSTOMER is entitled to receive such updates if it has entered into a Support and Maintenance Agreement with SAVISION (see Order Form for details).
- 3.9 SAVISION does not represent that it will continue to manufacture or support any version of its Licensed Product(s) indefinitely or for a specific period of time. SAVISION reserves the right to modify any of the specifications or characteristics of the Licensed Product(s), to remove any Licensed Product(s) from the market, and/or to cease manufacturing or supporting any Licensed Product(s), and shall provide CUSTOMER reasonable advance written notice should it have the intention to do so.
- 3.10 The Software is not specifically developed, intended or licensed for use in any nuclear, aviation, mass transit or medical application or in any other inherently dangerous or high-risk applications. SAVISION AND ITS PARTNERS, RESELLERS AND LICENSORS

SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM SUCH USE IF CUSTOMER OR ANY OTHER PERSON OR ENTITY USES THE SOFTWARE FOR SUCH PURPOSES.

- 3.11 SAVISION may, from time to time, give CUSTOMER written notice of amendments to this EULA. Any such amendment will automatically become a part of this EULA thirty (30) days from the date of such notice, unless otherwise specified in the notice.
- 3.12 The geographic maps feature is sub-licensed by SAVISION from Microsoft BING. If CUSTOMER makes use of geographic maps feature in any SAVISION product, then CUSTOMER will be limited to a maximum of ten (10) End-Users. By signing this EULA, CUSTOMER agrees that they will limit use of the geographic maps feature to not more than ten (10) End-Users. Should CUSTOMER require more than ten (10) End-Users, then it is CUSTOMER'S responsibility to license more users from Microsoft BING directly. It is not SAVISION's responsibility to police the number of users, and CUSTOMER agrees to indemnify, defend (at SAVISION's option) and hold harmless SAVISION in the case there is a breach of Microsoft BING licensing.

4. License Fee

- 4.1 CUSTOMER will pay SAVISION or PARTNER – as the case may be – the applicable License Fee for the Licensed Product(s) in advance within thirty (30) days of the invoice date, exclusive of all applicable taxes, for which CUSTOMER shall be responsible.
- 4.2 For term licenses for a period of one (1) year, following the first year of the term, SAVISION may, on an annual basis, increase the License Fees payable provided that any such increase does not exceed, on a percentage basis, the increase in the Consumer Price Index, published either by Statistics Canada or the United States Department of Labor, as applicable, over the immediately preceding one year period.
- 4.3 Should CUSTOMER not pay the applicable License Fee when due, then SAVISION shall be entitled to charge CUSTOMER interest at a rate of 1.5% percent per month (19.57% per annum) or the maximum rate permitted by law, whichever is lower, on the outstanding amounts, calculated from the date that they were due to SAVISION.
- 4.4 Upon request, CUSTOMER shall immediately lend its full cooperation to any investigations to be conducted by or on behalf of SAVISION in relation to CUSTOMER'S compliance with the agreed restrictions on use in this EULA. At the first request of SAVISION, CUSTOMER shall grant SAVISION access to its buildings and systems. SAVISION shall maintain the confidentiality of all company information to be regarded as confidential that SAVISION obtains from or on the premises of CUSTOMER within the context of this type of investigation, in so far this information does not relate to the use of the Software itself.
- 4.5 CUSTOMER shall not withhold or deduct any amounts from, or set-off amounts owed by SAVISION or a SAVISION licensor or PARTNER to CUSTOMER against any amounts invoiced by SAVISION or a SAVISION licensor or PARTNER under this EULA.

5. Intellectual Property Rights and Confidential Information

- 5.1 CUSTOMER acknowledges that any and all of the Intellectual Property Rights used or embodied in or in connection with the Licensed Product(s) shall be and remain the exclusive property of SAVISION. This EULA transfers to CUSTOMER neither title nor any Intellectual Property Rights to any of the Software, Documentation, or any Intellectual Property Rights embodied or used in connection therewith, except for the rights expressly granted herein. All rights not expressly granted are hereby reserved to SAVISION.
- 5.2 'Confidential Information' shall mean any trade secrets, confidential data, know-how, performance, benchmarking or feature-related information or other confidential information relating to or used in the Licensed Product(s). CUSTOMER agrees to keep confidential all Confidential Information disclosed to it, protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of Confidential Information), not to use any Confidential Information for any purpose not authorized under this EULA, and not to disclose, transfer or otherwise provide to third parties any such Confidential Information. Confidential Information shall not include any information which is generally available to the public without a breach of confidentiality obligations.
- 5.3 CUSTOMER shall not remove, cover, or alter any SAVISION proprietary rights notice, such as designations, logos, trade names or trademarks on the Licensed Product(s) or any copies thereof.

6. Personal Data

- 6.1 CUSTOMER authorizes SAVISION to process CUSTOMER's Data, for the purposes described in the Privacy Policy. CUSTOMER acknowledges that use of Data includes processing and fulfilling your orders and providing information to CUSTOMER about the Software and offering solutions. SAVISION may share CUSTOMER Data with its resellers and PARTNERS.

7. Warranty

- 7.1 For a period of thirty (30) days from the date of delivery of the Software to CUSTOMER, SAVISION warrants that it shall operate substantially and perform in accordance with the functional specifications and the Documentation.
- 7.2 If the Software does not conform to the warranty in Section 7.1, then, upon notification of such nonconformance from CUSTOMER, SAVISION shall undertake all reasonable endeavors to correct the error or malfunction or to replace such copy of the Licensed Products free of charge. The foregoing provisions of this Section 7.2 state CUSTOMER's sole and exclusive remedy, and SAVISION's entire liability, for any breach of the warranty in Section 7.1 above.

- 7.3 SAVISION does not warrant that the Software will operate uninterrupted or that it will be free from all defects or errors or that the applications contained in the Software are designed to meet all CUSTOMER's business requirements. Except as specifically set forth in this Section 7, SAVISION and its licensors, resellers and PARTNERS disclaim all other warranties, or conditions, express, statutory, or implied, including without limitation, any implied warranties or implied conditions of merchantability, no infringement or fitness for a particular purpose.
- 7.4 In addition to this the rights set out in this Section 7, if pursuant to the Order Form CUSTOMER is under valid Support and Maintenance Agreement, then SAVISION shall use all reasonable efforts to ensure that the Software functions in accordance with the terms of such agreement.

8. Limitation of Liability and Indemnities

- 8.1 **IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF SAVISION OR ITS LICENSORS, SUPPLIERS, PARTNERS AND RESELLERS (OR EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AFFILIATES) TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY DAMAGES EXCEED THE LICENSE FEES PAID BY CUSTOMER IN THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE CLAIM. IN NO EVENT WILL SAVISION OR ITS LICENSORS, SUPPLIERS, PARTNERS OR RESELLERS (OR EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AFFILIATES) BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, LOSS OF REVENUE OR PROFIT, LOSS OF OR DAMAGE TO DATA OR OTHER COMMERCIAL OR ECONOMIC LOSS, WHETHER BASED ON BREACH OF CONTRACT, EQUITY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE PARTIES HAVE AGREED THAT THE LIMITATIONS SPECIFIED IN THIS SECTION 8.1 WILL SURVIVE AND APPLY, WHETHER OR NOT THE ALLEGED BREACH OR DEFAULT IS A BREACH OF A FUNDAMENTAL CONDITION OR TERM OR A FUNDAMENTAL BREACH AND EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS EULA IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY OF CERTAIN DAMAGES, SO THESE LIMITATIONS MAY NOT APPLY TO CUSTOMER.**
- 8.2 Subject to Section 8.1, SAVISION shall defend CUSTOMER in any third party action, suit or claim that CUSTOMER's use or possession of the Licensed Product(s) infringes any third party United States or Canadian intellectual property rights and shall pay settlement amounts agreed to by SAVISION and/or any losses, damages liabilities, expenses, or costs (including, but not limited to, reasonable legal fees) awarded to such third party against CUSTOMER in a court of competent jurisdiction, provided that: (i) CUSTOMER promptly notifies SAVISION in writing of any such action, suit or claim; (ii) CUSTOMER shall give SAVISION sole control of the defence and settlement of the claim; (iii) at SAVISION's request, CUSTOMER shall fully cooperate at its own expense with SAVISION in defending or settling such claim; and (iv) CUSTOMER shall not settle any claims without SAVISION's consent, or compromise the defense of any such claims. If: (a) SAVISION becomes aware of an actual or potential claim; or (b) CUSTOMER provides SAVISION with notice of an actual or potential claim, SAVISION may (or in the case of an injunction against CUSTOMER, shall), at SAVISION's sole

option and determination: (I) procure for CUSTOMER the right to continue to use the Licensed Product(s); or (II) replace or modify the Licensed Product(s) with equivalent or better software or technology so that CUSTOMER's use is no longer infringing; or (III) if (I) or (II) are not commercially reasonable, take return of the affected Licensed Product(s) and pay to CUSTOMER the depreciated capital cost of the affected Licensed Product(s), as calculated by applying a three (3) year straight-line depreciation schedule commencing from the date of delivery, less any outstanding moneys owed on such affected Licensed Product(s). The obligations in this Section 8.2 do not extend to (1) any claim based upon infringement or alleged infringement of any intellectual property right by the combination of the Licensed Product(s) with other products, software or services not provided or performed by SAVISION; (2) any claim related to or in connection with any modification of the Licensed Product(s) by anyone other than SAVISION; (3) any compliance by SAVISION with the specific instructions of CUSTOMER; (4) any use, distribution, or exercise of any other right in respect to the Licensed Product(s) outside what is reasonably foreseeable; or (5) any claim based upon CUSTOMER's breach of the terms and conditions in this EULA. The foregoing are SAVISION's sole and exclusive obligations, and CUSTOMER's sole and exclusive remedies, with respect to infringement or misappropriation of any intellectual property right.

- 8.3 CUSTOMER shall, at its own expense and at SAVISION's request, indemnify, defend (at SAVISION's option) and hold harmless SAVISION and its licensors, suppliers, resellers and PARTNERS (and each of their respective officers, directors, employees and affiliates) from and against any and all liabilities, claims, damages, losses, costs, expenses and other amounts (including reasonable legal fees) that arise or result, directly or indirectly, from CUSTOMER's use of the Licensed Product(s).

9. Term and Termination

- 9.1 This EULA takes effect as set out in Section 1 hereof and shall remain in force either for an indefinite period of time or the term of the license specified in the Order Form for the Licensed Product(s), unless terminated earlier as set forth below. The parties may, upon mutual agreement, at least thirty (30) days before the end of the term, renew this EULA pursuant to an executed Order Form applicable to the Licensed Product(s).
- 9.2 Notwithstanding any provisions contained herein, this EULA may be terminated with immediate effect by either party upon written notification by the party not in default if any of the following events take place:
- (i) if the other party is, at any time, in default under this EULA and, if such default is capable of cure, fails to cure such default within thirty (30) days upon the receipt of a written notification from the other party specifying such default; or
 - (ii) if either party is for any reason (other than a reason directly attributable to the other party) prevented from performing its obligations hereunder for a period of three (3) months or for a total period of six (6) months in any period of twelve (12) consecutive months.
- 9.3 Notwithstanding any provisions contained herein, this EULA may be terminated with immediate effect by SAVISION upon written notification to CUSTOMER if any of the following events take place:

- (i) if CUSTOMER becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of its creditors, files or has filed against it by a third party any petition under any bankruptcy act, or an application for a receiver of CUSTOMER is made by anyone and such petition or application is not resolved in favor of CUSTOMER within sixty (60) days; or
 - (ii) if CUSTOMER does not pay the License Fees or pays later than sixty (60) days after the date the License Fees are due and payable, and without prejudice to any other rights SAVISION may have under this EULA or the law.
- 9.4 Notwithstanding anything contained in this EULA to the contrary, SAVISION may also, in its sole discretion, terminate or suspend access to the Software at any time.
- 9.5 If any of these events occur, termination shall become effective forthwith or on the date set forth in the written notice of termination.
- 9.6 The expiry or termination of this EULA shall be without prejudice to the rights of the parties accrued up to the date of such expiry or termination. Upon expiry or termination of this EULA for any reason, including, without limitation, as a result of CUSTOMER not renewing the license or not paying the applicable License Fee, CUSTOMER shall return or destroy (as SAVISION shall instruct) no later than fourteen (14) days thereafter any documentation, technical information and any other data in respect of the Licensed Product(s) supplied to CUSTOMER during the term of this EULA and all and any copies made in whole or in part of the same, and at SAVISION's request, CUSTOMER shall furnish SAVISION with a statement certifying that the same has been done. The following Sections shall survive any termination or expiration of this EULA: 1, 3.6, 4.3, 4.4, 5, 6, 7.3, 8, 9 and 10.

10. General

- 10.1 Force Majeure. Notwithstanding anything else in this EULA, and except for the obligation to pay money, no default, delay or failure to perform on the part of either party shall be considered a breach of this EULA if such default, delay or failure to perform is shown to be due to causes such as strikes, lockouts or other labor disputes, riots, civil disturbances, actions or inaction of governmental authorities or suppliers, material breakdown of its equipment, epidemics, war, embargoes, severe weather, fire, flood, earthquakes, acts of God or the public enemy, disasters, default of a common carrier, or similar causes beyond reasonable control of the party charged with a default ('Force Majeure'). A failure due to Force Majeure shall only be excused to the extent of the duration of such Force Majeure and a reasonable time thereafter.
- 10.2 Partial Invalidity. In the event that any terms, conditions or provision contained in this EULA or any part thereof are found to be invalid, unlawful or unenforceable to any extent the parties shall endeavor to agree such amendments which shall in so far as possible effect the intentions expressed therein. In default of such agreement, such invalid term, condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.
- 10.3 Assignment. CUSTOMER may not assign this EULA or any rights or obligations hereunder, directly or indirectly, by operation of law or otherwise, without the prior written consent of SAVISION. SAVISION may freely assign this EULA and upon such assignment shall be fully released from all of its obligations hereunder. Subject to the foregoing, this EULA shall inure to the benefit of and be binding upon the parties and

their respective successors and permitted assigns. Any attempted assignment in violation of this Section shall be void.

- 10.4 Waiver. Failure or neglect by SAVISION to enforce any of the provisions hereof at any time shall not be construed or deemed to be a waiver of SAVISION's rights hereunder nor in any way affect the validity of the whole or any part of this EULA nor prejudice SAVISION's rights to take subsequent action. The express waiver by SAVISION of any provision, condition or requirement of this EULA shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.
- 10.5 Publicity. Neither party shall: (i) disclose the existence or terms of this EULA to any third party or make any press release or other public communication (other than to an affiliate or except where required by applicable law or regulation); or (ii) use the names or trademarks of the other party, without the prior written consent of such party, such consent to be in such party's sole and absolute discretion.
- 10.6 Notices. All notices required by or relating to this EULA will be in writing and will be sent by electronic mail to SAVISION to: itops-contracts@martellotech.com; and to CUSTOMER at the email address set out in the Order Form.
- 10.7 Third Party Beneficiary. SAVISION's PARTNER is a third party beneficiary to the rights reserved for SAVISION under this EULA, and by entering into this EULA, SAVISION shall be deemed to have accepted such on behalf of its PARTNER. Except to the extent expressly set forth herein, there are no third party beneficiaries to this EULA.
- 10.8 Relationship of the Parties. Nothing contained in this EULA shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties shall at all times be that of independent contractors. Neither party shall have authority to contract for or bind the other in any manner whatsoever.
- 10.9 Government Use. The Software and Documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the software and accompanying documentation by the U.S. Government shall be governed solely by the terms of this EULA and shall be prohibited except to the extent expressly permitted by the terms of this EULA.
- 10.10 Export Regulations. The Software is subject to United States and Canadian export laws and regulations. CUSTOMER must comply with all Canadian, United States and international export laws and regulations that apply to the Software. These laws include restrictions on destinations, End-Users and end use.
- 10.11 Governing Law (United States). If CUSTOMER is located in the United States, this EULA shall be construed under and governed by the laws of New York, including its Uniform Commercial Code, without reference to conflict of laws principles. CUSTOMER consents and agrees that the courts of New York shall have the exclusive jurisdiction over any legal action or proceeding arising out of or relating to this EULA, and CUSTOMER consents to the jurisdiction of such courts for any such action or proceeding and CUSTOMER agrees that CUSTOMER will pay to SAVISION all legal costs and disbursements incurred by SAVISION in enforcing this EULA.

Governing Law (Canada). If CUSTOMER is located in Canada, this EULA shall be construed under and governed by the laws of the Province of Ontario and the federal

laws of Canada applicable therein, without reference to conflict of laws principles. CUSTOMER consents and agrees that the courts of the Province of Ontario, in Ottawa, Canada, shall have exclusive jurisdiction over any legal action or proceeding arising out of or relating to this EULA, and CUSTOMER consents to the jurisdiction of such courts for any such action or proceeding and CUSTOMER will pay to SAVISON all legal costs and disbursements incurred by SAVISON in enforcing this EULA.

General. Notwithstanding the foregoing, nothing in this EULA shall prevent SAVISION from seeking injunctive relief from, or bringing a claim or enforcing a judgment in, a court of competent jurisdiction within or outside of New York or the Province of Ontario. No choice of laws rules of any jurisdiction shall apply to this EULA. CUSTOMER waives all rights that CUSTOMER may have or that may hereafter arise to contest the jurisdiction of such courts. The parties waive any right to a jury trial with respect to any action brought in connection with this EULA. The parties agree that none of the obligations herein will be governed by the United Nations Convention on Contracts for the International Sale of Goods.

- 10.12 Arbitration. In the event a dispute arises between the parties hereto arising out of or in connection with or with respect to this EULA or any breach thereof, such dispute shall be determined and settled by arbitration: (i) if CUSTOMER is located in the United States, the arbitration shall be conducted in New York, New York, in accordance with the rules of the American Arbitration Association ("AAA"); and (ii) if CUSTOMER is located in Canada, the arbitration shall be conducted in Ottawa, Ontario, in accordance with the *Arbitration Act, 1991* (Ontario). The award rendered thereon by the arbitrator shall be final and binding on the parties thereto, and judgment thereon may be entered in any court of competent jurisdiction. Nothing in this Section shall prevent either party from applying to a court of competent jurisdiction for equitable or injunctive relief.
- 10.13 Further Assurances. CUSTOMER shall execute and deliver all such further documents and instruments and do all acts and things as SAVISION may reasonably require to carry out the full intent and meaning of this EULA.
- 10.14 English Language. The parties hereto have requested that this EULA and all correspondence and all documentation relating to this EULA, be written in the English language. Les parties aux présentes ont exigé que la présente entente, de même que toute la correspondance et la documentation relative à cette entente, soient rédigées en langue anglaise.
- 10.15 Entire Agreement. This EULA (including the Order Form and Support and Maintenance Agreement, if applicable) constitutes the entire agreement between the parties and supersedes all prior or contemporaneous communications, agreements and understandings, written or oral, with respect to the subject matter hereof.
- 10.16 Basis of Bargain. Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this EULA are materially bargained for and that such warranty disclaimers and liability and remedy limitations have been taken into account and reflected in determining the consideration to be given by each party to enter into this EULA.