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- a. Limitation on Type and Amount of Liability. IN NO EVENT WILL NEPTUNE OR ITS SUPPLIERS SHALL HAVE NO LIABILITY (DIRECTLY OR INDIRECTLY) FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES; FOR LOSS OF PROFITS, USE, REVENUE, OR DATA; OR FOR BUSINESS INTERRUPTION (REGARDLESS OF THE LEGAL THEORY FOR SEEKING SUCH DAMAGES OR OTHER LIABILITY). IN ADDITION, THE LIABILITY OF NEPTUNE AND ITS SUPPLIERS ARISING OUT OF OR RELATING TO ANY NEPTUNE MATERIALS, SUBSCRIPTION OR SERVICES WILL NOT EXCEED THE AMOUNT PAID OR PAYABLE BY LICENSEE FOR SUCH NEPTUNE MATERIALS, SUBSCRIPTION, OR SERVICES, RESPECTIVELY.
- b. Application of and Basis for Limitations. THE LIMITATIONS OF LIABILITY IN THIS SECTION (LIMITATIONS OF LIABILITY) WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW TO ANY DAMAGES OR OTHER LIABILITY, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE, EVEN IF NEPTUNE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITY AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE HEREUNDER FAIL OF THEIR ESSENTIAL PURPOSE. ALSO, LICENSEE AGREES THAT THE LICENSE, SUBSCRIPTION AND SERVICES FEES AND OTHER FEES CHARGED BY NEPTUNE AND PAID BY LICENSEE ARE BASED ON AND REFLECTIVE OF THE ALLOCATION OF RISK CONTEMPLATED BY THIS SECTION 11 (LIMITATIONS OF LIABILITY) AND THAT THE LIABILITY LIMITATIONS IN THIS SECTION 11 (LIMITATIONS OF LIABILITY) ARE AN ESSENTIAL ELEMENT OF THE AGREEMENT BETWEEN THE PARTIES.

12. Term and Termination

- a. Term; Termination or Suspension. Each license under this Agreement, with respect to each specific set of Licensed Materials covered by this Agreement, will

become effective as of the latest to occur of: (a) this Agreement becoming effective, (b) payment by Licensee of the applicable fees, excluding licenses (such as evaluation licenses) where no fees are required, (c) delivery of the specific Licensed Materials, and (d) in the case of Neptune Materials provided in connection with a Subscription, upon commencement of the applicable Subscription period. Each of Neptune or Licensee may terminate this Agreement, Licensee's license as to Licensed Materials, Licensee's Subscription, and/or the provision of Services relating to the Licensed Materials if the other party is in breach of this Agreement and fails to cure such breach within ten (10) days after written notice of the breach. In addition, Neptune may, as an alternative to termination, suspend Licensee's license as to the Licensed Materials, Licensee's Subscription, the provision of Services relating to the Licensed Materials, and/or other Neptune obligations or Licensee rights under this Agreement (or under other terms, if any, relating to materials associated with the Licensed Materials), if Licensee fails to make a payment to Neptune or otherwise fails to comply with the provisions of this Agreement or other terms relating to any such license, Subscription, Services, or other associated materials. Neptune may also terminate this Agreement if Licensee becomes subject to bankruptcy proceedings, becomes insolvent, or makes an arrangement with Licensee's creditors. This Agreement will terminate automatically without further notice or action by Neptune if Licensee goes into liquidation. Licensee acknowledges and agrees that Neptune may assign or sub-contract any of its rights or obligations under this Agreement.

- b. Effect of Termination of Agreement or License. Upon termination or expiration of this Agreement, the licenses granted hereunder will terminate. Upon termination or expiration of any license granted to Licensee, Licensee must cease all use of Neptune Materials to which such license applies, any Subscription (including, without limitation, associated and third-party subscriptions and services), and any Services and Uninstall all copies of the Neptune Materials. At Neptune's request, Licensee agrees to destroy or return to Neptune. Neptune reserves the right to require Licensee to show satisfactory proof that all copies of the Neptune Materials have been Uninstalled and, if so requested by Neptune, destroyed or returned to Neptune. If Licensee's Subscription is terminated or expires, but this Agreement and Licensee's license to the Licensed Materials remains in effect, any rights of Licensee based on the Subscription (including, without limitation, rights with respect to Previous Versions) will terminate, and (unless otherwise authorized by the Subscription Program Terms) Licensee must comply with the obligations of Section 2.b.i. (Effect of Upgrades) with respect to (including the obligations to cease use of, Uninstall and destroy or return) all copies of such Previous Versions.
- c. Survival. Sections 3, 7, 8, 9, 10, and 11 will survive and termination or expiration of this Agreement.

13. General Provisions

- a. Notices. Any notices to be provided hereunder will be deemed delivered: (a) five (5) calendar days after deposit in the United States Mail, postage prepaid, certified or registered mail, return receipt requested; (b) three (3) calendar days after deposit with a national overnight courier; (c) if given by telex, telegraph or facsimile, one (1) day after transmission, provided confirmation of such notice is also sent by national overnight courier or delivered in person; or (d) upon delivery if delivered in person or by messenger, in each case, addressed to the following addresses (or such other address as any party may be notified of as described above):

If to Neptune: Neptune Technology Group Inc.
Attn.: _____
1600 Alabama Highway 229
Tallahassee, Alabama 36078

[If to Licensee, Neptune may contact the person identified on the electronic order form or submission form.

- b. Governing Law. The laws of the State of Florida (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement.
- c. No Assignment; Insolvency. Licensee may not assign this Agreement or any rights hereunder (whether by purchase of stock or assets, merger, change of control, operation of law, or otherwise) without Neptune's prior written consent, which may be withheld in Neptune's sole and absolute discretion, and any purported assignment by Licensee will be void. In the context of any bankruptcy or similar proceeding, this Agreement is and will be treated as an executory contract of the type described by Section 365(c)(1) of Title 11 of the United States Code and may not be assigned without Neptune's prior written consent, which may be withheld in Neptune's sole and absolute discretion.
- d. Neptune Subsidiaries and Affiliates. Licensee acknowledges and agrees that Neptune may arrange to have its subsidiaries and affiliates engage in activities in connection with this Agreement, including, without limitation, delivering Neptune Materials and providing Subscriptions and Services, provided that Neptune (and not such subsidiaries and affiliates) will remain subject to the obligations of Neptune under this Agreement. Licensee also agrees that Neptune's subsidiaries and affiliates may enforce (including taking actions for breach of) this Agreement.
- e. Severability. If and to the extent any provision of this Agreement is held illegal, invalid, or unenforceable in whole or in part under applicable law, such provision or such portion thereof will be ineffective as to the jurisdiction in which it is illegal, invalid, or unenforceable to the extent of its illegality, invalidity, or unenforceability and will be deemed modified to the extent necessary to conform to applicable law so as to give the maximum effect to the intent of the parties. The

illegality, invalidity, or unenforceability of such provision in that jurisdiction will not in any way affect the legality, validity, or enforceability of such provision or any other provision of this Agreement in any other jurisdiction.

- f. No Waiver. No term or provision of this Agreement will be considered waived, and no breach excused, unless such waiver is in writing signed on behalf of the party against which the waiver is asserted. No waiver (whether express or implied) will constitute consent to, waiver of, or excuse of any other, different, or subsequent breach.
- g. Audits. Licensee agrees that Neptune has the right to require an audit (electronic or otherwise) of the Neptune Materials and the Installation thereof and Access thereto. As part of any such audit, Neptune or its authorized representative will have the right, on fifteen (15) days' prior notice to Licensee, to inspect Licensee's records, systems and facilities, including machine IDs, serial numbers and related information, to verify that the use of any and all Neptune Materials is in conformance with this Agreement. Licensee will provide full cooperation to enable any such audit. If Neptune determines that Licensee's use is not in conformity with the Agreement, Licensee will obtain immediately and pay for a valid license to bring Licensee's use into compliance with this Agreement and other applicable terms and pay the reasonable costs of the audit. In addition to such payment rights, Neptune reserves the right to seek any other remedies available at law or in equity, whether under this Agreement or otherwise.
- h. Construction. Ambiguities in this Agreement will not be construed against the drafter.
- i. Force Majeure. Neptune will not be liable for any loss, damage or penalty resulting from delays or failures in performance resulting from acts of God, supplier delay or other causes beyond Neptune's reasonable control.
- j. Export Control. Licensee acknowledges that the Neptune Materials are subject to the export control laws and regulations of the United States ("U.S.") and will abide by those laws and regulations. Under U.S. export control laws and regulations, the Neptune Materials may not be downloaded or otherwise exported, re-exported, or transferred to restricted countries, to restricted end users or for restricted end uses. Licensee represents, warrants and covenants that neither Licensee nor Licensee's Personnel (a) are located in, or a resident or a national of, a restricted country; and (b) are on any of the U.S. government lists of restricted end users. Licensee understands that the requirements and restrictions of U.S. law as applicable to Licensee may vary depending on the Neptune Materials downloaded and may change over time, and that, to determine the precise controls applicable to the Neptune Materials, it is necessary to refer to the U.S. Export Administration Regulations and the U.S. Department of Treasury, Office of Foreign Assets Control Regulations.

- k. Entire Agreement. This Agreement and any other terms referenced in this Agreement (such as the Subscription Terms and the Services terms) constitute the entire agreement between the parties (and merges and supersedes any prior or contemporaneous agreements, discussions, communications, agreements, representations, warranties, advertising or understandings) with respect to the subject matter hereof, except that particular Neptune Materials may be subject to additional or different terms associated with such Neptune Materials. The parties acknowledge that, in entering into this Agreement, they are not relying on any agreements, discussions, communications, agreements, representations, warranties, advertising or understandings other than as expressly set forth in this Agreement. Licensee acknowledges and agrees that Neptune may add to or change the Subscription Terms and the Services terms from time to time, provided that, Neptune will provide written notice of the additions or changes (and may allow Licensee not to renew, may permit Licensee to terminate, and may offer other options with respect to Subscriptions or Services) before the additions or changes are effective as to Licensee. In the event of a conflict between this Agreement and any other terms of Neptune (including, without limitation, the Subscription Terms, the Services Terms, or such additional or different terms), the other terms will apply. Terms stipulated by Licensee in any communication by Licensee which purport to vary this Agreement or such other terms will be void and of no effect unless agreed in a writing signed by an authorized representative of Neptune. Any other modifications to this Agreement will also be invalid unless agreed to in a writing signed by an authorized representative of Neptune.

The signatory for each party set forth below represents that he/she is legally authorized to enter into this Agreement as a binding contractual commitment of the party for whom he/she signs.

Neptune:

Licensee:

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A

Software

Please refer to the New Customer Guide for the software description for

N_SIGHT & N_SIGHT PLUS

Exhibit B

License Types

1. Licensee-Hosted Network License. If the License Identification identifies the License Type for the Licensed Materials as a “Licensee-Hosted Network License,” Licensee may Install copies of the specific release of the Licensed Materials designated in the applicable License Identification on a Computer and permit Access to such Licensed Materials on multiple Computers, on a Networked Basis, solely by Licensee’s Personnel, solely for Licensee’s Internal Business Needs, only so long as the maximum number of concurrent Authorized Users does not exceed the Permitted Number of Authorized Users. A Network License shall be Accessible for the Term set for in the applicable License Identification.
2. Third-Party Hosted Network License. If the License Identification identifies the License Type for the Licensed Materials as a “Third Party Hosted Network License,” Neptune will permit Access to such Licensed Materials solely by Licensee’s Personnel, solely for Licensee’s Internal Business Needs, only so long as permitted in the applicable License Identification.

Exhibit C

Licensed Materials

See purchase invoice