

# GENERAL TERMS

Updated: May 1, 2020

**1 APPLICABILITY.** These terms ("General Terms") shall only be applicable to Agreements where the Offer Made Date on the Order Form is on or after May 1, 2020. These terms are in addition to any other terms and conditions provided under the Agreement.

## **2 PERMITTED USERS AND USER ACCOUNTS**

**2.1 Access to Software or GLN Services.** Access to the Software or GLN Services may be, by design, require an individual to be authenticated against a User Account before being provided with access. Depending on the design of the Software or GLN Services, Descartes may either create the User Account as required or provide Customer the ability, through an Administrative User, to manage its own User Accounts. The processing of any personal data that may be provided by individuals to Descartes in setting up a User Account is governed by Descartes privacy policy, accessible at <https://www.descartes.com/legal/privacy-center>.

**2.2 Permitted Users.** Customer agrees that it is responsible for all Permitted Users who Use the Software or GLN Services. Accordingly, the terms, conditions, restrictions and obligations of the Agreement (excluding Customer's payment obligation to Descartes) shall be construed to also apply to all Permitted Users, and Customer shall be liable for any breach of the Agreement by a Permitted User.

**2.3 Administrative User.** Where the Software or GLN Services permits the use of an Administrative User, the Administrative User shall only set up User Accounts for Permitted Users. Customer understands and agrees that it will be solely liable in the event an Administrative User improperly sets up a User Account, creates a User Account for the wrong person, or otherwise accesses, modifies, deletes, or resets any User Account. Customer acknowledges that Descartes relies solely on User Accounts to validate if a person has the authority to use the Software or GLN Services.

**2.4 Security of User Accounts.** Customer shall be solely responsible and liable for ensuring its Permitted Users are properly securing their User Accounts. Customer shall be responsible for any actions arising from Customer, Administrative User, or Permitted User improperly storing or securing their User Account.

## **3 INTEGRATIONS WITH THIRD PARTIES**

**3.1 Data Providers.** Some GLN Services and Software are designed to use or exchange specific information and data provided by third parties to which Customer has some pre-existing relationship, including but not limited to Customer's vendors, suppliers, technology providers, or contractors (collectively "Data Providers"). Customer is responsible for obtaining from Data Providers all necessary permissions or consent required by law to provide such information or data to Descartes. Customer understands that as Descartes has no contractual relationship with the Data Providers. Accordingly, Customer shall be solely responsible for ensuring the Data Providers: (i) provide such data and information to Descartes, either directly or indirectly via a third party, in a

compatible format and through compatible communication protocols; (ii) provide Descartes with all necessary licenses or rights to the data for Descartes to perform its obligations under the Agreement, including, without limitation, rights to store, transmit, and reproduce such data as would reasonably be required; (iii) to maintain, verify and update such data and information (or to cause the Data Providers to do so), including without limitation the accuracy, recency, and completeness of such data and information; and (iv) managing any required communication or coordination with the Data Provider and be responsible for any associated delays that may arise from the lack of adequate communication nor coordination with the Data Provider. Descartes is in no way obligated to accept, receive, transmit, or otherwise exchange data with any Data Provider unless and until the applicable Data Provider complies with Descartes' reasonable requirements for the exchange of data, including without limitation any file formatting, data array, security, or other requirements.

**3.2 Technology Providers.** Certain Software or GLN Services require or are powered by third party content or technology, including but not limited to map content and pricing formulas or calculators. Customer understands that some third parties who maintain such third party content or technology may require Customer to agree to user terms, acceptable use policies, or other similar policies ("Technology Provider Policies") which will be provided to Customer in advance of use. If Customer, acting reasonably, is unable to comply with any Technology Provider Policies, and Descartes is unable to or unwilling to provide a reasonable substitute, the Customer may, as its sole remedy and upon thirty (30) days written notice to Descartes, terminate without penalty the applicable Agreement.

**3.3 Maps and Map Content.** Where certain Software or GLN Services utilize maps or map data ("Maps"), Customer understands that there are inherent limitations in Maps for which Descartes expressly disclaims any liability for. Such limitations may include but are not limited to:

**(a)** Maps reflects conditions as they existed at various points in time. Accordingly, Maps may contain inaccurate or incomplete data or information due to the passage of time, road construction, changing conditions, and otherwise.

**(b)** Maps are comprised of compilations of data and information from government and other sources which may contain errors and omissions. Accordingly, such Maps may contain inaccurate or incomplete data and information due to the nature and processing of such sources.

**(c)** Unless specifically stated otherwise, Maps do not contain, include, analyze, process, consider or reflect any of the following categories of information: Neighborhood quality or safety; population density; availability or proximity of law enforcement, emergency, rescue, medical or other assistance; construction work, zones or hazard; road and lane closures; legal restrictions (such as vehicular type, weight, load, height and speed restrictions); road slope or grade; bridge height, width, weight or other limits; road, traffic or traffic

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facilities safety or conditions; weather conditions; pavement characteristics or conditions; special events; traffic congestion; or travel time.

**3.4 External Links.** Certain Software or GLN Services may, as part of their intended functionality, provide links to information or services which Descartes reasonably identifies as being maintained a third party. These links do not constitute an endorsement, sponsorship, recommendation, association, or affiliation by or with any such third party or any content, service, or products that the third party may produce. Customer's access and use of this external content is at Customer's own risk and it is Customer's responsibility to take all protective measures to guard against viruses and other destructive elements. Descartes disclaims any liability that may arise from Customer's use or access to third party links.

## 4 FEES AND PAYMENT

**4.1 Fees.** The following terms and conditions shall apply in respect of payment of Fees by Customer:

- (a) Customer shall pay Descartes the Fees in the amounts and on such terms as set out in the Agreement.
- (b) Unless otherwise expressly provided in the Agreement, all Fees are expressed in United States Dollars (\$USD).
- (c) At Descartes' option, Descartes may assess a late payment fee equal to one and one half per cent (1.5%) of the unpaid amount for each succeeding thirty (30) day period or portion thereof in which Descartes has not received payment from Customer of Fees when due. If unpaid for a twelve months' period, the effective rate of interest would be 19.56% per annum.
- (d) Customer shall promptly and carefully review statements and invoices provided or made available by Descartes to Customer reflecting transaction activity. If Customer believes any adjustments are needed with respect to any amounts due to Descartes, or if Customer has any other questions or concerns regarding any statement or report provided by Descartes, Customer must so notify Descartes in writing within ninety (90) days after such invoice or report is received. If Customer fails to notify Descartes within such time frame, Descartes will not be required to investigate the matter or effect any related adjustment, absent any willful misconduct by Descartes. If Customer notifies Descartes after such time period, Descartes may still, in its sole discretion and at Customer's cost, investigate the matter addressed in Customer's notice, but Descartes will not have any liability to effect any related adjustment absent any willful misconduct by Descartes.
- (e) At Descartes' option, Descartes may suspend provision of any Services if Descartes has not received payment of Fees from Customer when due upon five (5) days written notice.
- (f) A failure by Customer to pay Fees when due shall be deemed to be a material breach of the Agreement.
- (g) All Fees payable to Descartes are exclusive of any taxes, assessments or duties that may be assessed upon the Software, Services, Hardware or any

licenses under the Agreement, including, without limitation, sales, use, excise, value added, personal property, electronic/internet commerce, export, import and withholding taxes, but not including taxes based upon Descartes' income. Customer shall directly pay any such taxes assessed against it, including without limitation all taxes that arise out of transactions completed by Customer using the Software. Customer shall promptly reimburse Descartes for any such taxes payable or collectable by Descartes. If any tax in the nature of withholding tax is payable on any sums payable to Descartes under this Agreement, Customer shall pay Descartes such amount as is necessary to ensure that the net amount received by Descartes after such withholding shall be equal to the amount originally due.

**4.2 Overage Fees.** Unless the Order Form provides for unlimited usage, Customer will be charged overage fees for any usage beyond the quantity listed in the Order Form. Unless the Order Form specifies another means of calculating overage fees, any overage fee shall be the unit price, as described in the Order Form, for each unit in excess of the permitted quantity.

**4.3 Collection Expenses.** Customer agrees to reimburse Descartes for any and all collection related expenses, including reasonable attorney fees, incurred by Descartes in the collection of any amounts owed to Descartes pursuant to the Agreement.

**4.4 Credit Card or ACH Payments.** Customers paying Fees by either credit card or automated clearing house ("ACH") debit entries shall provide all necessary credit card or account information (the "Payment Information") to facilitate payment. Customer shall submit its Payment Information to Descartes through an account at <https://shop.descartes.com>, or other similar sites as specified by Descartes, and promptly update the Payment Information if it changes. Customer authorizes Descartes and gives permission to Customer's financial institution to use the Payment Information for the purpose of paying the Fees payable under this Agreement, including any late or interest fees owed under the Agreement. Customer agrees to be bound by any rules Customer's financial institution requires for pre-authorized electronic funds payments and is responsible for all fees charged by Customer's financial institution associated with the Payment Information. If Customer's Payment Information is inaccurate and Descartes is unable to withdraw or charge Customer using its Payment Information for the Fees due, Customer may be subject to applicable late or interest fees, chargeback fees, and any other fees or charges assessed by Customer's financial institution or Descartes. Neither Descartes or any of its subsidiaries or affiliates shall bear any liability or responsibility for any losses of any kind that Customer may incur as a result of services incorrectly billed, for any delay in the actual date on which a Customer's payment is debited or charged by Descartes or any services charges levied by Customer's financial institution.

## 5 TERM AND TERMINATION

**5.1 Term.** The Agreement shall be in force for the Term unless earlier terminated as provided by the Agreement.

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**5.2 Termination by Either Party.** The Agreement may be terminated by a party if the other party is subject to an Insolvency Event, or by a non-breaching party in the following circumstances:

- (a) if the other party commits a material breach of the Agreement (including, without limitation, the failure to pay any Fees due to Descartes in accordance with the Agreement) and such breach remains uncured thirty (30) days after written notice of such breach is delivered to such other party; and
- (b) immediately upon material breach by either party of any obligations set forth in section 9 (Confidentiality).

**5.3 Termination by Descartes.** Descartes may terminate the Agreement immediately upon a material breach by Customer of section 6 (Ownership of Intellectual Property). Descartes may terminate the Agreement on sixty (60) days' notice in the event that Descartes discontinues for all customers the product or service described in the Order Form.

**5.4 Consequences of Termination.** Upon and after expiration or termination of the Agreement, all licenses or rights to use, except those granted on a perpetual basis, to any Software or GLN Service shall immediately terminate and Customer shall immediately cease the Use of the Software and GLN Services. If title in Hardware has not passed to Customer, Customer's right to possession of such Hardware shall immediately terminate. Customer shall immediately return to Descartes or, if Descartes so requests in writing, destroy all Descartes property provided to Customer, including, but not limited to, all copies of the Software. Within thirty (30) days after the date of any termination or expiration of the Agreement, Customer shall provide Descartes with a signed written statement by an officer of Customer certifying that Customer has returned to Descartes and/or destroyed all such items in accordance with Descartes' instructions.

**5.5 Survival.** Notwithstanding the foregoing and any expiration or termination of the Agreement, in addition to any provisions in the Agreement which are expressly stated to survive termination, the following provisions of the General Terms shall survive such expiration or termination: sections 4 (Fees and Payment), 5.5 (Survival), 6 (Ownership of Intellectual Property), 7 (Disclaimer of Warranties), 8 (Limitation of Liability), 9 (Confidentiality), 10 (Indemnification), 11 (Indemnification Procedure), 12 (Miscellaneous) and 13 (Definitions).

## **6 OWNERSHIP OF INTELLECTUAL PROPERTY**

**6.1 Ownership.** Descartes and its licensors shall have and retain all right, title and interest, including any copyrights, patents, trade secrets, moral rights and other Intellectual Property Rights in and to any Software licensed under an Agreement, and any software, documentation, processes or methodology produced or used by Descartes in the performance of Services pursuant to the Agreement, including, without limitation, any modifications, enhancements, changes or additions to the Software. To the extent of any interest of Customer therein (including, to the extent that any Services performed by Descartes may constitute a "work made for hire"), Customer

irrevocably agrees to assign and, upon its creation, automatically assigns to Descartes the ownership of such Intellectual Property Rights absolutely and without the necessity of any additional consideration. Customer agrees to do and perform such other acts and things and to execute and file such other agreements, documents, certificates or instruments as may be considered reasonably necessary or advisable by Descartes in order to carry out the intent of this provision and should Customer be unable or unwilling to do so, Customer irrevocably appoints Descartes and its duly authorized officers as Customer's agent and attorney to do all such acts and things and to execute and file all such aforementioned documents.

**6.2 No Sale.** Notwithstanding any use of the terms "sale" or "purchase" herein, in the Agreement or in any documentation, Customer acknowledges that Customers is only provided a license or right to use the Software or GLN Services, and that nothing in the Agreement should be construed as transferring of ownership to Customer of any Software, GLN Service, or any underlying Intellectual Property Rights therein.

## **7 DISCLAIMER OF WARRANTIES**

**7.1 DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, DESCARTES AND DESCARTES LICENSORS MAKE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY HARDWARE, SOFTWARE OR SERVICES THAT MAY BE DELIVERED AS PART OF THE AGREEMENT OR OTHERWISE, AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, DESCARTES SPECIFICALLY DISCLAIMS ANY COLLATERAL WARRANTIES AND ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, DESCARTES DOES NOT REPRESENT OR WARRANT THAT THE HARDWARE, SOFTWARE OR GLN SERVICES WILL OPERATE UNINTERRUPTED OR THAT THEY WILL BE FREE FROM DEFECTS OR ERRORS OR THAT THE HARDWARE, SOFTWARE OR SERVICES ARE DESIGNED TO MEET CUSTOMER'S BUSINESS REQUIREMENTS.

## **8 LIMITATION OF LIABILITY**

**8.1 AGGREGATE LIABILITY.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY LIABILITY ON THE PART OF EITHER PARTY UNDER AN AGREEMENT (INCLUDING FOR BREACH OF ANY PROVISION OF THE AGREEMENT, FUNDAMENTAL BREACH OR ANY OTHER BREACH GIVING RISE TO LIABILITY OR ARISING OUT OF OR RELATED TO THE AGREEMENT, HARDWARE, SOFTWARE OR SERVICES IN ANY OTHER WAY), FOR ANY CAUSE OF ACTION WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION (INCLUDING BREACH OF CONTRACT, TORT OR ANY OTHER LEGAL OR EQUITABLE THEORY), SHALL BE LIMITED TO THAT PARTY'S ACTUAL DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL FEES PAID TO DESCARTES BY CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM.

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**8.2 CONSEQUENTIAL DAMAGES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY NOR DESCARTES' LICENSORS OR SUPPLIERS BE LIABLE TO ANY OTHER PARTY OR ANY OTHER PERSON, FIRM, CORPORATION OR ENTITY FOR SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, MULTIPLE, CONSEQUENTIAL, OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL OR BUSINESS PROFITS, LOSS OF REVENUE, WORK STOPPAGE, DATA LOSS OR COMPUTER MALFUNCTION, OR ANY DAMAGES IN THE NATURE OF LOST OPPORTUNITY COSTS OR COSTS FOR PROCUREMENT OF AN ALTERNATIVE TO THE HARDWARE, SOFTWARE OR SERVICES PROVIDED UNDER THE AGREEMENT, WHETHER SUCH DAMAGES ARE ALLEGED IN TORT, CONTRACT OR OTHERWISE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BOTH PARTIES AGREE THAT IN NO EVENT WILL THE OTHER PARTY'S DIRECTORS, OFFICERS, EMPLOYEES OR SHAREHOLDERS BE LIABLE FOR ANY DAMAGES, INCLUDING DIRECT, INCIDENTAL, ORDINARY, PUNITIVE, EXEMPLARY, INDIRECT, SPECIAL, CONSEQUENTIAL OR ANY OTHER DAMAGES ARISING OUT OF THE AGREEMENT.

**8.3 LIABILITY FOR DELIVERY.** DESCARTES SHALL NOT HAVE ANY LIABILITY REGARDING DELIVERY OR FAILURE OF DELIVERY OF ANY PACKAGE OR FREIGHT, EITHER BY OR TO CUSTOMER, OR IN RESPECT OF DELIVERIES FACILITATED BY CUSTOMER, REGARDLESS OF THE CAUSE OF SUCH LOSS OR DAMAGE.

**8.4 EXCLUSION FROM LIMITATION OF LIABILITY.** NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED IN THE AGREEMENT SHALL LIMIT: A) DESCARTES' LIABILITY FOR DAMAGES TO CUSTOMER FOR DEATH OR PERSONAL INJURY RESULTING SOLELY FROM DESCARTES' WILLFUL ACTIONS OR DESCARTES' GROSS NEGLIGENCE; B) ANY LIABILITY ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THAT PARTY; C) CUSTOMER'S LIABILITY FOR NON-PAYMENT OF FEES OWED UNDER THIS AGREEMENT; D) CUSTOMER'S LIABILITY ARISING FROM ANY INFRINGEMENT OF DESCARTES INTELLECTUAL PROPERTY RIGHTS.

**8.5 TIME FOR COMMENCEMENT OF ACTION.** NO ACTION AGAINST DESCARTES OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES OR SHAREHOLDERS, REGARDLESS OF FORM (INCLUDING NEGLIGENCE), ARISING OUT OF ANY CLAIMED BREACH OF THE AGREEMENT OR TRANSACTIONS UNDER THE AGREEMENT OR IN ANY OTHER WAY RELATED TO THE AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS FIRST ARISEN.

## 9 CONFIDENTIALITY

**9.1 Discloser, Recipient.** In the performance of the Agreement, each party may disclose to the other party certain Confidential Information. For the purposes of the Agreement, (i) "Discloser" means the party that is providing Confidential Information to the other party to the Agreement; and (ii) "Recipient" means the

party that is receiving Confidential Information from the other party to the Agreement.

**9.2 Non-Disclosure.** Recipient acknowledges and agrees that the Confidential Information provided by Discloser shall remain the sole and exclusive property of Discloser or the third party providing such information to Discloser. Recipient shall not disclose, reproduce, use, distribute, or transfer, directly or indirectly, in any form, by any means, or for any purpose, the Confidential Information provided by Discloser, except as may reasonably be required pursuant to, or for performance of, the Agreement, and including for greater certainty assessing Recipient's actual or potential obligations under the Agreement. The disclosure of such Confidential Information to Recipient does not confer upon Recipient any license, interest, or rights of any kind in or to the Confidential Information, except as expressly provided under the Agreement. Recipient shall require its employees as well as any employees of Recipient's Affiliates receiving the Confidential Information provided by Discloser to abide by these confidentiality restrictions and Recipient shall only allow Recipient's independent contractors to receive Confidential Information of Discloser if such contractors have executed a nondisclosure agreement with restrictions no less protective of the Confidential Information than those contained in herein. Subject to the terms set forth herein, Recipient shall protect the Confidential Information provided by Discloser with the same degree of protection and care Recipient uses to protect its own Confidential Information, but in no event less than reasonable protection in light of general industry practice.

**9.3 Exceptions to Non-Disclosure.** Nothing in the Agreement shall prohibit or limit Recipient's disclosure or use of information if Recipient can establish that (i) at the time of disclosure such information was generally available to the public; (ii) after disclosure by Discloser and prior to any disclosure by Recipient, such information becomes generally available to the public, except through breach of the Agreement by Recipient; (iii) such information was in Recipient's possession prior to the time of disclosure by Discloser and was not acquired directly or indirectly from Discloser; (iv) the information became available to Recipient from a third party who, to the knowledge of Recipient, does not owe a confidentiality obligation to Discloser; (v) the information was developed by or for Recipient independently of the disclosure of such information by Discloser; (vi) the Confidential Information is disclosed by Recipient pursuant to a requirement of a governmental agency or by operation of law, provided that, with respect to item (vi), Recipient shall first notify Discloser prior to disclosure in order to give Discloser an opportunity to seek an appropriate protective order and/or waive compliance with the terms of the Agreement and shall disclose only that part of the Confidential Information which Recipient is required to disclose or (vii) the information relates to the tax treatment or the tax structure of the transactions contemplated herein, where "the tax treatment or the tax structure" is limited to any facts relevant to the U.S. federal income tax treatment of the transaction and does not include information relating to the identity of the parties.

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## 10 INDEMNIFICATION

**10.1 Descartes Indemnification.** Subject to the Indemnification Procedure, Descartes shall defend Customer, at Descartes' expense, from and against any claim brought by a third party alleging that any Descartes Software licensed to Customer or any GLN Services provided by Descartes to Customer under the Agreement infringe any (i) European Union, United States or Canadian patent, (ii) European Union, United States or Canadian trademark, (iii) copyright, or (iv) trade secret, and shall indemnify Customer against all damages and costs assessed against Customer that are payable as part of a final judgment or settlement. Should the Software licensed to Customer or the GLN Services provided by Descartes to Customer under the Agreement become, or in Descartes' opinion be likely to become, the subject of a claim of infringement, Descartes may, at its sole option and/or election use reasonable commercial efforts to (a) obtain for Customer the right to continue using the Software or GLN Services pursuant to the terms and conditions of the Agreement, (b) replace or modify the Software or GLN Services so that they become non-infringing but functionally equivalent or (c) where either (a) or (b) are not practicable, terminate the Agreement. The indemnification obligation shall not apply to any claim arising out of (i) the combination of the Software or GLN Services with other products not claimed to be owned, developed or deployed by or on behalf of Descartes, (ii) the modification of the Software or GLN Services, or any part thereof, unless such modification was made by or for Descartes, (iii) unauthorized use of the Software or GLN Services, or (iv) any infringement caused by any action of Customer. THIS INDEMNIFICATION PROVISION STATES THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF DESCARTES, AND ITS LICENSORS TO CUSTOMER AND CUSTOMER'S SOLE REMEDY WITH RESPECT TO THE INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

**10.2 Customer Indemnification.** Subject to the Indemnification Procedure, Customer shall defend, indemnify and hold Descartes and Descartes' officers, directors, employees, agents and shareholders harmless against any liability, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) from any third party claims brought against Descartes arising out of (i) Use of the Software, Hardware or GLN Services by Customer or a Permitted User, (ii) misuse of or distribution of User Accounts by Customer to anyone other than Permitted Users, (iii) any contract concluded by Customer using the Software or GLN Services, or (iv) any Services provided by Descartes to Customer; provided that this indemnification shall not apply in respect of those matters for which Descartes may have an indemnification obligation under the Agreement.

## 11 INDEMNIFICATION PROCEDURE

**11.1 Notice of Indemnification.** A party seeking indemnification pursuant to the Agreement (an "Indemnified Party") from or against the assertion of any claim by a third person (a "Third Person Assertion") shall give prompt notice (a "Notice of

Claim") to the party from whom indemnification is sought (the "Indemnifying Party"); provided, however, that failure to give prompt notice shall not relieve the Indemnifying Party of any liability hereunder (except to the extent the Indemnifying Party has suffered actual material prejudice by such failure).

**11.2 Assumption of Defense.** Within twenty (20) business days of receipt of a Notice of Claim from the Indemnified Party, the Indemnifying Party shall have the right exercisable by written notice to the Indemnified Party, to assume the defense of a Third Person Assertion. If the Indemnifying Party assumes such defense, the Indemnifying Party may select counsel, which shall be reasonably acceptable to the Indemnified Party.

**11.3 Failure to Defend.** If the Indemnifying Party (a) does not, within the time limited, assume the defense of any Third Person Assertion after receipt of a Notice of Claim or (b) having so assumed such defense, unreasonably fails to defend against such Third Person Assertion, then, upon twenty (20) days' written notice to the Indemnifying Party, the Indemnified Party may assume the defense of such Third Person Assertion. In such event, the Indemnified Party shall be entitled as part of its damages to indemnification for the costs of such defense.

**11.4 Conflicts of Interest.** If the Indemnifying Party has been advised by the written opinion of counsel to the Indemnified Party that the use of the same counsel to represent both the Indemnified Party and the Indemnifying Party would present a conflict of interest, then the Indemnified Party may select its own counsel to represent the Indemnified Party in the defense of the matter and the costs of such defense shall be borne by the Indemnifying Party. The Indemnifying Party shall be entitled to continue to handle its own representation in such matter through its own counsel.

**11.5 Settlement.** The party controlling the defense of a Third Person Assertion shall have the right to consent to the entry of judgment with respect to, or otherwise settle, such Third Person Assertion with the prior written consent of the other party, which consent shall not be unreasonably withheld.

**11.6 Participation.** Notwithstanding the assumption of the defense of a Third Person Assertion by either party in accordance with the Agreement, the other party shall agree to cooperate, as necessary, in the defense or prosecution of any Third Party Assertion and shall be entitled to participate, at its own expense, in the defense or settlement of any Third Person Assertion.

## 12 MISCELLANEOUS

**12.1 Audit.** Customer shall, upon reasonable advance written notice and during normal business hours, provide access and allow Descartes to inspect Customer's books, records and computer systems and Hardware in order to confirm Customer's compliance with the Agreement.

**12.2 Successors and Assigns.** The Agreement shall be binding upon and inure to the benefit of the parties to the Agreement, and their respective successors and permitted assigns.

**12.3 Entire Agreement.** The Agreement constitutes the entire agreement between the parties regarding its

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subject matter and supersedes all prior proposals, agreements and understandings between the parties, whether oral or written, with respect to the subject matter. No amendments or modifications to the Agreement shall be binding unless: a) Descartes makes a written offer to add on to an existing agreement and that offer is executed by Customer; or b) any other written amendment or modification executed by duly authorized representatives of all parties to the Agreement. The terms of any purchase order or other document submitted by Customer to Descartes from time to time shall be of no force or effect to the extent that they are inconsistent with the terms of the Agreement.

**12.4 Appendices.** Any appendices, attachments and schedules referred to in the Order Form or these General Terms and attached hereto or thereto are incorporated herein or into the Agreement by reference to the same extent as if set forth in full in the Agreement. In the event of any inconsistency between any appendix, attachment or schedule and the main body of the Agreement, the terms and conditions of the main body of the Agreement shall prevail unless otherwise expressly provided to the contrary in such appendix, attachment, schedule, or in these General Terms.

**12.5 Construction.** Each provision of the Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of the Agreement shall be prohibited or invalid, such provision shall be ineffective only to the extent of such prohibition or invalidity and shall not invalidate the remainder of such provision or the remaining provisions of the Agreement in that or other jurisdictions which provisions shall continue in full force and effect.

**12.6 Waiver.** Neither party hereto shall, by mere lapse of time without giving notice or taking other action hereunder, be deemed to have waived any breach by the other party of any provision of the Agreement. Failure by either party to enforce any term of the Agreement shall not be deemed a waiver of future enforcement of that or any other term in the Agreement.

**12.7 Multiple Counterparts.** The Agreement may be executed in several counterparts, all of which taken together shall constitute one single Agreement between the parties.

**12.8 Execution by Transmissions in PDF & Other Document-Scanning Programs.** Execution and delivery of this Agreement in a PDF or a similar document-scanning file format, or execution by way of a commercial electronic signature application or service shall constitute, for purposes of the Agreement, delivery of an executed original and shall be binding upon the party whose signature appears on the transmitted copy. Any party so executing the Agreement hereby agrees that they will, upon request, originally-execute and deliver to the other party hereto a copy of the Agreement.

**12.9 Compliance With Law.** Each party agrees to comply with all applicable laws, regulations, and ordinances relating to its performance under the Agreement.

**12.10 Corporate Compliance.** Descartes agrees to comply with Descartes Code of Business Conduct and Ethics, Descartes Anti-Corruption Policy, and any

other policy or code which may be posted from time to time by Descartes on the following webpage: <https://www.descartes.com/legal/compliance>.

**12.11 Notice.** Any notices, demands and other communications pursuant to the Agreement shall be in writing and shall be delivered in person, mailed by first class mail and postage prepaid (registered or certified to the extent available, and via airmail if overseas), couriered overnight, or transmitted electronically in a PDF or similar document-scanning file format to the party to receive the notice at the applicable address, set out on in the Agreement or at such other address as may be designated in writing by the receiving party. All such notices shall be effective upon receipt.

**12.12 Dispute Resolution.** Except for the right of either party to apply to a court of competent jurisdiction for interim or interlocutory relief or other provisional remedy to prevent irreparable harm pending final determination or to pursue a claim for infringement of any intellectual property right, any dispute or controversy between the parties arising out of or relating to the Agreement (each, a "Dispute") shall be resolved by first attempting good faith negotiations between the parties which negotiations shall not terminate until the Dispute has been considered by a senior officer of each party.

**12.13 Third Party Beneficiaries.** Customer acknowledges that the Software may contain software, computer programs and/or proprietary data of the Third Party Licensors. In addition to any other limitations or restrictions set out in the Agreement, the Third Party Licensors shall not be liable for any damages, whether direct, indirect, incidental or consequential arising from the Use of the Software. Customer agrees that prior to delivery of any of the Third Party Software, Customer shall enter into any further necessary agreements which may be required by a Third Party Licensor and Customer specifically acknowledges that the Third Party Licensors shall be third party beneficiaries of the Agreement. Except for such Third Party Licensors, no provision of the Agreement shall be construed to provide or create any third party beneficiary right or any other right of any kind in a third party.

**12.14 Export.** Customer agrees to comply with all domestic, foreign and local export laws and regulations applicable to the GLN Services and Software should such export be permitted under the Agreement.

**12.15 Government Departments.** In the event that Customer is a governmental entity, only those departments or agencies listed in the Agreement shall have the right to use the Software and Documentation. Governmental departments or agencies not listed must have a separate license agreement and pay additional license fees.

**12.16 Assignment.** Neither party may assign or transfer the Agreement or any obligation incurred hereunder, except: i) with the prior written consent of the other party, which will not be unreasonably withheld; or ii) to an Affiliate of the party provided that all, and not just some, of the rights and obligations under the Agreement are assigned.

**12.17 Acknowledgment.** Customer publications in which the Hardware, Descartes Software or GLN



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Services are implicitly or explicitly mentioned shall include an acknowledgment that the Hardware, Descartes Software or GLN Services "is a proprietary software product of The Descartes Systems Group Inc. or its Subsidiaries". In addition, Customer agrees to provide Descartes with a copy of the proposed publication not less than 10 days prior to the publication thereof.

**12.18 Announcements.** Upon signing of the Agreement, Customer consents to being publicly identified by Descartes as a customer of the products and services provided by Descartes pursuant to the Agreement.

**12.19 Governing Law.** The Agreement shall be governed by and construed under the laws of jurisdiction stated as applying to the Agreement in the Order Form, without reference to its conflicts of law principles, and the parties hereby submit to the sole and exclusive jurisdiction of the courts of that jurisdiction. Where the Order Form does not state any jurisdiction, the laws of the province of Ontario, Canada will apply. The parties specifically disclaim the United Nations Convention on Contracts for the International Sale of Goods.

**12.20 Further Assurances.** The parties hereto shall with reasonable diligence do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated in the Agreement, and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary or desirable to effect the purpose of the Agreement and carry out its provisions.

**12.21 English Language Provision.** The parties acknowledge having required that the Agreement and all documents, notices and judicial proceedings entered into, given or instituted pursuant thereto, or relating directly or indirectly thereto, be drawn up in English.

**12.22 Force Majeure.** "Force Majeure" means an act of God, war, natural disaster, governmental regulations, communication or utility failures or casualties. A party (the "Claiming Party") will not be in breach of this Agreement or otherwise liable to the other party (the "Non-claiming Party") for any delay in performance or any non-performance of any obligations under this agreement (and the time for performance will be extended accordingly) if and to the extent that the delay or non-performance is owing to Force Majeure. This clause only applies if (i) the Claiming Party could not have avoided the effect of the Force Majeure by taking precautions which, having regard to all matters known to it before the occurrence of the Force Majeure and all relevant factors, it ought reasonably to have taken but did not take; and (ii) to the Claiming Party has used reasonable endeavours to mitigate the effect of the Force Majeure and to carry out its obligations under this Agreement in any other way that is reasonably practicable. The Claiming Party shall promptly notify the Non-claiming Party of the nature and extent of the circumstances giving rise to Force Majeure. If the Force Majeure in question prevails for a continuous period in excess of three (3) months after the date on which the Force Majeure begins, the Non-claiming Party shall be entitled to give notice to the Claiming Party to terminate this agreement. The

notice to terminate must specify the termination date, which must be not less than thirty (30) clear days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, the agreement will terminate on the termination date set out in the notice.

**12.23 No Agency.** Nothing in the Agreement shall constitute or be deemed to constitute one party as agent of the other, for any purpose whatsoever, and neither party shall have the authority or power to bind the other, or to contract in the name of or create a liability against the other, in any way or for any purpose.

**12.24 Descartes is a Non-Party.** All transactions concluded through Use of the Software or GLN Services by Customer shall be between the Customer and the other parties to that transaction pursuant to the terms and conditions agreed upon by the Customer and those parties. Descartes shall not be a party to any transaction or contract concluded through Use of the Software or GLN Services.

**12.25 Right to Assurance.** Descartes reserves the right to review the creditworthiness of Customer through available and reliable verification procedures or sources and Customer hereby consents to Descartes obtaining such information. Descartes reserves the right, in its sole discretion, to require a deposit, letter of credit or similar surety, as a condition to the initial provision of the Services and/or the Software. Furthermore, Descartes may require a deposit, letter of credit or similar surety as a condition of continued provision of Services and/or the Software or decline to accept any requests to provide additional and/or new Services and/or the Software if: (a) Customer fails to comply with the payment terms of these General Terms and/or any Agreement (b) Customer presents an undue risk of non-payment; (c) Customer experiences a material adverse change in its creditworthiness or financial position; (d) Customer is acquired by an entity who is insolvent; or (e) Customer is subject to bankruptcy or has filed for bankruptcy or insolvency proceedings.

## 13 DEFINITIONS

**13.1 "Affiliate"** of a party shall mean any corporation that (a) is controlled, either directly or indirectly, by a party; (b) is under common voting control, either directly or indirectly, with the party; or (c) that controls the party; as the case may be. For the purposes of this definition "control" means the ability to vote greater than fifty percent (50%) of the outstanding voting securities in such corporation.

**13.2 "Confidential Information"** means any information disclosed by a party hereunder to another party hereunder relating to an Agreement or a proposed amendment to an Agreement which consists of information (including any copies, extracts, summaries or adaptations of such information), regardless of the form of its disclosure, that, by its nature or by the circumstances in which it is disclosed, ought reasonably be considered to be confidential. For greater certainty, the Descartes Software and Documentation as well as the service levels, specifications, performance restrictions and data configuration requirements of the GLN Services, the results of any tests run on the Descartes Software or

# GENERAL TERMS

GLN Services and any pricing for Descartes' products and/or Services shall be deemed to be Confidential Information of Descartes.

- 13.3 "Data Providers"** means third party data providers of Customer, including shippers, carriers, suppliers of Customer, customers of Customer, freight forwarders, third party logistics providers and fourth party logistic providers.
- 13.4 "Descartes GLN"** means the physical hardware architecture and communication infrastructure operated by Descartes over which Descartes makes its network-based services generally commercially available, including the operating system, system and network interfaces, internal network, databases, disk storage, central applications, engines, warehouses and internal communications backbone.
- 13.5 "Documentation"** means any end-user instructional or supplementary materials related to the Descartes Software and or GLN Services, in human or machine readable form, that are provided by Descartes to Customer with the Descartes Software, but only to the extent that Descartes, in its sole discretion, makes such materials generally available for commercial distribution.
- 13.6 "Effective Date"** means the date that the Agreement becomes effective, as identified in the Agreement and, in the absence of a specific effective date being so set out, the date of signature of the Agreement by Descartes.
- 13.7 "Fees"** means the amounts to be paid by Customer to Descartes pursuant to the Agreement.
- 13.8 "GLN Services"** means the GLN Services as defined under the Order Form.
- 13.9 "Indemnification Procedure"** means the procedure set out in section 11 of the General Terms.
- 13.10 "Insolvency Event"** means (i) the Customer transfers the whole or a substantial part of its assets for the benefit of its creditors, is unable to pay its debts as they fall due, has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, convenes a meeting of creditors, enters into liquidation except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, has a receiver and/or manager or an administrator or administrative receiver appointed of its undertaking or any part of it, has a resolution passed or a petition presented to any court for its winding up or for the granting of an administration order in respect of it, suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it; or (ii) any other analogous step, process or procedure is taken in relation to the Customer in any jurisdiction, or the other Customer becomes subject to the laws relating to insolvency, bankruptcy or liquidation in any jurisdiction.
- 13.11 "Intellectual Property Rights"** means patent and other patent rights (including patent disclosures and applications and patent divisions, continuations, continuations-in-part, reissues, reexaminations, and extensions thereof), copyrights, and other rights in works of authorship (including registered and unregistered copyrights and unpublished works of authorship), trade secrets, and all other forms of

Intellectual Property in existence on the Effective Date.

- 13.12 "Order Form"** means any document issued by Descartes and identified as an Order Form, GLN Services Agreement, Software License Agreement, or any other similar such ordering document.
- 13.13 "Permitted Use"** means Use for internal business in accordance with and subject to the Scope of Use and Documentation. Except as expressly provided the Agreement, "Permitted Use" does not include redistribution, remarketing, loaning, renting, sublicensing or otherwise making any Software or GLN Services available or accessible to any third party.
- 13.14 "Permitted User"** means those individuals or classes of individuals identified in an Agreement whom Customer may authorize to Use the Software or GLN Service.
- 13.15 "Professional Services"** means those services that Descartes has expressly agreed in the Agreement to provide to Customer, which may include consulting services, training services or implementation services and Software Maintenance Services, but which shall not include GLN Services.
- 13.16 "Scope of Use"** means the scope for which the Software or GLN Services can be Used, including restrictions on such Use, as identified in the Agreement.
- 13.17 "Services"** means Professional Services and/or GLN Services.
- 13.18 "Software"** means Software as defined under the Order Form.
- 13.19 "Term"** shall mean the period of time identified in the Order Form as being the term of the Agreement, along with any renewal period if provided for in the Order Form.
- 13.20 "Use"** means to load, execute, employ, utilize, store or display. Use is deemed to occur where any such process occurs or at any computer terminal or workstation that initiates or is activated by any such process.
- 13.21 "User Accounts"** means the information necessary to establish a unique identifier for the purpose of controlling access to Software or GLN Services, including but not limited to a username, passcodes, security questions and answers, and security tokens.

[End of terms.]