Swampfox Technologies, Inc.
End User License and Warranty

1.   Definitions. Capitalized terms used in this Agreement shall have the following meanings:

1.1 "Additional License Limitations" shall have the meaning assigned to it in Section 2.1 ("Grant of License").

1.2 "Authorized Location" shall mean the location identified in the applicable Order Form and operated by Customer.

1.3 "Documentation" shall mean all materials provided to Customer by Licensor and designated as documentation which describe the form, features or operation of the Software and which are contained in a tangible medium, such as written format, tape, magnetic or other media. Documentation shall include any Updates of Documentation which Licensor may make available to Customer pursuant to any separate agreement for Technical Support Services.

1.4 "Error" shall have the meaning assigned to it in Section 8.1 ("Software Warranty").

1.5   "In-Service Data" shall mean the audio input to the Software and associated log files as determined by Licensor resulting from user calls to the Software whether in a pilot, trial or production use of the Software.

1.6 "Key" shall mean a numerical or alpha-numerical code which is necessary to gain access to certain Software as determined by Licensor on certain media as delivered by Licensor hereunder.

1.7 "Order Form" shall mean a written order form approved by Licensor and executed by Customer and either (i) Licensor (ii) or Licensor's approved reseller, in each case which sets forth the necessary information relating to the Software and the Software License Fees payable to Licensor, which may include, without limitation, identification of the Software licensed (including whether in object code or source code form), Additional License Limitations, and the Authorized Location.

1.8 "Professional Services" shall mean any professional services which Customer may receive from time to time relating to the Software pursuant to a separate agreement between Customer and Licensor or Licensor's approved reseller.

1.9 "Software" shall mean the computer software programs described in the applicable Order Form, in object code only (unless otherwise expressly specified in the applicable Order Form), including Updates, if any, and accompanying Documentation and as specifically licensed hereunder. Software shall further include any modifications to the Software provided to Customer as a part of any Professional Services and shall be subject to the terms and conditions of this Agreement.

1.10 "Software License" shall have the meaning set forth in Section 2.1 ("Grant of License").

1.11 "Software License Fees" shall mean those fees for the Software License payable by Customer to Licensor for the Software set forth in the applicable Order Form.

1.12 "Specifications" shall mean the technical and performance specifications for the Software which are contained in and distributed with the Documentation.

1.13 "Supported Software" shall mean a Software License for which Customer has ordered and paid for Technical Support Services for the relevant time period under a separate agreement between Customer and Licensor or Licensor's approved reseller. Supported Software shall not include (i) any modifications to software by Customer or (ii) any other software or modifications to software provided as a part of any Professional Services or pursuant to

any separate agreement unless otherwise expressly provided for in a separate agreement between Customer and Licensor or Licensor's approved reseller.

1.14 "Technical Support Services" shall mean technical support services on the Software pursuant to a separate agreement between Customer and Licensor or Licensor's approved reseller.

1.15 "Update" shall mean subsequent releases of the Software which are generally made available for Supported Software at no additional charge, other than media and handling charges. Updates may include modifications of or additions to the Software, but does not include any releases, versions, options or future products which Licensor licenses separately.

1.16 "Warranty Period" shall have the meaning assigned to it in Section 8 ("Warranty and Disclaimer").

2. Grant of Software License.

2.1 Grant of License. In consideration of all obligations of Customer hereunder, including without limitation the payment by Customer of Software License Fees, Licensor hereby grants to Customer a non-exclusive, non-transferable license (the "Software License") solely to (i) install one copy of the Software only at the Authorized Location; (ii) use the Software (which with respect to any Software pursuant to which Customer receives source code under an applicable Order Form shall include the right to modify and create derivative works thereof) solely for the purpose of serving the internal needs of Customer's organization and not the needs of any affiliate or any other person and (iii) use the Software subject to any additional license limitations set forth in the applicable Order Form (the "Additional License Limitations").

2.2 Copies. Customer may make one copy of the Software for Customer's internal back-up and archival purposes only, provided that such copy shall bear the original and unmodified copyright, patent and other intellectual property markings as originally delivered by Licensor. Customer may, however, make additional copies of the Documentation only as reasonably necessary to use the Software in compliance with this Agreement.

2.3 Additional Restrictions.

    2.3.1 No Implied Licenses. The Software, including all copies thereof, are and shall remain at all times the exclusive property of Licensor. Customer does not acquire any rights or licenses therein except those expressly granted herein and does not receive any title or interest to the Software or any changes or modifications thereto or any intellectual property rights throughout the world contained therein.

    2.3.2 No Transfer. Customer may not market, distribute, sublicense, sell, assign, pledge, lease, transfer or in any way encumber the Software.

    2.3.3 No Reverse Engineering. Customer hereby acknowledges that the Software contains valuable trade secret and confidential information of Licensor and others. Customer agrees not to reverse compile, reverse engineer, reverse assemble, or otherwise attempt, directly or indirectly, to obtain or create source code for the Software for any reason.

    2.3.4 Required Proprietary Notices. Customer agrees that as a condition of its rights hereunder, each copy of the Software shall contain the same proprietary notices which may appear on or in Software as provided by Licensor to Customer and as otherwise reasonably required by Licensor.

    2.3.5 Unauthorized Distribution or Copying. Customer agrees that using, distributing, copying, duplicating or otherwise reproducing all or any part of the Software except in strict accordance with this Agreement or otherwise violating the provisions of this Section 2.3 will be considered a material breach of this Agreement which is incapable of cure.

2.4 Customer Responsibilities. Customer has sole responsibility for Customer's use and operation of the Software including monitoring and verifying input and output data, back-up of input and output data, providing data for any files or tables of such Software, and for maintaining the required Software environment. Customer is responsible for installation of the Software and for converting any data files for use with the Software.

3. Fees.

3.1 Fees. The Fees for Software are as mutually agreed and set forth in the applicable Order Form.

3.2   Fee Changes. Any additional Software licenses that Customer desires shall be at Licensor's then current prices unless otherwise stated in the applicable Order Form.

3.3   Third Party Charges. Customer recognizes that the Software License Fees do not include fees for all hardware or third party software products which may be required to be licensed or purchased by Customer for Customer to utilize the various capabilities of the Software and that Customer is responsible for the costs and licenses to obtain such hardware or third party software.

4.   Keys and Access. Licensor shall provide to Customer the Keys, if any, necessary to permit Customer to gain access to the Software for the number of licenses which have been properly licensed to Customer pursuant to this Agreement. All such Keys shall be considered the Confidential Information of Licensor for purposes of Section 7 ("Confidential Information").

5. Right to Audit. Customer shall maintain complete and accurate written records describing: (a) the use and location of all copies of the Software; (b) the number of copies of Software, and machine location for each copy of Software; and (c) any other information which may be reasonably required by Licensor to determine whether Customer is complying with the terms of this Agreement. To ensure compliance with the terms of this Agreement, Licensor shall have the right to conduct an inspection and audit of the facilities of Customer and all the relevant books and records of Customer, and to obtain true and correct photocopies thereof, during regular business hours at Customer's offices and in such a manner as not to interfere unreasonably with Customer's normal business activities. If any such audit should disclose any underpayment of Software License Fees, Customer shall promptly pay Licensor such underpaid amount, together with interest thereon at a rate of one and one-half percent (1.5%) per month or partial month during which each such amount was owed and unpaid, or the highest rate allowed by law, whichever is lower. If the amount of such underpayment exceeds five percent (5%) of amounts otherwise paid, then Customer shall immediately reimburse Licensor for Licensor's reasonable expenses associated with such audit.

6. In-Service Data.

6.1 In-Service Data. In-Service Data is necessary to ensure optimal performance and accuracy of the Software for a given application and evaluate feature utilization. Normal uses of In-Service Data include determining "hot spots," tuning the system parameters, application tuning, working on adaptive personality models, measuring accuracy and evaluating feature utilization. Licensor shall have full access to all In-Service Data generated through the use of the Software.

6.2 Use of In-Service Data.   The primary use of In-Service Data shall be to evaluate feature utilization and improve the performance of the Software for the Customer, provided however that such In-Service Data can also be used to train, refine, supplement or test Licensor software, models and algorithms, and that the resulting improvements to the software, models and algorithms may be used for the benefit of all users of Licensor software. Licensor shall have no rights to the content of any In-Service Data which includes any Confidential Information of Customer.

7.   Confidential Information.

Customer acknowledges that the Software, and other related confidential information provided to Customer contain unique, confidential and secret information of Licensor and are trade secrets and confidential proprietary products of Licensor. Customer agrees at all times to protect and preserve in strict confidence the confidentiality of the Software, and all other related confidential information. Customer further agrees at all times to protect and preserve in strict confidence the terms of this Agreement (including all Order Forms). Customer agrees not to permit or authorize access to, or disclosure of, the Software, or any other related confidential information or the terms of this Agreement (including all Order Forms) to any person or entity other than employees of Customer who have agreed in a written agreement to be bound by the terms of this Agreement and have a "need to know" such information in order to use the Software for the benefit of Customer.

8. **Warranty and Disclaimer**.

8.1 Software Warranty. Licensor warrants that for a period of sixty (60) days from the effective date of the applicable Order Form pursuant to which Software is licensed to Customer hereunder (the "Warranty Period"), the Software shall meet all of Licensor's material Specifications for the Software, as described in the Documentation. Each instance in which the Software fails to meet such material Specifications shall be considered an "Error". If Customer reports to Licensor any Errors in such Software during the Warranty Period, and provides such detail as Licensor may reasonably require to permit Licensor to reproduce such Errors, then Licensor, at its expense, shall, as Customer's sole and exclusive remedy, use commercially reasonable efforts to modify or replace the Software, or provide Updates to correct such Errors. Customer agrees to pay Licensor for all personnel time and expense incurred in investigating reported Errors that are not reproducible. This Warranty shall not apply to (i) changes or modifications made to the Software other than those made by Licensor, or (ii) any Software used with hardware or third party software except as specified in the Documentation or approved by Licensor in writing.

8.1.1 **Pre-production Releases.** If pre-production (i.e., "alpha" or "beta") releases of Software are provided to Customer, such copies are provided "as-is" without warranty of any kind.

8.2 Disclaimer. THE WARRANTIES SET FORTH IN THIS SECTION 8 ("WARRANTY AND DISCLAIMER") STATE LICENSOR'S SOLE AND EXCLUSIVE WARRANTY TO CUSTOMER CONCERNING THE SOFTWARE AND THE EXCLUSIVE REMEDY FOR BREACH OF WARRANTY. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8.1 ("SOFTWARE WARRANTY"), THE SOFTWARE IS PROVIDED STRICTLY "AS IS," AND LICENSOR MAKES NO ADDITIONAL WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE SOFTWARE OR ANY MATTER WHATSOEVER. IN PARTICULAR, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE EXPRESSLY EXCLUDED. THESE WARRANTIES ARE LIMITED AND ARE THE ONLY WARRANTIES MADE BY LICENSOR. LICENSOR DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE ERROR FREE OR THAT ALL ERRORS WILL BE CORRECTED.

9. **Indemnities.**

9.1 Intellectual Property Indemnity. Licensor agrees to indemnify, defend and hold harmless Customer from any costs, damages, and reasonable attorneys' fees resulting from any claims by third parties that the Software as delivered by Licensor directly infringes any United States patent, copyright or trademark, or misappropriates any trade secret arising under the laws of the states of the United States; provided that Customer: a) gives Licensor prompt written notice of each such claim; b) tenders to Licensor the defense or settlement of each such claim at Licensor's expense; and c) cooperates with Licensor, at Licensor's expense, in defending or settling each such claim. If Licensor receives notice of an alleged infringement, or if Customer's use of the Software shall be prevented by permanent injunction, Licensor may, at its sole option and expense: a) procure for Customer the right to continue using the Software as provided hereunder; b) modify the Software so that it is no longer infringing; or c) replace the Software with computer software of equal or superior functional capability. If none of the foregoing is

commercially reasonable, Licensor shall have the right to terminate any affected Software License and require the return of the Software. If Licensor terminates any Software License as described above, Licensor shall refund the Software License Fees paid less depreciation determined by prorating the Software License Fees over a straight-line three year period.

9.2   Intellectual Property Indemnity Limitations.   THE RIGHTS GRANTED TO CUSTOMER UNDER SECTION 9.1 ("INTELLECTUAL PROPERTY INDEMNITY") SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND LICENSOR'S SOLE OBLIGATION FOR ANY ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHT. LICENSOR SHALL HAVE NO LIABILITY TO CUSTOMER IF ANY ALLEGED INFRINGEMENT OR CLAIM OF INFRINGEMENT IS BASED UPON: (A) ANY MODIFIED SOFTWARE; (B) ANY CUSTOMER OR THIRD PARTY APPLICATION; (C) ANY THIRD PARTY SOFTWARE INCLUDED WITH LICENSOR'S SOFTWARE (D) USE OF THE SOFTWARE IN CONNECTION OR IN COMBINATION WITH EQUIPMENT, DEVICES, OR SOFTWARE NOT PROVIDED BY LICENSOR (BUT ONLY TO THE EXTENT THAT THE SOFTWARE ALONE WOULD NOT HAVE INFRINGED); (E) PROFESSIONAL SERVICES PROVIDED PURSUANT TO ANY AGREEMENT WITH CUSTOMER IN COMPLIANCE WITH CUSTOMER'S DESIGN REQUIREMENTS OR SPECIFICATIONS; (F) THE USE OF SOFTWARE OTHER THAN AS PERMITTED UNDER THIS AGREEMENT OR IN A MANNER FOR WHICH IT WAS NOT INTENDED; OR (G) USE OF OTHER THAN THE MOST CURRENT RELEASE OR VERSION OF THE SOFTWARE (IF SUCH CLAIM WOULD HAVE BEEN PREVENTED BY THE USE OF SUCH RELEASE OR VERSION).

10. Limitation of Liability. LICENSOR SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OR CORRUPTION OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, LAW, EQUITY OR OTHERWISE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITH RESPECT TO ANY ORDER FORM, LICENSOR'S MAXIMUM LIABLITY ARISING OUT OF OR RELATING TO SUCH ORDER FORM REGARDLESS OF THE FORM OF THE ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABLITY, LAW, EQUITY OR OTHERWISE, SHALL NOT EXCEED THE AGGREGATE AMOUNTS PAID BY CUSTOMER TO LICENSOR FOR THE SOFTWARE LICENSE FEES UNDER SUCH ORDER FORM. IN ALL CIRCUMSTANCES, LICENSOR'S ENTIRE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT REGARDLESS OF THE FORM OF THE ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, LAW, EQUITY OR OTHERWISE, SHALL NOT EXCEED THE AGGREGATE AMOUNTS PAID BY CUSTOMER FOR SOFTWARE LICENSE FEES IN THE TWELVE MONTH PERIOD IMMEDIATELY PRECEEDING THE DATE ON WHICH A CLAIM ARISES. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY DAMAGES BASED UPON THE ACCURACY OF THE LICENSOR SOFTWARE OR FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS. CUSTOMER ACKNOWLEDGES THAT LICENSOR HAS SET ITS FEES, AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE FOREGOING LIMITATION OF LIABILITY IS INDEPENDENT OF ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY SET FORTH IN THIS AGREEMENT.

11.   Term and Termination.

11.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue until terminated.

11.2 Termination for Material Breach. Either party may terminate this Agreement immediately upon written notice for the material breach of the other party, which material breach has remained uncured for period of thirty (30) days (if curable) from the date of delivery of written notice thereof to the breaching party.

11.3 Effect. In the event of any termination of this Agreement, all licenses (including, but not limited to, Software Licenses) granted by Licensor hereunder shall immediately terminate, and Customer shall immediately return to Licensor all material delivered hereunder including without limitation all copies of the Software and shall promptly certify to Licensor in writing that Customer has done so.

12.   Survival. In the event of any expiration or termination of this Agreement, the provisions of Section 1 ("Definitions"), Section 2.3 ("Additional Restrictions"), Section 3 ("Fees"), Section 5 ("Right to Audit"), Section 7 ("Confidential Information"), Section 8 ("Warranty and Disclaimer"), Section 9 ("Indemnities"), Section 10 ("Limitation of Liability"), Section 11.3 ("Effect"), Section 12 ("Survival") and Section 13 ("General") shall survive and shall continue to bind the parties.

13.   General.

13.1 Government Customers. This Software is a "commercial item," as that term is defined at 48 C.F.R. 2.101 (OCT 1995), and is "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (SEPT 1995).

13.2 Export Control. The parties acknowledge that the manufacture and sale of the Software is subject to the export control laws of the United States of America, including the U.S. Bureau of Export Administration regulations, as amended, and hereby agree to obey any and all such laws.

13.3 Governing Law. This Agreement shall be governed in all respects by the laws of the United States of America and the State of South Carolina without regard to conflicts of law principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

13.4 Forum. All disputes arising under this Agreement shall be brought in the Court of Common Pleas, Richland County, South Carolina or the Federal District Court, Columbia Division, District of South Carolina, as permitted by law. The Court of Common Pleas, Richland County, South Carolina and the Federal District Court, Columbia Division, District of South Carolina shall each have non-exclusive jurisdiction over disputes under this Agreement. Customer consents to the personal jurisdiction of the above courts.

13.5 Injunctive Relief. It is understood and agreed that, notwithstanding any other provisions of this Agreement, breach of the provisions of this Agreement by Customer will cause Licensor irreparable damage for which recovery of money damages would be inadequate, and that Licensor shall therefore be entitled to obtain timely injunctive relief to protect Licensor's rights under this Agreement in addition to any and all remedies available at law.

13.6 Notices. All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery or five (5) days after deposit in the U.S. mail. Notices shall be sent to the parties at the addresses described on the first page of this Agreement or such other address as either party may designate for itself in writing. All notices to Licensor must be addressed to its President to be effective.

13.7 No Agency. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

13.8 Waiver. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

13.9 Severability. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted

so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

13.10   Use of Customer's Name. Customer agrees that Licensor may use Customer's name and may disclose that Customer is a licensee of Licensor products in Licensor advertising, promotion and similar public disclosures with respect to the Software; provided, however, that such advertising, promotion or similar public disclosures shall not indicate, without Customer's written consent, that Customer in any way endorses any Licensor products.

13.11   Nondisclosure. Customer promises not to disclose the terms and conditions of this Agreement to any third party without the prior written consent of Licensor .

13.12   Headings. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect this Agreement.

13.13 Third Party Beneficiaries. Customer acknowledges that third party software is included with the Software and that such third parties are beneficiaries to this Agreement and this Agreement is enforceable by such third parties.

13.14   Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

13.15   Entire Agreement. This Agreement together with the Schedules hereto completely and exclusively states the agreement of the parties regarding its subject matter. It supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. The terms of any shrink-wrap agreement accompanying any Software delivered by Licensor hereunder shall, to the extent inconsistent with the terms of this Agreement, have no effect whatsoever. This Agreement shall not be modified except by a subsequently dated written amendment or Schedule signed on behalf of Licensor and Customer by their duly authorized representative.