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¹ **Smith+Nephew is the name used to refer to our whole business, including Smith & Nephew PLC with registered address Building 5, Croxley Park, Hatters Lane, Watford, Hertfordshire, WD18 8YE, England, United Kingdom. S+N", "we" or "us" may refer to Smith & Nephew PLC itself or one or more of its subsidiaries. Smith & Nephew PLC is a holding company and is not an operating company. Therefore, products and services are provided exclusively by subsidiaries and not by Smith & Nephew PLC.**

4. **Term.** The term of the license is set forth in the applicable S+N quotation, sale agreement or purchase order relating to the Software or connected equipment ("**Ordering Document**") for the purchase of the software license, and if no specific term is stated in the Ordering Document, then the license may be used for the duration of Customer's relationship with S+N, unless terminated in accordance with Section 27 below. Customer is hereby notified that license management software may be included to monitor and control the use of the Software, including without limitation to automatically cause the Software to cease functioning at the end of the term of the license or trial or subscription period (and in any case Customer agrees to discontinue usage at the end of the term or trial or subscription period).
5. **Scripting/Programming Functionality.** Customer understands that certain scripts or programs may adversely impact instrument or software performance. Customer takes full responsibility for any script or program it creates using the Software or for any script or program created by Customer or a third party and run by Customer.
6. **Warranty Disclaimer.** S+N does not warrant that (i) the Software, or scripts or programs generated or developed using the Software, will meet Customer's requirements; (ii) the Software, scripts, or programs will operate in combination with other hardware, software, systems or data not provided by S+N (except as expressly specified in the documentation provided with the Software by S+N); (iii) the operation of the Software, scripts, or programs will be uninterrupted or error-free, or (iv) all Software, script, or program errors will be corrected. **THE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SOFTWARE, SCRIPTS, AND PROGRAMS. NO WARRANTIES SHALL ARISE UNDER THIS AGREEMENT FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. S+N EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR ANY PARTICULAR PURPOSE UNLESS OTHERWISE AGREED IN AN ORDERING DOCUMENT.**
7. **Restrictions.** The Software and documentation and any copies, translations, compilations, partial copies, modifications, improvements, enhancements and updates are proprietary to S+N or its licensors, and may contain copyrighted material, trade secrets and other proprietary material. In order to protect such intellectual property rights and preserve the confidentiality of the Software, Customer may not decompile, reverse engineer, disassemble, translate or otherwise reduce the Software to a human-perceivable form (or permit others to do so), except to the extent expressly permitted by mandatory provisions of applicable law (including national laws implementing Directive 91/250/EEC on the legal protection of computer programs) in order to gain certain information specified therein, provided that Customer shall not exercise its rights under such laws, unless and until Customer has first requested the required information from S+N in writing, and S+N, at its sole discretion, has not complied with Customer's request within a commercially reasonable period of time. Excepting any applicable license to generate and run scripts or programs for Customer's internal purposes only, Customer may not copy, modify, unbundle, network, sell, transfer, rent, lease, loan, host, distribute, or create derivative works based upon the Software, in whole or in part. Customer shall not remove any proprietary notices, labels, or marks from any part of the Software or documentation.
8. **Maintenance/Updates.** Except as agreed in a separate support or maintenance agreement, the Ordering Document or as required by applicable law, S+N is under no obligation to provide updates, upgrades, enhancements, or modifications to the Software. Any updates or upgrades that the S+N may choose to provide will be at the sole discretion of S+N. **IF S+N, AT ITS SOLE DISCRETION, PROVIDES ANY UPDATES, UPGRADES, ENHANCEMENTS, OR MODIFICATIONS TO THE SOFTWARE, SUCH UPDATES, UPGRADES, ENHANCEMENTS, OR MODIFICATIONS WILL BE PROVIDED "AS IS" WITHOUT ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.** S+N does not guarantee that any updates, upgrades, enhancements, or modifications to the Software will be compatible with the Customer's environment, including but not limited to hardware, software, and other systems. Any support, maintenance, or other services related to the Software, including the provision of updates, upgrades, enhancements, or modifications, may be offered by S+N at additional cost under a separate agreement, provided that S+N is not obligated to offer such services. The terms and conditions of such services will be governed by the separate agreement. S+N reserves the right to discontinue the provision of any updates, upgrades, enhancements, or modifications to the Software at any time without notice. S+N reserves the right to require you to accept updates, modifications and/or improvements to the Software deemed necessary by S+N, at its sole discretion, and you agree to cooperate with the implementation of any such updates, modifications or improvements. You agree that this provision does not apply to enhancements to the Software that must be paid for by you through a separate support Software agreement. Further, you are responsible

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9. **Audit Rights.** At S+N's written request, but not more frequently than once annually, Customer shall certify to S+N in a writing signed by Customer's authorized representative its compliance with the terms of this license, and providing: (i) the number of people to whom Customer provides access to the Software; (ii) the locations and types of the systems on which it operates or has installed the Software; and (iii) scripts or programs it has created using the Software. S+N reserves the right to audit Customer's use and Authorized User's use of the Software no more than once annually at S+N's expense, provided that S+N may audit more frequently upon its reasonable suspicion of a violation of this Agreement. S+N shall schedule any audit at least fifteen (15) days in advance. Any such audit shall be conducted during regular business hours at Customer's facilities and shall not unreasonably interfere with Customer's business activities. If such audit reveals that Customer has underpaid fees to S+N or has otherwise violated this Agreement, Customer shall promptly pay to S+N such fees at the prices previously agreed to for such Software to remediate such underpayment in full or such other compensation as is appropriate to pay to S+N resulting from Customer's violation of this Agreement. Customer shall allow S+N, or its agents, access to Customer's facilities, including its computing equipment and books and records, during normal business hours for the purpose of undertaking an audit and determining Customer's compliance with this Agreement.
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11. **Customer Responsible For Authorized Users.** The Customer is responsible and liable for all non-compliance with this Agreement by all Authorized Users and any and all acts and omissions by all Authorized Users and their accounts in connection with the Software; the content (including User Content) and data (including Customer data) transmitted to or from the Software by Customer or Authorized Users, or their accounts; and for the effects of any breach of security in connection with the activity of Authorized Users' accounts in connection with the Software. The Customer is responsible and liable for the act and/or omissions by any other person to whom Customer or an Authorized User may provide access to or use of the Software, whether such access or use is permitted by or in violation of this Agreement. The Customer is solely responsible for the Authorized Users' interactions with patients in connection with and separate from the Software. The Customer is solely responsible for ensuring that all diagnoses activities are carried-out by a healthcare practitioner, and all exercises and/or other actions to cure, mitigate, treat, or prevent disease or other conditions are prescribed and carried-out by a healthcare practitioner. All Authorized Users must follow policies and controls established by the Customer to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) any and all data privacy laws. All Authorized Users are solely responsible for obtaining, installing, maintaining and operating all necessary software, hardware, and other equipment to use and access the Software. All Authorized Users shall use up-to-date web browsers, antivirus, anti-spyware, and internet security software. S+N bears no responsibility or liability for interruption or non-performance of the Software or for loss and theft of data which results in connection with the aforementioned factors.

12. **Account And Login.** To gain access to and use the Software, Customer and all Authorized Users must use their unique user ID and associated password (**Login Credentials**), and Customer shall not share its Login Credentials with anyone except Customer's Authorized Users. Customer is solely and entirely responsible for maintaining the confidentiality of the information Customer holds for Customer's account, including Customer's Login Credentials, and for any and all activity that occurs under Customer's account as a result of Customer failing to keep this information secure and confidential. If Customer's account information changes, Customer must update Customer's account promptly. Except with Company's express prior written permission, Customer may not use the profile, username, or password of another Software user. If multiple accounts or sets of Login Credentials are registered or established by the same individual, S+N may terminate such accounts or Login Credentials immediately at S+N's sole discretion. If S+N has reason to believe that Customer account information is untrue, inaccurate, out-of-date or incomplete, S+N may suspend or terminate Customer's account at S+N's sole discretion.
13. **Security Messages.** For security purposes, S+N may send an SMS text message containing a PIN code or provide access to a QR Code. Any QR Code or PIN code is for use solely by the Authorized User to whom the SMS text message is issued and may not be forwarded or used by any other party.
14. **User Content.** The Software may, from time to time, allow Authorized Users to submit user-generated content and information ("**User Content**"). The Customer is solely responsible for all User Content including all code, video, images, software, music, sound, photographs, graphics, messages, and other information or materials that is uploaded, posted, published, displayed or submitted to the Software. You assume all risk associated with your User Content and the transmission of your User Content, and you have sole responsibility for the accuracy, quality, legality and appropriateness of your User Content.
15. **Promises For User Content.** By uploading or submitting User Content, you represent and warrant that: (a) you own or control all rights and interests in such User Content; (b) you have the right to grant S+N to use such User Content in accordance with this Agreement; and (c) all User Content you submit, to the best of your knowledge: is accurate and up-to-date; is not false, inaccurate or misleading; does not violate this Agreement or any laws; and does not conflict with the rights of any third parties.
16. **S+N Rights To User Content.** You acknowledge and agree that S+N may preserve User Content and may also disclose User Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process, applicable laws, or government requests; (b) enforce this Agreement; (c) respond to claims that any content violates the rights of third parties; or (d) protect the rights, property, or personal safety of S+N, its users, or the public. You understand that the technical processing and transmission of Software and User Content, may involve (i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks or devices.
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18. **Prohibited Actions.** (a) Other than as expressly set forth in Section 2, Customer may not make or distribute copies of the Software or electronically transfer the Software from one server or to another or over a network. (b) Customer may not alter, merge, modify, adapt or translate the Software, or decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form or modify the file format in any way, including file conversion application converting files to any other file format; (c) Unless expressly permitted by S+N, Customer may not rent, lease, or sublicense the Software. (d) Unless expressly permitted by S+N, Customer may not modify the Software or create derivative works based upon the Software.
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23. **Data Privacy.** The Software is provided to Customer as a service. To provide the service, S+N requires access to any use of personal data inputted by or on behalf of Customer into the Software which may include without limitation, the personal data of patients, healthcare professionals and those individuals who use the Software. S+N shall collect and use (process) such personal data in accordance with the S+N privacy notice [[Privacy Notice](#)].
24. **Collected Data and Feedback.** Customer understands the Software may communicate with S+N either by means of email transmission or through a cloud service related to the Software. Customer agrees that S+N may collect system data, technical or statistical data and related information regarding use of the Software and related products, equipment or services provided by S+N, including but not limited to, data (including images) shared by Customer as part of any feedback or bug report and information about the associated equipment, computing device, system and application software, or peripherals or user data ("**Collected Data**"), and may store and access Collected Data. In

accordance with applicable laws, S+N, its affiliates and its service providers may use Collected Data for purposes of monitoring and maintaining the equipment and improving the products and services of S+N and its affiliates (including without limitation for training or validation of machine learning models or systems). Customer hereby grants, and hereby agrees to grant, to S+N, S+N's affiliates and S+N's service providers (including third party suppliers) a worldwide, royalty-free, fully paid, non-exclusive, transferable, sublicensable, perpetual license to use, sell, offer to sell, license, import, run, copy, make, have made, prepare derivative works, distribute, display, or otherwise exploit Collected Data in furtherance of the purposes stated in this Agreement. Customer acknowledges and agrees that any ideas, enhancements, modifications, and the like disclosed by Customer to S+N with respect to the Software ("**Software Improvements and Feedback**") will be the property of S+N. Customer agrees to assign, and hereby assigns, all right, title, and interest worldwide in the Software Improvements and Feedback to S+N and agrees to assist S+N, at S+N's expense, in perfecting and enforcing S+N's rights thereto and ownership thereof. Customer acknowledges and agrees that S+N and its affiliates may use such Software Improvements and Feedback for its business purposes without restriction provided S+N shall not identify Customer in any such use without Customer's prior consent.

25. **Confidentiality.** The Software and information made available via the Software, includes trade secrets and is proprietary to S+N. Customer shall maintain Software and its contents in confidence and prevent disclosure of Software using at least the same degree of care it uses for its own similar proprietary information, but in no event less than a reasonable degree of care. Customer shall not disclose Software or any part thereof to anyone for any purpose, other than to i) employees or Authorized Users whose access is required for the sole purpose of exercising the rights expressly granted under this Agreement; or ii) a regulatory or supervisory body having jurisdiction in order that Customer comply with its obligations under applicable laws or regulations. The obligation of confidentiality shall survive any termination of this Agreement.
26. **Events Outside S+N Control.** S+N will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this Agreement that is caused by an Event Outside S+N's Control. An "**Event Outside S+N's Control**" is defined as any act or event beyond S+N's reasonable control, including without limitation failure of public or private telecommunications networks, cyber-security or data breach incidents. If an Event Outside S+N's Control takes place that affects the performance of S+N's obligations under this Agreement: (a) S+N's obligations under this Agreement will be suspended and the time for performance of S+N's obligations will be extended for the duration of the Event Outside S+N's Control; and (b) we will use our reasonable endeavours to find a solution by which S+N obligations under this Agreement may be performed despite the Event Outside S+N Control.
27. **Termination.** In addition to any rights and remedies that S+N has under any other agreement, S+N may terminate this Agreement and all rights and licenses granted hereunder immediately if you are in breach of this Agreement where S+N considers such breach incapable of remedy or on thirty (30) days' notice in writing specifying the breach where you fail to remedy the breach within such period. This Agreement, and all rights and licenses granted hereunder, shall automatically terminate in the event that (a) you sell or otherwise dispose of any equipment which has been supplied to you by S+N on which the Software is installed; (b) you breach Sections 7 or 18 of this Agreement; or (c) Customer (i) admits in writing its inability to pay its debts generally as they become due; (ii) makes a general assignment for the benefit of creditors; (iii) institutes proceedings to be adjudicated a voluntary bankrupt, or consent to the filing of a petition of bankruptcy against Customer; (iv) is adjudicated by a court of competent jurisdiction as being bankrupt or insolvent; (v) seeks recourse under any bankruptcy act, or consents to the filing of a petition seeking such recourse; or (vi) ceases to do business itself or through a successor.
28. **Effects of Termination.** Upon termination of this Agreement or any Authorized User's access to the Software for any reason:
 - a. all rights granted to you and the Authorized Users (as applicable) under this Agreement will immediately cease;
 - b. you and the relevant Authorized Users must promptly discontinue all use of all Software and delete or remove it from all devices in your possession or control and cause all Authorized Users in the instance of termination of the Agreement as a whole, to do the same; and
 - c. you must pay S+N all outstanding amounts that you owe us, if any.

29. If S+N stores structured Customer data in the Software, S+N shall, at your choice, return or destroy such Customer data. S+N shall store Customer data in accordance with regulatory requirements following termination of this Agreement.
30. Those provisions of this Agreement that by their nature are intended to survive termination or expiration of these terms and conditions shall so survive.
31. **Governing Law.** Unless otherwise stated in the Ordering Document, this Agreement shall be governed by the laws of the jurisdiction in which the Software is provided to Customer by S+N without regard to conflict of laws provisions. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. Nothing herein shall prevent the parties from filing administrative actions with any Intellectual Property Office or any other Patent and Trademark Office
32. **Miscellaneous.** This Agreement contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect. The controlling language of this Agreement, and any proceedings relating to this software license agreement, shall be English. Customer agrees to bear any and all costs of translation, if necessary. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. S+N may transfer S+N's rights and obligations under this Agreement to another organisation, but this will not affect your rights or our obligations under this Agreement. Customer may only transfer your rights or your obligations under this Agreement to another person if we agree in writing. A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy All questions concerning this Agreement shall be directed to: Company.Secretary@smith-nephew.com

JURISDICTION SPECIFIC ADDENDA

Australia

This addendum forms part of the agreement if the jurisdiction in which the Software is provided to Customer by S+N is Australia.

1. **Definitions.** In this Addendum, the following terms have defined meanings:
 - a. **Applicable Laws** means any document with binding force made by a government in Australia using its executive or legislative powers, including the *Privacy Act 1988* (Cth), and the acts and orders of various states and territories dealing with health information privacy and other information privacy issues.
 - b. **Clause** means a clause in the Agreement to which this addendum is annexed.
 - c. **Data Incident** means a computer security incident that has, or is reasonably suspected to have, occurred in respect of any Personal Information that either party has collected, held, used or disclosed in the course of or relating to this Agreement.
 - d. **Eligible Data Breach** means a Data Incident that must, according to an Applicable Law, be notified to either or both of a regulator or individuals.
 - e. **Personal Information** has the meaning given in the Privacy Act 1988 (Cth).
 - f. **Sensitive Information** has the meaning given in the Privacy Act 1988 (Cth).
2. **Warranties.** Clause 6 is amended by inserting the following at the conclusion of the Clause:

“This clause applies to the maximum extent permitted by law. In respect of liability under any condition or warranty which cannot be legally excluded, S+N’s liability is limited to (at S+N’s discretion): (1) in the case of goods, the replacement of the goods, supply of equivalent goods, repair of the goods, or payment of the cost of replacing the goods, acquiring equivalent goods or having the goods repaired; and (2) in the case of services, supplying the services again, or paying the cost of having the services supplied again.
3. **Maintenance/Updates.** Clause 8 is amended by inserting the following at the conclusion of the Clause:

“This clause applies to the maximum extent permitted by law. In respect of liability under any condition or warranty which cannot be legally excluded, S+N’s liability is limited to (at S+N’s discretion): (1) in the case of goods, the replacement of the goods, supply of equivalent goods, repair of the goods, or payment of the cost of replacing the goods, acquiring equivalent goods or having the goods repaired; and (2) in the case of services, supplying the services again, or paying the cost of having the services supplied again.
4. **Limitations of Liability.** Clause 10 is amended by inserting the follow at the conclusion of the Clause:

In respect of liability under any condition or warranty which cannot be legally excluded, S+N’s liability is limited to (at S+N’s discretion): (1) in the case of goods, the replacement of the goods, supply of equivalent goods, repair of the goods, or payment of the cost of replacing the goods, acquiring equivalent goods or having the goods repaired; and (2) in the case of services, supplying the services again, or paying the cost of having the services supplied again.
5. **Customer’s privacy obligations.** Without limiting clause 23, the Customer warrants that it: (1) will not provide any Sensitive Information to S+N unless that information is necessary for S+N to perform its obligations under this Agreement; (2) obtained consents in the form specified by S+N from time to time for the individuals whose Personal Information Customer is disclosing to S+N in the course of this Agreement to enable S+N to both: (i) lawfully use the Personal Information and (ii) perform its obligations in accordance with this Agreement, including transfer of the data by S+N to its related entities and service providers including overseas.

6. **Data Incident.** If either party becomes aware, or has reasonable grounds to suspect, that a Data Incident has occurred, that party must immediately notify the other party, and take reasonable steps to contain and resolve the Data Incident and preventing any further serious harm to affected individuals (for the avoidance of doubt, this obligation is ongoing).
7. **Data Incident investigation.** If clause 6 of this addendum applies, each party must promptly conduct a thorough investigation of the Data Incident in accordance with Applicable Law (**Data Breach Investigation**). Each party must then provide the other party with a notice stating: (1) the nature and details of the Data Incident; (2) the specific Personal Information affected; (3) the actions taken by it; (4) the recommended next steps for each of the parties and the affected individuals; (5) whether the Data Incident is an Eligible Data Breach.
8. **Notification to Individuals.** In the case of an Eligible Data Breach, Customer and S+N must determine whether the Customer or S+N will make the relevant notifications under the Privacy Act and whether and to what extent any public or media statements will be made. Where the Customer is making the relevant notifications, the Customer must submit the notifications to S+N for approval before they are made (such approval not to be unreasonably withheld or delayed).

Japan

This addendum forms part of the agreement if the jurisdiction in which the Software is provided to Customer by S+N is Japan.

1. **LIMITATIONS OF LIABILITY.** Clause 10 is amended by replacing inserting the following at the conclusion of the Clause

YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNLESS S+N HAS ACTED WITH INTENT OR GROSS NEGLIGENCE, S+N WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, OR DAMAGES FOR LOSS OF PROFITS INCLUDING DAMAGES FOR LOSS OF GOODWILL, SOFTWARE, BUSINESS, USE, OR DATA; CORRUPTION OR LOSS OF DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SOFTWARE FAILURE, MALFUNCTION, OR SHUTDOWN; FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION; FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; OR BREACHES IN SYSTEM SECURITY; OR OTHER INTANGIBLE LOSSES (EVEN IF S+N HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), HOWEVER CAUSED OR ON ANY THEORY OF LIABILITY, EVEN IF S+N IS INFORMED OF THEIR POSSIBILITY. WITHOUT LIMITING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, S+N IS NOT LIABLE FOR: (A) THE USE, INTERRUPTION, DELAY, OR THE INABILITY TO USE THE SOFTWARE OR CONNECTED EQUIPMENT; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SOFTWARE RESULTING FROM ANY GOODS, DATA, INFORMATION, OR SOFTWARE PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM A SOFTWARE OR DEVICE; (C) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (D) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON A SOFTWARE, DEVICE OR CONTENT; OR (E) ANY OTHER MATTER RELATING TO THE SOFTWARE. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNLESS S+N HAS ACTED WITH INTENT OR GROSS NEGLIGENCE, IN NO EVENT WILL S+N'S TOTAL CUMULATIVE LIABILITY TO YOU FOR INDEMNIFICATION AND ALL DAMAGES, LOSSES, OR CAUSES OF ACTION IN CONNECTION WITH THIS AGREEMENT OR USE OF THE SOFTWARE EXCEED AN AMOUNT WHICH IS THE LOWER OF: I) THE FEES PAID TO S+N BY YOU DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CAUSE OF ACTION; OR II) \$500 WHICHEVER IS THE LESSER. THE LIMITATIONS SET FORTH IN SECTION 10 SHALL APPLY EVEN IF CUSTOMER'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.