

## PANASONIC FACTORY SOLUTIONS COMPANY OF AMERICA

Unit of Panasonic Corporation of North America  
1701 Golf Road, Suite 3-1200, Rolling Meadows, IL 60008

### TERMS AND CONDITIONS FOR BETA TEST PARTICIPATION

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Panasonic System Solutions Company of North America - Process Automation (“PSSNA-PA”), a Division of Panasonic Corporation of North America, has developed and is the owner of a prototype product as set forth in Schedule A attached hereto (hereinafter referred to as the “Product”), which it desires to have tested by prospective users in what is commonly referred to as a “Beta Test” prior to general release. By requesting PSSNA-PA to participate in the Beta Test for the Product, and acceptance of the related Quote, the prospective user (“Customer”) shall be deemed to have read and unconditionally accepted these terms and conditions (along with any and all related Exhibits and Schedules, this “Agreement”) pertaining to the provision of the Product during the Beta Test Period and the terms and conditions set forth in the relevant Quote, which is explicitly incorporated into and made part of this Agreement. In the event of a conflict between the terms and conditions contained herein and those set forth in the Quote, the Quote shall control.

#### 1. DEFINITIONS.

For purposes of this Agreement, the following terms have the meanings set forth below:

“Authorized Data” means the data and other information associated with Customer’s use of the Product, including but not limited to, equipment KPIs, manufacturing statistics and panel traceability data, but only to the extent such data and other information is actually collected pursuant to Customer’s use of the Product.

“Authorized User” means a Customer employee, contractor, or representative explicitly designated by Customer with a need to access the Product to perform its obligations under this Agreement.

“Beta Test Period” means the period of time set forth in the related Quote during which testing of, and any adjustments to, the Product contemplated hereunder will be undertaken.

“Data Protection Laws” means (a) laws regarding data protection and privacy, including any amendments thereto and regulations promulgated thereunder by any Federal, State or other jurisdiction of the United States of America: (i) where Customer or PSSNA-PA, as applicable, is incorporated, formed, domiciled, or conducting business; (ii) where the proprietor of any of the Personal Information resides, or enters, submits, processes, or transmits Personal Information; (iii) where any of the Personal Information is received, collected, hosted, stored, handled, processed, or transmitted by any entity pursuant to the terms of this Agreement; or (iv) where Customer or PSSNA-PA, as applicable, is for any other reason legally responsible for the protection of the Personal Information, such laws including, without limitation, applicable Federal or State laws and regulations of the United States of America, including the Gramm-Leach-Bliley Act, the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996, the Children’s Online Privacy Protection Act of 1998, laws and regulations of the U.S. Federal Trade Commission; and (b) any applicable Federal, State or local principles, guidelines and codes issued by a competent data protection authority, or other competent U.S. governmental body or agency, in respect of such laws.

“Documentation” means such supporting written materials as PSSNA-PA may in its discretion provide to Customer in connection with its use of the Product, including without limitation, written materials of any associated hardware or Software.

“Personal Information” means, but is not limited to: (a) personal data, personal information and personally identifiable information, as defined by the Data Protection Laws; (b) information that (i) permits the identification of, or physical or online contacting of, the individual to whom such information pertains, including first and last name or first initial and last name, information about an individual’s sex, race, ethnicity, date of birth, age, income, physical address, e-mail address or any other identifier that permits direct contact with an individual online, telephone number, Social Security number, financial or credit card account information, health or medical information, or credit information, or (ii) can be used to authenticate that individual, such as passwords or PINs, biometric data, unique identification numbers, answers to security questions, or other

personal identifiers; and (c) any copies of such information or materials derived from or related to such information, in whatever form maintained.

“Quote” means the related quote provided by PSSNA-PA from time to time to Customer in connection with the provision of the Product to Customer during the Beta Test Period. In the event of a conflict between the provisions contained in two or more Quotes provided to Customer by PSSNA-PA in connection with the Product, then the most recent Quote shall control.

“Software” means the computer programs provided by PSSNA-PA as part of the Product as specified in Schedule A attached hereto.

## 2. OWNERSHIP AND LICENSE GRANT.

a. Ownership. Customer acknowledges that the Product is presented and loaned to Customer solely for the purpose of the Beta Test and that PSSNA-PA retains ownership of all right, title and interest in and to the Product, any Software and Documentation, the design of the Product, Software and Documentation, and the intellectual property rights therein and thereto (including without limitation, all patent rights, design rights, copyrights and trade secret rights), subject to the Software license granted in Section 2(b) below. Customer agrees not to (i) copy, modify, or reverse engineer any hardware or design associated with the Product or Software, make derivative works based upon the Product, Software or Documentation, or use the Product, Software or Documentation to develop any products, without PSSNA-PA's prior written approval, (ii) sell, license, rent, lend, assign, distribute, publish or transfer the Product, Software or Documentation to any third party, except as expressly permitted by this Agreement or (iii) use or authorize the use of the Product, Software or Documentation in any manner or for any purpose that is either unlawful under applicable law or permitted under the terms set forth herein. In the event that the Product requires the provision of any associated hardware, PSSNA-PA hereby reserves, and Customer hereby agrees, that PSSNA-PA shall have a security interest in such hardware delivered under this Agreement. If requested by PSSNA-PA, Customer agrees to execute and deliver financing statements or any other instruments, recordings or filings deemed necessary by PSSNA-PA to protect and preserve its right, title and interest in and to any such hardware associated with the Product under applicable law.

b. License Grant. PSSNA-PA hereby grants to Customer and Customer hereby accepts a limited, non-transferable, non-sublicenseable, non-exclusive license to access and use the Product, Software, and Documentation during the Beta Test Period solely for the purpose of testing and evaluating the Product subject to the following restrictions: Customer shall not (i) exercise its rights granted hereunder at any location other than at the Customer's site(s) listed on the related Quote (the “Beta Test Site”); (ii) exercise its rights granted hereunder in connection with any activities other than as contemplated under this Agreement relating to the testing of the Product listed on Schedule A; (iii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make any Product, Software, or Documentation available to any third party, except as expressly permitted by this Agreement or in a prior written consent from PSSNA-PA; and (iv) make copies of the Software or Documentation except as may be reasonably necessary to access and use the Product; *provided, however*, that if any Software is based on or derived from “open source” code, such restriction from copying shall not apply but only to the extent of such open source code.

c. Modifications. Customer hereby assigns to PSSNA-PA, Customer's entire right, title and interest (including, without limitation, all patent rights, design rights, copyrights and trade secrets) in any modifications, updates, changes, adaptations, bug fixes, new releases, corrections or improvements (“Updates”) to the Product, Software or Documentation, which Customer may propose or make during the Beta Test Period or which Customer and PSSNA-PA may jointly make during the Beta Test Period.

## 3. SCOPE.

This Agreement (which includes the relevant Quote) sets forth the terms and conditions for the beta installation, use, test and support of the Product, and related Software and Documentation, during the Beta Test Period at the Beta Test Site prior to formal release.

## 4. OBLIGATIONS.

a. Customer.

i. Testing. During the Beta Test Period, Customer agrees to test the Product, including to run such test

suites and other test programs set forth in the related Quote. Customer also agrees to use such special and non-standard operating procedures as may be reasonably required by PSSNA-PA to accomplish testing of the Product.

ii. *Contacts.* The Customer Contact designated on the Quote shall provide to PSSNA-PA's Beta Coordinator designated on the Quote, written reports on all test and performance results of the Product according to the time schedule set forth in the Quote and from time to time as reasonably requested by the Beta Coordinator in writing.

iii. *Error Notice.* The Customer Contact shall promptly notify PSSNA-PA of any failure, error or other malfunction of any part of the Product but no later than twenty-four (24) hours of such occurrence.

iv. *Modifications.* Customer agrees to promptly implement such Updates that PSSNA-PA may make to the Product, Software, and Documentation as PSSNA-PA may provide from time to time during the Beta Test Period. Customer understands that new Updates may be incompatible with previous versions or Updates and could include substantial changes to the Product system and its operating procedures. Except as otherwise specified in this Agreement or at the written direction of PSSNA-PA, Customer shall not alter or modify any aspect of the Product, Software, or Documentation during the Beta Test Period without PSSNA-PA's prior written approval.

v. *Access.* During the Beta Test Period, Customer will grant PSSNA-PA full and free access to any Authorized Data and any hardware, Software or Documentation in connection with the Product to allow PSSNA-PA to perform under this Agreement at such reasonable times as may be required by PSSNA-PA.

vi. *Insurance.* User shall keep all hardware related to the Product in good condition and working order and insure such hardware against loss, theft, or damage in the amount specified by PSSNA-PA.

b. PSSNA-PA.

i. *Delivery.* PSSNA-PA agrees that PSSNA-PA, or a third party designated by PSSNA-PA, will deliver the Product to Customer within a reasonable time after effectiveness of this Agreement, or at a time otherwise agreed to in writing by PSSNA-PA.

ii. *Technical Assistance.* PSSNA-PA will provide Customer such technical assistance as PSSNA-PA may deem necessary to properly install and operate the Product at the Beta Test Site during Customer's normal business hours. PSSNA-PA will provide Customer with all test suites to be run by Customer.

iii. *Modifications.* During the Beta Test Period, PSSNA-PA will consult with the Customer Contact regarding the performance of the Product and will evaluate the test data and error reports provided by Customer. PSSNA-PA will undertake to make such Updates to the Product as deemed appropriate by PSSNA-PA and provide the same to Customer at no cost; *provided, however,* PSSNA-PA is not obligated to make any Updates.

## 5. **DATA.**

a. Customer acknowledges that it may be necessary from time to time during the Term and relating to provision of the Product for PSSNA-PA to access and use Authorized Data stored on PSSNA-PA's servers, and therefore grants to PSSNA-PA, including its contractors as necessary to provide and operate the Product, a limited non-exclusive, transferable, royalty-free, right throughout the universe to reproduce, access, and use Authorized Data as reasonably necessary:

- i. to provide the Product to Customer;
- ii. to monitor and administer the Product;
- iii. to resolve service requests;
- iv. to address deficiencies in the Product offerings;
- v. for publication of aggregated statistical data related to performance, security, operation and use of

the Product;

- vi. to create statistical analyses; and,
- vii. for research and development purposes.

In no event shall any publication, statistical analyses, or research and development projects identify Customer or include identifiable Authorized Data or Personal Information.

- b. PSSNA-PA shall not collect, handle, process, disclose, use or store any Authorized Data for any purpose other than

as necessary to furnish the Product or to exercise any rights granted to it under this Agreement, or as required by the Data Protection Laws or other applicable laws.

c. The parties agree to reasonably cooperate to enter into any additional agreements, instruments and other documents which PSSNA-PA determines, in its sole reasonable discretion, are necessary to ensure the appropriate collection, handling, processing, disclosure, use and storage of the Authorized Data in accordance with or as required by the Data Protection Laws.

d. In the event that PSSNA-PA is in or comes into possession of Personal Information of Authorized Users other than the Authorized Data, PSSNA-PA shall identify, in writing, to Customer the locations at which the Personal Information is collected, handled, processed, disclosed, used or stored. PSSNA-PA may not relocate or transfer any such Personal Information to other locations, except as necessary to comply with Data Protection Laws.

- e. Data Security:

- i. PSSNA-PA hereby agrees to maintain commercially reasonable data security measures to ensure that Personal Information stored behind PSSNA-PA's firewalls is protected against loss, damage, destruction or any form of unauthorized or unlawful collection, handling, processing, disclosure, usage, access and/or storage in accordance with the standards and requirements set forth in this Agreement and the Data Protection Laws.

- ii. PSSNA-PA further agrees to maintain and comply with, a comprehensive written information security program with respect to the collection, handling, processing, disclosure, use, access and storage of Personal Information, that is consistent with Data Protection Laws, and that includes: administrative, technical and physical safeguards to protect the security, integrity, and confidentiality of Personal Information that are appropriate to: (1) the size, scope and type of business comprising the Product; (2) the amount of resources available to it; (3) the amount of stored Authorized Data; and (4) the need for security and confidentiality of Personal Information.

- iii. If PSSNA-PA becomes aware of any unauthorized or unlawful access to or use of the Personal Information of Authorized Users that requires notification by PSSNA-PA under the ~~Data Protection Laws~~ ("Security Incident"), PSSNA-PA shall promptly notify Customer of the Security Incident. In the event of a Security Incident, the parties shall cooperate to resolve any data privacy or security issues involving Personal Information, and to make any required notifications to individuals affected by the Security Incident. PSSNA-PA agrees to take commercially reasonable action to investigate the Security Incident and to take reasonable action to identify and mitigate the effects of any such Security Incident. Except to the extent prohibited by the Data Protection Laws or as reasonably necessary to sustain attorney-client privilege, PSSNA-PA shall provide Customer with a detailed description of the Security Incident, the type of data that was the subject of the Security Incident, and any other information that Customer may reasonably request concerning the Security Incident, as soon as PSSNA-PA has concluded its investigation of such Security Incident and such information can be confirmed and collected or otherwise becomes available. Subject to Section 11 hereof, PSSNA-PA shall be responsible for all costs related to its investigation of the Security Incident and providing any required notifications to individuals affected by the Security Incident in any case where the Security Incident is the result of PSSNA-PA's gross negligence, willful misconduct, or failure to comply with the requirements of this Section 5.

- f. PSSNA-PA and Customer each shall comply with any applicable obligations under any applicable laws, rules and

regulations including, without limitation, the Data Protection Laws, with respect to its processing, use, storage and disclosure of Authorized Data.

6. **PAYMENTS.** Customer shall pay to PSSNA-PA the fees for the Product in the amounts and in accordance with the payment terms set forth on the Quote. All fees shall be paid in U.S. dollars in immediately available funds and shall be made payable to PSSNA-PA reserves the right to impose a late fee on all amounts not paid when due in the amount of 1.0% per month, or the maximum amount allowable by law, whichever is less.

7. **CONFIDENTIALITY.**

a. **Confidential Information Defined.** Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") may disclose Confidential Information in connection with this Agreement. "Confidential Information" means all information in any form or medium (whether oral or written) that the Disclosing Party considers confidential or proprietary, including without limitation information consisting of or relating to the Disclosing Party's technology, services, products, trade secrets, know-how, business operations, processes, programs, schematics, software and software related documents, customers, plans, and strategies: (i) that is marked or designated "confidential" or "proprietary," or (ii) that the other party knows or has reason to know is confidential or proprietary because of legends or other markings, the circumstances of disclosure or the nature of the information itself, *provided, however*, that orally disclosed confidential or proprietary information shall continue to be deemed "Confidential Information" only where such oral information is reduced to written form and furnished to the Receiving Party or Receiving Party's Affiliates within ten (10) business days following such oral disclosure.. "Confidential Information" also includes, without limitation, any information described above which the Disclosing Party obtains from a third party under a contractual or other confidentiality obligation, and the terms and conditions of this Agreement.

b. **Protection of Confidential Information.** The Receiving Party shall use Confidential Information solely in connection with the performance of this Agreement. The Receiving Party shall protect Confidential Information (whether disclosed before or after the Effective Date) from unauthorized use, dissemination or publication by using the same degree of care, but not less than a reasonable degree of care, as the Receiving Party uses to protect its own confidential or proprietary information of a similar nature. The Receiving Party will limit the use of and access to the Disclosing Party's Confidential Information to the Receiving Party's employees or independent contractors who have a demonstrable need to know, who have been notified that such information is Confidential Information and who are under binding obligations of confidentiality no less restrictive than those of this Agreement. The Receiving Party agrees not to reverse engineer, disassemble or decompile any prototypes, software or other tangible objects that embody the Disclosing Party's Confidential Information. Furthermore, the Receiving Party agrees not to copy any of the Disclosing Party's Confidential Information unless and until the Disclosing Party approves in writing such copying, except as reasonably required to evaluate and/or conduct the parties' transaction(s). The Receiving Party agrees to reproduce the Disclosing Party's proprietary rights notices on any such authorized copies, in the same manner in which such notices were set forth in or on the original.

c. **Length of Confidentiality Obligation.** The Receiving Party's obligation to protect an item of Confidential Information under this Agreement shall survive termination of this Agreement except when an exception set forth in Section 7.d applies to such item of Confidential Information.

d. **Exceptions to Non-Disclosure Obligations.** The restrictions of nondisclosure set forth in this Section 7 will not apply to any Confidential Information: (i) after it has become generally available to the public through no fault of the Receiving Party or its affiliates, consultants, agents or subcontractors; (ii) that is rightfully in the Receiving Party's possession before disclosure to the Receiving Party by the Disclosing Party; (iii) is independently developed by the Receiving Party without the developing person(s) having access to the Disclosing Party's Confidential Information, or (iv) is received by the Receiving Party in good faith from a third party not subject to an obligation of confidentiality.

e. **Required Disclosures.** In addition, the Receiving Party may disclose Confidential Information if required to do so by statute, administrative process or court order, provided (i) that the Receiving Party gives the Disclosing Party prompt notice of such disclosure requirement, (ii) the Receiving Party uses reasonable efforts to cooperate with the Disclosing Party in trying to seek a protective order in connection therewith, and (iii) the scope of such disclosure is limited to the extent possible.

8. **WARRANTIES.** Each party represents and warrants to the other party that:

- a. it is a duly organized, validly existing and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization;
- b. it has, and throughout the Term and any additional periods during which it receives, does or is required to perform the Product, will retain, the full right, power and authority to enter into this Agreement and perform its obligations hereunder;
- c. the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and
- d. when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

**9. DISCLAIMER OF WARRANTY.** THE PRODUCT (INCLUDING ANY SOFTWARE AND DOCUMENTATION) IS PROVIDED IN PRE-RELEASE MODE AND MAY NOT BE AT THE LEVEL OF PERFORMANCE, FUNCTIONALITY OR COMPATIBILITY OF A FINAL, GENERAL PRODUCT OFFERING. THE PRODUCT (INCLUDING ANY SOFTWARE AND DOCUMENTATION) IS PROVIDED HEREUNDER "AS IS." EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PSSNA-PA MAKES AND CUSTOMER RECEIVES NO REPRESENTATIONS OR WARRANTIES REGARDING THE PRODUCT OR ANY MODIFICATIONS OR IMPROVEMENTS THERETO (INCLUDING ANY SOFTWARE, DOCUMENTATION, OR ANY OTHER PRODUCT OR SERVICE PROVIDED HEREUNDER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE). PSSNA-PA DOES NOT MAKE ANY WARRANTY THAT THE USE OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE OR THAT IT WILL PROVIDE ANY BACK-UP FUNCTIONALITY FOR AGGREGATE ACTIVITY DATA, NOR DOES PSSNA-PA MAKE ANY WARRANTY WITH RESPECT TO THE ACCURACY OR PERFORMANCE OF ANY ASSOCIATED APPLICATIONS OR THE ACCURACY OF ANY DATA OBTAINED FROM SUCH APPLICATIONS OR THAT AGGREGATE DATA CAN BE USED TO MAKE ANY CONCLUSIONS REGARDING THE CUSTOMER OR ANY END USER. NO ORAL INFORMATION OR STATEMENT MADE BY ANY PARTY OR ITS REPRESENTATIVES WILL CREATE ANY SUCH WARRANTY.

**10. LIMITATION OF LIABILITY.** NEITHER PARTY NOR ANY AFFILIATE, AGENT OR SUPPLIER OF SUCH PARTY SHALL BE LIABLE FOR (A) ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION/DATA AND THE LIKE) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (B) ANY DIRECT DAMAGES OR OTHER AMOUNT IN EXCESS OF THE FEES ACTUALLY PAID PURSUANT TO THE APPLICABLE QUOTE.

**11. INDEMNIFICATION.**

- a. PSSNA-PA shall indemnify and hold Customer, and each of Customer's affiliates, directors, officers, agents and employees (each of the foregoing, an "Indemnitee") harmless from and against any and all loss or damage to which such Indemnitee has become subject pursuant to a final, non-appealable judgment from a court of competent authority arising out of or relating to any claim, suit, action or proceeding (including any governmental claim) (each, an "Action") by a third party to the extent such losses or damages do or are alleged to result from:
  - i. PSSNA-PA's failure to comply with its obligations under Data Protection Laws;
  - ii. PSSNA-PA's breach of any representation, warranty, covenant or obligation of PSSNA-PA Agreement; and under this
  - iii. any action or failure to take a required action or more culpable act or omission (including recklessness or willful misconduct) in connection with the performance or nonperformance of the Product or other activity actually or required to be performed by or on behalf of PSSNA-PA under this Agreement;

except to the extent such claim arises out of or relates to (A) the use of the Product by Customer in a manner not authorized in this Agreement, (B) Customer's negligence or intentional misconduct, or (B) the failure by Customer to comply with its obligations with respect to data under Section 5 of this Agreement.

b. Customer shall indemnify, defend and hold PSSNA-PA, and each of PSSNA-PA's affiliates, directors, officers, agents and employees (each of the foregoing, a "PSSNA-PA Indemnitee") harmless from and against any and all loss or damage to which such PSSNA-PA Indemnitee has become subject pursuant to a final, non-appealable judgment from a court of competent authority arising out of any Action by a third-party against PSSNA-PA resulting from

i. the failure by Customer or any Authorized User to comply with its obligations under Data Protection Laws;

ii. Customer's breach of any representation, warranty, covenant or obligation of PSSNA-PA Agreement; and under this

iii. any action or failure to take a required action or more culpable act or omission (including recklessness or willful misconduct) in connection with the use of the Product or other activity actually or required to be performed by or on behalf of Customer under this Agreement;

except to the extent such claim arises out of or relates to (A) the use of any Authorized Data by PSSNA-PA in a manner not authorized in this agreement, (B) PSSNA-PA's negligence or intentional misconduct, or (C) the failure by PSSNA-PA to comply with its obligations under Data Protection Laws.

c. Each party's obligation of indemnification is contingent upon the other party promptly notifying the indemnifying party of any such claim, and cooperating with the indemnifying party in such defense and/or settlement. In the event that the Product becomes or is in PSSNA-PA's reasonable discretion likely to become the subject of any injunction preventing use in the manner contemplated in this Agreement, or that PSSNA-PA reasonably determines that the Product is likely to infringe or violate any third party intellectual property rights or that the use of the Product is likely to violate any Data Protection Law, PSSNA-PA may, at its option, (i) procure for Customer the right to continue to use the Product in the manner permitted hereunder, without the payment of any additional fees by Customer to any such third party; (ii) replace or modify the Product so that they are compliant with Data Protection Laws and/or non-infringing while continuing to perform all material functions or (iii) if in PSSNA-PA's reasonable opinion it is not commercially reasonable for PSSNA-PA to take the actions set forth in (i) or (ii), terminate this Agreement and release Customer from any further obligations. This Section 11 states the parties' sole liability and exclusive remedies for third party claims with respect to the Product or the Authorized Data.

## **12. TERM AND TERMINATION.**

a. Term. This Agreement shall commence on the Effective Date and shall continue for a period of twelve (12) months or for such shorter or longer time as set forth in the Quote (the "Initial Term") unless earlier terminated under the terms of this Agreement. Commencing on the date following expiration of the Initial Term, this Agreement shall automatically renew for subsequent six (6) month periods (each a "Renewal Term") unless either party provides the other party with written notice of its intent not to renew at least thirty (30) days prior to the end of the Initial Term or any such Renewal Term. The Initial Term and any Renewal Terms shall cumulatively be referred to in this Agreement as the "Term".

b. Termination. Either party may terminate this Agreement at any time (i) upon sixty (60) days' prior written notice to the other party or (ii) upon written notice to the other party if the other party: (A) breaches any material term hereof and fails to cure such breach within thirty (30) days after receiving written notice of such breach from the non-breaching party; (B) ceases to do business in the normal course, (C) becomes or is declared insolvent or bankrupt; (D) is the subject of any proceeding related to its bankruptcy, liquidation or insolvency (whether voluntary or involuntary) which is not dismissed within ninety (90) calendar days; or (E) makes an assignment of the benefit of creditors. Notwithstanding the foregoing, this Agreement may be terminated immediately by PSSNA-PA in the event of Customer's breach of Section 2 or Section 7.

c. Effect of Termination or Expiration.

i. Upon termination or expiration of this Agreement, the rights and obligations hereunder shall terminate immediately, except that (A) any payment or other obligation that has accrued as of the date thereof shall survive and continue in full force and effect, and (B) the provisions of Section 2.a , Section 5 , Section 7, Section 9, Section 10, Section 11, this Section 12.c.i and Section 13 of this Agreement shall all survive and continue in full force

and effect.

ii. The Receiving Party of any Confidential Information shall, on termination of this Agreement, promptly destroy and erase from all systems it directly or indirectly uses or controls all originals and copies of all documents, materials and other embodiments and expressions in any form or medium that contain, reflect, incorporate or are based on Disclosing Party's Confidential Information, in whole or in part, and, on the request of the Disclosing Party, provide a written statement to the Disclosing Party certifying that it has complied with these requirements.

### 13. ADDITIONAL TERMS.

a. Entire Agreement. This Agreement (including the related Quote) represents the complete and exclusive statement of the agreement between the parties and supersedes any proposal or prior oral or written agreement, or any other communications relating to the subject matter of this Agreement. This Agreement may be amended, modified or supplemented only by written agreement of both of the parties.

b. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to the principles of conflicts of law. The parties expressly exclude the United Nations Convention on Contracts for the International Sale of Goods from application to this Agreement. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted in the federal courts of the United States or the courts of the State of New York in each case located in the city of New York, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

c. Equitable Remedies. Each party to this Agreement acknowledges and agrees that (i) a breach or threatened breach by such party of any of its obligations under Sections 5.ee, 5.f and 7, would give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy and (ii) if a breach or a threatened breach by such party of any such obligations occurs, the other party hereto will, in addition to any and all other rights and remedies that may be available to such party at law, at equity or otherwise in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to (A) post a bond or other security, or (B) prove actual damages or that monetary damages will not afford an adequate remedy. Each party to this Agreement agrees that such party shall not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Section 13.c.

d. Assignment. Either party may assign this Agreement in connection with a merger or a sale or transfer of substantially all of its business or assets relating to this Agreement. Except as provided above, neither party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party, which shall not be unreasonably withheld, conditioned or delayed. This Agreement shall be binding upon and shall inure to the benefit of the parties' respective successors and permitted assigns. Any purported assignment in violation of the foregoing shall be void.

e. Severability; Waiver. If any term of this Agreement shall be found invalid, the term shall be modified or omitted to the extent necessary, and the remainder of this Agreement shall continue in full effect. The waiver by either party of a breach of any provision of this Agreement shall not constitute or be construed as a waiver of any future breach of any provision of this Agreement.

f. Notice. Each party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "Notice") in writing and addressed to the other party at the addresses set forth on the Quote (or to such other address that may be designated by the receiving party from time to time in accordance with this section). Each party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), facsimile or e-mail (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (i) upon receipt by the receiving party and (ii) if the party giving the Notice has complied with the requirements of this Section.

g. No Rights in Third Parties. This Agreement does not grant any rights or remedies to any person or entity that is not a party to this Agreement. No person or entity is a third party beneficiary of this Agreement.



h. Independent Contractors. The parties are independent contractors and the relationship between the parties does not and shall not constitute a partnership, joint venture or agency. No party shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other party, without the prior written consent of such other party.

i. Force Majeure. Each party will be excused from delays in performing or from failing to perform its obligations under this Agreement to the extent the delays or failures result from causes beyond the reasonable control of such party, for so long as such party acts diligently to attempt to remedy the cause of any such delay or failure. If any force majeure condition occurs, the party delayed or unable to perform shall give prompt written notice to the other party, stating the nature of the force majeure condition and any action being taken to avoid or minimize its effect. If PSSNA-PA is affected by a force majeure condition, PSSNA-PA may elect to suspend this Agreement for the duration of the force majeure condition and once the force majeure condition ceases, require Customer to resume its obligations under this Agreement.

j. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement, by facsimile, electronic mail in portable document format (.pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, has the same effect as delivery of an executed original of this Agreement.

k. Publicity. Neither party will, without the prior written consent of the other party, use in advertising, publicity or otherwise the names, trade names, service marks, trade dress or logo of the other party in any press releases, advertising, web sites or materials distributed or made available to prospective customers or other third parties.

## SCHEDULE A

### PRODUCTS, SERVICES AND SOFTWARE

1. **Services:** Installation of software, configuration of customer assembly line and supporting hardware (Express 2.0 Box and scanner) with the enabled software modules

2. **Product:**

Combination of hardware and software that comprise a solution. The software tools used may be any listed below or a combination of products that comprise a comprehensive package.

- PanaCIM Express 2.0
- PanaCIM Enterprise Edition
- PanaCIM Data Warehouse
- PanaCIM Cloud solution
- PanaCIM QSR
- PanaCIM WIP
- PanaCIM MMS-Maintenance