

READ THIS AGREEMENT CAREFULLY.

IF YOU HAVE ENTERED INTO A SEPARATE WRITTEN LICENSE AGREEMENT WITH SCHOONER FOR USE OF THE SOFTWARE, THE TERMS AND CONDITIONS OF SUCH OTHER AGREEMENT SHALL PREVAIL OVER ANY CONFLICTING TERMS OR CONDITIONS IN THIS AGREEMENT.

BY CLICKING ON THE "I AGREE" BUTTON OR INSTALLING OR USING ALL OR ANY PORTION OF THE SOFTWARE, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT.

END-USER LICENSE FOR SCHOONER MEMBRAIN^(TM)

This End-User License Agreement ("**Agreement**") for Membrain is a legal contract between you ("**Customer**") and Schooner Information Technology, Inc. ("**Schooner**"). The right to use the Licensed Program (as defined in Section 1 below) is granted upon the condition that you agree to the following terms. If you do not agree to the terms of this Agreement, Schooner does not license the Licensed Program to you and you may not use the Licensed Program. **PLEASE CAREFULLY READ THE TERMS BELOW BEFORE USING THE LICENSED PROGRAM. BY USING THE LICENSED PROGRAM YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.**

AGREEMENT

1. **DEFINITIONS.** Capitalized terms used in this Agreement are defined in this Section 1 or in the section where they are first used.

1.1 "**Documentation**" means the documentation provided by Schooner to Customer in connection with the Product.

1.2 "**Licensed Program**" means the object code version of the Schooner proprietary computer software programs provided to Customer under this Agreement and any Updates thereto and the accompanying Documentation.

1.3 "**Product**" means the Licensed Program, the Documentation, and the Third Party Software Programs.

1.4 "**Third Party Software Programs**" shall have the meaning set forth in Section 2.3.

1.5 "**Order Form**" means the document agreed to by Schooner and Customer which captures and describes the number of software licenses purchased by Customer, and the duration and extent of those licenses. A valid Customer Purchase Order can serve as an Order Form for this purpose. An Order Form is not required or applicable for evaluations of the Licensed Program.

1.6 "**Updates**" means updates or modifications to the Licensed Program, if any, provided to Customer by Schooner or its distributors from time to time during the term of this Agreement.

2. LICENSES

2.1 **Licensed Program.** Subject to the terms of this Agreement, Schooner grants Customer a nonexclusive, nontransferable license to install, execute and run the Licensed Program on any hardware configuration supported by Schooner, but only in accordance with (i) the technical specifications in the Documentation and (ii) the software subscription term length, number of authorized servers, workgroup, project, enterprise or other limits set forth in an Order Form, if applicable, documenting the duration and extent of Customer's license. For evaluation usage of the Licensed Program, or if not otherwise specified on an Order Form, the Licensed Program is licensed for use on one server. "**Software**" also includes any Documentation and any Support and Maintenance releases of the same Software product provided to Customer under this Agreement. Customer may reproduce the Licensed Program solely for back-up purposes. This license shall terminate upon the expiration or earlier termination of this Agreement. All rights not specifically granted to Customer under this Agreement are retained by Schooner and its licensors.

2.2 Certain Restrictions. Except as otherwise specifically permitted under Section 2.1, Customer shall not use, copy, modify, create derivative works of, distribute, sell, assign, sublicense, loan, , or transfer to a third party the Licensed Program, nor permit any third party to do any of the foregoing; provided that Customer may assign this Agreement to an acquirer of the Product as long such acquirer agrees in writing to be bound by this Agreement and Customer destroys all copies of the Licensed Program in its possession (if any) upon such assignment. Customer may not (i) derive or attempt to derive the source code of all or any portion of the Licensed Program that is provided to Customer in object code form, (ii) permit any third party to derive or attempt to derive such source code, or (iii) reverse engineer, decompile, disassemble, or translate the Licensed Program or any part thereof.

2.3 Certain Third Party Software. Certain software components provided by Schooner in connection with the Licensed Program contain software programs that are licensed to Schooner by third parties pursuant to open-source or other third party licenses (“**Third Party Software Programs**”). The licenses that govern Customer’s use and distribution of the Third Party Software Programs can be found here: www.schoonerinfotech.com/resources/product_documentation. The source code to the portions of Third Party Software Programs that are subject to third party licenses that require Schooner to provide such source code to licensees (e.g., the GNU General Public License, the Common Public License, the Mozilla Public License) may be obtained by contacting: legal@schoonerinfotech.com.

3. OWNERSHIP AND FEEDBACK. Schooner and its licensors own and shall retain all intellectual property rights and other rights in and to the Licensed Program, the Documentation and any Commercial Release that Schooner creates, and any changes, modifications or corrections to the foregoing. Customer may report or otherwise disclose orally or in writing errors, problems, defects, or suggestions for changes and improvements to the Product (collectively, “**Feedback**”) to Schooner. Customer hereby grants to Schooner a royalty-free, perpetual, irrevocable, sublicenseable, transferable license to exercise all intellectual property rights in the Feedback and otherwise exploit the Feedback for any purpose.

4. TERM AND TERMINATION. This Agreement shall be effective until terminated in accordance with this Section 4. Schooner may terminate this Agreement upon written notice to Customer in the event Customer materially breaches any provision hereof and Customer fails to cure such breach within ten (10) days after receipt of notice of such breach. Customer may terminate this Agreement by providing written notice of termination to Schooner. Upon termination of this Agreement for any reason, Customer agrees to either: (y) return to Schooner all copies of the Licensed Program in Customer’s possession or under Customer’s control or (z) destroy all such copies and certify such destruction to Schooner in writing. All licenses and other rights to use the Product shall terminate upon any termination of this Agreement. The termination of this Agreement shall not affect Customer’s obligation to pay for the Product or any related service. The following provisions will survive the expiration or earlier termination of this Agreement: Sections 2.3, 3, 4, 5, 6, 7 and 9.

5. WARRANTY. ANY WARRANTY OR SERVICE OBLIGATION APPLICABLE TO THE PRODUCT SHALL BE SOLELY BETWEEN CUSTOMER AND THE RESELLER OR OTHER ENTITY FROM WHOM CUSTOMER ACQUIRED THE PRODUCT. SCHOONER PROVIDES THE PRODUCT TO CUSTOMER UNDER THIS AGREEMENT “AS IS” WITHOUT WARRANTY OF ANY KIND. SCHOONER AND ITS LICENSORS AND SUPPLIERS HEREBY DISCLAIM ANY AND ALL WARRANTIES UNDER THIS AGREEMENT AND THE CUSTOMER SUPPORT PLAN (AS DEFINED BELOW), WHETHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE PRODUCT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR USE OR PURPOSE. NEITHER SCHOONER NOR ITS LICENSORS OR SUPPLIERS WARRANT THAT THE PRODUCT WILL FUNCTION WITHOUT INTERRUPTION OR ERROR-FREE.

6. LIMITATION OF LIABILITY. IN NO EVENT WILL SCHOONER BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL OR INDIRECT DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE CUSTOMER SUPPORT PLAN, WHETHER ARISING IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR OTHER THEORY. SCHOONER’S LICENSORS AND SUPPLIERS SHALL HAVE NO LIABILITY FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT OR THE CUSTOMER SUPPORT PLAN. SCHOONER’S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING FROM OR RELATED TO THIS AGREEMENT OR THE CUSTOMER SUPPORT PLAN SHALL BE AN AMOUNT EQUAL TO THE LESSER OF (i) THE FEES PAID BY CUSTOMER FOR PRODUCTS DURING THE TWELVE (12) MONTHS PRECEDING THE FIRST OCCURRENCE OF AN EVENT GIVING RISE TO LIABILITY HEREUNDER AND (ii) \$50,000. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMER OF WARRANTIES, LIMITATIONS ON LIABILITY AND LIMITED REMEDIES CONTAINED IN THIS AGREEMENT AND THE CUSTOMER SUPPORT PLAN ARE FUNDAMENTAL PARTS OF THE BASIS OF THE BARGAIN HEREUNDER AND SCHOONER AND ITS LICENSORS AND SUPPLIERS WOULD NOT PROVIDE THE PRODUCT TO CUSTOMER ABSENT SUCH LIMITATIONS.

7. CONFIDENTIAL INFORMATION. The term “**Confidential Information**” means the Product (excluding the object-code version of the Licensed Program and any Third Party Software Programs licensed under open-source agreements that

require disclosure of the software licensed under such agreements) and any information or materials provided by Schooner to Customer pursuant to the Customer Support Plan. Customer will not disclose Confidential Information to third parties and will take reasonable precautions to protect such Confidential Information. Customer may not use or reproduce the Confidential Information for any purpose except as necessary to operate the Product. Customer may disclose Confidential Information to Customer's employees or agents who are required to have access to such information to operate the Product and who have agreed in writing to maintain such information in confidence in accordance with terms substantially similar to, and no less restrictive than, those imposed on Customer under this Section 7. Customer will notify Schooner in writing immediately if it becomes aware of or suspects that the Confidential Information has been used or disclosed other than in accordance with this Agreement. Upon termination of this Agreement Customer shall promptly return to Schooner all documents and other tangible materials representing Schooner's Confidential Information and all copies thereof.

8. SUPPORT & MAINTENANCE. Schooner shall provide the support and maintenance services set forth in Schooner's then-current Customer Support Plan (the "**Customer Support Plan**") during such periods for which Customer has a valid paid-for Software Subscription, or, if applicable, has paid any additional applicable fees for such services.

9. GENERAL. This Agreement will be governed by and construed in accordance with the laws of the State of California. The parties exclude the application of the 1980 United Nations Convention on the International Sale of Goods and the application of the Uniform Computer Information Transactions Act. The parties consent to the personal jurisdiction and venue of the federal and state courts sitting in the County of Santa Clara, in the Northern District of California. Except as specified in Section 2.2, neither this Agreement nor any rights or obligations under this Agreement may be assigned or delegated by Customer, by operation of law or otherwise, without the prior written consent of Schooner. Any attempted or purported assignment or delegation by Customer in violation of the previous sentence will be null and void. The Customer will not export, directly or indirectly, the Product or any technical data of Schooner to any country for which the U.S. Government requires an export license or other governmental approval without first obtaining such license or approval. If any provision of this Agreement will be held invalid or unenforceable by a court, the remaining provisions of this Agreement will remain in full force and effect, and the provision or portion thereof affected will be construed so as to be enforceable to the maximum extent permissible by law. All waivers of rights or obligations under this Agreement must be in writing. This Agreement may only be amended by a written document signed by both parties. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between them. Customer will permit Schooner or its representatives to review Customer's relevant records and inspect Customer's facilities solely to ensure compliance with this Agreement. Schooner will give Customer reasonable advance notice of any such inspection and will conduct the same during normal business hours in a manner that does not unreasonably interfere with Customer's normal operations. If Customer is a branch or agency of the United States Government or obtaining the Licensed Program pursuant to a United States Government contract, then the following provision applies. The Licensed Program is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Licensed Program with only those rights set forth in this Agreement.

THE LICENSED PROGRAM IS PROTECTED BY THE INTELLECTUAL PROPERTY LAWS OF THE UNITED STATES AND BY INTERNATIONAL TREATY. UNAUTHORIZED REPRODUCTION OR DISTRIBUTION IS SUBJECT TO CIVIL AND CRIMINAL PENALTIES.
