

# Connected Development End user agreement

Connected Development products are proprietary software applications. Your use of these products is subject to the terms and conditions as outlined in this End User Agreement.

## END USER AGREEMENT

Last updated: November 22, 2017

### *IMPORTANT – PLEASE READ THIS AGREEMENT!*

- This End User Agreement ("Agreement") is a binding legal document between Connected Development ("CD") and you, which explains your rights and obligations as an End User of CD products. "End User" means either (a) you as an individual or (b) your company, if you are using "CD" products in your capacity as an employee or agent of a company. You identify the specific "End User" during the registration process. "CD" means Connected Development, a Dutch corporation (kvk 68480393), with headoffice at Snellinckstraat 70, 3021 WK Rotterdam, The Netherlands.
- By allowing the "I Agree to the terms and conditions of the End User Agreement" box to remain checked, or by installing or using any CD products, End User agrees to be bound by this Agreement. If you do not agree to this Agreement, then uncheck the "I Accept" box and do not install or use CD products.
- The "Agreement" also includes any CD policies or documents referenced in this document, including CD Privacy Policy (see [www.informapp.nl](http://www.informapp.nl)).
- From time to time, CD may modify this Agreement, including any referenced policies and other documents. Any modified version will be effective at the time it is posted. To keep abreast of your license rights and relevant restrictions, please bookmark this Agreement and read it periodically. By using any Product after any modifications, End User agrees to all of the modifications.

## **1. Introduction to CD's Products and License Terms.**

1.1 What's Included in "Software". CD offers many different software products for download. "Software" means any CD product that End User orders from CD (or an CD Partner, as described below) and downloads from CD. The term also includes (a) related documentation, (b) any Updates (defined below) to the Software, (c) any add-ons, plug-ins, APIs or Internet-based components of the Software provided by CD (but not third parties) ("Supplementary Software"), and (d) any third party software embedded in or provided with CD's software ("Embedded Software"). End User's detailed rights to use Software are in Section 2 below. To be clear, any add-ons, plug-ins, APIs or other code offered by third parties (through the Informapp Marketplace or otherwise) or created by End User itself are not "Software", and CD is not responsible for and does not offer any warranty, indemnity or support for those items.

1.2 What's Included in "Hosted Services". "Hosted Services" include any CD online services products that End User orders, which can include "OnDemand" versions of many CD Software products, and other online services provided by CD. "Hosted Services" always means the version of the Hosted Services as described in CD's then-current product descriptions. End User's detailed rights to use Hosted Services are in Section 3 below.

1.3 The "Products". This Agreement uses "Products" to refer to the Software and/or the Hosted Services.

1.4 CD's Maintenance Offerings. For additional fees, CD offers "Maintenance" to End Users as described in separate agreements. Maintenance includes (1) any generally released updates, upgrades, patches, and bug fixes for the Software ("Updates") when and if generally released at CD's sole discretion, (2) web-based support and phone support (depending on End User's support level) as described in the link above, and (3) other support features as described in the link above.

1.5 Limits on Users. When buying a license to the Software or a subscription to the Hosted Services, from a CD Partner or directly from the CD platform, End User pays fees for a specific

number of forms End Users expect to submit in the near future (credits). End User designates users through the Products. There are no limits on the number of users. Users may include End User's employees, representatives, consultants, contractors, agents, and Customers (note: detailed rules for Customers in Section 4.4 below). End User is responsible for all use of the Products by its Users and their compliance with this Agreement.

1.6 Purchase through "CD Partners" (Resellers or Business Partners). Fees are payable directly to CD as described in Section 5 (Fees and Payment) below unless End User ordered the Products from a CD Business Partner. If End User ordered Products from a CD Business Partner, then the sections of this Agreement referring to orders with CD or payments to CD do not apply for those Products. Instead, End User agrees to pay the CD Business Partner the fees separately agreed with the CD Business Partner. No CD Business Partner may change the terms of this Agreement (but they may impose additional restrictions on use of the Products). No promises, warranties or agreements by CD Business Partner are binding on CD.

## **2. License to Use CD Software.**

2.1 Software, Generally. CD grants End User a worldwide, non-exclusive, non-transferable, non-sublicenseable right to use the Software, subject to the terms and conditions of this Agreement. Software licenses are perpetual unless terminated as described in this Agreement. Only End Users may use the Software. All use of Software must be in accordance with the relevant CD documentation and policies. For clarity, End User's employees and contractors may use the Software and End User will be responsible for their compliance with this Agreement on all the same terms as for Authorized Users. Unless CD agrees otherwise in writing, End User may only install, use or make available the Software on End User's hardware systems, whether owned, leased or controlled. End User will be responsible for any use of the Software on any hardware systems not owned, leased or controlled by End User ("Uncontrolled Systems")

2.2 Updates and Supplementary Software. The terms for Software in this Agreement apply to any Updates and Supplementary Software, unless CD provides different terms. CD may cease making available Supplementary Software and Internet-based services used with the Software (e.g., the CD Plugin tool) at any time.

2.3 Open Source Software. The Software may contain or be provided with components subject to the terms and conditions of "open source" software licenses ("Open Source Software"). To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open Source Software, including any provisions governing access to source code, modification or reverse engineering.

2.4 Evaluation Software. This paragraph applies to any Software that CD makes available on an evaluation basis ("Evaluation Software"). End User may only use the Evaluation Software for internal evaluation purposes for the period specified by CD (or, if not specified, for 30 days). Evaluation Software will be limited in usage (users or credits). End User acknowledges that Evaluation Software may not be fully functional. Notwithstanding anything else in this Agreement, CD does not offer any warranty, indemnity or support for any Evaluation Software.

2.5 Source Code. CD may provide some elements of Software in source code form ("Source Code"). Unless otherwise specified, End User may modify Source Code solely to develop bug fixes, customizations, and additional features ("End User Modifications") and, notwithstanding anything else in this Agreement, may only use End User Modifications internally for purposes of using the Software licensed from CD. CD will have no support, warranty, indemnity or other obligations relating to, and assumes no liability for, any End User Modifications or any effect they may have on the operation of the Products.

2.6 IP Protection Mechanisms. The Software has license protection mechanisms designed to manage and protect CD's and its suppliers' and licensors' intellectual property rights. Whether using Source Code or not, End User must not modify or alter these mechanisms or try to circumvent them or the usage rules they are designed to enforce.

## **3. Use of CD Hosted Services.**

3.1 Access Rights. End User may access and use the Hosted Services during the applicable Subscription Term (defined below), subject to the terms and conditions of this Agreement. Only

Authorized Users may use the Hosted Services, and only up to the permitted usage (number of Authorized Users). All use of the Hosted Services must be in accordance with the relevant CD documentation and policies.

3.2 Subscription and Renewals. End User selects its initial subscription term, which may be a month, quarter, year, or other mutually agreed period, at the time of order or . Once that term expires, it will automatically renew for successive terms of the same period (but no longer than 1 year each) unless either End User or CD notifies the other of non-renewal at least 5 business days prior to the upcoming expiration date or CD ceases to make a particular Hosted Service available. Renewals are charged at CD's then-current rates unless otherwise agreed, and CD will at its discretion charge End User using the credit card on file on, direct debit, or after the expiration date or send End User an invoice. "Subscription Term" means the initial term and any renewal term(s).

3.3 Credit Bundles. A credit bundle is a prepaid number of registrations according to CD's price list. For Credit Bundles, the "Subscription Term" does not apply. Instead, the remaining number of Registrations is specified by CD. CD may notify End User of the remaining number of Registrations through the Hosted Services. Registration bundles ends at the time the last registration available inside the bundle is used. End Users can choose whether they would like to purchase new bundles automatically or manually via our website. New Bundles are charged at CD's then-current rates unless otherwise agreed, and CD will at its discretion charge End User using the credit card on file on, direct debit, or after the expiration date or send End User an invoice. Unless otherwise agreed there will be no refund for not used Registrations within the purchased Bundles.

3.4 Evaluations. For evaluations of Hosted Services, the "Subscription Term" does not apply. Instead, the evaluation period is specified by CD. CD may notify End User of the remaining number of days or credits through the Hosted Services. Notwithstanding anything else in this Agreement, CD does not offer any warranty, indemnity or support for any Hosted Services offered on an evaluation basis.

3.5 End User Data. Unless otherwise specified, End User retains ownership of any data or other content or information that End User provides through the Hosted Services, ("End User Data"). End User's use of the Hosted Services and all End User Data must comply with End User's own privacy policies and all domestic, foreign and international laws and regulations, including those relating to data privacy, international communications, and the exportation of technical or personal data. End User is solely responsible for the accuracy, content and legality of all End User Data. End User agrees not to submit any content that is obscene, defamatory, libelous, threatening, harassing, pornographic, racially or ethnically offensive, that encourages conduct that would be considered a criminal offense or give rise to any civil liability. End User will not submit any material (including any virus, bot, worm, scripting exploit or other harmful code) that is likely to harm or corrupt the Hosted Services or any computer systems or data. End User represents and warrants to CD that it has sufficient rights in the End User Data to grant the rights in this section and that the End User Data does not infringe the rights of any third party. End User agrees that CD may, in its sole discretion, delete or remove any End User Data at any time and with or without notice.

End User hereby grants CD a non-exclusive license to copy, distribute, perform, display, store, modify, and otherwise use End User Data in connection with operating the Hosted Services.

CD may also use aggregate information to measure general Hosted Service usage patterns and characteristics of its user base and otherwise to improve its products and services, and may include such aggregate information about its audience in promotional materials or reports to third parties. This aggregate information will not reference names, phone numbers, email addresses, or other personally identifiable information, and it will be not traceable to a specific recipient or user email address.

3.6 Storage Limits. CD sells 1 GB blocks of storage for End User Data at the rates specified when End User orders Hosted Services. Use in excess of purchased storage will count as an overage, and any overages are charged at \$1.00 per month for the next 1 GB block or CD's then-current rate. CD may create or modify maximum storage limits for the Hosted Services at any time, in its discretion, and End User acknowledges that it may not receive notices about these limits.

3.7 Return of End User Data. After termination or expiration of a Subscription Term or this Agreement, unless it was for End User's breach, at End User's request, CD will use reasonable efforts to make available the End User Data for download. If made available, End User must download the End User Data within 30 days of termination or expiration. After that, CD may delete the End User Data.

3.8 End User Responsibility for Systems. End User is responsible for its own Internet connection and must use software, systems and equipment compatible with the Hosted Services, as CD specifies in its published policies. Any End User web browsers and other software must support the Secure Socket Layer (SSL) protocol or other protocols accepted by CD. CD is not responsible for any End User Data lost, altered, intercepted or stored across networks not owned or operated by CD.

#### **4. Important Customer Obligations**

4.1 Accounts and Passwords. End User will provide accurate, current and complete information when registering with CD and ordering Products and agrees to update its information if it changes. This is important, because CD may send notices, statements and other information to End User by email or through End User's account (for Hosted Services). End User will keep all its Authorized Users' passwords and usernames confidential and will not share them with third parties. End User is responsible for all actions taken through its accounts.

4.2 Embedded Software. All of the other restrictions for Software in this Agreement also apply to Embedded Software Software, with the addition of the following terms. End User receives restricted licenses to Embedded Software and may use Embedded Software only for its internal purposes (including for Customer Use as permitted below) in conjunction with the applicable Product as provided by CD, and may only use the Embedded Software as part of and through that Product. End User may not install, access, configure or use any Embedded Software (including any APIs, tools, databases or other components of any Embedded Software) separately or independently of the rest of the Product, whether for production, technical support or any other purposes, or otherwise attempt to gain direct access to any Embedded Software components, or permit anyone else (including Customers) to do any of these things. Notwithstanding any other terms of this Agreement, End User may not modify any Embedded Software. End User will be financially responsible to the applicable third party licensor ("Embedded Software Licensor") for all damages and losses resulting from End User's or its Customers' breach of this Agreement. End User may not "benchmark" or otherwise analyze performance information for individual Embedded Software elements.

Some Embedded Software may include source code provided as part of the Embedded Software Licensor's standard shipment. That source code will be governed by the terms for Embedded Software in this Agreement, and not the terms for Source Code in Section 2.5 (Source Code) above.

End User understands that the applicable Embedded Software Licensor retains all ownership and intellectual property rights to the Embedded Software. Embedded Software Licensors (and any other third party licensors of any components of the Products) are intended third party beneficiaries of this Agreement with respect to the items they license and may enforce this Agreement directly against End User; but, to be clear, Embedded Software Licensor do not assume any of CD's obligations under this Agreement. In addition, End User agrees to the Embedded Software-related audit provisions in Section 6 (License Certifications and Audits) below.

Embedded Software may include or be accompanied by third party technology that may be appropriate or necessary for use with some Embedded Software. Such technology may be specified in the Documentation or otherwise specified by CD, and is licensed to End User only for use with the Product with which it is provided under the specified third party license terms, and not this Agreement. CD may also provide additional or substitute terms for Embedded Software if required by the Embedded Software Licensor, and End User will comply with those terms.

4.3 Rules for Plug-ins. End User may develop its own plug-ins for various Products ("End User Plug-ins") and may distribute End User Plug-ins to third parties, but only for those Products permitted by CD, and only in accordance with CD's published plug-in and API guidelines. End

User Plug-ins distributed through the Informapp Marketplace will be subject to the posted terms for the Informapp Marketplace.

4.4 Use by End User's Customers. End User's customers ("Customers") may be Authorized Users. End User will be responsible for Customers the same as any other Authorized User and must enter into valid, binding agreements with Customers consistent with this Agreement, including the additional conditions below. A Customer's permitted use of Products under this Agreement is called "Customer Use".

In addition to all other terms in this Agreement, the following conditions apply to Customer Use:

(a) End User may not distribute or make available any Product on a standalone basis. Instead, End User may only make available the Product to Customers in order to support Customers' use of content and features that are part of End User's own existing offerings.

(b) End User may not resell or OEM the Product or otherwise charge Customers for use of the Product itself.

(c) Customers may interact with the Product, but may not receive any administrator, configuration or similar access to the Product.

(d) In making available Products to Customers, End User may not violate any other term or condition in this Agreement, such as reverse engineering and anti-circumvention restrictions.

CD will not have any direct or indirect liability or obligation to any Customers, and Customers do not acquire any rights under this Agreement.

CD understands that Product usage may be flexible and that End Users may identify new proposed uses for the Products. If End User has questions about whether a proposed use complies with these rules, please contact CD at [sales@informapp.nl](mailto:sales@informapp.nl).

4.5 Conditions on Use of Products. End User will not, and will not allow any Authorized User or other third party to: (a) resell, assign, rent, give, transfer, pass title to, lease, copy, provide access to or sublicense (including without limitation on a timeshare, subscription service, hosted service or outsourced basis) any Product to any third party (for use in its business operations or otherwise) or anyone else besides Authorized Users (including Customers) in accordance with this express terms of this Agreement, or permit anyone besides Authorized Users to use any data or information not owned by End User that is generated by the Products (and, in the event End User grants any security interest in any Products, the secured party has no right to use or transfer the Products); (b) use any Product to provide, or incorporate any Product into any product or service provided to, a third party, except as expressly permitted above for Customer Use; (c) reverse engineer, decompile, disassemble, decipher, decrypt, or otherwise seek to discover or obtain the source code or non-public APIs to Products (including any data structure or similar materials produced by the Products), except to the extent expressly permitted by applicable law despite this prohibition (and then only upon advance notice to CD); (d) modify, adapt or create derivative works of a Product (excluding End User Modifications and End User Plug-ins); (e) remove or obscure any proprietary or other notices of CD or any third party contained in any Product (including any information or data generated by the Products); (f) publicly disseminate information regarding the performance of Products; (g) use any Product for commercial solicitation purposes or spam; (h) use the CD name or any CD trademarks or logos except as permitted in Section 4.6 (Attribution); or (i) commit any act or omission that could result in damage to CD's or its suppliers' or licensors' reputations. End User will not attempt to do any of the foregoing, encourage others to do so, or otherwise attempt to bypass or circumvent any usage restrictions in this Agreement.

4.6 Attribution. In any use of the Software, End User must include the following attribution to CD on all user interfaces in the following format: "Powered by Informapp", which must in every case include a hyperlink to <http://www.informapp.nl>, and which must be in the same format as delivered in the Software.

4.7 Export Control. If a Product is acquired in The Netherlands by End User, End User must comply with all applicable Dutch export control laws and regulations, including the laws and regulations administered by the Dutch Department of Foreign Affairs and Trade (or any replacement department or authority). If a Product is acquired by End User in the United States,



End User acknowledges that the Product is subject to U.S. export jurisdiction and agrees to comply with all applicable international and national laws that apply to the Product, including the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by U.S. and other governments. In any case, the import and export of any Product may be subject to control or restriction by applicable local law. End User is solely responsible for determining the existence and application of any such law to any proposed import and export and for obtaining any needed authorization. End User agrees not to export, directly or indirectly, any Product (or any direct product thereof) from any country in violation of applicable laws.

4.8 Indemnification. End User will indemnify, defend and hold harmless CD from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with any claim arising from or relating to (a) any breach by End User (including any Authorized Users) of this Agreement, (b) any End User Data, (c) any End User Modifications, End User Plug-ins or other modifications of or combinations with a Product, or any service or product offered by End User in connection with or related to a Product, (d) any Uncontrolled Systems, or (e) any representations or warranties made by End User (including any Authorized User) regarding a Product to third parties. This indemnification obligation is subject to End User receiving (i) prompt written notice of such claim (but in any event notice in sufficient time for End User to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, or settlement of such claim, provided that CD may participate in the claim at its own expense and End User may not settle any claim without CD's prior written consent; and (iii) all reasonable necessary cooperation of CD at End User's expense.

## **5. Fees and Payment**

5.1 General. End User must pay all fees by their due date specified at the time of order. Renewal fees for Hosted Services will be charged as described in Section 3.2 (Subscription and Renewals). Fees for additional Credit Bundles as described in section 3.3 must be paid in advance or in special occasions at their due date specified at the time of order. Late payments are subject to interest charges of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all collection expenses. End User will continue to be charged during any period of suspension. In event of any termination, End User will pay the unpaid balance due calculated in accordance with this section and this Agreement. CD may charge such unpaid fees and charges to End User's credit card or otherwise bill End User for such unpaid fees and charges. End User acknowledges that it is not relying on the future availability of any Products (including any Embedded Software) in agreeing to or making its payments hereunder.

5.2 Taxes. Payments made by End User under this Agreement exclude any taxes or duties payable in respect of the Products in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties are payable by CD, End User must pay to CD the amount of such taxes or duties in addition to any fees owed under this Agreement. Notwithstanding the foregoing, End User may have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed. In that case, End User will have the right to provide to CD with any such exemption information and CD will use reasonable efforts to provide such invoicing documents as may enable End User to obtain a refund or credit for the amount so paid from any relevant revenue authority if such a refund or credit is available.

## **6. License Certifications and Audits**

Upon CD's written request, End User will provide CD with a signed certification certifying that all Products are being used pursuant to the terms of this Agreement, including any access and user limitations. With prior reasonable notice of at least ten (10) days, CD (or its authorized agent) may audit the use of the Products by End User and its Authorized Users and any Customers, provided such audit is during regular business hours. End User will provide reasonable assistance and access to information in the course of any audit. End User is responsible for such audit costs only in the event the audit reveals that End User's use of the Products is not in accordance with the permitted scope of use. In the event that any certification or audit reveals that End User has exceeded its permitted number of Authorized Users, CD may invoice End User for any past or ongoing excessive use and End User will pay the invoice in

accordance with Section 5 (Fees and Payment). This remedy is without prejudice to any other remedies available to CD at law or equity or under this Agreement.

End User understands that CD may report audit results to any applicable Embedded Software Licensor or may assign the right to audit End User in this Section 6 to Embedded Software Licensors. When the audit is assigned, then notwithstanding anything else in this Agreement to the contrary, End User Licensor will not be responsible for End User's costs incurred in cooperating with the audit.

## **7. CD's Ownership Rights; Feedback**

CD and its licensors reserve all rights not expressly granted to End User in this Agreement. The Products (including any content or information contained therein) and all copies thereof are protected by copyright and other intellectual property laws and treaties. CD or its licensors own the title, copyright, and other intellectual property rights in the Products and all copies, modifications and derivative works of the Products and underlying software (including any incorporating Feedback) ("CD Technology"), and End User does not acquire any ownership rights in CD Technology. All Products are licensed, not sold.

"Feedback" means any feedback, comments, suggestions or materials (including, to the extent disclosed to CD, any End User Modifications, but excluding End User Plug-ins) that End User may provide to CD about or in connection with the Products, including any ideas, concepts, know-how or techniques contained therein. End User may provide Feedback in connection with Maintenance and otherwise. End User hereby grants CD a worldwide, royalty-free, non-exclusive, perpetual and irrevocable license to use, copy, modify and otherwise exploit the Feedback for any purpose, including incorporating or implementing the Feedback in the Products. End User agrees that CD may exploit all Feedback without any restriction or obligation on account of intellectual property rights or otherwise. For clarity, no Feedback will be deemed End User's Confidential Information, and nothing in this Agreement (including Section 8 (Confidentiality)) limits CD's right to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise.

## **8. Confidentiality**

Except as otherwise set forth in Section 7 (CD's Ownership Rights; Feedback) above, each party agrees that all code, inventions, know-how, business, technical and financial information it obtains ("Receiving Party") from the disclosing party ("Disclosing Party") constitute the confidential property of the Disclosing Party ("Confidential Information"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any CD Technology, performance information relating to the Products, and the terms and conditions of this Agreement shall be deemed Confidential Information of CD without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (iv) is independently developed by employees of the Receiving Party who had no access to such information; or (v) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

## **9. Termination**

This Agreement will continue so long as End User has a license to the Software or an ongoing Subscription Term for the Hosted Services, unless earlier terminated. CD may suspend or terminate this Agreement and End User's account, with respect to one or more of the Products, if End User fails to comply with the terms and conditions of this Agreement, including any failure

to pay fees when due. CD may terminate any free account or evaluation usage at any time in its sole discretion.

End User may terminate this Agreement at any time with notice to CD.

Immediately upon termination of any license or subscription right granted under this Agreement, End User's license to Software and Hosted Services will cease, and End User must at its own cost: (a) cease using (and require all Authorized Users, and anyone else to cease using) all the terminated Products; (b) remove all copies of Software from its computer systems and any Uncontrolled Systems; and (c) return to CD all Software or provide CD with written certification that it has destroyed all copies of the Software and other CD Confidential Information in its possession, custody or control. Upon termination of this Agreement for whatever reason, End User will not be entitled to credits or refunds for any unused portion of this Agreement, including but not limited to unused maintenance and support.

All payment and other obligations accrued as of the date of any expiration or termination of this Agreement, and Sections 4.5 (Conditions on Use of Products), 4.7 (Export Control), 4.8 (Indemnification), 5 (Fees and Payment), 6 (License Certifications and Audit), 7 (CD's Ownership Rights; Feedback); 8 (Confidentiality), 9 (Termination), 11 (Warranties; Disclaimer of Warranties), 12 (Limitation of Liability), 13 (Publicity Rights) 14 (Assignment), 15 (Governing Law and Arbitration), 16 (DMCA Notices), 17 (Government End Users) and 18 (General) will survive expiration or termination.

#### **10. CD Infringement Indemnification**

Subject to the remainder of this Section 10, CD will indemnify, defend and hold End User harmless against a claim to the extent based on an allegation that End User's use of a Product (in the form provided by CD) in compliance with this Agreement infringes a United States or European Union patent or registered copyright ("Claim"), and will pay those damages and costs finally awarded against End User by a court of competent jurisdiction, or agreed to in writing by CD as settlement, as a result of such Claim, provided that CD is (i) promptly notified and furnished a copy of such Claim, (ii) given all relevant evidence in End User's possession, custody or control, and (iii) given reasonable assistance in and sole control of the defense thereof and all negotiations for its settlement. CD will have no obligation to defend and no liability for any damages or costs to the extent that a Claim is based upon: (i) use of a Product in combination with any non-CD product, software or equipment; (ii) use of a Product in a manner or for an application other than for which it was designed or intended to be used, regardless of whether CD was aware of or had been advised of such use; (iii) modifications to a Product by any person or entity other than CD (including any End User Modifications); or (iv) other circumstances or occurrences that are covered in End User's indemnification obligations in Section 4.8.

If a Product becomes, or in the opinion of CD may become, the subject of a Claim, CD may, at its option and in its discretion: (i) procure for End User the right to use the Product free of any liability; (ii) replace or modify the Product to make it non-infringing; or (iii) terminate End User's right to continue using such Product and refund, in the case of Software, any license fees or purchased Credit Bundles related to this Software paid by End User (depreciated on a three-year straight line basis) or, in the case of a Hosted Service, any prepaid amounts for the service no longer being provided.

This Section 10 states the sole liability of CD and the exclusive remedy of End User for any infringement of intellectual property rights in connection with any Product or other items provided by CD under this Agreement.

#### **11. Warranties; Disclaimers of Warranties**

11.1 General. Each party represents and warrants that it has the legal power and authority to enter into this Agreement, and that, if End User is an entity, this Agreement and each order is entered into by an employee or agent of such party with all necessary authority to bind such party to the terms and conditions of this Agreement.

11.2 DISCLAIMER OF WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT AS EXPRESSLY SET FORTH HEREIN, CD AND ITS THIRD PARTY SUPPLIERS/LICENSORS PROVIDE THE PRODUCTS (INCLUDING THE



HOSTED SERVICES, SOFTWARE AND ANY MAINTENANCE) AS IS AND WITH ALL FAULTS, AND HEREBY DISCLAIM ALL OTHER REPRESENTATIONS, WARRANTIES AND GUARANTEES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR ANY PURPOSE. WITHOUT LIMITING THE FOREGOING, CD AND ITS THIRD PARTY SUPPLIERS/LICENSORS MAKE NO REPRESENTATION, WARRANTY OR GUARANTY (1) AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF ANY PRODUCTS OR ANY CONTENT THEREIN OR GENERATED THEREWITH, (2) THAT (A) THE USE OF ANY PRODUCTS WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE PRODUCTS WILL MEET END USER'S REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE OR THAT ANY STORED DATA WILL NOT BE LOST OR CORRUPTED, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY END USER THROUGH THE PRODUCTS WILL MEET END USER'S REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE PRODUCTS (OR ANY SERVER(S) THAT MAKE A HOSTED SERVICE AVAILABLE) ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WITHOUT LIMITING THE FOREGIONG, TO THE MAXIMUM EXTENT PERMITTED BY APPLICBLE LAW, CD AND ITS THIRD PARTY SUPPLIERS/LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO, AND ASSUME NO LIABILITY FOR, ANY PRODUCTS PROVIDED ON AN EVALUATION BASIS. IN ADDITION, CD AND ITS THIRD PARTY LICENSOR/SUPPLIERS SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF CD.

END USER MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE LIMITED WARRANTY PERIOD.

11.3 Hosted Services Facilities. The Hosted Services are controlled and operated from facilities in The Netherlands and Ireland. CD makes no representations that the Hosted Service is appropriate or available for use in other locations. Those who access or use the Hosted Service from other jurisdictions do so at their own volition and are entirely responsible for compliance with all applicable United States and local laws and regulations, including export and import regulations.

## **12. Limitation of Liability**

12.1 MAXIMUM LIABILITY. EXCEPT WITH RESPECT TO AMOUNTS PAYABLE TO THIRD PARTIES PURSUANT TO THE PARTIES' INDEMNIFICATION OBLIGATIONS IN SECTION 4.8 AND 10 OR END USER'S BREACH OF ANY LICENSE OR USE RESTRICTIONS RELATING TO THE PRODUCTS, NOTWITHSTANDING ANY DAMAGES EITHER PARTY MIGHT INCUR FOR ANY REASON WHATSOEVER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ENTIRE LIABILITY OF EITHER PARTY TO THIS AGREEMENT UNDER ANY PROVISION OF THIS AGREEMENT AND THE OTHER PARTY'S EXCLUSIVE REMEDY HEREUNDER SHALL BE LIMITED TO THE ACTUAL DAMAGES SUCH PARTY INCURS, UP TO THE AMOUNT ACTUALLY PAID BY END USER FOR (A) SUCH SOFTWARE, DEPRECIATED ON A THREE-YEAR STRAIGHT LINE BASIS, OR (B) SUCH HOSTED SERVICE IN THE LAST TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EMBEDDED SOFTWARE LICENSORS WILL NOT BE LIABLE TO END USER FOR ANY DAMAGES WHATSOEVER, INCLUDING DIRECT DAMAGES OR THE TYPES OF DAMAGES DISCLAIMED IN SECTION 12.2 BELOW.

12.2 OTHER DISCLAIMERS. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR END USER'S BREACH OF ANY LICENSE OR USE RESTRICTIONS RELATING TO PRODUCTS, IN NO EVENT SHALL EITHER PARTY (OR THEIR RESPECTIVE THIRD PARTY SUPPLIERS/LICENSORS) BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR REVENUE) WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT. END

USER SPECIFICALLY UNDERSTANDS AND AGREES THAT CD (ON BEHALF OF ITSELF AND ITS THIRD PARTY SUPPLIERS/LICENSORS) DISCLAIMS ALL WARRANTIES AND LIABILITY WITH RESPECT TO LOSS, LOSS OF USE OR CORRUPTION OF ANY END USER DATA (OR OTHER DATA END USER MAY PROVIDE) AND THE COSTS OF PROCUREMENT OF ANY SUBSTITUTE GOODS.

12.3 Failure of Essential Purpose. The parties agree that the limitations specified in this Section 12 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

12.4 Force Majeure. Neither party shall be liable hereunder by reason of failure or delay in the performance of its obligations hereunder (except for the non-payment of money) on account of strikes, shortages, riots, insurrection, war, acts of terrorism, fires, flood, storm, explosions, earthquakes, acts of God, governmental action, labor conditions, or any other cause which is beyond the reasonable control of the party.

### **13. Publicity Rights**

CD may identify End User (by name and or logo) as a customer in Product promotional material. End User may request that CD cease identifying End User at any time by submitting an email to [info@informapp.nl](mailto:info@informapp.nl). Requests may take 30 days to process.

### **14. Assignment**

End User may not assign this Agreement without the prior written consent of CD (which consent will not be unreasonably withheld), provided that the assignee agrees to be bound by the terms and conditions contained in this Agreement. CD may assign its rights and obligations under this Agreement in whole or in part without consent of End User. Any permitted assignee shall be bound by the terms and conditions of this Agreement.

### **15. Governing Law and Arbitration**

15.1 Applicable Law; Venue. This Agreement is governed by the laws of The Netherlands (with regard to conflict of law principles), and, subject to Section 15.2, the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of Rotterdam.

15.2 Arbitration. Except in circumstances where a party seeks urgent injunctive relief, before commencing any court proceedings, if any disputes arise under this Agreement the parties will negotiate in good faith to resolve the dispute and if the dispute has not been resolved within sixty (60) calendar days by the relevant parties using their best efforts to resolve the dispute, the dispute will be referred to arbitration and determined under the Rules of Arbitration of **Nederlands Arbitrage Instituut** Secretariaat NAI Aert van Nesstraat 25 J/K, 3012 CA Rotterdam, Postbus 21075, 3001 AB Rotterdam , as mutually agreed by the parties.

15.3 Exclusion of UN Convention and UCITA. The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to this Agreement. The Uniform Computer Information Transactions Act (UCITA) shall not apply to this Agreement regardless of when or where adopted.

### **16. DMCA Notices**

If End User believes that any content on CD' Hosted Services or site violates its copyright, it should notify CD' copyright agent in writing. The contact information for CD' copyright agent is at the bottom of this section. CD cannot take action unless End User gives us all the required information.

In order for CD to take action, End User must do the following in its notice:

(i) provide End User's physical or electronic signature;

(ii) identify the copyrighted work that End User believe is being infringed;

(iii) identify the item that End User thinks is infringing and include sufficient information about where the material is located (including which website) so that CD can find it;

(iv) provide CD with a way to contact End User (such as address, telephone number, or email);

(v) provide a statement that End User believes in good faith that the item identified as infringing is not authorized by the copyright owner, its agent, or the law to be used by CD; and

(vi) provide a statement that the information End User provides in its notice is accurate, and that (under penalty of perjury), End User is authorized to act on behalf of the copyright owner whose work is being infringed.

Here is the contact information for CD's copyright agent: Copyright Enforcement  
Connected Development BV  
Snellinckstraat 703121 WK Rotterdam The Netherlands  
E-Mail: [info@informapp.nl](mailto:info@informapp.nl)

## **17. Government End Users**

The Products are commercial computer software. If the user or licensee of the Products is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Software, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Products were developed fully at private expense. All other use is prohibited.

## **18. General**

This Agreement is the entire agreement between End User and CD relating to the Products and supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Products or any other subject matter covered by this Agreement. If any provision of this Agreement is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect. This Agreement may not be modified or amended except as described on the first page of this Agreement or otherwise with the written agreement of CD (which may be withheld in its complete discretion without any requirement to provide reasons). As used herein, "including" (and its variants) means "including without limitation" (and its variants). If either party to this Agreement breaches any provision of this Agreement relating to Confidential Information or intellectual property rights, there may not be an adequate remedy available solely at law; therefore, an injunction, specific performance or other form of equitable relief or monetary damages or any combination thereof may be sought by the injured party to this Agreement. No failure or delay by the injured party to this Agreement in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder at law or equity. The parties are independent contractors. This Agreement shall not be construed as constituting either party as a partner of the other or to create any other form of legal association that would give on party the express or implied right, power or authority to create any duty or obligation of the other party.