

RFgen End User License Agreement

BY CHECKING THE ACCEPTANCE BOX OR INSTALLING OR USING ALL OR ANY PORTION OF THE SOFTWARE, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AS PUBLISHED ON RFGEN'S WEBSITE AT WWW.RFGEN.COM (AS MAY BE RELOCATED BY RFGEN FROM TIME TO TIME). YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY YOU AND LEGALLY BINDING BETWEEN YOU AND THE DATAMAX SOFTWARE GROUP, INC DBA AS RFGEN SOFTWARE, HEREFTER ("RFGEN"). IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, DO NOT INSTALL THE SOFTWARE. IF YOU WISH TO USE THE SOFTWARE AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATION, PARTNERSHIP OR OTHER ENTITY, THEN YOU MUST BE AUTHORIZED TO SIGN FOR AND BIND THE ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS AGREEMENT AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT AND AUTHORITY TO DO SO. IN THE EVENT YOU ARE REDIRECTED TO RFGEN'S WEBSITE, YOU AGREE THAT YOUR USE IS SUBJECT TO ANY POLICIES POSTED THEREON. RFGEN MAY MODIFY THIS AGREEMENT AS SET FORTH IN SECTION 14 (MODIFICATIONS TO THIS AGREEMENT).

This End User License Agreement ("EULA") is between RFgen and the customer (individual or entity) that has downloaded or otherwise procured the licensed Software (as defined below) for use as an end user ("you"). This EULA applies only to the Software Product, as referenced herein.

1. DEFINITIONS.

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control", for purposes hereof, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Ancillary Programs" means certain enabling software or tools, which RFgen makes available to Customer for download as part of the Software for purposes of facilitating Customer access to, operation of, and/or use with the Software.

"Authorized Device" means those licensed devices which are authorized by you to have the software installed regardless of whether those devices are actively using the Software at any given time.

"Authorized User" means those licensed individuals who are authorized by you to install and/or use the Software regardless of whether those individuals are actively using the Software at any given time.

"Documentation" means RFgen's product guides and other end user documentation for the Software and Ancillary Programs available online and through the help feature of the Software, as may be updated by RFgen from time to time to reflect the then-current Software.

"Effective Date" means the date of your first Ordering Document or the initial Delivery date of the Software (whichever is earlier).

"Software" means, collectively, the set of programs and services comprising the RFgen Mobile Unity Platform™ and RFgen Mobile Application suites (and any optionally procured modules) as described in the applicable Documentation that is procured by Customer from RFgen, but excluding Third Party Applications, Support Services, and Professional Services.

"Support Services" means the level of support services purchased by Customer pursuant to an Order.

"Third Party Applications" means applications, integrations, services, or implementation, customization and other consulting services related thereto, provided by a party other than RFgen.

2. RFGEN SOFTWARE PRODUCTS.

2.1. **Software Product.** In order to use the Software under this EULA, you must activate your copy of the Software with the valid license key(s) or activation code(s) provided to you ("Product Key") at the time of purchase and/or submit a uniquely identifiable user registration when prompted, in accordance with the scope of use and other terms specified for each type of Software, the Documentation, and as set forth in this Section 1 of this EULA. Except as set forth herein, any terms which apply to a Software product (such as RFgen Server) also apply to any add-on features to that Software product.

2.2. **Server-Based License.** The Software license designated on the applicable Order Form has a Server-Based element, permitting the software to be deployed to multiple server instances (physical or virtual), provided that the total

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number of Servers made available to each installation of the Software does not exceed the permitted number of Servers identified on your Order Form.

- 2.3. **User-Based License.** The Software license on the applicable Order Form has a User-Based element, the total concurrent count of Authorized Users enabled to use such Software must not exceed the number of licenses purchased on the applicable Order Form(s) or received by you from RFgen, including to the extent applicable, across all Production and Non-Production Environments. Your purchase of “**User-Based**” licenses may be further specified on the applicable Order Form as included in a specified Software package, and the technical capabilities available to each Authorized User shall be as set forth in the Documentation.
- 2.4. **Device-Based License.** The Software license on the applicable Order Form may include a Device-Based element, the total count of Authorized Devices enabled to use such Software must not exceed the number of licenses purchased on the applicable Order Form(s) or received by you from RFgen, including to the extent applicable, across all Production and Non-Production Environments. Your purchase of “**Device-Based**” licenses may be further specified on the applicable Order Form as included in a specified Software package, and the technical capabilities available to each Authorized User shall be as set forth in the Documentation.

3. LICENSE.

- 3.1. **Grant of License.** Subject to all of the terms and conditions of this EULA, and except as set forth in Section 6 (Term and Termination), during the applicable License Term, RFgen grants you a limited, worldwide, non-transferable, non-sublicensable, non-exclusive license to use the Software for which you have been issued a Product Key by RFgen or an Authorized Partner, but only in accordance with: (a) the Documentation and the Acceptable Use Policy; (b) the restrictions in Section 2 (RFgen Software Products), Section 3.9 (License Restrictions) and any restrictions on the applicable Order Form; and (c) the number of Authorized Users, Authorized Servers and/or Authorized Devices (as applicable), on the platforms and configurations or any other restrictions mutually agreed upon by you and an Authorized Partner. You may allow your Contractors and Affiliates to use the Software in accordance with this EULA, provided you shall remain liable for all acts and omissions of your Affiliates and Contractors as if their acts or omissions were your own.

No rights to prepare derivative works from the Software Product (including without limitation documentation (in electronic or print form)) are granted herein.

- 3.2. **Transfer.** You may not rent, lease, license, sell, lend, or otherwise transfer the Software Product to a third party without the express written consent of RFgen.
- 3.3. **Maintenance Services.** RFgen may provide you with maintenance / support services related to the Software Product (“**Maintenance Services**”). Use of Maintenance Services is governed by a separate agreement.

4. COPYRIGHT

All title and copyrights in and to the Software Product (including but not limited to all source code, object code, program structure and organization, screens or other images, photographs, animations, video, audio, text, and “**applets**” incorporated into the Software Product), the accompanying printed materials and documentation, electronic documentation, and any copies of the Software Product are owned by RFgen.

The Software Product is protected by copyright laws and international treaty provisions. Therefore, you may not use, reproduce, prepare derivative works, distribute, or display the Software Product except as provided in this EULA. You may not copy or use the printed materials or electronic documentation accompanying the Software Product except as provided in this EULA.

5. TRADE SECRETS

The Software Product (including but not limited to source code, object code, program design and functionality, data base design, screens and user interface, software development methodology, and the ideas and methods incorporated therein) and all documentation provided therewith (including print and electronic documentation) constitute and contain

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trade secrets owned by RFgen. You must maintain the confidentiality of such Software Product and may not disclose such product or documentation to any third party without the express written consent of RFgen. You may not reverse engineer, de-compile, or disassemble the Software Product.

6. CUSTOMER OBLIGATIONS.

- 6.1. **Responsibilities.** Customer shall (i) access, deploy, and use the Software Product in accordance with this EULA, applicable laws, and government regulations, and (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the Software Product.
- 6.2. **Acceptable Use Policy.** Customer shall not (i) license, sublicense, sell, resell, rent, lease, transfer, distribute or otherwise similarly exploit the Software Product or Ancillary Programs, (ii) use or permit others to use any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Software Product, (iii) copy, create a derivative work of reverse engineer, reverse assemble, disassemble, or decompile the Software Product, Ancillary Programs, or any part thereof or otherwise attempt to discover any source code or modify the Software Product or the Ancillary Programs, (iv) create a competitive offering based on the Software Product, and (v) disclose any benchmark or performance tests of the Software Product.

7. PROPRIETARY RIGHTS.

- 7.1. **RFgen Intellectual Property Rights.** All rights, title, and interest in and to the Software Product (including without limitation all intellectual property rights therein and all modifications, extensions, customizations, scripts, or other derivative works of the Software Product provided or developed by RFgen) and anything developed or delivered by or on behalf of RFgen for use with the Software Product (including without limitation Deliverables) are owned exclusively by RFgen or its licensors. Except as provided in this EULA, the rights granted to Customer do not convey any rights in the Software Product, express or implied, or ownership in the Software Product or any intellectual property rights thereto. Customer grants RFgen a royalty free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Software Product (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by Customer or any Users related to the operation or functionality of the Software Product. Any rights in the Software Product or RFgen's intellectual property not expressly granted herein by RFgen are reserved by RFgen. DataMAX, RFgen, and Mobile Unity Platform service marks, logos and product and service names are marks of RFgen (the "**RFgen Marks**"). Customer agrees not to display or use the RFgen Marks in any manner without RFgen's express prior written permission. The trademarks, logos and service marks of Third-Party Application providers ("**Marks**") are the property of such third parties. Customer is not permitted to use these Marks without the prior written consent of such third party which may own the Mark.
- 7.2. **Ancillary Programs, Third-Party Software.** The Software Product (including Ancillary Programs) may interoperate with certain third-party software products, including open-source software, owned by third parties, and licensed directly to the Customer by such third party ("**Third-Party Software**"). Such Third-Party Software is provided to the Customer without liability or obligation by RFgen and is governed by a license agreement directly between the Customer and the respective owner of the Third-Party Software.
- 7.3. **U.S. Government Rights.** The Software Product is a "**commercial item**" as that term is defined at FAR 2.101. If Customer or user is a US Federal Government (Government) Executive Agency (as defined in FAR 2.101), RFgen provides the Software Product, including any related software, technology, technical data, and/or professional services in accordance with the following: (a) if acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement; or (b) if acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative Agency or Federal Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as set forth in this Agreement. If any Federal Executive Agency, Federal Legislative Agency, or Federal Judicial Agency has a

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need for rights not conveyed under the terms described in this Section, it must negotiate with RFgen to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. This U.S. Government Rights Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

8. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS.

- 8.1. **Limited Warranty.** Subject to payment of the applicable license fee to RFgen for the Software Product, RFgen warrants that the Software Product will perform substantially in accordance with the RFgen Documentation, which accompanies the Software Product for a period of one year from the date of installation. For ERP related usage, the Software Product is warranted for the current version (only) of your ERP system. These limited warranties are void if failure of the Software Product has resulted from accident, abuse, misapplication, or modification of any source code provided with the Software Product.
- 8.2. **Customer Representations and Warranties.** Customer represents and warrants that (i) it has the legal authority to enter into this EULA, and (ii) it will use the Software Product in accordance with the terms and conditions set forth in this EULA and in compliance with all applicable laws, rules, and regulations.
- 8.3. **Remedies.** RFgen's and its suppliers' entire liability and your exclusive remedy shall be, at RFgen's option, either (a) return of the price paid, or (b) repair or replacement of the Software Product that does not meet RFgen's Limited Warranty and which is returned to RFgen with a copy of your proof of purchase and a return authorization number. Any replacement Software Product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. Outside the United States, neither these remedies nor any product support services offered by RFgen are available without proof of purchase from an authorized international source.
- 8.4. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, RFGEN MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, AND RFGEN HEREBY DISCLAIMS ALL IMPLIED WARRANTIES AND CONDITIONS, INCLUDING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY WARRANTY WITH RESPECT TO THE QUALITY, PERFORMANCE, ACCURACY OR FUNCTIONALITY OF THE SOFTWARE PRODUCT OR THAT THE SOFTWARE PRODUCT IS OR WILL BE ERROR FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

9. MUTUAL INDEMNIFICATION.

- 9.1. **Indemnification by RFgen.** RFgen shall indemnify, defend and hold Customer harmless from and against any judgments, settlements, costs and fees reasonably incurred (including reasonable attorney's fees) resulting from any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that the use of the Software Product hereunder infringes or misappropriates the valid intellectual property rights of a third party (a "**Claim Against Customer**"); provided that Customer (a) promptly gives RFgen written notice of the Claim Against Customer; (b) gives RFgen sole control of the defense and settlement of the Claim Against Customer (provided that RFgen may not settle any Claim Against Customer unless the settlement unconditionally releases Customer of all liability); and (c) provides to RFgen all reasonable assistance, at RFgen's expense. In the event of a Claim Against Customer, or if RFgen reasonably believes the Software Product may infringe or misappropriate, RFgen may in RFgen's sole discretion and at no cost to Customer (i) modify the Software Product so that they no longer infringe or misappropriate, without breaching RFgen's warranties hereunder, (ii) obtain a license for Customer's continued use of Software Product in accordance with this EULA, or (iii) terminate Customer's license for the Software Product and refund to Customer the original price paid to RFgen. Notwithstanding the foregoing, RFgen shall have no obligation to indemnify, defend, or hold Customer harmless from any Claim Against Customer to the extent it arises from (i) Customer Data or Third Party Applications, (ii) use by Customer after notice by RFgen to discontinue use of all or a portion of the Software Product, (iii) use of Software Product by Customer in combination with equipment or software not supplied by RFgen where the Software Product itself would not be infringing, (iv) or Customer's breach of this EULA.

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- 9.2. **Indemnification by Customer.** Customer shall indemnify, defend and hold RFgen harmless from and against any judgments, settlements, costs and fees reasonably incurred (including reasonable attorney's fees) resulting from any claim, demand, suit or proceeding made or brought against RFgen by a third party alleging that Customer Data or Third Party Application violates applicable law or a third party's rights (a "**Claim Against RFgen**"); provided that RFgen (a) promptly gives Customer written notice of the Claim Against RFgen; (b) gives Customer sole control of the defense and settlement of the Claim Against RFgen (provided that Customer may not settle any Claim Against RFgen unless the settlement unconditionally releases RFgen of all liability); and (c) provides to Customer all reasonable assistance, at Customer's expense.
- 9.3. **Exclusive Remedy.** This Section 9 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

10. LIMITATION OF LIABILITY.

- 10.1. **Limitation of Liability.** EXCEPT FOR (I) EACH PARTY'S OBLIGATIONS SET FORTH IN SECTION 9 (MUTUAL INDEMNIFICATION), (II) INFRINGEMENT OR MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, INCLUDING TRADE SECRETS, (III) DAMAGES FOR BODILY INJURY, DEATH, DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; OR (IV) ANY OTHER LIABILITY THAT MAY NOT BE LIMITED UNDER APPLICABLE LAW (THE "**EXCLUDED MATTERS**"), IN NO EVENT SHALL EITHER PARTY'S TOTAL AGGREGATE LIABILITY RELATING TO THIS EULA (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO RFGEN FOR THE SOFTWARE PRODUCT GIVING RISE TO SUCH CLAIM IN THE 12 MONTHS PRECEDING THE APPLICABLE INCIDENT.
- 10.2. **Exclusion of Consequential and Related Damages.** EXCEPT FOR THE EXCLUDED MATTERS, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 10.3. NOTWITHSTANDING THE FOREGOING OR ANY OTHER PROVISION OF THIS EULA, IN NO EVENT SHALL RFGEN BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS, DAMAGE OR INJURY TO PERSON OR PROPERTY ARISING OUT OF OR INCIDENT TO THE PERFORMANCE OF THIS EULA. THIS SECTION APPLIES TO DAMAGES ARISING FROM ANY CAUSE OF ACTION WHATSOEVER, INCLUDING WITHOUT LIMITATION CONTRACT, WARRANTY, STRICT LIABILITY, TORT, OR NEGLIGENCE, EVEN IF SUCH LOSS OR DAMAGE WAS FORESEEABLE OR CONTEMPLATED BY THE PARTIES.

11. TERM AND TERMINATION.

- 11.1. **Suspension for Delinquent Account.** RFgen reserves the right to suspend Customer's access to and/or use of the Software Produce if any payment is due but unpaid but only after RFgen has provided Customer two (2) delinquency notices, and at least thirty (30) days have passed since the transmission of the first notice. Customer agrees that RFgen shall not be liable to Customer or other third party for any suspension pursuant to this Section.
- 11.2. **Suspension for Ongoing Harm.** RFgen may suspend Customer's or Users' access to, or use of, the Software Product if RFgen believes that (a) Customer or Users are accessing or using the Software Product to commit an illegal act; or (b) there is a violation of the Acceptable Use Policy. When reasonably practicable and lawfully permitted, RFgen will provide Customer with advance notice of any such suspension. RFgen will use reasonable efforts to re-establish the Software Product promptly after RFgen determines that the issue causing the suspension has been resolved.
- 11.3. **Survival.** Provisions anywhere in the EULA regarding payment, termination, proprietary rights, Intellectual Property Rights, warranties, limitations of liability, governing law, dispute resolution, confidentiality, severability, export control, and waivers will survive the expiration or termination of this EULA.

12. NOTICES, GOVERNING LAW, AND JURISDICTION.

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- 12.1. **Manner of Giving Notice.** Except as otherwise specified in this EULA, all legal notices of default, breach, or termination (“**Legal Notices**”) hereunder shall be in writing and shall be deemed to have been given upon (i) personal delivery, (ii) the fifth business day after being sent by certified mail return receipt requested, or (iii) the first business day after sending by a generally recognized international guaranteed overnight delivery service. Each party shall send all Legal Notices to the other party at the address set forth in the applicable Order Form or SOW, as such party may update such information from time to time, with, in the case of notices sent by Customer, a copy sent to the DataMAX Software Group, Inc., 1101 Investment Blvd, Suite 250, El Dorado Hills, CA 95762, Attn: General Counsel. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer on the applicable Order.
- 12.2. **Binding Mediation and Arbitration.** Any unresolved controversy or claim, regardless of its nature, arising from or related to this EULA shall first be submitted for mediation under the Commercial Mediation Rules of the American Arbitration Association. Thereafter, any unresolved controversies or claims arising hereunder shall be settled by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The location of any such mediation or binding arbitration shall be selected by the party against whom such action is being pursued. The mediator and/or arbitrator shall be selected from a panel of arbitrators with subject matter experience. Any court having jurisdiction over the matter may enter a judgment upon the award of the arbitrator. Service of a petition to confirm the arbitration award may be made by United States Mail, postage prepaid, or by any regularly conducted commercial express mail service, to the attorney for the party or, if not so represented, to the party at the address set forth herein, or to the party's last-known business address. The arbitrator(s) shall have the power at the arbitrator's discretion to appoint a Special Master or consultant for the purpose of analyzing technical issues and preparing a report to the arbitrator of such analysis and performing such other tasks as the arbitrator(s) may deem necessary for a fair and proper determination of the issues submitted to arbitration. The costs of the services of such Special Master or consultant shall initially be shared equally by the parties pro rata and shall upon the award be deemed to be expenses of the arbitration. This EULA shall be construed in accordance with and governed by the laws of the State of California, USA. Any action in connection with the Services provided hereunder, must be commenced within one year of the event causing the controversy or claim; the prevailing party, as determined by the arbitrator, shall be entitled to reimbursement of its reasonable attorneys' fees and arbitration expenses (including administrative costs and the arbitrator's fee).
- 12.3. **Litigation Rights.** Either party may seek temporary or permanent injunctive relief from any court of competent jurisdiction to protect its Confidential Information, Intellectual Property Rights, or non-solicitation rights, regardless of the arbitration requirements.

13. EXPORT.

- 13.1. **Import and Export Compliant.** Each party shall comply with all applicable import, re-import, export and re-export control laws, treaties, agreements, and regulations. Export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (EAR), the Department of State International Traffic in Arms Regulations (ITAR), and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control (OFAC), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. Each party represents that it is not named on any U.S. government denied-party list. Customer shall not permit users to access or use Services in a U.S.-embargoed country or in violation of any U.S. export law or regulation.
- 13.2. **Access and User Data.** Customer acknowledges that the Software Product is designed with capabilities for Customer and Customer Users to access the Software Product without regard to geographic location and to transfer or otherwise move Customer Data between the Software Product and other locations such as User workstations, mobile devices, other environments. Customer is solely responsible for the authorization and management of User accounts across geographic locations, as well as export control and geographic transfer of Customer Data.

14. GENERAL PROVISIONS.

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- 14.1. **Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of the other party's employees or agents in connection with this EULA. If a party learns of any violation of the above restriction, such party will use reasonable efforts to promptly notify the other party.
- 14.2. **Relationship of the Parties.** The parties are independent contractors. This EULA does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 14.3. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this EULA.
- 14.4. **Waiver.** No failure or delay by either party in exercising any right under this EULA shall constitute a waiver of that right. A waiver of any breach of this EULA is not a waiver of any other breach of this EULA. Any waiver must be in writing and signed by an authorized representative of the waiving party.
- 14.5. **Force Majeure.** Neither party shall be liable under this EULA for delays or failures to perform this EULA due to causes beyond its reasonable control. Such delays include, but are not limited to, fire, natural catastrophe, government legislation, acts, orders, or regulation, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed party. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed party. The delayed party shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control.
- 14.6. **Severability.** If any provision of this EULA is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this EULA shall remain in effect.
- 14.7. **Modification.** This EULA may be amended at any time by RFgen in its discretion and published on its website www.rfgen.com. The new EULA shall take effect when Customer installs a new copy of the Software Product.
- 14.8. **Assignment.** Neither party may assign its rights and obligations hereunder, either in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign this EULA in its entirety, without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Subject to the foregoing, this EULA shall bind and inure to the benefit of the parties, their respective successors, and permitted assigns.
- 14.9. **Entire Agreement.** This EULA constitutes the entire agreement between the parties as it relates to the subject matter and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning or relating to the same. Except as otherwise provided herein, no modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties. To the extent of any conflict or inconsistency between the provisions of this EULA, the Documentation, any Order Form or SOW, the terms of such Order Form or SOW shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a PO, payment system, other order documentation or otherwise (excluding Order Forms and/or SOWs) shall be incorporated into or form any part of this EULA, and all such terms or conditions shall be null and void.
- 14.10. **Language.** All communications and notices pursuant to this EULA, must be in the English language.