MARKLOGIC CORPORATION
SOFTWARE LICENSE AGREEMENT

1. Definitions

1.1 **"Agreement"** means this Master Software License and Services Agreement, Order Documents, Statements of Work, information contained in a MarkLogic URL or policy referenced in the foregoing and such other documents, attachments and exhibits that the Parties' authorized representatives may mutually agree to in writing.

1.2 **"Applications"** means applications that interact and operate with the Software, according to any restrictions specified in the Order Document, developed in accordance with the Documentation; provided, that such applications do not expose generic database functionality provided by the Software nor allow users to further develop such applications.

1.3 **"Customer Technology"** means any Intellectual Property which is owned or licensed by Customer prior to the Effective Date or which is developed by Customer outside the scope and unrelated to the subject matter of this Agreement. Customer Technology expressly excludes Developed Materials and Work Product.

1.4 **"Developed Materials"** means any Intellectual Property created or developed solely or primarily by MarkLogic, its employees, agents or contractors, other than Work Product.

1.5 **"Documentation"** means any user instructions, release notes, manuals or other materials, and on-line help files in the form generally made available by MarkLogic regarding the use of the Software.

1.6 **"Equipment"** means a single Customer computer system or virtual computer system at Customer's facilities running the Software, which meet the restrictions specified on the applicable Order Document, if any.

1.7 **"Error"** means a material failure of Software to conform to its functional specifications described in the Documentation.

1.8 **"Error Correction"** means any bug fixes, modifications, additions, or routines intended to correct the practical adverse effect of an Error.

1.9 **"Intellectual Property Rights"** means patent rights (including patent applications and invention disclosures), copyrights, rights in database, moral rights, trademarks, service marks, trade secrets, know-how and any other intellectual property rights recognized in any country or jurisdiction in the world, now or hereafter existing, and whether or not perfected, filed or recorded.

1.10 **"Intellectual Property"** means technology, inventions, know-how, show-how, designs, formulae, processes, techniques, trade secrets, ideas, artwork, software, works of authorship, and any document or other materials embodying any of the foregoing, whether or not any of the same are patentable or copyrightable, and related documentation.

1.11 **"License Keys"** means the license key or keys provided to Customer by MarkLogic hereunder to enable the Software.

1.12 **"License Period"** means the period for which the license is granted to Customer for each Software, as set forth in an Order Document.

1.13 **"Software"** means the computer software programs in object code format specified in the Order Document, the License Keys, Documentation, copies thereof and, if Customer has purchased Support, Updates.

1.14 **"Support"** means the technical support services and Updates for the level of support services specified in the Order Document.

1.15 **"Territory"** means the certain geographic areas, specified in the Order Document, in which the Software may be used.

1.16 **"Updates"** means the Error Corrections, updates, modifications or enhancements to the Software developed after the effective date of the Order Document, which MarkLogic makes generally available under the Support level ordered by Customer in the applicable Order Document. Updates expressly exclude new products for which MarkLogic generally charges a separate license fee.

1.17 **"Work Product"** means any Intellectual Property created or developed by MarkLogic, its employees, agents or contractors on behalf of, and that is specified in the applicable Statement of Work as a deliverable to, Customer in the course of providing Services.

2. Software License

2.1 **Grant.** Subject to the terms and conditions of this Agreement, including but not limited to payment of the applicable fees and the Software use rights, rules and definitions described in the applicable Order Document, MarkLogic grants to Customer a limited, nonexclusive, nontransferable license in the Territory and for the License Period to (a) install, run and use the Software on the Equipment solely for Customer's own internal business operations and solely as enabled by the License Keys, and (b) use the Documentation in connection with such use of the Software.

2.2 **Additional Licenses.** Customer may expand the license granted under this Agreement, or otherwise change the scope of the license granted under an Order Document, upon MarkLogic's receipt and acceptance of a new Order Document specifying the foregoing, and upon Customer's payment of additional license fees for such expanded scope as set forth in MarkLogic's then-current price list.

2.3 **Rights Reserved-Ownership.** All rights not expressly granted in this Agreement are reserved by MarkLogic. MarkLogic retains sole and exclusive ownership of the Software and all Intellectual Property Rights in, to and/or embodied in or associated with the Software and services provided by MarkLogic hereunder, and all copies and derivative works thereof (whether

developed by MarkLogic, Customer or a third party), other than Applications independently developed by Customer. Customer acknowledges that no source code of the Software will be provided to Customer.

2.4 **Copies**. Except as otherwise set forth in an Order Document and except for archival or backup copies of the Software, Customer may not make copies of the Software. Notwithstanding the foregoing and except as otherwise set forth in an Order Document, in no event shall the Software be installed on Equipment that is immediately available for production processing in the event of a disaster or failure of the primary production Equipment running the Software.

2.5 **License Restrictions**. Customer shall not itself, or through any affiliate, employee, consultant, contractor, agent or other third party:

(a)   sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Software, or MarkLogic's Confidential Information (as defined in Section 7.1 below);

(b)   use the Software to provide training or other professional services to third parties;

(c)   decipher decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architectures, structures or other elements of the Software, including the license keys, or MarkLogic's Confidential Information, in whole or in part, for competitive purposes or otherwise;

(d)   allow access, provide, divulge or make available the Software or MarkLogic's Confidential Information to any user other than Customer's employees and independent contractors who have a need for such access and who shall be bound by a written nondisclosure agreement applicable to the Software with provisions that are at least as restrictive as the terms of this Agreement;

(e)   write or develop any derivative software or any other software program based upon the Software, the Documentation or any Confidential Information, except that Customer may develop its own Applications independently;

(f)   modify, adapt, translate or otherwise make any changes to the Software or any part thereof, including the License Keys;

(g)   create license keys or other programs or functionality that enable access to the Software, reverse engineer or otherwise attempt to discover or decipher the License Keys, distribute the License Keys to third parties, or cause such third parties to create, use, or distribute the License Keys, knowingly or otherwise;

(h)   use the Software or MarkLogic's Confidential Information to provide processing services to third parties, or otherwise use the Software on a 'service bureau' basis or outsource any of its operations utilizing any Software to any third party (which shall include, without limitation, the operation or maintenance of any environment on which any Software is installed). "Outsource" used in this section shall mean any arrangement by which a third party performs any of Customer's internal business operations on Customer's behalf;

(i)   otherwise use or copy the Software except as expressly permitted herein;

(j)   disclose or publish, without MarkLogic's express prior written consent, performance or capacity statistics or the results of any benchmark test performed on Software; or

(k)   use any name, mark or designation of MarkLogic, any of its affiliates or licensors or their respective products or services, unless expressly permitted herein or by MarkLogic in writing.

2.6 **Delivery**. MarkLogic will promptly make available to Customer, within 10 days after execution and receipt by MarkLogic of (i) the applicable Order Document and (ii) a purchase order from Customer, if applicable, License Keys as specified in the applicable Order Document, a downloadable machine-readable copy of the Software and a downloadable machine-readable copy of the Documentation. Customer will be solely responsible for installation and implementation of the Software.

3. Services

3.1 **Support**. If ordered, Support is provided on an annual basis under MarkLogic's Support policies in effect at the time the services are provided for the level of services ordered. Customer may access the current version of such policies on the web at http://www.marklogic.com/services/support.html. When ordered, Support must be ordered for all copies of the Software. The Support fee is as set forth in the applicable Order Document. Support will automatically renew each year unless either Party notifies the other of its intention not to renew Support at least 30 days prior to the expiration of the then-current term. If Customer terminates Support, Customer may reinstate Support only in accordance with MarkLogic's then-current business policies concerning reinstatement which may require, among other things, payment to MarkLogic of the annual Support fee for the reinstatement period and all Support fees that would have been paid previously had Customer not terminated Support.

3.2 **Ownership**. MarkLogic shall retain all rights, title and interest in and to any and all Developed Materials used or in any manner employed by MarkLogic in the provision of services and any and all Work Product. MarkLogic grants Customer, upon full payment of the applicable Services fees and charges, a personal, nonexclusive, non-transferable, worldwide, royalty-free license to, use, execute, reproduce, display, perform and internally distribute the Work Product and prepare for internal use only derivative works based upon the Work Product. Additionally, to the extent Developed Materials may be included with or embodied in any deliverable(s) delivered hereunder, MarkLogic grants Customer, upon full payment of the applicable fees and charges, a personal, nonexclusive, non-transferable, worldwide, royalty-free license to, during the License Period, use, execute, reproduce, display, perform, and internally distribute the Developed Materials and prepare for internal use only derivative works based upon such Developed Materials in each case solely in conjunction with the deliverable(s) provided in connection with the Order Document. Customer acknowledges that MarkLogic may create original works for third parties that may appear similar to a deliverable provided hereunder, including any Work Product. Customer agrees that, so long as such original work does not embody and is not created with reference to any of Customer's Confidential Information or any portion of the Customer

Technology, MarkLogic will not be prevented from independently creating original, but similar, works for the benefit of third parties. Except as expressly set forth in this Section 3.5, the license restrictions set forth in Section 2.5 apply to Work Product and Developed Materials.

4. Warranties, Disclaimers and Limitation of Liability

4.1   **Software**. MarkLogic warrants that

(a)   the Software, as updated and used in accordance with the Documentation and this Agreement, will perform in substantial accordance with the Documentation for a period of 90 days after the effective date of the applicable Order Document for such Software;

(b)   it is the sole owner of all right, title and interest in and to the Software, or if it is not the sole owner of such rights, that it is an authorized licensee of such rights and has the right to sublicense such rights to Customer; and

As Customer's exclusive remedy for any claim under the warranty in this Section 5.1, Customer shall promptly notify MarkLogic in writing of its claim and, provided that such claim is determined by MarkLogic to be MarkLogic's responsibility, MarkLogic shall, within 30 days of its receipt of Customer's written notice, (i) use commercially reasonable efforts to correct any Error in the Software or (ii) provide Customer with a plan reasonably acceptable to Customer for correcting any such Error. The preceding warranty cure shall constitute MarkLogic's entire liability and Customer's exclusive remedy for cure of the warranty set forth in this Section 4.1.

4.2   **Requirements**. The Software warranty shall apply only if (i) the Software has been properly installed and used at all times in accordance with this Agreement and the Documentation; (ii) no modification, alteration or addition has been made to the Software by persons other than MarkLogic or MarkLogic's authorized representative; and (iii) a defect in or malfunction of the Software has not been caused by Customer, Equipment, Customer's other equipment or software, including, without limitation, Applications, or third party software or equipment.

4.3   **Disclaimer**. Any written representation or warranty not expressly contained in this Agreement is expressly disclaimed and is not enforceable. Except as set forth in this Section 5, MarkLogic makes no warranties, whether express, implied, or statutory regarding or relating to the Software, Support, Developed Materials, Work Product or any other materials or services provided to Customer hereunder. MARKLOGIC HEREBY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH RESPECT TO THE SOFTWARE, SUPPORT, DEVELOPED MATERIALS, WORK PRODUCT AND OTHER MATERIALS PROVIDED TO CUSTOMER HEREUNDER. MARKLOGIC DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE, DEVELOPED MATERIALS, WORK PRODUCT OR ANY OTHER MATERIALS PROVIDED BY MARK LOGIC WILL BE ERROR-FREE, PERFORM IN AN UNINTERRUPTED MANNER, OR THAT MARK LOGIC WILL CORRECT ALL ERRORS.

5. Indemnification

5.1   **Customer Indemnity**. MarkLogic shall indemnify, defend or settle any action, suit or proceeding brought against Customer alleging that the Software infringes any copyright or misappropriate any trade secret of any third party and shall pay any final judgments awarded or settlements entered into and agreed to by MarkLogic; provided, that Customer gives prompt written notice to MarkLogic of any such action, suit or proceeding. Customer shall give such assistance, cooperation and information as MarkLogic may reasonably require to defend, settle or oppose any such action, suit or proceeding.

5.2   **Remedy**. In the event any such infringement action, suit or proceeding is brought or threatened, MarkLogic may, at its sole option and expense: (i) procure for Customer the right to continue use of the Software or the allegedly infringing part thereof; (ii) modify or amend or replace the same with other software or material having substantially similar functionality and performance; or (iii) if neither of the foregoing is commercially practicable as determined by MarkLogic in its sole discretion, MarkLogic shall have the right to terminate the license for the Software involved, and repay to Customer a portion, if any, of the fees paid by Customer equal to the amount paid by Customer for the affected Software less one thirty-sixth (1/36) thereof for each month or portion thereof that the applicable Order Document has been in effect.

5.3   **Exclusions**. The foregoing obligations shall not apply to the extent the action, suit or proceeding for infringement and/or misappropriation arises or results from (i) modifications to the Software made by any party other than MarkLogic or MarkLogic's authorized representative, (ii) Software or components thereof made in whole or in part to Customers' specifications upon Customer's request, (iii) Software that does not incorporate all of the Updates provided by MarkLogic to Customer or is not being used in compliance with this Agreement, (iv) use of the Software beyond the scope of or not in compliance with the terms of the Documentation, (v) breach of this Agreement by Customer, (vi) combination of the Software or components thereof with other products (hardware or software), processes or materials to the extent the alleged infringement relates to such combination, or (vii) where Customer continues the allegedly infringing activity after being notified thereof and is provided modifications, replacements or other remedies that would have avoided the alleged infringement.

6. Confidentiality.

7.1   By virtue of this Agreement, each Party may be exposed to or be provided with certain confidential and proprietary information of the other Party, including, but not limited to, information designated as confidential in writing and information, which ought to be in good faith considered confidential and proprietary to the disclosing Party ("**Confidential Information**"). Notwithstanding the foregoing, the following are Confidential Information of MarkLogic: the terms and conditions (but not the existence) of this Agreement, all trade secrets, software, including, without limitation, the Software, Developed Materials and Work Product, source code, object code, specifications, as well as results of testing and benchmarking of the Software or other services, product roadmap, data and other information of MarkLogic and its licensors relating to or embodied in the Software, Developed Materials or Work Product.

7.2.   Each Party will protect the other's Confidential Information from unauthorized dissemination and use with the same degree of care that each such Party uses to protect its own non-public and confidential information, but in no event less than a commercially reasonable degree of care. Neither Party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement.   Neither Party will disclose to third parties the other's Confidential Information without prior written consent of such other Party.

7.3.   Information shall not be considered Confidential Information to the extent, but only to the extent, that the receiving Party can establish that such information (i) is or becomes generally known or available to the public through no fault of the receiving Party; (ii) was in the receiving Party's possession before receipt from the disclosing Party; (iii) is lawfully obtained from a third party who has the right to make such disclosure; (iv) has been independently developed by the receiving Party without use of or reference to any Confidential Information of the disclosing Party; or (v) is required to be disclosed by law provided the receiving Party has promptly notified the disclosing Party of such requirement and allowed the disclosing Party a reasonable time to oppose such requirement.

7.   Term and Termination

7.1   **Term**. This Agreement shall take effect on the Effective Date and shall remain in force until the earlier of expiration of all License Periods specified in the attached Order Documents and termination in accordance with this Section 8.

7.2   **Termination by MarkLogic**. MarkLogic may, by written notice to Customer, terminate this Agreement, an Order Document, and/or a Statement of Work effective immediately if:

(a)   Customer is in material breach of its obligations under Section 2 (Software License) or Section 7 (Confidentiality) and such breach continues for 5 days after written notification from MarkLogic of such material breach;

(b)   Customer is in material breach of any term, condition or provision of this Agreement, including, without limitation, any payment term, which breach, if capable of being cured, is not cured within thirty (30) days after Customer's receipt of MarkLogic's written notice of such breach; or

(c)   MarkLogic elects to return Customer's fees in accordance with Section 6.2(iii).

7.3   **Effect of Termination**. Sections 1, 2.3, 2.5, 4, 5, 6 and 7 shall survive expiration or any termination of this Agreement for as long as necessary to permit their full discharge. On and after the effective date of expiration or termination, as applicable, all of Customer's rights to the Software, the Developed Materials and other materials provided by MarkLogic, other than Work Product, granted under this Agreement and its rights to any Support and other services shall immediately cease. Customer's license to the Work Product set forth in Section 3.6 above shall survive the expiration or any termination of this Agreement other than a termination by MarkLogic pursuant to Section 7.2 above. No later than thirty (30) days after the date of expiration, termination or discontinuance of this Agreement for any reason whatsoever, Customer shall return or destroy the Software (including the Documentation, the License Keys and any Updates released by MarkLogic), the Developed Materials and any other materials provided by MarkLogic, any other Confidential Information in its possession or control and all copies of any of the foregoing in any medium, except for any Work Product which shall only be returned to MarkLogic in the event MarkLogic terminates this Agreement pursuant to Section 8.3 above. Customer shall furnish MarkLogic with a certificate signed by an authorized officer of Customer verifying that the above has been done. Further, Customer shall compensate MarkLogic for all Services actually performed and reimburse MarkLogic for all actual out-of-pocket expenses and all non-cancelable commitments incurred by MarkLogic in the performance of the Services outstanding as of the date of termination of this Agreement or Statement of Work, as applicable.

8.   Miscellaneous

8.1   **Audit**. With reasonable notice and not more frequently than once per calendar year (unless deficiencies are found, in which case as frequently as is required to ensure that deficiencies are eliminated), MarkLogic may periodically carry out an audit of Customer's facilities and systems to ensure Customer's compliance with the terms of the Agreement. Customer will reasonably cooperate with MarkLogic in such an exercise and provide MarkLogic with reasonable access to its facility and systems to enable MarkLogic's audit. MarkLogic shall reasonably endeavour not to disrupt Customer's normal business activities and shall perform the audit in a professional manner. Customer acknowledges that the Software includes a license manager component to track usage of the Software and agrees not to impede, disable or otherwise undermine such license manager's operation.

8.2   **Assignment**. Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Customer, in whole or in part, whether voluntary or by operation of law, including by way of sale of assets, merger, consolidation or similar transaction without the prior written consent of MarkLogic. Any assignment by Customer without MarkLogic's prior written consent is null and void. MarkLogic may assign and delegate its rights and obligations under this Agreement without restriction. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

8.3   **Not Fault Tolerant**. The Software is not fault-tolerant and is not designed or intended for use in hazardous environments requiring fail-safe performance (such as, without limitation, the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, life support machines, or weapons systems) in which the failure of the Software could lead to death, personal injury, or severe physical or environmental damage. Accordingly, the license granted in this Agreement excludes use in any such environments and such use is unauthorized and prohibited. Customer hereby agrees not to directly or indirectly use the Software in such environments.