



# End User License Agreement

This Agreement (the "Agreement") is made by and between GMC Software Technology Inc., a Massachusetts corporation, with offices at 470 Atlantic Ave., 4<sup>th</sup> floor, Boston, MA 02210 ("GMC" or "Licensor") and the customer identified on the Order Form (the "Customer" or "Licensee") (GMC or Customer may be referred to herein as a "Party" and they may be referred to herein collectively as the "Parties").

NOW THEREFORE, in exchange for the consideration described herein, the Parties agree as follows:

## 1. Definitions

The definitions which apply to this Agreement including all exhibits are attached as **Exhibit A** and incorporated herein by reference.

## 2. License Grants

2.1 Upon execution of an agreement with Reseller (Reseller) GMC grants to Licensee a non-exclusive and non-transferable perpetual license to the Software described in the Order Form for the Use described in the Order Form and in the Software documentation and as set forth below at the prices set forth in the Reseller's order with Licensee. All Licenses granted are subject to the terms and conditions set forth in this Agreement and the applicable Third Party Software Programs license terms.

2.2 Some GMC Software licensed to Licensee includes Open Source Software. A complete list of these licenses is available via a link to GMC's website which available upon Customer's request. Customer agrees to comply with the terms of all Open Source Software licenses. To the extent the license for any Open Source Software requires GMC to make available to the Licensee the corresponding source code, Licensee may obtain a copy of the applicable source files by sending a written request, Licensee's name and address to: GMC Software Technology 470 Atlantic Ave., 4<sup>th</sup> floor, Boston, MA 02210. All requests must clearly specify: Open Source File Request. This offer to obtain a copy of the Source Files is valid for two years from the date when Licensee had acquired the Software license.

2.3 License Key. Licensee acknowledges that the Software contains a license key. GMC will provide Licensee with a license mechanism and a related key. This mechanism and key pair shall control the modules, functions and features as licensed in accordance and defined in the applicable License Schedule. If Licensee subsequently purchases additional modules and functions, GMC shall provide Licensee with additional license keys in order to update the mechanism and license pair. In the event Licensee purchases a click-charge subscription for production engines, the mechanism and key pair shall take control of such click-charge counter. Licensee agrees not to acquire or use any license key or similar computer code for the Software provided by another supplier than GMC or one of its authorized partners/resellers or distributors.

2.4 Backup/Archival Copy. Licensee may make one (1) backup/archival copy of the Software provided this copy is not installed or Used on any Computer. Licensee may not sell, assign or transfer any copy of the Software, except where specifically set forth in the applicable license terms (such as in the applicable Open Source Software terms). Any copies that Licensee is permitted to make pursuant to this Agreement must contain the same copyright and other proprietary notices that appear on or in the Software. Except as provided for above, Licensee may not copy the Software.

2.5 If Licensee wants to Use the GMC Software licensed hereunder on a Virtual Machine then any such Use of the Software by Licensee in a virtual environment shall only be allowed, if Licensee covenants and agrees to implement the GMC License Manager in a non-virtual environment (on a physical machine). In case that Licensee is under a volume restricted or click charge license type, Licensee must furthermore agree to provide GMC within no later than 5 working days after each quarter with the respective usage report produced by the GMC License Manager installed by the Licensee.

Any non-compliance with the above stated obligations is considered to be a material breach of this Agreement.

2.6 The GMC Software, as well as know-how and the relevant documentation are owned by GMC Software AG, Switzerland and its structure, organization and code are the valuable trade secrets of GMC Software AG. Any and all intellectual property rights of the GMC Software and integrated third party software (i.e. Adobe PDF Library technology) remain in the ownership of the respective owner(s) which retain title and full ownership rights thereto. The GMC Software is also protected by Swiss copyright law and International Treaty provisions. Integrated third party software programs are protected by United States copyright law and international treaty provisions and may be subject to additional terms and conditions. Such additional terms and conditions shall be contained in the "About the Product" documentation or defined in the applicable License Schedule.

Except as stated herein, **this Agreement does not grant Licensee any intellectual property rights in the Software or in any component of the Software**. Licensee is only allowed to use the programs contained in the Software for which it has paid the License Fee and for which it has received the authorization to use the Software.

2.7. Any rights not expressly granted to Licensee are reserved by GMC Software AG and GMC, which retain title and full ownership right under the copyright laws of the Switzerland, the United States or any other jurisdiction or foreign laws. Neither GMC Software AG, GMC nor their respective resellers and distributors are obligated to provide, nor is Licensee acquiring any right of any kind with respect to, the source code for the Software. Licensee acknowledges such ownership and intellectual property rights and will not take any action to jeopardize, limit or interfere in any manner with GMC Software

AG's or GMC's ownership of or rights with respect to the Software. Furthermore, Licensee agrees not to limit or interfere in any manner with the ownership and intellectual property rights related to integrated third party software program(s). Licensee also covenants not to use the Viewing Function (meaning a function allowing the copying of a PDF document into memory for display) contained in the Adobe PDF library technology in order to violate or bypass PDF file security measures which prevent copying or editing PDF documents.

Except as otherwise expressly permitted in this Agreement, Licensee may not:

- modify or create any derivative works of any Software or Software documentation
- decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for any Software (except to the extent applicable laws specifically prohibit such restrictions)
- re-distribute, encumber, sell, rent, lease, sublicense the Software, except as to Licensee's Affiliates.

### 3. Support & Maintenance

3.1 Customer has agreed to buy Support services from GMC ("Initial Support Term") via the Reseller as provided for in **Exhibit C**. If Customer buys Support after the Initial Support Term, GMC may increase the cost of support by no more than 5% per year.

3.2 Term. GMC shall provide Support & Maintenance Services for a term of one (1) year from the effective date of this Maintenance Agreement. Such term shall be automatically renewed each year for an additional one (1) year renewal term unless one party notifies the other party in writing of its intent not to renew the Support & Maintenance services ninety (90) prior to the expiration of the then current Support & Maintenance term.

3.3 Termination. Either party may terminate Support & Maintenance services at the end of any term by giving written notice to the other party at least ninety (90) days prior to the end of such term. Additionally, either party may terminate Support & Maintenance Services if the other party breaches any material term or condition of the EULA (End User License Agreement) or of the Support & Maintenance Agreement, **Exhibit C**, and such breach is not remedied within thirty (30) days after receiving written notice thereof. Notwithstanding the foregoing, GMC may immediately, by written notice to Licensee, suspend or terminate Support & Maintenance Services if Licensee fails to make any payment due under this Agreement within ten (10) days after GMC's written notice that such payment is overdue. In the event that Customer terminates this Support & Maintenance Services Agreement for cause, it shall be entitled to a pro rated refund of any fees paid for services not received.

### 4. Conditions of Service

4.1 Licensee Assistance. Licensee agrees to provide GMC reasonable access to Licensee personnel authorized to answer questions or resolve problems reported by Licensee regarding the Products. Licensee also agrees to implement all Updates and Upgrades provided by GMC under this Maintenance Agreement within a reasonable time which means no longer than twelve (12) months after the commercial release by GMC. If the new release is necessary to resolve an existing problem, Licensee agrees to implement such release as soon as reasonably possible. When GMC offers a new release and Licensee does not implement such release, GMC has no

obligation with regard to the problem resolved by the new release.

4.2 Retirement of Releases. GMC shall provide Maintenance Services for Product versions from the date the version becomes generally available until such version is retired. Product versions that are currently maintained and supported are listed at <http://www.gmc.net> under "GMC Products". This list is regularly updated. Unless otherwise set forth in an executed written agreement between the parties to this Maintenance Agreement, GMC shall retire prior commercial releases of the Products (i.e. discontinue Maintenance Services) as follows: (i) six (6) months after the commercial release of the subsequent maintenance release; (ii) no sooner than six (6) months after the commercial (generally available) release; (iii) no sooner than twelve (12) months after the commercial release of a new major upgrade. Notwithstanding the foregoing, GMC shall provide telephone support, during normal business hours, with respect to questions regarding the "how-to" use of a retired release of the Products for six (6) months following its retirement.

4.3 Use of Updates. Licensee's use of any Updates provided by GMC as part of Maintenance Services shall be governed by all license limitations and restrictions, and all other terms and conditions of the Agreement. GMC may, upon thirty days prior written notice to Licensee, change the services included in Maintenance Services provided, any such change shall not materially or substantially decrease the service level commitments described in Exhibit C. Such changes will not become effective until acceptance and commencement of any renewal term.

### 5. Payment

Licensee shall pay Reseller per their order.

### 6. Mutual Confidentiality

Each party acknowledges and agrees that any and all information emanating from the other's business in any form is "Confidential Information," and each party agrees that it will not, during or after the term of this Agreement, permit the duplication, use, or disclosure of any such Confidential Information to any person (other than an employee, agent or representative of the other party who must have such information for the performance of its obligation hereunder or in the execution of the duties of his or her employment), unless such duplication, use or disclosure is specifically authorized by the other party in writing. Licensee agrees that Licensor shall expressly be entitled to disclose Confidential Information provided by Licensee to its own employees, agent or representatives as well as to such of its parent company GMC Software AG, Switzerland as well as to employees of GMC Software Technology s.r.o. in the Czech Republic where the Research and Development Organization of the GMC Group is located. Such aforesaid disclosure shall always be strictly confined to the extent that required in order to fulfill Licensor's obligations under this Agreement and under a valid Maintenance and Support Agreement with Licensee.

Each party shall use reasonable diligence, and in no event less than that degree of care which such party uses in respect to its own Confidential Information of like nature, to prevent the unauthorized disclosure or reproduction of such Confidential Information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions.

Confidential Information shall not include: information which is in the public domain; information known to the recipient party as of the date of this Agreement, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source who is not under an obligation of confidentiality with respect to such information. The provisions of this Section 4 shall survive any termination or expiration of this Agreement.

#### **7. Assignment**

Provided Licensee gives Licensee timely written notice, Licensee may assign its rights and obligations under this Agreement without prior written approval by GMC to any Licensee Affiliate.

#### **8. Export Rules**

Licensee agrees that the Software will not be shipped, transferred, or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Software is identified as an export controlled item under the Export Laws, Licensee represents and warrants that it is not a citizen, or otherwise located within, an embargoed nation and not otherwise prohibited under the Export Laws from receiving the Software. All rights to use the Software are granted on condition that such rights are forfeited if Licensee fails to comply with the terms of this Agreement and the applicable Schedules hereto.

#### **9. Limited Warranty and Disclaimer**

9.1 Provided that Licensee has paid the applicable license fee, GMC warrants that for a period of ninety (90) days from the date of successful completion of Software implementation, the Software substantially conforms to its published specifications and the media on which the Software is furnished will be free of defects in materials and workmanship under normal use. Such warranty shall be extended and continued so long as Customer pays for Maintenance.

9.2 GMC warrants and covenants that : (i) GMC has the power and authority to execute and deliver the Agreement; (ii) GMC has taken all necessary corporate action to authorize the execution and delivery of the Agreement, and the Agreement is and shall be the legal, valid, and binding obligation of GMC enforceable in accordance with its terms; (iii) GMC owns or has acquired rights to all proprietary interests in the Software and documentation necessary to grant the licenses set forth in the Agreement; (iv) to the knowledge of GMC, the Software contains no virus, Trojan horse, worm, or other software routines designed either to permit unauthorized access by third parties or to disable, erase or otherwise harm Licensee's data, hardware or computer system; (v) the documentation is reasonably sufficient for the operation and maintenance of the Software by reasonably competent and trained End Users; and (vi) all Services provided by GMC will be performed in a workmanlike manner pursuant to generally accepted industry standards..

a) GMC AND ITS SUPPLIERS PROVIDE NO REMEDIES OR WARRANTIES, WHETHER EXPRESS OR IMPLIED FOR ANY SAMPLE APPLICATION CODE, ALPHA CODE OR TRIAL VERSION OF THE SOFTWARE. ANY TRIAL VERSION OR TEST VERSION (NON GA VERSION) OR SAMPLE APPLICATION CODE OF THE SOFTWARE ARE PROVIDED "AS IS".

b) EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY WITH RESPECT TO SOFTWARE OTHER THAN ANY SAMPLE APPLICATION CODE OR TRIAL VERSION, GMC, ITS SUPPLIERS AND RESELLERS DISCLAIM ALL

OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESSED, IMPLIED OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF NON-INFRINGEMENT AND TITLE OR QUIET ENJOYMENT. GMC DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION.

c) IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SOFTWARE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF SHIPMENT OF THE SOFTWARE.

e) NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY GMC, ITS SUPPLIERS AND RESELLERS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.

f) ANY AND ALL WARRANTIES SHALL BE VOID IF THE SOFTWARE HAS BEEN MODIFIED WITHOUT AUTHORIZATION BY GMC OR IF INSTALLED ON OR USED WITH EQUIPMENT BY LICENSEE WHICH DOES NOT MEET THE MINIMUM REQUIREMENTS NECESSARY FOR PROPER OPERATION AS SET FORTH BY GMC AND PROVIDED TO LICENSEE. NEITHER PARTY SHALL BE LIABLE FOR ANY FAILURE OR DELAY IN PERFORMANCE DUE TO ANY CAUSE BEYOND SUCH PARTY'S CONTROL INCLUDING BUT NOT LIMITED TO ACCIDENT, ACTS OF GOD, FIRE OR WATER DAMAGE, ACTS OF WAR, RIOTS, STRIKES, LIGHTNING, ELECTRICAL DISTURBANCES OR OTHER SIMILAR CAUSES.

#### **10. Sole and Exclusive Remedy**

Licensee's exclusive remedy for any breach of the warranty as set forth in herein is described below. Provided that Customer makes a timely written warranty claim to GMC within the warranty period, at GMC's sole discretion, GMC will either (1) supply Licensee with a copy of the Software that substantially conforms to the published documentation, or (2) provide a replacement for the defective media, or (3) refund a pro-rated portion purchase price of the Software to Licensee.

GMC shall have no responsibility to Customer for a Software failure if the failure of the Software has resulted from Licensee's conduct including, without limitation. Misconfiguration, accident, abuse, misapplication, or if the failure arises out of use of the Software with other than a recommended hardware configuration as provided by GMC documentation.

#### **11. Indemnity**

GMC will defend, at its own expense, and hold Licensee harmless against any legal action brought against Licensee based on a claim that the Software infringes an Intellectual Property Right of a third party, and GMC will pay any final judgment against Licensee in any such action attributable to any such claim or incurred by Licensee through settlement of such claim. Claims with respect to any of the Open Source Software and/or Third party software programs shall be subject to their respective license agreements and GMC disclaims any and all liability with respect to any claims of infringement with respect to those software programs. However, all such defense and payments of final judgment are subject to the conditions that Licensee must: (i) notify GMC promptly in writing of such claim, (ii) permit GMC to have sole control of the defense, compromise or settlement of such claim, including any appeals, and (iii) reasonably cooperate with GMC in the

defense or settlement of such claim. GMC will pay those costs, damages or reasonable attorney's fees incurred by Licensee in connection with such action or claim but shall only pay Licensee's legal fees which were incurred by Licensee after Licensee gave GMC notice of the claim and before GMC assumed control of the defense.

Nevertheless, the parties agree that GMC's entire liability under this Agreement for any claim or legal action related to an infringement of a third party Intellectual Property Right shall be limited to 125% of the amount of the Licensee's paid License Fees for the Software in the prior twelve (12) months. Should the Software become, or in GMC's opinion be likely to become, the subject of any such infringement claim, Licensee shall permit GMC, at GMC's option and expense, to (i) procure for Licensee the right to continue using the Software, or (ii) replace or modify the Software so that it becomes non-infringing and maintains the same functionality or (iii) terminate the right to use the Software, upon which termination Licensee agrees to promptly destroy all copies of the Software and certify the same to GMC, whereupon GMC will refund Licensee's License Fees for the Software up to 100% the total amount of the Licensee's paid License Fees for the Software in the prior twelve (12) months.

## **12. Limitation of Liability**

**TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL GMC OR ITS RESELLERS OR DISTRIBUTORS OR CUSTOMER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF OR THE INABILITY TO USE THE SOFTWARE EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. IN ANY CASE GMC'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL NOT EXCEED 100% OF LICENSE FEES PAID TO LICENSOR FOR THE SOFTWARE IN THE PRIOR TWELVE (12) MONTHS.**

The limitations of liability set forth in this Section 12 shall not apply to: (i) claims by a party for breach of Section 6 Confidentiality; (ii) the extent the party seeking the benefit of the limitation has engaged in willful misconduct, gross negligence or has intentionally harmed the other party; (iii) claims for personal injury and (iv) claims for which there is actual insurance coverage for such claim and the deductible shall be paid by the party carrying such coverage (in which case the maximum liability of a party shall be the greater of the maximum liability set forth in this section or the amount of actual insurance coverage).

WHERE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES; HOWEVER, THE EXCLUSION OF GMC'S WARRANTY IN THIS LIMITED WARRANTY SECTION SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

## **13. License Term and Termination**

This Agreement shall be effective for the term of the License grant unless terminated earlier, either through mutual agreement by the parties or by Licensee's breach of the Agreement; provided however, Licensee shall have thirty (30) days from written notice to cure any such breach, if curable. Upon termination, Licensee must immediately destroy the Software and all accompanying written materials and all copies

thereof (including copies stored in computer memory) and shall so certify to GMC in writing.

## **14. Disputes**

14.1 This Agreement will be governed by and construed under the laws of the State of New York and under the federal laws applicable therein.

14.2 Except for matters which would result in irreparable harm to a party without injunctive relief, the parties agree all disputes arising out of or in connection to this Agreement will be resolved under through binding arbitration under the Rules of the American Arbitration Association ("AAA"). For cases where the amount in controversy is \$250,000 or less, the case will be heard before an arbitrator appointed by the AAA who shall be an attorney. For cases where the amount in controversy exceeds \$250,000, the case will be heard by a panel of 3 arbitrators; one shall be an attorney, the second shall be an industry contracts professional and third shall be a subject matter expert. The arbitration shall be conducted in English in Washington, DC. The arbitrator's decision will be final and binding and may be enforced in a court. Each party waives its right to trial by jury or a court and agrees that such arbitration/mediation shall be the exclusive methods of resolving disagreements with respect to this License Agreement. This paragraph shall survive any termination of this Agreement.

This paragraph shall survive any termination of this Agreement. Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by the other party, which waiver shall be effective only with respect to the specific obligation described therein. If any provision hereof is found to be void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

## **15. Notices**

All notices or other communications herein provided to be given or which may be given by any party to the other, shall be deemed to have been duly given when made in writing, including an electronic writing which can be authenticated and time stamped or delivered in person, or upon receipt if deposited in the United States or Canadian mail, postage, prepaid, certified mail, return receipt requested, as follows:

Notices to the Licensee shall be sent to the address set forth on the Order Form.

Notices to GMC:

GMC Software Technology, Inc.  
470 Atlantic Avenue, 4th Floor  
Boston, MA 02210529

With a copy to:

Mike Gardner, Esq.  
Troutman Sanders, LLP  
222 Central Park Ave  
Suite 2000  
Virginia Beach, VA 23452  
Tel: (757) 687-7506

or to such address as the parties may provide to each other in writing from time to time.

# Exhibit A

## Definitions

**“Computer”** means one central processing unit (CPU) that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions;

**“End User”** means the Licensee of the GMC Software Product who acquires the software for use and not for distribution or resale;

**“End User License Agreement” (EULA)** means this GMC End User License Agreement for the GMC software program(s) and Products;

**“Fees”** means the fees and expenses specified in this Agreement and the applicable Schedules thereto payable by Licensee to GMC in respect of the License, and the Maintenance Services; all fees and expenses are stated without any applicable taxes;

**“GA Release”** means the Generally Released Version of GMC Software (excluding Beta and earlier Versions, Custom Versions, Trial Version, Test Versions and Code Samples);

**“GMC License Manager”** means the software management tool metering Licensee’s Use of the software products by in order to ensure Licensee’s compliance with the mutually agreed extent of Use;

**“Instance”** means one loaded code of the Software to run one thread at a time, no matter whether running on a single or multiprocessor Computer;

**“Intellectual Property Rights”** means all rights in inventions, patents, copyrights, design rights, trade marks and trade names, service marks, trade secrets, know-how and any other intellectual property rights (whether registered or unregistered) and all applications for any of them, anywhere in the world;

**“License”** means the License in respect of the Software granted by GMC to the Licensee;

**“Open Source License Terms”** means the license terms applicable to Open Source Software included in GMC Products

**“Open Source Software”** means Third Party Software available without charge for use, modification or distribution and generally licensed under the GNU Lesser General Public License, Apache or other open source software license;

**“Order Form”** means the document used by Neopost USA Inc. Pursuant to which the Licensee ordered the Software.

**“Remote Access”** means an installation of the GMC Software Program(s) where a User accesses the said Software from a remote device. The host device allows one or more Users to use the Software at one time through the remote connection. Each remote access User, network User, or local connection to the remote access host computer who uses the Software is cumulatively counted as one User for license counting purposes;

**“Response Times”** means the times specified in the applicable Maintenance Agreement within which GMC shall have commenced analysis of an Incident respectively corrective maintenance after notification from the Licensee of an Incident either by hotline support and advise, a remote diagnostics or if

necessary by dispatching a suitably qualified support analyst to the Licensee;

**“Seat”** means a workstation or terminal that can be operated by one User at a time;

**“Site”** shall mean one enterprise location (such can be a contiguous number of buildings, a single building or a production site); Remote buildings thereto within a distance of not more than 3miles shall be accepted as being only one production site provided that Licensee’s management and live control is maintained through one licensing server at the central site through live communication. Remote sites (such as local agencies, home offices) with up to two Users shall be considered to be part of one site provided that they do not run any production at the remote site and provided that control is maintained through one licensing server at the central site through live communication;

**“Software”** or **“Products”** means the GMC Software Program(s) (as set forth in the applicable License Schedule with GMC) and therein integrated third party software program(s), in each case, supplied by GMC or its suppliers or resellers herewith, and corresponding documentation, associated media, printed materials, and online or electronic documentation;

**“Support & Maintenance”** means the services described on **Exhibit C**.

**“Third party software programs”** means in the GMC Software integrated third party software such as Adobe PDF Library technology, Datalogics Software etc. and related documentation, and any upgrades, modified versions, updates, additions, and copies thereof;

**“Trial Version”** means a version of the Software, so identified, to be used only to review and evaluate the Software for a specific time period as determined by GMC;

**“Updates and Upgrades”** means any updates or upgrades or new releases of the Software made available by GMC Software AG, GMC or its resellers or distributors to the Licensee as part of Maintenance Services under the terms of this Agreement and the applicable Maintenance Agreement thereto;

**“Use”** means to access, install, download, copy or otherwise benefit from the functionality of the Software in accordance with the Software documentation and as set forth in this Agreement;

**“User”** means any person, program, process, product, or hardware which uses any functionality of the Software;

**“Virtual Machine”** means a computer operating system (guest) running in emulated hardware within a host operating system. A virtual machine is capable of executing the functions supported by its installed operating system. For license counting, a virtual machine is considered to be the equivalent of a physical machine;

**“Warranty Period”** means the period set forth in Section 10 of this End User License Agreement.