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SOFTWARE END USER LICENSE AGREEMENT (EULA)

MARCOMCENTRAL®

IMPORTANT- READ CAREFULLY:

IF ANY ENTITY HAS PREVIOUSLY ENTERED INTO A SEPARATE WRITTEN CUSTOMER AGREEMENT WITH PTI MARKETING TECHNOLOGIES INC, ("PTI") OR WITH AN AUTHORIZED THIRD PARTY RESELLER REGARDING THE MARCOMCENTRAL SYSTEM (AS DEFINED BELOW), THEN THE TERMS OF SUCH CUSTOMER AGREEMENT SHALL CONTINUE IN FULL FORCE AND EFFECT, AND THE TERMS OF THIS END USER AGREEMENT SHALL ONLY APPLY TO THE EXTENT PERMITTED BY THE CUSTOMER AGREEMENT. IN SUCH CASE, YOU MAY PRESS THE "I AGREE" BUTTON AND CONTINUE.

FOR ALL OTHER USERS, THE FOLLOWING APPLIES:

THIS END-USER LICENSE AGREEMENT ("EULA") IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AN INDIVIDUAL OR A SINGLE ENTITY) AND PTI MARKETING TECHNOLOGIES® INC. ("PTI") FOR THE MARCOMCENTRAL SYSTEM (DEFINED BELOW). IN THIS EULA, YOU AND YOUR COMPANY SHALL BE COLLECTIVELY REFERRED TO AS THE "END USER". BY CLICKING ON THE "I AGREE" BUTTON BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE FOLLOWING TERMS AND AGREE TO BE BOUND BY THEM, AND, IF YOU ARE AN INDIVIDUAL ENTERING INTO THIS EULA ON BEHALF OF AN ENTITY, YOU REPRESENT, WARRANT, AND COVENANT THAT YOU ARE AUTHORIZED TO ENTER INTO THIS EULA ON BEHALF OF SUCH ENTITY, AND BIND SUCH ENTITY TO THE TERMS AND CONDITIONS HEREOF. IF YOU DO NOT AGREE TO THESE TERMS, PTI IS UNWILLING TO GRANT YOU THIS LICENSE AND YOU SHOULD CLICK ON THE "I DO NOT AGREE" BUTTON, IN WHICH CASE: (1) IF YOU RECEIVED THE SOFTWARE PRODUCT ON MAGNETIC MEDIA OR CD-ROM, PROMPTLY RETURN THE UNUSED SOFTWARE PRODUCT TO THE PLACE FROM WHICH YOU OBTAINED IT AND YOU MAY OBTAIN A REFUND IN ACCORDANCE WITH THE REFUND POLICY OF SUCH PLACE OF PURCHASE; OR (2) IF YOU RECEIVED THE SOFTWARE PRODUCT VIA DOWNLOAD FROM AN INTERNET WEB SITE, THEN YOU MUST DELETE ALL OF THE DOWNLOADED FILES AND YOU MAY OBTAIN A REFUND IN ACCORDANCE WITH THE REFUND POLICY OF SUCH INTERNET WEB SITE; OR, (3) IF AGREEMENT TO THIS EULA IS A PRE-CONDITION FOR ACCESS AND USE OF THE MARCOMCENTRAL SYSTEM VIA AN ONLINE APPLICATION SERVICE PROVIDER MODEL, THEN YOU MUST DISCONTINUE ANY FURTHER ATTEMPT TO ACCESS OR USE THE MARCOMCENTRAL SYSTEM, AND IF YOU HAVE PREVIOUSLY PAID ANY FEE TO ANY THIRD PARTY FOR SUCH ACCESS AND USE, THEN YOU MAY OBTAIN A REFUND FROM SUCH THIRD PARTY IN ACCORDANCE WITH SUCH THIRD PARTY'S REFUND POLICY. BY CLICKING "I

AGREE” YOU ALSO ACKNOWLEDGE THAT THIS EULA IS THE ONLY AGREEMENT BETWEEN YOU AND PTI REGARDING THE MARCOMCENTRAL SYSTEM, AND THAT YOU HAVE NOT PREVIOUSLY ENTERED INTO AN APPLICABLE PTI CUSTOMER AGREEMENT AS SET FORTH ABOVE.

PTI and End User may be individually referred to as a “Party” or collectively as the “Parties”.

In consideration of the mutual covenants and Agreements contained in this EULA, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

12. DEFINITIONS. The definitions set forth below and elsewhere in the EULA shall apply to both their singular and plural form, as the context may require.

(a) **“MarcomCentral Portal”** means certain End User-specific applications under this EULA that can be accessed via the MarcomCentral System.

(b) **“Fees”** means the amounts to be paid by End User to PTI or the applicable third party reseller/distributor of the MarcomCentral System pursuant to a separate agreement between such reseller/distributor and End User.

(c) **“Host Server”** means the computer system(s) and supporting equipment and software located at PTI’s facilities upon which the MarcomCentral Application software resides and with which access is provided to End User via the Internet.

(d) **“Intellectual Property Rights”** collectively means any and all copyrights, patents, patent registration rights, business processes, disc rights, mask works, trademarks, trade names, service marks, service names, trade secrets, and know-how rights arising or enforceable under U.S. law, foreign law, or international treaty regime.

(e) **“MarcomCentral System”** means the proprietary online system “MarcomCentral” provided by PTI to End User under this EULA, including, without limitation, the software (which may include software from Adobe Systems Incorporated, hereinafter referred to as “Adobe”), services and documentation listed in the Customer Agreement, any MarcomCentral Portal created by PTI hereunder, and any subsequent improvements, updates, modifications or additions thereof, when, and if made available by PTI.

(f) **“Term”** shall have the meaning set forth in the Customer Agreement.

13. LICENSE AND SERVICES

(a) **License Grant.** Subject to the terms of this EULA, PTI hereby grants to End User a non-exclusive, non-transferable (without right to sublicense, except as expressly provided herein) right and license to access and use the MarcomCentral System solely for End User’s internal use in support of End User’s printing activities. The foregoing license includes the right for End User to make use of the electronic mail feature of the MarcomCentral System, and End User represents and warrants to PTI that any and all such use of such feature by End User: (i) shall comply with all applicable laws (including, without limitation, all such laws regarding unsolicited commercial email (“spam”)); and, (ii) shall not cause PTI to be in violation of any such applicable law.

(b) **Restrictions.** Title to and ownership of the MarcomCentral System, as well as all related maintenance documentation and user documentation, and all Intellectual Property Rights in and to the MarcomCentral System and such documentation shall at all times remain with PTI, and any reference to the “sale” of the MarcomCentral System to End User shall be, and be construed as, a sale of a license to use the MarcomCentral System as set forth herein. Except for the license expressly granted in Section 2(a), this EULA shall be not construed to grant to End User any right, title, or interest in any Intellectual Property Rights embodied in or associated with the MarcomCentral System, or any right to copy, modify, or lease the MarcomCentral System, or

RICOH

create any derivative works thereof. Except as permitted under applicable law (and then only to the minimum extent so permitted), under no circumstances shall End User, nor shall End User permit any third party to, reverse assemble, reverse compile, reverse translate or otherwise reverse engineer the MarcomCentral System or otherwise attempt to learn or derive the source code, structure, algorithms or ideas underlying the MarcomCentral System. In no event shall End User use, or permit any third party to use, the MarcomCentral System in any manner not specifically authorized hereunder.

(c) **Compliance with Terms of Use and Privacy Policy.** In addition to being subject to the terms and conditions hereof, any and all use of the MarcomCentral System (including, without limitation, use of the PTI web site and/or the MarcomCentral portal) by End User is subject to PTI's Terms of Use and Privacy Policy, which are incorporated by reference herein. End User agrees to familiarize itself with such Terms of Use and Privacy Policy, and to periodically review the foregoing to become apprised of any applicable updates thereto. If there is any conflict or inconsistency between these Terms and Conditions and the Terms of Use and/or Privacy Policy, then these Terms and Conditions shall control with respect to such conflict or inconsistency.

14. PAYMENT OF FEES

(a) **Payment Schedule.** Fees owed by End User to PTI or the applicable PTI reseller/distributor shall be made in accordance with End User's agreement with PTI or such reseller/distributor. End User acknowledges and agrees that a failure by End User to make applicable payments to PTI or such reseller/distributor shall be deemed a breach of this EULA by End User, and, without limiting any other provision of this EULA, such breach shall be subject to the terms of Section 7(b)(i) below.

15. RESPONSIBILITIES OF THE PARTIES.

(a) **End User Responsibilities.** In addition to the other duties set forth in this EULA, End User agrees to perform the following: (i) follow the processes established by PTI for accessing and using the MarcomCentral System; (ii) provide the Internet connection with which access to the Host Server is acquired and maintained; (iii) provide and maintain such Internet connection, including the communications lines, modems, routers, browsers, and/or other equipment, software and services necessary for access to and use of the World Wide Web; (iv) providing an Internet Service Provider and paying all related fees and charges for such Internet Service Provider; and, (v) provide PTI with all content, trademarks, logos, and other items necessary for PTI to provide the MarcomCentral System and the Services to End User ("**End User Content**"). End User hereby grants PTI a worldwide, non-exclusive, limited right and license to display and use the End User Content as necessary and appropriate for PTI to provide the MarcomCentral System and the Services to End User, including, without limitation, displaying, publishing, transmitting, and distributing such End User Content on or through the MarcomCentral System, and any MarcomCentral portal. End User represents, warrants, and covenants on a continuing basis, that it owns or has obtained all rights, licenses, waiver, permissions, credits, or attributions necessary for PTI to use the End User Content as contemplated hereunder.

(b) PTI Responsibilities.

(i) PTI shall use commercially reasonable efforts to maintain suitable data storage space to maintain system functionality. Except in emergency situations, PTI will not terminate or disrupt End User's services if End User's storage space is fully utilized. Before adding any additional storage space for End User, PTI will first discuss the need of such additional storage space with End User. All additional storage requirements and pricing must first be approved by End User prior to being implemented by PTI.

(ii) PTI shall use commercially reasonable efforts to minimize performance interruptions or repair the system in a reasonable time frame. PTI shall use commercially

reasonable efforts to promptly notify End Users of anticipated or existing interruptions in service of any kind.

16. NO WARRANTY. THE MARCOMCENTRAL SYSTEM AND THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND. END USER EXPRESSLY ACKNOWLEDGES THAT PTI'S ABILITY TO PROVIDE THE MARCOMCENTRAL SYSTEM AND THE SERVICES IS DEPENDENT ON THE AVAILABILITY OF THE TELECOMMUNICATIONS AND INTERNET SERVICE PROVIDERS UTILIZED BY END USER AND THAT PTI HAS NO CONTROL OVER OR RESPONSIBILITY FOR SUCH SERVICE PROVIDERS. PTI AND ITS LICENSORS DO NOT WARRANT THE SECURITY, PRIVACY, OR ACCURACY OF ANY MEDIA PROVIDED VIA THE MARCOMCENTRAL SYSTEM, AND END USER AGREES THAT THE USE OF ANY SUCH MEDIA OR OTHER MEDIA BY END USER IS AT END USER'S SOLE RISK. TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, PTI AND ITS LICENSORS DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PTI MAKES NO WARRANTIES OR REPRESENTATIONS WHATSOEVER WITH REGARD TO ANY GOODS OR SERVICES PROVIDED, OR ANY OBLIGATIONS ENTERED INTO, BY END USER AND/OR ANY THIRD PARTY THROUGH USE OF THE MARCOMCENTRAL SYSTEM, THE PTI WEB SITE OR END USER'S WEB SITE, AND PTI SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE PTI INFORMATION PROVIDED TO END USER WILL BE ERROR FREE OR WILL BE SUITABLE FOR END USER'S NEEDS, OR WILL MEET END USER'S REQUIREMENTS, OR THAT A THIRD PARTY WILL PAY OR BE CAPABLE OF PAYING FOR THE GOODS OR SERVICES DELIVERED BY END USER THROUGH AN ORDER PLACED ON PTI'S WEB SITE OR END USER'S WEB SITE, OR THAT A SUPPLIER OF END USER WILL DELIVER OR BE CAPABLE OF DELIVERING GOODS AND SERVICES ON A TIMELY BASIS THROUGH AN ORDER PLACED ON PTI'S WEB SITE OR END USER'S WEB SITE.

17. LIMITATION OF LIABILITY. TO THE MAXIMUM PTI AND ITS LICENSORS SHALL NOT BE LIABLE TO END USER OR ANY END USER OR OTHER THIRD PARTY UNDER THIS EULA: (I) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOSS OF DATA, LOSS OF REVENUE, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, WHETHER ARISING UNDER TORT OR CONTRACT, EVEN IF PTI HAS BEEN MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES; OR (II) FOR ANY DIRECT DAMAGES IN EXCESS OF THE GREATER OF: (I) PTI UNDER THIS EULA IN THE TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH DAMAGES; OR (B) ONE HUNDRED U.S. DOLLARS (\$100). WITHOUT LIMITING THE FOREGOING, END USER FURTHER AGREES TO BRING ALL CLAIMS REGARDING THE MARCOMCENTRAL SYSTEM (WHETHER FOR COMPONENTS OWNED BY PTI OR ITS THIRD PARTY LICENSORS) SOLELY AGAINST PTI AND NOT AGAINST ANY OF ITS THIRD PARTY LICENSORS.

18. TERM AND TERMINATION

(a) **Term.** If End User has agreed upon a certain term for this EULA with a PTI reseller/distributor, then such agreed-upon term shall be applicable to this EULA. If End User and such reseller/distributor have not agreed upon such a term, then: (i) this EULA shall begin on the date that this EULA is accepted by End User, and shall continue for 12 months thereafter (the "Initial Term") unless terminated earlier as set forth herein; and, (ii) the EULA shall

RICOH

automatically renew for an additional 12 months (each, a Renewal Term) at the expiration of each term, unless either PTI or End User gives written notice of non-renewal to the other party at least thirty (30) days prior to the expiration of the then current Term; and, (iii) in such event, the Initial Term and any Renewal Term(s) shall collectively constitute the "Term" of this EULA.

(b) Termination

(i) **For Cause.** Either Party may terminate this EULA upon written notice if the other Party breaches this EULA and does not cure such breach within thirty (30) days of receiving written notice thereof from the non-breaching Party; except that either Party may terminate this EULA immediately upon written notice for a material breach by the other Party of the confidentiality or licensing restriction provisions of this EULA.

(ii) **For Convenience.** End User may terminate this EULA for convenience by providing at a minimum of thirty (30) days prior written notice thereof to PTI.

(iii) **For Cessation of Service.** PTI shall have the right, upon one hundred eighty (180) days written notice to End User, to terminate this EULA without any liability to End User, if PTI decides to cease offering the MarcomCentral System for general availability.

(c) **Effect of Termination.** Upon any termination or expiration of this EULA, all licenses granted hereunder shall cease, End User shall immediately cease all use of the MarcomCentral System, and End User shall promptly return or destroy any copies of any PTI documentation, or other confidential information of PTI in End User's possession. Any outstanding payment obligation of End User, and Sections 12, 2(b), 5, 6, 7(c), and 8 shall survive any termination or expiration of this EULA.

19. GENERAL PROVISIONS.

(a) **Injunction.** End User acknowledges that any breach of the provisions of this EULA may cause irreparable harm and significant injury to PTI to an extent that may be extremely difficult to ascertain. Accordingly, End User agrees that PTI will have, in addition to any other rights or remedies available to it at law or in equity, the right to seek injunctive relief wherever it deems appropriate to enjoin any breach or violation of this EULA.

(b) **Publicity.** Notwithstanding any other provision of this EULA, except as required by law, neither PTI nor End User shall use the other Party's names or trademarks, and neither Party shall make any public statements relating to the other Party, without such Party's prior written consent, not to be unreasonably withheld or delayed.

(c) **Governing Law.** This EULA shall be governed by and construed solely and exclusively in accordance with the laws of the State of California, USA, without regard to its conflict of law principles or any other principles that would result in the application of another body of law. If any provision of this EULA is found void or unenforceable, the Parties agree that the remainder of this EULA shall continue to bind the Parties. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Except for actions taken pursuant to Section 8(a):

(i) for End Users located in the United States: any and all claims, disputes or controversies arising under or in connection with this EULA shall be brought solely and exclusively in the state or federal courts located in San Diego County, California, USA, which shall constitute the sole, exclusive and final forum for any resolution of any disputes between the Parties. Both Parties hereby irrevocably consent to the jurisdiction of such courts and waive any objections thereto. Both Parties hereby irrevocably consent to service of process for all actions in such courts. Any judgments obtained by such courts may be entered and enforced against each Party in any jurisdiction wherever such Party or its assets are located

(ii) for End Users located outside the United States, any and all claims, disputes or controversies arising under or in connection with this EULA shall be submitted to binding arbitration with a single arbitrator under the then-current Commercial Arbitration Rules

of the American Arbitration Association (“AAA”). The arbitrator shall be mutually agreed upon by the Parties, or, if the Parties cannot agree upon an arbitrator within five (5) business days following the receipt of an arbitration demand by the non-demanding Party, then the AAA shall select the arbitrator. The arbitration shall be conducted in the English language, and all documents shall be submitted in English or with an English translation. The arbitrator shall submit a written report to the Parties, detailing the basis for any arbitration award. The arbitration shall be held in San Diego, California, USA. The Parties shall equally share the cost of the administration of the arbitration, including paying the fees of the arbitrator. Any decision rendered by the arbitrator shall be binding, final and conclusive upon the Parties, and a judgment thereon may be entered in, and enforced by, any court having jurisdiction over the Party against which an award is entered or the location of such Party’s assets, and the Parties hereby irrevocably waive any objection to the jurisdiction of such courts based on any ground, including without limitation, improper venue or forum non-conveniens. The Parties and the arbitrator shall be bound to maintain the confidentiality of this EULA, the dispute and any award, except to the extent necessary to enforce any such award. The prevailing Party, if a Party is so designated in the arbitration award, shall be entitled to recover from the other Party its costs and fees, including attorneys’ fees, associated with such arbitration.

(d) **Confidentiality:** It is expected that the Parties will disclose to each other certain confidential information (“**Confidential Information**”) and each Party recognizes the value and importance of the protection of the other’s Confidential Information. All Confidential Information of one Party (the “**Disclosing Party**”) that is disclosed to the other Party (“**Recipient**”) shall remain the sole property of the Disclosing Party (or its licensors), which shall own all rights, title, interest and Intellectual Property Rights therein. Only information which is identified as confidential pursuant to the next paragraph shall be deemed Confidential Information hereunder, except that End User agrees and acknowledges that the Services and the PTI System constitute PTI’s Confidential Information.

A Disclosing Party may designate information as confidential by: (a) marking written information or other physical media as “Confidential” prior to disclosure; (b) indicating in the visual display of a program that the program is confidential; (c) identifying oral information as confidential at the time of disclosure to Recipient, or (d) notifying the Recipient in writing prior to disclosure that certain specifically identified types of information are considered to be confidential.

Except as expressly allowed in this EULA, the Recipient agrees not to duplicate in any manner the Disclosing Party’s Confidential Information or to disclose it to any third party or to any of Recipient’s employees not having a need to know same to implement this EULA. The Recipient shall ensure that any such third party or employee is bound by written confidentiality provisions at least as restrictive as those contained in this EULA. Each Recipient agrees to keep the Disclosing Party’s Confidential Information in a safe and secure place; protect it from unauthorized use or disclosure, and monitor access to it. Recipient shall use the Disclosing Party’s Confidential Information solely for the implementation of this EULA and for no other purpose, whether for Recipient’s own benefit or the benefit of any third party.

Recipient’s obligations to maintain confidentiality shall not apply to information which Recipient can prove: (i) is or becomes a part of the public domain; (ii) was in Recipient’s lawful possession prior to the disclosure and had not been subject to limitations on disclosure or use; (iii) is entirely independently developed by Recipient without any knowledge or reference to the Confidential Information of the other Party; (iv) is lawfully disclosed hereafter to Recipient, without restriction, by a third party who did not acquire the information from the Disclosing

RICOH

Party; or (v) is disclosed to the minimum required by a court of competent jurisdiction after Recipient has obtained a protective order therefore, if available.

(e) **Compliance with Laws.** End User shall, at its own expense, comply with all applicable laws, regulations, ordinances, or rules relating to its duties, obligations and performance under this EULA. Without limiting the generality of the foregoing, End User shall comply with all applicable U.S. export laws, in its use of the PTI System and in performing its obligations under this EULA. End User shall not export or re-export, or request PTI to export or re-export, directly or indirectly, any products, and/or technical disc or other media received from PTI, to any country, entity or person prohibited by the U.S. Government. End User acknowledges that compliance with U.S. export laws may cause delays and/or prohibit PTI from exporting the MarcomCentral System to certain countries and entities for certain uses. In no event shall PTI be liable for any such delays or prohibition. In performing its activities hereunder, End User shall also comply with, and take the necessary steps to ensure that PTI is in compliance with (i) the laws and regulations of other applicable countries which prohibit export or diversion of certain technical products to certain countries and individuals and any other applicable law, and (ii) the U.S. Foreign Corrupt Practices Act and Anti-Boycott Regulations.

(f) **End User Indemnity.** End User shall defend, indemnify and hold PTI, its officers, directors, employees, agents, subcontractors and suppliers (all such persons and entities being collectively referred to as the “**PTI Indemnitees**”), harmless from and against any claim, action, suit, damages, liabilities, losses or expenses (including reasonable attorneys’ fees) suffered or incurred by any PTI Indemnitee arising from or relating to End User’s breach of any of the provisions of this EULA. The foregoing indemnification obligation shall not apply to the extent, if any, such claims directly and solely result from the gross negligence or willful misconduct of any PTI Indemnitee.

(g) **Assignment.** End User may not assign this EULA or delegate any or all of its obligations hereunder to any third party without the prior written consent of PTI, such consent not to be unreasonably withheld or delayed. PTI may freely assign this EULA, or delegate any of all of its obligations hereunder to any third party, provided that any such third party agrees in writing to be bound by the terms of this EULA. Any attempted assignment or delegation in violation of this Section 8(g) shall be void and without effect.

(h) **Non-Exclusivity.** Neither Party is precluded from continuing its contractual commitments, or pursuing ongoing operational or marketing activities in connection with the sale or distribution of its products or services.

(i) **Independent Contractor.** The relationship of the Parties hereunder is that of independent contractors. This EULA shall not be interpreted or construed to create an association, agency, franchise, employment relationship, joint venture or partnership between the Parties or to impose any partnership obligation or liability upon any Party.

(j) **Force Majeure.** Except for the obligation to pay money, non-performance by either Party shall be excused solely to the extent that performance is rendered impossible by strike, fire, flood, earthquake, electric or other power outages, telecommunications failures, governmental act or orders or restrictions, failure of suppliers, or any other reasons where failure to perform is beyond the control and not caused by the negligence or default of the non-performing Party.

(k) **Notice.** All notices and communications, required to be sent hereunder shall be sent to the address listed on the Customer Agreement, in writing, and shall be (i) mailed by first class, registered or certified mail, postage paid; or (ii) delivered personally, by overnight delivery service; or (iii) sent by facsimile, with confirmation of receipt. All notices are effective upon receipt

(l) **Attorneys’ Fees.** If any action at law or in equity, including an action for declaratory relief or injunctive relief is brought to enforce or interpret the provisions of this EULA, the

prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which the Party may be entitled.

(m) **Waiver.** Any waiver of compliance with any obligation, covenant, EULA, provision or condition of this EULA or consent pursuant to this EULA shall not be effective unless evidenced by an instrument in writing executed by the Party to be charged. Any waiver of compliance with any such obligation, covenant, EULA, provision or condition of this EULA shall not operate as a waiver of, or estoppel with respect to, any subsequent or other non-compliance.

(n) **Audit Rights.** During the term of this EULA, and for one (1) year thereafter, End User shall maintain complete and accurate records regarding the activities it performs and transactions it enters into with third parties in connection with this EULA. Upon reasonable advance notice to End User, PTI, or an independent auditor reasonably acceptable to End User, may inspect such records during End User's normal business hours in order to confirm End User's compliance with the terms of this EULA.

(o) **Severability.** If any term of this EULA is held to be unenforceable by a court of competent jurisdiction, then such court may substitute the unenforceable term with an enforceable provision which most nearly affects the Parties' intent in entering into this EULA as reflected in the unenforceable provision. If the foregoing is not possible under applicable law, then the unenforceable provision shall be deleted and the validity or enforceability of the remainder of this EULA shall not be affected.

20. U.S. Government End Users. The Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Software with only those rights set forth therein.

21. Third Parties. End User is hereby notified that Adobe Systems Incorporated, a Delaware corporation, located at 345 Par Avenue, San Jose, California 95110 ("Adobe") and Adobe Systems Software Ireland Limited, a company incorporated in Ireland ("Adobe Ireland") are the suppliers of certain sublicensed software to PTI. End User agrees that there are third-party beneficiaries to terms of the EULA that relate to End Users user of the Software, which provisions are made expressly for the benefit of Adobe and Adobe Ireland and are enforceable by Adobe and Adobe Ireland in addition to PTI.

22. Intellectual Property Indemnity.

11.1 Infringement Claim: If End User receives actual notice of any demand, claim, suit or proceeding against End User from a third party that contends that the MarcomCentral System infringes any United States or European Union patent or copyright or misappropriates any trade secret of a third party (an "**Infringement Claim**"), End User will provide prompt written notice of such Infringement Claim to PTI and will authorize PTI to have sole control over the defense and/or settlement of such Infringement Claim. Upon PTI's request, End User will provide reasonable cooperation in the defense and/or settlement of the Infringement Claim. If End User complies with all of the requirements above, then PTI will: (i) defend the Infringement Claim at its expense; (ii) pay any damages and costs finally awarded against End User (or payable by End User pursuant to a settlement agreement) arising out of the Infringement Claim; and (iii) reimburse End User for reasonable costs and expenses incurred by End User to provide the cooperation requested by PTI pursuant to this section.

11.2 Limitation of Indemnity: PTI will have no obligation to indemnify End User regarding an Infringement Claim if the Infringement Claim arose from: (i) End User's use of the MarcomCentral System not in accordance with the EULA or for purposes not intended by PTI;

RICOH

(ii) any use of the MarcomCentral System in combination with other product(s), equipment, software, or data not supplied by PTI, if but for such combination, the MarcomCentral System would not be subject to such Infringement Claim; or (iii) any modification of the MarcomCentral System by anyone other than PTI (other than End User configurable fields within the MarcomCentral System application).

11.3 Option to Modify: If any part of the MarcomCentral System becomes, or in PTI's opinion is likely to become, the subject of an Infringement Claim, PTI may, at its option and expense: (i) replace or modify the MarcomCentral System so that it becomes non-infringing and remains functionally equivalent; (ii) procure the right for End User to continue using the MarcomCentral System; or (iii) terminate this Agreement and give End User a refund for the fees paid for the infringing MarcomCentral System.

11.4 Exclusive Remedy: This Intellectual Property Indemnity provision states End User's exclusive remedy and PTI's total liability to End User regarding any Infringement Claim in connection with the EULA.

[I AGREE]

[I DO NOT AGREE]