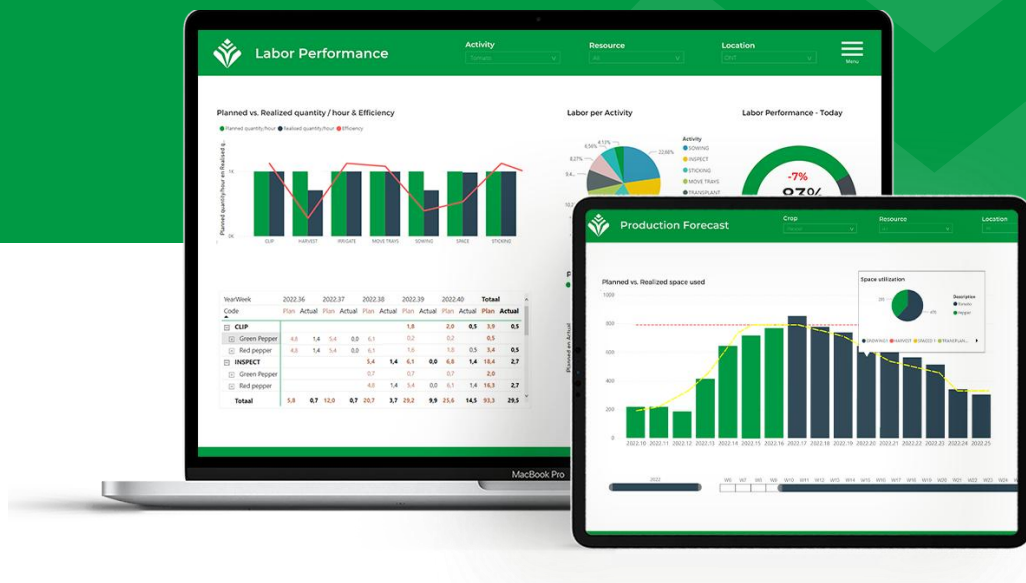


Agriware 365 SaaS

Mprise Agriware

End User License Agreement



Mprise Agriware End User License Agreement

This Mprise End User License Agreement (this “**Agreement**”) will apply to the entity designated as the Customer in the signature block on the applicable Quotation (“**Customer**”) and any of its contracted Affiliates identified on the Quotation (as applicable, in which case all Affiliates shall be deemed to be included in the defined term “Customer”) and governs Customer’s use of Mprise Agriware’s Software and Professional Services (as defined below and as applicable).

By accepting this Agreement, either through executing a Quotation that references this Agreement, or by signing this Agreement directly, Customer agrees that its use of the Software and Professional Services is subject to and governed by this Agreement.

1. DEFINITIONS AND SCHEDULES

1.1. **Definitions.** In the Agreement, except where the context or subject matter is inconsistent therewith, the following terms shall have the following meanings, and such meanings shall apply to both singular and plural forms of any such terms.

“**Access Methods**” means the user identifiers and passwords assigned to Customer’s Authorized Users for access to the Software pursuant to the Agreement.

“**Affiliate**” means a Party’s direct or indirect parent or subsidiary corporation (or other entity), or any corporation (or other entity) with which the Party is under common control.

“**Agreement**” means, collectively, this Agreement, the signed Quotation, all schedules annexed thereto and any other document incorporated by reference in the Agreement or Quotation.

“**API**” means Mprise Agriware owned or licensed application programming interface made available by Mprise Agriware as part of the applicable Mprise Agriware Offerings.

“**Authorized User**” means any employee or agent of Customer, to whom Customer gives access to the Mprise Agriware Offerings pursuant to the Agreement.

“**Confidential Information**” means any and all information disclosed by the disclosing Party to the receiving Party pursuant to the Agreement relating to its products, services, customers, marketing, research and development, business and finances, information technology networks, including all technical information, data, documentation, code, security measures and procedures and copies thereof, which is either explicitly marked or noted at the time of disclosure as confidential or which a reasonable party would deem to be non-public and confidential. The Documentation and non-public features of the Software shall be considered Confidential Information of Mprise Agriware. Confidential Information shall not include information which a receiving Party can establish to have: (a) become publicly known through no action of the receiving Party; (b) been lawfully known by the receiving Party prior to receipt; (c) been independently developed by the receiving Party without reference to any information received from the disclosing Party; or (d) been approved for public release by the written authorization of the disclosing Party.

“**Customer Data**” means data or information provided by Customer to Mprise Agriware through access or use of the Mprise Agriware Offerings. Customer Data excludes Mprise Agriware Data.

“**Documentation**” means all standard user guides, on-line user guides, operating manuals and release notes for the operation of the Mprise Agriware Offerings made available by Mprise Agriware, and any revisions, updates and supplements thereto, as such documentation may be amended by Mprise Agriware from time to time or embedded in any Mprise Agriware Offering.

“**Effective Date**” means the date that the Quotation is signed by the Parties.

“**e-Learning**” means Mprise Agriware’s computer-based training courses made available to Customer as a cloud-based service.

"Intellectual Property Rights" means all intellectual property and other proprietary rights, including all trade secret laws, patents, copyrights, trademarks, service marks, design patents, mask works, and any other statutory or common law intellectual property rights which may provide a right in either ideas, formulae, algorithms, concepts, inventions or know-how, whether registered or not and including all applications therefor.

"License" means, collectively, the licenses granted in Section 2 below.

"License Fees" means the fees for the License as described on any signed Quotation.

"License Metrics" means the specific modules, scope, names (if applicable) and number of Authorized Users, metrics, duration and quantity of the Software as described on a signed Quotation.

"Mprise Agriware" means Mprise Agriware Canada Inc.

"Mprise Agriware Data" means (a) usage data, performance data, technical data, set-up and configuration data, and other data associated with Customer's use of the Mprise Agriware Offerings or the performance of the Mprise Agriware Offerings, (b) data, information, statistics, results, feeds, graphs, analysis and reports computed and generated by or from the Software, (c) information, metrics, logs, inventory reports and issues identified regarding devices that the Software might be connected to, and (d) all data provided by Customer through access or use of the Mprise Agriware Offerings that has been anonymized, aggregated, or de-identified. Mprise Agriware Data is not Customer Data.

"Mprise Agriware Offerings" means the Software, Support, Professional Services, e-Learning and any other products or services made available by Mprise Agriware.

"Party" means either Mprise Agriware or Customer, and "Parties" refers to both Mprise Agriware and Customer.

"Professional Services" means professional services provided by Mprise Agriware to its customers in connection with the purchase, configuration, training and/or implementation of the Software.

"Quotation" means an order schedule, a sales quote, a SOW, or any other document confirming any Mprise Agriware Offerings to be purchased and any applicable Subscription Period(s) and License Metrics, issued or accepted by Mprise Agriware.

["Scope of Work" or "SOW"] means a statement of work setting out the details of the Professional Services to be provided by Mprise Agriware to Customer.]

"Service Level Agreement" means an agreement separately entered into by the Parties that describes the scope of Support provided by Mprise Agriware to Customer.

"Software" means the software made available by Mprise Agriware for subscription by Customer, as well as any APIs as described on a signed Quotation. "Software" excludes Third-Party Services.

"Subscription" means a subscription for the Subscription Period to license and use the Software, and, to the extent ordered, to receive Support, ordered and paid for pursuant to one or more signed Quotations,

"Subscription Period" means the time period of each Subscription set out in the applicable Quotation and commences upon the start date identified on the applicable Quotation or the date of delivery of the applicable Mprise Agriware Offering, whichever is earlier. If no time period is set out in a Quotation, the Subscription Period will be the twelve (12) month period commencing upon delivery of the applicable Mprise Agriware Offering.

"Support" means the maintenance services and the technical support services identified on the Quotation, and as further described in a Service Level Agreement.

"Third-Party Services" means online, cloud-based applications, platforms, and/or forms, offline software products and/or forms, mobile components, tools, and services that are provided by third parties to Customer, its Affiliates and/or Authorized Users including, without limitation, Microsoft Dynamics 365 Business Central and ForNav.

- 1.2. **Quotations.** All orders of Mprise Agriware Offerings shall be evidenced by a signed Quotation between Mprise Agriware and Customer.

2. Mprise Agriware Offerings

- 2.1. **Grant of License to Software.** Mprise Agriware grants to Customer (and Customer's Affiliates to the extent identified on the Quotation) a limited, non-exclusive, non-transferable, non-assignable, non-sublicenseable license to access and use the Software identified on any signed Quotation up to the License Metrics for the Subscription Period solely for its internal business purposes, subject at all times to the terms and conditions set forth in the Agreement. Customer shall be responsible for its Affiliates' use of the Software and Professional Services and for their compliance with the terms and conditions of this Agreement.
- 2.2. **Grant of License to Documentation.** Mprise Agriware hereby grants the Customer the right to use the Documentation for Customer's internal purposes and solely in connection with Customer's use of the Software, subject at all times to the terms and conditions set forth in the Agreement. Customer shall not copy, modify, adapt, merge, translate, or create derivative works based on the whole or any part of the Documentation, and shall not remove any trademark, copyright or other proprietary notices from the Documentation.
- 2.3. **Support.** Mprise Agriware shall provide the Support for the Software to the extent specified in a signed Quotation. Support shall be provided as a Subscription during the Subscription Period. Once paid, Support fees are non-refundable and non-cancellable.
- 2.4. **Service Levels, Sole Remedy.** Mprise Agriware will make the Software available to Customer in accordance with the applicable Service Level Schedule. Mprise Agriware's obligations in the Service Level Schedule do not apply to the extent: (a) Customer's system does not meet the minimum requirements listed in the Documentation to support the applicable Mprise Agriware Offering; (b) Customer has breached or continues to breach the Agreement; and/or (c) the Service Availability (as defined in the Service Level Schedule) is impacted by Customer's failure to incorporate or utilize any recommendations or data produced by the applicable Mprise Agriware Offering (e.g. security recommendations emanating from the applicable Mprise Agriware Offering). *The remedies listed in the Service Level Schedule are Customer's sole remedy and Mprise Agriware's sole obligation for any failure of the Software. The Software is otherwise provided "as is", per the disclaimer in Section 4.5.*
- 2.5. **Security.** Mprise Agriware will maintain commercially reasonable administrative, physical and technical safeguards for the protection, confidentiality and integrity of the Software and Customer Data.
- 2.6. **Access Methods, Authorized Users, Unauthorized Access or Use.** Customer agrees that it is responsible for protecting the security and integrity of the Access Methods. Customer shall be fully responsible for any Authorized Users' breach of the Agreement. Customer agrees that it is liable for any acts or omissions occurring under any Access Methods, whether by Authorized Users or otherwise. Each Party shall notify the other Party immediately of any suspected or known unauthorized access or use of the Software, will use commercially reasonable efforts to prevent such unauthorized access or use, and will use commercially reasonable efforts to stop said unauthorized access or use.
- 2.7. **Updates and Modifications.** Customer acknowledges and agrees that from time to time, Mprise Agriware may apply updates to, or otherwise revise, the Software, including updates, upgrades, patches, bug fixes and other improvements to the Software and that such updates and/or revisions may result in additions, modifications or removal of functionality, features, content or the appearance of the Software, provided, however, that no such updates or revisions will materially reduce the

Software's security standards. Any updates shall be included in the definition of "Software" under the Agreement.

- 2.8. **APIs.** In the event that Mprise Agriware makes available any APIs to Customer as part of the Mprise Agriware Offerings, then Customer may access such APIs on a non-exclusive, non-transferable, non-assignable basis for the applicable Subscription Period identified on a signed Quotation, subject at all times to the terms and conditions of the Agreement. Customer is responsible for making and maintaining all necessary arrangements to access, use and interface with such APIs in accordance with such specifications, restrictions and guidance as Mprise Agriware may stipulate from time to time. Mprise Agriware may from time to time on reasonable notice require Customer at Customer's own cost to take such steps as are required to integrate any modifications or updates Mprise Agriware makes to APIs.
- 2.9. **E-learning.** All e-Learning services provided by Mprise Agriware are made available as described on a signed Quotation and are for Customer's internal purposes solely in connection with using the Mprise Agriware Offerings. Subscriptions to e-Learning services and instructor-led training courses are personal to each user and are non-transferable. Users may not share logons, passwords or licensed content. Customer is responsible for securing and protecting login and other access information from unauthorized disclosure or use.
- 2.10. **License and Subscription Models.** The Mprise Agriware Offerings are provided or made available based on the License Metrics identified in the applicable Quotation. Usage of the Mprise Agriware Offerings may not exceed the applicable License Metrics. Where Customer's usage exceeds its License Metrics, Customer will be invoiced for any use overage at the then-current list price. If Customer's use of the Software exceeds the License Metrics and any usage limitations set forth on the Quotation or otherwise requires the payment of additional fees (per the terms of the Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided in the Agreement. Customer may request an increase of its License Metrics (for example to add additional Authorized Users), which increases will be at Mprise Agriware's then-current rates and documented in an amendment to the Agreement signed by the Parties.
- 2.11. **Acceptable Use Policy.** Customer shall use the Mprise Agriware Offerings for its internal business purposes and will not, and will ensure that its Authorized Users will not: (a) use the Mprise Agriware Offerings in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any third party; (b) permit any third party to access the Mprise Agriware Offerings, or otherwise sell, rent, license, provide, or distribute the Mprise Agriware Offerings; (c) create derivative works from the Mprise Agriware Offerings, or otherwise reverse engineer or access the Mprise Agriware Offerings; (d) build a product or service competitive with the Software; (e) build a product using similar ideas, features, functions, or graphics of the Software; (f) copy any ideas, features, functions, or graphics of the Software; (g) not use the Mprise Agriware Offerings in any manner that could damage, disable, overburden, impair, or otherwise interfere with Mprise Agriware's infrastructure, or interfere or attempt to interfere with the proper working of the Mprise Agriware Offerings; (h) attempt to gain unauthorized access to the Mprise Agriware Offerings or related systems or networks, or systematically access the Software using "bots" or "spiders"; and (i) use or distribute the Mprise Agriware Offerings in any manner that violates any applicable local, state, domestic and/or international laws, rules, and regulations. Mprise Agriware shall have the right to immediately suspend Customer's access to the Mprise Agriware Offerings or terminate the Agreement in the event of any breach of this Acceptable Use Policy, in addition to any other legal or equitable remedies Mprise Agriware may have.

2.12. Professional Services. Mprise Agriware shall provide the Professional Services described in the Quotation or SOW upon the terms and conditions set forth in the Agreement and in Schedule A. Customer shall pay all associated fees for the Professional Services in accordance with the payment terms set forth herein, unless otherwise provided in the Quotation or SOW.

2.13. Third-Party Services. Customer agrees to maintain at all times during the Term current licenses and/or subscriptions to Third-Party Services necessary for Mprise Agriware to provide the Mprise Agriware Offerings to Customer. For clarity, Customer acknowledges and agrees that Mprise Agriware has no control over (or responsibility for) any Third-Party Services or any information that Customer may provide to, store on, or otherwise process using any Third-Party Services. Customer's use of Third-Party Services is governed entirely by the terms of Customer's agreement with the relevant third party. Nothing in the Agreement creates any rights or obligations on Mprise Agriware's part with respect to such Third-Party Services, nor should the Agreement be construed as creating any rights or obligations on the part of any third party providing Third-Party Services with respect to the Mprise Agriware Offerings. Customer acknowledges that Mprise Agriware will allow providers of Third-Party Services to access the Customer Data as required for performance of the Mprise Agriware Offerings. Mprise Agriware does not warrant or support any third-party products or services (including the Third-Party Services) except as expressly specified in the signed Quotation.

3. FEES; PAYMENT TERMS

3.1. Fees. Customer will pay the License Fee and all other fees due for Mprise Agriware Offerings according to the prices and terms listed in the Quotation. All fees are payable in US Dollars and are non-cancelable and nonrefundable unless expressly otherwise set forth herein. Mprise Agriware reserves the right to increase its prices (a) upon thirty (30) days' prior notice to Customer; and (b) as set forth in Section 2.11 for use overages. Customer shall have the right to terminate this Agreement upon thirty (30) days' notice to Mprise Agriware in the event that Customer does not agree to the price increases.

3.2. Taxes. All fees are exclusive of taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties (excluding taxes imposed on Mprise Agriware's net income). In the event Mprise Agriware pays any such taxes and has not collected them previously from Customer, Customer shall promptly reimburse Mprise Agriware.

3.3. Invoicing. Unless otherwise set forth on the Quotation, Mprise Agriware will invoice Customer annually in advance for the Software (together with any applicable sales tax), monthly in arrears for Professional Services, and any other amounts due under the Agreement when such amounts become due.

3.4. Late Payments. Unless otherwise set forth on the Quotation, all fees are due within 14 days of the invoice date. Invoices not fully paid on the due date shall automatically place the Customer in default without warning and shall accrue interest at 1.5% per month or the highest amount permitted under applicable law, whichever is less. Customer shall also be responsible for Mprise Agriware's costs of collection of such overdue amounts.

4. LIMITED WARRANTIES FOR SOFTWARE; DISCLAIMER

4.1. Mutual Warranties. Each Party represents and warrants that it has the legal power and authority to enter into the Agreement and there is no outstanding contract or commitment which may limit, restrict, or impair its ability to perform its obligations hereunder.

4.2. Customer Warranties. Customer represents and warrants that its use of the Services will comply with all applicable federal, state, and local laws and regulations; and it owns or otherwise has and will have the necessary rights in, and consents relating to, the Customer Data.

- 4.3. **Software Warranty.** Mprise Agriware warrants that, during the Term, the Software, under normal use and circumstances, will conform in all material respects with the functionality outlined in the Documentation. The warranty set forth in this Section does not apply: (a) to any change or service to such Software made by any party other than Mprise Agriware or its authorized agent; (b) to the operation of such Software with software or hardware not approved by Mprise Agriware, its authorized agent or as specified in the Documentation; (c) use of the Software in a manner other than as contemplated in the Agreement or the Documentation.
- 4.4. **Sole Software Remedy.** Upon a valid Software warranty claim by Customer, Mprise Agriware shall, in its sole discretion: (a) correct any demonstrable failure in the Software within a reasonable time, or (b) where (a) is not successful after a reasonable remedy period, refund the portion of the License Fee paid to Mprise Agriware attributable to the item giving rise to the warranty claim. *The foregoing remedies are Mprise Agriware's sole obligation and Customer's sole remedy in the event of a valid warranty claim under this Section 4.*
- 4.5. **WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 4 OR SCHEDULE A, MPRISE AGRIWARE DOES NOT REPRESENT OR WARRANT THAT THE MPRISE AGRIWARE OFFERINGS WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ANY OR ALL ERRORS CAN OR WILL BE CORRECTED; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF ANY OF THEM. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 4 AND SCHEDULE A, THE MPRISE AGRIWARE OFFERINGS ARE PROVIDED "AS IS" AND "AS AVAILABLE". TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MPRISE AGRIWARE AND ITS LICENSORS HEREBY DISCLAIM ALL REPRESENTATIONS, WARRANTIES, CONDITIONS AND GUARANTEES, EXPRESS OR IMPLIED (WHETHER ARISING UNDER COMMON LAW, STATUTE, COURSE OF DEALING OR TRADE, OR OTHERWISE), INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF QUALITY, MERCHANTABILITY, MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, NON-INFRINGEMENT, CURRENCY, RELIABILITY, SECURITY, OR UNINTERRUPTED USE. NO WRITTEN OR ORAL INFORMATION OR ADVICE GIVEN BY MPRISE AGRIWARE WILL CREATE ANY REPRESENTATION, WARRANTY OR CONDITION. MPRISE AGRIWARE DISCLAIMS ALL LIABILITY AND INDEMNIFICATION FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY SERVICES PROVIDERS OR THIRD-PARTY HOSTING PROVIDERS. ANY BETA, TRIAL, OR OTHER SERVICES FOR WHICH NO FEES ARE CHARGED ARE PROVIDED "AS IS", AND NO WARRANTY OR INDEMNIFICATION APPLY TO THE SAME, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN.

5. **CONFIDENTIALITY, NON-DISCLOSURE AND NON-SOLICITATION**

- 5.1. **Non-Disclosure.** Each of the Parties agrees that it will not: (a) make use of the Confidential Information of the disclosing Party other than to perform its obligations under the Agreement; or (b) in any way disclose any Confidential Information of the disclosing Party to any person or entity, other than its own personnel to the extent necessary to give effect to the Agreement and only to those of its personnel who have agreed to be bound by confidentiality obligations no less protective than those set forth in the Agreement. Each receiving Party is responsible for any breach of the Agreement by any person to whom it provides, or provides access to, Confidential Information. Each receiving Party shall safeguard the disclosing Party's Confidential Information using the same standard it employs to safeguard its own confidential information of like kind, but in no event less than a commercially reasonable standard of care. The obligations of the Parties, with regard to the Confidential Information that constitutes trade secrets, shall remain in effect for as long as such Confidential Information shall remain a trade secret under applicable law. All other Confidential Information shall remain protected during the term of the Agreement and for three (3) years thereafter.

- 5.2. **Destruction of Confidential Information.** Upon the termination of the Agreement, or at any time at the disclosing Party's request, the receiving Party shall destroy Confidential Information of the disclosing Party in its possession or control except to the extent it would be unreasonably burdensome to destroy such information (such as archived computer records), and such information will continue to be treated as Confidential Information, notwithstanding any termination or expiration of the Agreement. Upon the request of the disclosing Party, the receiving Party shall certify in writing that all materials containing Confidential Information of the disclosing Party have been destroyed and no further Confidential Information of the disclosing Party is in the possession or control of the receiving Party.
- 5.3. **No Rights to Confidential Information.** All Confidential Information remains the sole property of the disclosing Party and no license or other rights to Confidential Information is granted or implied by the Agreement.
- 5.4. **Required Disclosure.** In the event that Confidential Information is required to be disclosed in response to a valid order issued by a court, governmental or regulatory body with jurisdiction over the recipient, then such Confidential Information may be disclosed pursuant to such requirement so long as the Party required to disclose the Confidential Information, to the extent possible, provides the other Party with timely prior notice of such requirement and coordinates with the other Party in an effort to limit the nature and scope of such required disclosure.
- 5.5. **Non-Solicitation.** For so long as Customer is receiving Mprise Agriware Offerings from Mprise Agriware and for a period of one year thereafter, Customer will not directly or indirectly (a) solicit, request or otherwise cause any of Mprise Agriware's other customers to terminate its relationship with Mprise Agriware; and/or (b) solicit, employ or engage any Mprise Agriware employees or cause any of them to terminate his or her relationship with Mprise Agriware; provided, however, that the restrictions of this Section shall not prohibit Customer from (i) conducting any general solicitations for employment, such as any newspaper or Internet help wanted advertisements, directly or through any agent (including placement and recruiting agencies) that is not directed at the employees of Mprise Agriware, or (ii) hiring any such person (A) who approaches Customer in response to such advertisements or general solicitations, or (B) who contacts Customer on his or her own initiative without any direct or indirect solicitation from Customer or any agency or representative working on Customer's behalf.
- 5.6. **Remedies.** Customer understands and agrees that (a) the restrictions in section 5.5 above are reasonable and properly required for the protection of the business and property of Mprise Agriware; and (b) Mprise Agriware will suffer irreparable harm in the event of any breach of Customer's obligations contained in Section 5.5 above, and accordingly, Mprise Agriware shall be entitled, without proof of damage, to apply for and obtain injunctive relief (without the posting of any bond or provision of any undertakings), in any court of competent jurisdiction, to enforce any provision of Section 5.5 above upon the breach or threatened breach thereof, and to any other legal or equitable remedy for such breach.
6. **OWNERSHIP, INTELLECTUAL PROPERTY, DATA, PRIVACY**
- 6.1. **Ownership.** As between the parties, all ownership and Intellectual Property Rights in and to the Mprise Agriware Offerings belong to Mprise Agriware, its Affiliates or its licensors. Customer receives no title or ownership in any of the foregoing. The Software provided to Customer pursuant to the Agreement are licensed, and not sold, and Customer receives no title or ownership in any of the foregoing. Mprise Agriware reserves all rights not expressly granted under the Agreement.
- 6.2. **Mprise Agriware Data.** Customer acknowledges that Mprise Agriware and its Affiliates may collect and process Mprise Agriware Data, and the Mprise Agriware Offerings may automatically send Mprise

Agriware Data to Mprise Agriware and its Affiliates. All Intellectual Property Rights in and to Mprise Agriware Data belong to Mprise Agriware. Mprise Agriware may use Mprise Agriware Data for its own internal purposes, such as to develop, test, improve, increase service and product value, train machine learning or other artificial intelligence algorithms, optimize the Mprise Agriware Offerings and/or publish aggregate information, subject in all cases to applicable laws and provided that Mprise Agriware shall not disclose any data that identifies the Customer or any individual.

- 6.3. **Customer Data.** All ownership rights in and to Customer Data belong to Customer. Customer hereby consents and grants to Mprise Agriware a non-exclusive, worldwide right to use, process and transmit the Customer Data so that Mprise Agriware may (a) provide or administer the applicable Mprise Agriware Offering, (b) monitor compliance with the Agreement, and (c) manage its relationship with the Customer. Customer has sole responsibility for, and Mprise Agriware disclaims all liability for, the Customer Data. Customer represents and warrants that Customer has all rights in the Customer Data that are necessary and sufficient to grant the rights contemplated by the Agreement.

7. INDEMNIFICATION

- 7.1. **Mprise Agriware's Indemnification Obligations.** Mprise Agriware will defend Customer against third party claims that the Software (or any portion thereof) violates a third party's Intellectual Property Rights and will indemnify Customer against amounts required to be paid in a settlement approved by Mprise Agriware or awarded by a court in a final, non-appealable judgement; provided: (a) Customer has promptly notified Mprise Agriware in writing of such claim and Mprise Agriware is not prejudiced by any delay by Customer; (b) Mprise Agriware shall have full control over the defense of the claim, provided that any settlement or resolution entered into by Mprise Agriware shall not require any admission of liability or any payment by Customer; (c) Customer has not made any admission against Mprise Agriware's interests and has not agreed to any settlement of any claim or demand without Mprise Agriware's consent; and (d) Customer shall reasonably cooperate with Mprise Agriware in the defense of the claim.
- 7.2. **Exceptions to Mprise Agriware's Indemnification Obligations.** Notwithstanding Section 7.1, Mprise Agriware shall be under no obligation to indemnify or defend Customer if any infringement claim by a third party arises as a result of any: (a) access or use of the Software in violation of or inconsistent with the Agreement or the Documentation; (b) modification to the Software by a party other than Mprise Agriware or its authorized agents, which modification has resulted in the claim; (c) combination of the Software with any computer program, software, hardware or equipment where the claim would not exist without such combination; (d) use of a superseded version of the Software or any portion thereof where use of a then-current version would avoid the claim; (e) access to or use of the Software after Mprise Agriware notifies Customer to discontinue such access or use; or (f) a claim arising from Third-Party Services.
- 7.3. **Additional Infringement Remedies.** At Mprise Agriware's sole expense and discretion, in response to any pending or potential infringement claim, Mprise Agriware may: (a) procure for Customer the right to continue using the offending Mprise Agriware Offering or applicable portion thereof; (b) replace or modify the offending Mprise Agriware Offering or applicable portion thereof so that it is non-infringing; or (c) terminate the Agreement either entirely or only as it relates to the offending Mprise Agriware Offering in question or the applicable portion thereof and upon return of the Mprise Agriware Offering in question or the applicable portion thereof or certification of destruction, refund the pro rata unused portion of any prepaid fees allocable to such part(s) of the Mprise Agriware Offerings that is (are) terminated.
- 7.4. **Sole Remedy.** *Sections 7.1 and 7.3 shall constitute Customer's sole remedy from Mprise Agriware in respect of infringement claims and demands.*

7.5. Customer's Indemnification Obligation. At its own cost, Customer shall indemnify and defend Mprise Agriware, its Affiliates and their licensors against any and all third party claims or demands related to (a) Customer's or any Authorized User's alleged or actual access to and/or use of the Mprise Agriware Offerings; or (b) Customer Data. The foregoing indemnification obligations apply provided that (i) Mprise Agriware has promptly notified Customer of such claim and Customer is not prejudiced by any delay by Mprise Agriware; (ii) Customer shall have full control over the defense of the claim, provided that any settlement or resolution entered into by Customer shall not require any admission of liability or any payment by Mprise Agriware; (iii) Mprise Agriware has not made any admission against Customer's interests or has not agreed to any settlement of any claim or demand without Customer's consent; and (iv) Mprise Agriware shall reasonably cooperate with Customer in the defense of the claim.

8. LIABILITY, LIMITATIONS AND EXCLUSIONS

- 8.1. LIMITATIONS.** THE TOTAL AGGREGATE LIABILITY OF MPRISE AGRIWARE AND ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS AND SUBCONTRACTORS TO CUSTOMER WILL NOT EXCEED THE TOTAL OF ALL AMOUNTS PAID TO MPRISE AGRIWARE IN RELATION TO THE OFFENDING MPRISE AGRIWARE OFFERING IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. FOR GREATER CERTAINTY, THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THE AGREEMENT WILL NOT INCREASE THESE MAXIMUM LIABILITY AMOUNTS.
- 8.2. EXCLUSIONS.** IN NO EVENT WILL MPRISE AGRIWARE BE LIABLE FOR ANY OF THE FOLLOWING ARISING FROM OR IN CONNECTION WITH THE AGREEMENT: (A) INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, AGGRAVATED, EXEMPLARY OR PUNITIVE DAMAGES; (B) ANY LOST SALES, SAVINGS, REVENUE, PROFITS, GOODWILL, USE, DATA OR CONTENT; OR (C) BUSINESS INTERRUPTION.
- 8.3. APPLICATION.** THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THIS SECTION 8 APPLY (A) TO ALL CAUSES OF ACTION, (B) WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, FOR NEGLIGENCE, HOWEVER CAUSED AND REGARDLESS OF THE LEGAL THEORY OF LIABILITY, (C) EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR HEREIN FAILS ITS ESSENTIAL PURPOSE AND (D) EVEN IF MPRISE AGRIWARE IS ADVISED IN ADVANCE OF THE DAMAGES IN QUESTION OR EVEN IF SUCH DAMAGES WERE FORESEEABLE.

9. AGREEMENT TERM, SUBSCRIPTION PERIODS, TERMINATION AND SUSPENSION

- 9.1. Term of Agreement.** The Agreement becomes effective upon the execution of a Quotation by both Parties and shall continue in effect until such time as no active Quotation or Scope of Work granting Customer access to Mprise Agriware Offerings exists, or as otherwise terminated pursuant to the provisions herein.
- 9.2. Term of License; Automatic Renewal.** The License commences on the Effective Date and, unless terminated earlier in accordance with the terms of the Agreement, shall continue for the initial term as set forth in the applicable Quotation (the "**Initial Term**"). Thereafter, the License shall automatically renew for successive periods of 12 months commencing on the anniversary of the Effective Date (each a "**Renewal Term**"), unless a Party provides the other Party with written notice of its intent to not renew at least 60 days' prior to the end of the Initial Term or then-current Renewal Term. The Initial Term, together with all Renewal Terms, as applicable, shall be the "Term." For clarity, the Parties may agree to modifications to the License Metrics after the Initial Term or any Renewal Term in writing, at least 60 days before the end of the Initial Term or any Renewal Period.
- 9.3. Termination for Cause.** A Party may terminate the Agreement if the other Party (a) makes a general assignment for the benefit of creditors, makes a written admission of its inability to pay its debts or obligations as they become due, has a petition in bankruptcy filed by or against it, a receiver or trustee of any of its property is appointed, is adjudged to be insolvent by any court having jurisdiction, or it is

dissolved, liquidated or terminated; or (b) is in breach of any of the material provisions of the Agreement and such breach is not cured within thirty (30) days of written notice of such breach if such breach is curable or with immediate effect if such breach is incurable or the breaching Party has clearly communicated its intent not to cure. Notwithstanding the foregoing, Mprise Agriware may terminate the Agreement or cease providing any Mprise Agriware Offering upon Customer's non-payment of any fees if such fees remain unpaid ten (10) days following notice from Mprise Agriware or any suspension of Software pursuant to Section 9.5 for thirty (30) days or more.

- 9.4. **Payment Upon Termination.** Upon any Termination for Cause (as described in Section 9.3 by Mprise Agriware, Customer shall pay any unpaid fees for the Term described in all applicable Quotations, regardless of whether such fees were due before or after the effective date of termination. In no event shall termination by Customer or Mprise Agriware relieve Customer of the obligation to pay any fees payable to Mprise Agriware for the period prior to the effective date of termination.
- 9.5. **Suspension of Software.** In the event that Mprise Agriware, acting reasonably, suspects or learns of any of the following described circumstances, then Mprise Agriware may immediately suspend Customer's access to and use of the Mprise Agriware Offerings, in addition to any other remedies Mprise Agriware may have: (a) any breach of the material provisions of the Agreement; (b) Customer's failure to cooperate with Mprise Agriware's reasonable investigation of any suspected violation of the Agreement; (c) access or manipulation of the Mprise Agriware Offerings without Mprise Agriware's consent; (d) any circumstance that requires suspension of the Mprise Agriware Offerings in order to protect the Mprise Agriware Offerings, Mprise Agriware, or its customers' data; or (e) suspension required by law.
- 9.6. **Termination Obligations.** Upon the earlier of termination of the Agreement, or termination or expiration of any outstanding Quotation or Subscription Period, all licenses under the Agreement shall terminate, and Customer shall cease to access and use the Mprise Agriware Offerings; and upon request, confirm in writing compliance with Section 5.2 (Destruction of Confidential Information). Mprise Agriware shall make Customer Data available to Customer for download for twenty eight (28) days following termination, and Mprise Agriware may destroy all Customer Data upon the expiration of such twenty eight (28) day period.
- 9.7. **Survival.** Notwithstanding the termination or expiration of the Agreement, all obligations which either expressly or by their nature are to continue after the termination of the Agreement shall survive and remain in effect, including, without limitation, Sections 4 through 11.

10. GOVERNING LAW AND DISPUTE RESOLUTION

- 10.1. **Governing Law.** The Agreement shall be governed by the laws of the State of New York without regard to its conflict of laws provisions.
- 10.2. **Dispute Resolution.** The Parties agree that if any claim, dispute or difference of whatever nature arises under or in connection with the Agreement or any other documents or agreements mentioned herein (a "**Dispute**"), management of both Parties will meet with each other and endeavor in good faith to resolve the Dispute. If management cannot resolve the Dispute, informally within a reasonable time not exceeding two (2) months from the date the informal process is requested by notice in writing, then the Parties shall participate in a non-binding mediation in a good faith attempt to resolve the Dispute. The Parties shall split mediation costs and each Party shall bear its own attorney's fees for the mediation. The mediation shall be held in New York, New York. In the event non-binding mediation does not resolve the Dispute, then the Dispute shall be finally settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules (the "**Rules**"). Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be New York, New York. The arbitration shall be governed by the

laws of the State of New York. Each Party will, upon written request of the other Party, promptly provide the other with copies of all relevant documents. There shall be no other discovery allowed. In making determinations regarding the scope of the exchange of electronic information, the arbitrator(s) and the Parties agree to be guided by The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production. Time is of the essence for any arbitration under the Agreement and arbitration hearings shall take place within ninety 90 days of filing and awards rendered within 120 days. Arbitrator(s) shall agree to these limits prior to accepting appointment. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing Party's actual damages, except as may be required by statute. The arbitrator(s) shall award to the prevailing Party, if any, as determined by the arbitrators, all of their costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees. The award of the arbitrators shall be accompanied by a reasoned opinion. Without limitation or prejudice to any remedy or rights provided by the Rules, the Parties agree that failure or refusal of a Party to pay its required share of the deposits for arbitrator compensation or administrative charges shall constitute a waiver by that Party to present evidence or cross-examine witness. In such event, the other Party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver shall not allow for a default judgment against the non-paying Party in the absence of evidence presented as provided for above. The Agreement to arbitrate does not extend to Disputes in which either Party seeks (a) injunctive or other equitable relief for the alleged unlawful use of intellectual property, including, without limitation, copyrights, trademarks, trade names, logos, trade secrets or patents, (b) the right to pursue enforcement actions through applicable U.S. federal, state, or local agencies where such actions are available, or (c) injunctive relief in a U.S. court of law. The language of the arbitration shall be English.

10.3. Confidentiality. All aspects of the arbitration, including but not limited to the existence of the arbitration, the arbitration proceedings, and any documents, evidence, or other information disclosed during the arbitration, shall be kept strictly confidential by the Parties and the arbitrators, except as may be required by law or as necessary to enforce or challenge the arbitration award. The arbitration award, including any interim or final award, shall be kept confidential by the Parties and shall not be disclosed to any third party, except as may be required by law, to enforce or challenge the award, or with the prior written consent of all Parties involved. Notwithstanding the foregoing, the Parties may disclose information related to the arbitration to: (a) their legal counsel, accountants, auditors, and other professional advisors, provided that such advisors agree to maintain the confidentiality of the information; (b) any Party's insurers or reinsurers, provided that such insurers or reinsurers agree to maintain the confidentiality of the information; (c) any person or entity to whom disclosure is required by law, regulation, or court order, provided that the disclosing Party gives prompt written notice to the other Party of such requirement and cooperates with the other Party in seeking a protective order or other appropriate remedy to maintain the confidentiality of the information. The arbitrator(s) shall have the authority to issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information disclosed during the arbitration. The obligations of confidentiality set forth in this provision shall survive the termination of the arbitration proceedings and the enforcement or challenge of any arbitration award.

10.4. No Class Arbitrations, Class Actions or Representative Actions. Any Dispute will be resolved solely through individual arbitration and will not be brought as a class arbitration, class action or any other type of representative proceeding. There will be no class arbitration or arbitration in which an individual attempts to resolve a Dispute as a representative of another individual or group of

individuals. Further, a Dispute cannot be brought as a class or other type of representative action, whether within or outside of arbitration, or on behalf of any other individual or group of individuals.

- 10.5. Authority of Arbitrator(s).** As limited by the Rules and the Agreement, the arbitrator(s) will have (a) the exclusive authority and jurisdiction to make all procedural and substantive decisions regarding a Dispute, including the determination of whether a Dispute is arbitrable, and (b) the authority to grant any remedy that would otherwise be available in court. The arbitrator(s) may only conduct an individual arbitration and may not consolidate more than one individual's claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual.
- 10.6. Jurisdiction.** To the extent that any lawsuit or court proceeding is permitted under the Agreement, to the fullest extent permitted by law Customer agrees to submit to the personal and exclusive jurisdiction of the state courts and federal courts located in New York, New York for the purpose of litigating all such Disputes. Customer also waives its rights to a jury trial.
- 10.7. Time Limit for Claims.** Any claim under the Agreement must be brought within one (1) year after the cause of action arises, or such claim or cause of action is barred. Customer agrees to the admissibility of computer records and electronic evidence in any Dispute herein.

11. MISCELLANEOUS PROVISIONS

- 11.1. Assignment; Subcontractors.** Without the prior written consent of Mprise Agriware, Customer may not assign the Agreement or any of its rights or obligations hereunder, except to an Affiliate and provided such Affiliate agrees to be bound by the terms of the Agreement, and Customer remains responsible for Affiliate's compliance with the Agreement, including payment of all fees to Mprise Agriware. Mprise Agriware may use subcontractors to perform its obligations under the Agreement provided Mprise Agriware shall remain responsible for the performance of its subcontractors.
- 11.2. Press Releases, Marketing.** Mprise Agriware may refer to Customer and use its logo for the limited purpose of identifying it as a customer in sales and marketing materials.
- 11.3. Entire Agreement, Amendment, and Order of Precedence.** The Agreement contains the entire understanding of the Parties hereto on the subject matter hereof and supersedes any previous agreements or understandings, written or oral, in effect between the Parties relating to the subject matter hereof. No amendment or modification of the Agreement shall be effective or binding unless agreed to in writing by both Parties. No text or information set forth on any other purchase order, preprinted form, or document (other than the executed Quotation or SOW) shall add to or vary the terms and conditions of the Agreement. Any inconsistency in the documents comprising the Agreement shall be resolved by giving precedence in the following order: (1) the signed Quotation; (2) the Appendices to the Quotation (other than this Agreement); and (3) this Agreement.
- 11.4. Waiver, Severability.** The waiver of any breach of the Agreement, or the failure of a Party to exercise or enforce any right under the Agreement, shall in no event constitute a waiver of any other breach, whether similar or dissimilar in nature, or prevent the exercise or enforcement of any right under the Agreement. If any provision of the Agreement is deemed contrary to applicable law or unenforceable by a court of competent jurisdiction, the remaining terms and conditions of the Agreement shall be unimpaired and the Parties shall substitute a valid, legal and enforceable provision as close in legal and economic consequence as possible to the provision being struck or considered unenforceable. If the limitation of liability set forth in the Agreement is limited by law, then Mprise Agriware's liability will be limited to the greatest extent permitted by law.
- 11.5. Rights and Remedies.** Except as expressly set out in the Agreement, in the event of any breach of the Agreement, the rights and remedies of the Parties provided for in the Agreement shall not be exclusive or exhaustive, and are in addition to any other rights and remedies available at law or in equity. The

Parties agree that in the event of any breach or threatened breach of the material provisions of the Agreement by Customer, money damages would be an inadequate remedy and the affected Party shall be entitled to seek injunctive relief, without the need to post a bond or other security.

- 11.6. **No Third Party Beneficiaries.** Nothing in the Agreement is intended to confer on any party other than Mprise Agriware, Customer and their permitted assigns any benefits, rights or remedies.
- 11.7. **Notices.** Any notice required or otherwise provided for in the Agreement shall be given to Mprise Agriware or Customer, as the case may be, at the physical or e-mail address set forth on the Quotation, or as updated from time to time pursuant to a notice provided pursuant to this Section, with a copy to any individuals with whom the Parties typically communicate.
- 11.8. **Force Majeure.** Except for payment and confidentiality obligations, neither Party shall be liable for any delay or failure to perform its obligations in the Agreement attributable to circumstances beyond its reasonable control, such as acts of God, fire, natural disaster, terrorism, labor stoppage, internet service provider failures or delays, power failures, delay of suppliers, denial-of-service, virus or ransomware attacks, civil unrest, war or military hostilities, or criminal acts of third parties.
- 11.9. **Export Controls.** Customer acknowledges and agrees that the Mprise Agriware Offerings are subject to export controls under U.S., Canadian and other export control laws. Customer shall not directly or indirectly, whether to an Affiliate or a third party: (a) export, re-export, transfer, or release (herein referred to as "export") any component of the Mprise Agriware Offering to any prohibited or restricted destination, person, or entity, or (b) access or use or allow any Authorized User, Affiliate or third party to access or use the Mprise Agriware Offerings in a manner prohibited or restricted by export control laws. Customer shall comply with all applicable export controls laws at all times.
- 11.10. **US Federal and State Government Customers.** The Software is a "commercial item" as that term is defined in Federal Acquisition Regulation ("FAR") 2.101, consisting of "technical data", "commercial computer software", "commercial computer software documentation" and/or "commercial services" as such terms are defined in FAR 2.101 or used in FAR 12.211 and 12.212, and is provided to the U.S. Government only as a commercial end item. Government end users acquire only the rights set out in the Agreement for the Mprise Agriware Offerings. Any further use, modification, reproduction, release, performance, display, disclosure, decompiling, or reverse engineering of any of the Mprise Agriware Offerings is prohibited except to the extent expressly permitted by the terms of the Agreement. To the extent allowed by applicable law, this US Government end user provision is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses U.S. Government rights in computer software or technical data. Terms and conditions herein that are prohibited by federal law or procurement regulation are not enforceable against the U.S. government.
- 11.11. **Independent Parties.** The Parties are independent contractors. No joint venture, partnership, employment, or agency relationship exists between Customer and Mprise Agriware as a result of the Agreement or Customer use of the Services.
- 11.12. **Construction.** No rules of construction are intended or shall be applied in the interpretation of the Agreement, and both Parties shall be deemed joint authors hereof for all purposes.
- 11.13. **Headings.** Headings used in the Agreement are for convenience of reference only, and shall not be used to modify the meaning of or to interpret the terms and conditions of the Agreement.
- 11.14. **Counterparts; Delivery by E-mail.** The Agreement may be executed in two or more counterparts each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Delivery of an executed copy of the Agreement by e-mail transmission will constitute valid and effective delivery of an original executed copy.

Schedule A: Additional Professional Service Terms And Conditions

In addition to the terms and conditions set forth in the Agreement, which continue to apply to Professional Services to the extent not inconsistent herewith, the following terms and conditions apply specifically to Professional Services provided by Mprise Agriware:

1. **Professional Services.** All Professional Services to be provided by Mprise Agriware to Customer shall be described in a Scope of Work (or SOW). Each SOW must be consistent with the terms in the Agreement (including this Schedule A) unless explicitly stated in the SOW.
2. **Time and Materials.** Unless explicitly stated in the SOW, all Professional Services are performed on a "time and material" basis. If requested, (a) Mprise Agriware will provide regular updates on the services being performed and (b) Mprise Agriware will not exceed the estimate in the SOW without Customer's consent.
3. **Expenses.** Unless explicitly stated in a SOW, Mprise Agriware shall be reimbursed for all reasonable and documented expenses, including travel, parking, accommodations and meals.
4. **Cooperation.** Each party agrees to cooperate reasonably and in good faith with the other in the performance of the Professional Services and acknowledges that delays may otherwise result. Customer agrees to provide, or provide access to, the following: office workspace, telephone and other facilities, suitably configured computer equipment with Internet access, complete and accurate information and data from Customer's employees and agents, continuous administrative access to dependent accounts, coordination of onsite, online and telephonic meetings, and other resources as reasonably necessary for satisfactory and timely performance of the Professional Services.
5. **Change Orders.** If either Party wishes to make a change to the scope of work set out in a SOW, a change order must be submitted which describes the scope of the Professional Services to be performed, the revised time frame and a cost estimate. Each change order must be accepted in writing to be binding.
6. **Scheduling.** Unless explicitly stated otherwise in the Statement of Work (SOW), Professional Services will be provided during standard business days and hours. Services performed outside such standard business days and hours, including weekends and overtime, shall be subject to the applicable weekend and overtime rates.
7. **Delivery Dates.** Delivery dates in the SOW are estimates only and are not binding completion dates.
8. **Limited License to Deliverables.** Mprise Agriware is not providing or licensing any software to Customer in connection with the Professional Services, except for specific deliverables identified in the SOW ("**Deliverables**"). The Deliverables are not "work made for hire" and any Intellectual Property Rights in the Deliverables remain with Mprise Agriware. The Deliverables are licensed to Customer in connection with the Software upon the same terms and conditions as set forth in the Agreement.
9. **Warranty.** For a period of thirty (30) days from the performance of the Professional Services, Mprise Agriware warrants that the Professional Services are performed in a professional manner using qualified and experienced personnel familiar with Mprise Agriware Offerings. Any warranty claims must be reported to Mprise Agriware within thirty (30) days of the related Professional Services.
10. **Exceptions to Warranty.** The warranty set forth in Section 9 of this Appendix A above does not apply upon any of the following: (a) any change, addition, deletion or other modification made to the Deliverables, except as specifically authorized in writing by Mprise Agriware; (b) any failure by Customer to provide the cooperation required under Section 4 of this Schedule A; (c) any incorrect or incomplete information provided by Customer to Mprise Agriware; and (d) failure by Customer to report a deficiency within the specified warranty period.
11. **Warranty Remedy.** Upon a valid deficiency claim by Customer, Mprise Agriware shall remedy the deficiency within a reasonable period of time and failing that, Mprise Agriware shall refund the portion of Professional Services fees paid to Mprise Agriware attributable to the deficiency giving rise to the warranty claim. *The*

foregoing remedies are Mprise Agriware's sole obligation and Customer's sole remedy in the event of a valid warranty claim under Section 9 of the Mprise Agriware End User License Agreement

12. **Independent Contractor.** The manner and means used by Mprise Agriware to perform the Professional Services are in the sole discretion and control of Mprise Agriware.
13. **Termination.** Any termination of Professional Services purchased in a Quotation shall require the written consent of Mprise Agriware. If Mprise Agriware agrees, in its sole discretion, to any termination of such Professional Services, or in the event of undue delays by Customer such as failing to provide requested information which result in scheduling changes, Customer shall be responsible for fees of all Professional Service resources that are not redeployed and all non-cancellable expenses which are incurred.