

# ROAM CUSTOMER AGREEMENT

PLEASE READ THIS ROAM CUSTOMER AGREEMENT CAREFULLY BEFORE ACCESSING AND USING THE ROAM SOFTWARE SERVICES AND THE ASSOCIATED WEBSITE, APPLICATIONS AND TOOLS. BY EXECUTING A ROAM ORDER FORM OR SERVICES CONFIRMATION REFERENCING THIS ROAM CUSTOMER AGREEMENT, OR BY ACCESSING THE ROAM SOFTWARE SERVICES, THE CUSTOMER IDENTIFIED IN THE APPLICABLE ROAM ORDER FORM OR SERVICES CONFIRMATION ACCEPTS AND AGREES TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS SET FORTH HEREIN.

This ROAM Customer Agreement includes, in addition to the terms and conditions set forth below (1) each Order Form (including, where applicable, Supplemental Order Forms) or Services Confirmation (including, where applicable, Supplemental Services Confirmations) and (2) if applicable, each Pre-Deployment Scope Checklist, executed by the parties. Order Forms are applicable to products and services purchased directly from ROAM, and Services Confirmations are applicable to services provided by ROAM, but purchased from authorized suppliers of ROAM Products. Supplemental Order Forms and Supplemental Services Confirmations are applicable to subsequent orders of products and/or services; provided, however, that if no Supplemental Order Form or Supplemental Services Confirmation is entered into with respect to such subsequent orders, the order shall be subject to the terms and conditions of this ROAM Customer Agreement and the applicable terms of the most recent Order Form or Services Confirmation executed by Customer with respect to the installation for which the products or services are being ordered. Order Forms and Supplemental Order Forms may be collectively referred to as Order Forms; and Services Confirmations and Supplemental Services Confirmations may be collectively referred to as Services Confirmations.

ROAM will, subject to the terms of this ROAM Customer Agreement, (1) sell to Customer the intelligent diagnostic and control devices and related products described in each Order Form (collectively, the "Products") and/or (2) provide to Customer the Software Services, Set-up Services, System Deployment and Training Services, and/or the Installation Services described in each Order Form or Services Confirmation (collectively, the "Services").

In the event of a direct conflict among terms, the order of priority shall be the applicable Order Form or Services Confirmation, this ROAM Customer Agreement, and then the applicable Pre-Deployment Scope Checklist.

## A. SOFTWARE SERVICES TERMS OF USE

### 1. Software Services

**Grant of Rights.** To the extent that Software Services are obtained as indicated in an Order Form or Services Confirmation, ROAM grants Customer, for the Term of Service indicated in the Order Form or Services Confirmation, a limited, non-exclusive, terminable, non-transferable license, for the number of users authorized by ROAM (collectively, the "Users"), to access and use such Software Services, including the services, tools and applications provided through the web-based ROAM Customer portal (the "Portal"), subject to the terms of this ROAM Customer Agreement. The Portal may also include links to third party software, downloadable documents and product information provided by ROAM. All Software Services, including any updates, enhancements, new features, and/or the addition of any new Internet properties, are subject to the terms of this ROAM Customer Agreement. All rights not expressly granted to Customer and its Users pursuant to this ROAM Customer Agreement are reserved to ROAM, and all uses of the Software Services not expressly permitted hereunder are prohibited.

**ROAM Ownership.** As between Customer and its Users and ROAM, (a) the Software Services, (b) the Portal, and (c) any other software used to provide the Software Services, any material or information provided pursuant to the Software Services (except Customer Data as provided below), and any associated applications, tools or data, and all additions, modifications and improvements made or specified by ROAM, its agents or contractors (collectively, the "Related Materials"), are the property of ROAM, and are protected by United States and international copyright, trademark and patent laws, as applicable. By using the Software Services, neither Customer nor its Users gain any ownership interest in such items.

**Limited Use.** Customer and its Users may access the Portal and use the Software Services solely to support and operate the Products purchased by Customer, in Customer's internal business. ROAM reserves the right, in its sole discretion, to limit Customer's and/or its Users' use of the Software Services in the event ROAM determines that Customer and/or its Users' use thereof is inconsistent with such purposes, and/or otherwise inconsistent with the terms of this ROAM Customer Agreement.

**Prohibited Uses.** Customer agrees, for itself and all Users, as a condition of use of the Portal, not to use the Portal for any purpose that is unlawful or prohibited by the terms of this ROAM Customer Agreement. Customer and its Users may not use the Portal in any manner that could damage, disable, overburden, or impair any ROAM server, or the network(s) connected to any ROAM server, or interfere with any other licensee's use and enjoyment of the Portal or any of the Software Services. Customer and its Users may not attempt to gain access to any part of the Portal that it is not authorized to access, nor to any other accounts, computer systems or networks connected to any ROAM server or to any part of the Portal, through hacking, password mining or any other means. Customer and its Users may not obtain or attempt to obtain any materials or information through any means not intentionally made available through the Portal. Except as expressly set forth herein, Customer and its Users may not (a) copy, reproduce, alter, modify, transmit, perform, create derivative works of, publish, sub-license, distribute, or circulate any software used to provide the Software Services or the Portal, or any Related Materials; (b) disassemble, decompile, or reverse engineer the software used to provide the Software Services, or use a robot, spider, or any similar device to copy or catalog any materials or information made available through the Portal; or (c) take any actions, whether intentional or unintentional, that may circumvent, disable, damage or impair the Portal's control or security systems, or allow or assist a third party to do so.

**Suspension of Service.** ROAM may at any time suspend (or require that Customer suspend) the access of Users to the Software Services and/or disable such User(s)' Log-in Information (as defined below) in the event of nonpayment of fees due ROAM, or in the event that Customer or any User is engaged in activities that may violate the terms of this ROAM Customer Agreement or applicable laws, or are otherwise deemed harmful to ROAM, its networks or facilities, or other licensees. ROAM shall not be liable to Customer or any User for suspension of Software Services, regardless of the grounds.

**Software Modifications.** ROAM reserves the right to upgrade, modify, replace or reconfigure the Software Services at any time, provided that such changes do not materially degrade the overall level of service provided to ROAM customers.

### 2. Ownership of Customer Data

ROAM does not claim ownership of Customer-specific data in electronic form (a) input by Customer or its Users, (b) collected through the use of the Software Services by Customer, or (c) processed or generated by the Software Services on behalf of Customer (collectively, "Customer Data"). Customer retains all right, title and interest to such Customer Data. Although Customer owns the Customer Data, ROAM and its vendors and contractors may use the Customer Data to provide, operate, and administer the Software Services. ROAM and its vendors or contractors may also have access to the Customer Data in connection with the performance of penetration tests of ROAM's network, systems and infrastructure through which ROAM provides the Software Services. In addition, ROAM may retain, analyze, use and share the Customer Data, but only in anonymous, filtered, or aggregate form, for general business purposes. For the avoidance of doubt, Customer Data excludes any data or information provided by ROAM as part of the Software Services that is not proprietary to Customer.

### **3. Customer Obligations**

**Use of Software Services.** Customer shall be responsible for providing personnel to obtain and act on the information available on the Portal, and only trained and knowledgeable personnel of Customer shall use the Software Services. Customer is solely responsible for obtaining all necessary rights and authorizations to collect and enter Customer Data into the Software Services, and hereby warrants that providing such Customer Data to ROAM will not violate or infringe the rights of any third party.

**Use of Log-in Information.** Customer is responsible for providing and administering usernames and passwords for all Users. Each User must have a valid username and password ("Log-in Information") for the purpose of accessing the Portal. Customer and its Users must keep all Log-in Information strictly confidential. Log-in Information may be used only by the assigned User and may not be shared. Without ROAM's consent in writing, Customer shall not allow any third-party, other than an active maintenance contractor (within the Authorized User License limits) using the Portal on Customer's behalf, who has been informed of the terms of this ROAM Customer Agreement and who is bound by terms of confidentiality consistent with the terms of this ROAM Customer Agreement, to become a User and be provided Log-In Information. Customer and its Users are responsible for any and all activities that occur under all Users' accounts. Customer agrees to notify ROAM immediately of any unauthorized use of any Users' accounts or any other breach of security. ROAM will not be liable for any loss that Customer or a User may incur as a result of someone else using a User's Log-in Information, either with or without the applicable User's knowledge.

### **4. Software Services Warranty**

Subject to the limitations set forth below, ROAM warrants that the Software Services will be provided, during the Term of Service (as defined in Section D.2.), in material accordance with the specifications in the then current on-line documentation available at:

<https://www2.roamportal.net/Documentation/ROAM%20Portal%20User%20Guide%20V2.3.pdf> (the "Specifications"). In the event of any material non-conformance with the Specifications, Customer must notify ROAM in writing and agrees to provide ROAM with sufficient detail to allow ROAM to reproduce the defect or error. ROAM will use commercially reasonable efforts to correct such demonstrated material non-conformances with the Specifications. ROAM's warranty obligations hereunder shall not apply to the extent the nonconformity results from use of the Software Services in a manner contrary to the terms of this ROAM Customer Agreement or the instructions in any applicable documentation, or if Customer is not in compliance with all other terms and conditions of this ROAM Customer Agreement (including the payment of all fees then due and owing). ROAM does not warrant any third party software, products or services. If ROAM determines that a malfunction is due to a problem with Customer hardware, other software, telecommunications or network, ROAM will so inform Customer, and it will be Customer's responsibility to obtain and pay for any repairs or modifications required. ROAM's obligations described in this section are Customer's sole and exclusive remedy for failure of the Software Services to comply with the terms of this warranty.

## **B. TERMS APPLICABLE TO SERVICES OTHER THAN SOFTWARE SERVICES**

### **1. Subcontractors**

ROAM may use subcontractors to perform Services other than Software Services ("Ancillary Services"). If ROAM uses subcontractors for performance of the Ancillary Services, ROAM will remain responsible for its obligations regarding the Ancillary Services.

### **2. Ancillary Services Requirements**

The site(s) where Ancillary Services are to be performed must be free from any hazardous conditions that might render the premises unsafe for performing the Ancillary Services and the sites must conform to all written requirements provided. Unless otherwise agreed in writing, ROAM is not responsible for removal and disposal of existing photocontrols and related diagnostic devices. If a fixture conversion or replacement is part of the scope of the Ancillary Services and no voltage is present at the fixture terminal block and voltage cannot be restored, no work will be done on the fixture by ROAM.

### **3. Ancillary Services Limited Warranty**

Subject to the limitations set forth below, ROAM warrants that the Ancillary Services performed by or on behalf of ROAM, shall be performed in a professional and workmanlike manner.

### **4. Remedy**

In the event any Ancillary Services fail to comply with the limited warranty stated above, and Customer advises ROAM of such non-conformance in writing within ninety (90) days of performance of the applicable Ancillary Services, ROAM will use commercially reasonable efforts to re-perform any Ancillary Services that were performed in a manner that is substantially less than professional and workmanlike, at no additional cost.

### **5. Additional Remedy if Services Purchased Directly from ROAM**

If Ancillary Services were purchased directly from ROAM and ROAM is unable to re-perform any nonconforming Ancillary Services with respect to which it receives timely notice within a reasonable period of time in accordance with its warranty, ROAM will refund to Customer any amounts paid by Customer and/or waive the fees otherwise payable, all with respect to any such non-conforming Ancillary Services.

### **6. Exclusive Remedies**

The re-performance of the Ancillary Services, or refund as described above for Ancillary Services purchased directly from ROAM, is the sole and exclusive remedy for failure of the Ancillary Services to comply with the terms of this warranty and does not extend the warranty period.

## **C. TERMS APPLICABLE ONLY TO PRODUCTS AND SERVICES PURCHASED DIRECTLY FROM ROAM**

### **1. Terms and Conditions of Sale**

All sales of Products purchased directly from ROAM are subject to the Terms and Conditions of Sale accessible at [http://www.acuitybrands.com/CustomerResources/Terms\\_and\\_conditions.aspx](http://www.acuitybrands.com/CustomerResources/Terms_and_conditions.aspx).

### **2. Late Payment**

In addition to any other remedies that ROAM may have for late payment, failure to make timely payment shall permit ROAM, at its option, to suspend further Service until the financial obligations and accounts are brought current.

## **D. GENERAL TERMS**

### **1. ROAM Communications**

**Contacts from ROAM.** ROAM may periodically contact Customer or its Users for customer service purposes. By accessing the Software Services, Customer and each User consent to receive such communications.

**Publicity.** Customer agrees that ROAM may reference its business relationship with Customer in its customer lists, marketing or sales materials, sales presentations or other marketing activities, including responding to requests for references by other prospective ROAM customers. The marketing materials may include Customer's logo.

### **2. Term; Termination of the ROAM Customer Agreement; Effect of Termination or Expiration**

**Term.** Unless otherwise terminated in accordance with its terms, this ROAM Customer Agreement shall be effective from the effective date of the initial Order Form or Services Confirmation entered into by Customer through the expiration or termination of the last Term of Service (as defined below) under any Order Form or Services Confirmation entered into by Customer. The initial term of service for the Software Services will be indicated in the applicable Order Form or Services Confirmation (the "Initial Term"). Following expiration of the Initial Term, ROAM may propose to renew the term of service for the Software Services for additional periods of one-year each (an "Auto-renewal Term") at ROAM's then-current fees, by sending Customer an invoice or continuing to make the Software Services available to Customer; and Customer may (where permitted by law) agree to such renewal of the Software Services by paying such invoice by its due date or continuing to use the Software Services and paying any invoice subsequently issued therefor by its due date. If Customer does not pay any such invoice by its due date, the term of service shall not be renewed, and Customer shall have no further rights to access the Software Services. Alternatively, the term of Service for continuing Software Services may be renewed for the Renewal Term of Service indicated in any Supplemental Order Form or Supplemental Services Confirmation (a "Contract Renewal Term"). The Initial Term, the Auto-renewal Term and/or any Contract Renewal Term constitute the "Term of Service". If no Supplemental Order Form or Supplemental Services Confirmation is entered into with respect to additional purchases of ROAM Products and/or orders of Software Services, the Term of Service with respect to such additional purchases shall be the remainder of the then current Term of Service under the most recently executed Order Form or Services Confirmation with respect to the installation for which the products or services are being ordered.

**Termination.** In the event that either Customer or its Users or ROAM breaches any term of this ROAM Customer Agreement, and such breach is not cured within thirty (30) days after receipt of notice thereof from such party, the non-breaching party may terminate this ROAM Customer Agreement in whole or in part immediately upon written notice to the other party. Notwithstanding the foregoing, there shall be no cure period for any event of default that is not curable. ROAM may terminate this ROAM Customer Agreement in whole or in part, or suspend its performance hereunder, if Customer becomes insolvent or bankrupt or ceases to do business.

**Effect of Termination or Expiration.** Upon expiration or termination of this ROAM Customer Agreement, all rights granted herein shall revert to ROAM and ROAM may disable Customer's access to the Software Services and the Portal. All use of the Software Services by Customer or its Users must cease, and all materials, applications and tools downloaded from the Software Services, other than Customer Data, must be erased, deleted, or destroyed.

**Continued Use of Products.** The ROAM Products are offered with Software Services, which are subject to the terms of this ROAM Customer Agreement. Certain Products may be used without the Software Services, with very limited functionality, in case the Software Services are terminated or become unavailable for any purpose. Customer owns the Products it purchases, regardless of whether the Software Services are being provided.

**Retention of Customer Data.** ROAM will retain Customer Data in its possession for a period of at least thirty (30) days following expiration or termination of this ROAM Customer Agreement, and may, thereafter, delete such Customer Data at any time in its sole discretion.

### **3. Customer Obligations**

**Connectivity.** Except as otherwise provided on the applicable Order Form or Services Confirmation, Customer agrees to provide the necessary electric service, wiring, computer equipment and data communication line access (in accordance with UL standards) and/or connectivity of cellular service for communication to the internet and to the Software Services. If Customer elects to provide data communication line access through an Ethernet connection, or other authorized non-cellular means, Customer agrees to provide, install and maintain, at Customer's expense, such access, pursuant to minimum specifications prescribed by ROAM from time to time; and Customer shall be responsible for ongoing charges for Customer's own use of such data communication technology.

**Insurance.** Customer agrees and understands that ROAM is not an insurer and that insurance covering personal injury, including death, and real or personal property loss or damage in, about or to the premises lighted by Customer's light fixtures or lighting systems shall be obtained by Customer in amounts required by law and as otherwise deemed prudent by Customer.

**Customer's Lighting System and Internet Access.** Customer is solely responsible for the operation and maintenance of its light fixtures and lighting systems (or those of its customers) and ROAM shall have no liability in connection with any failure or improper maintenance of Customer's light fixtures or lighting systems (or those of its customers). Customer's access to the Internet is Customer's sole responsibility and the responsibility of Internet provider(s) Customer selects.

**Customer Acknowledgement Form.** Upon completion of certain Ancillary Services, Customer agrees to execute a customer acceptance document, the form of which is available upon request (the "Customer Acknowledgement Form"). If the Ancillary Services are completed in phases, Customer agrees to execute a Customer Acknowledgement Form upon completion of each milestone indicated in the Pre-Deployment Scope Checklist.

**Selection of Products and Services.** Except as otherwise specifically agreed in writing with ROAM, Customer shall be solely responsible for the selection, installation and use of the Products and Services, including without limitation, the obtaining of all permits, licenses or certifications required for its installation (if not installed by or on behalf of ROAM) or use of such Products, the determination of whether the Products conform to individual project specifications, and the selection of such Products and Services for use in a particular application to achieve Customer's intended results. Customer acknowledges that the Products and Software Services are not fault-tolerant and are not designed or intended for use, and should not be used, in hazardous environments requiring fail-safe performance.

### **4. ROAM Insurance**

ROAM shall maintain throughout the term of this Agreement at least the following insurance coverage: (a) workers' compensation insurance with statutory limits and employers liability insurance in an amount not less than US\$1,000,000; (b) comprehensive general liability insurance with a combined single limit for bodily injury and property damage of not less than US\$3,000,000 per occurrence; (c) automobile liability insurance (owned, non-owned and hired), including personal injury and property damage, with a \$1,000,000 combined single limit and (d) errors and omissions insurance with a minimum limit per event of US\$3,000,000. Upon Customer's written request, ROAM shall furnish to Customer a certificate of insurance evidencing such required insurance coverage and naming Customer as an additional insured, as its interests may appear under this ROAM Customer Agreement, on insurance policies identified in (b) and (c).

## 5. Warranty Disclaimers

**DISCLAIMER OF WARRANTY.** EXCEPT AS SPECIFICALLY SET FORTH ABOVE, THE PRODUCTS, SERVICES (INCLUDING SOFTWARE SERVICES), THE PORTAL AND ANY RELATED MATERIALS PROVIDED TO CUSTOMER IN CONNECTION WITH THE SOFTWARE SERVICES ARE PROVIDED "AS IS," AND ROAM MAKES NO REPRESENTATIONS OR WARRANTIES, AND EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, RELATING DIRECTLY OR INDIRECTLY TO THE PRODUCTS, SERVICES (INCLUDING SOFTWARE SERVICES), THE PORTAL OR RELATED MATERIALS PROVIDED TO CUSTOMER IN CONNECTION WITH THE SOFTWARE SERVICES, WHETHER ORAL, WRITTEN, OR ARISING BY COURSE OF DEALING OR USAGE OF TRADE, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. ROAM MAKES NO REPRESENTATION OR WARRANTY THAT THE PERFORMANCE OF THE SOFTWARE SERVICES, PORTAL OR RELATED MATERIALS WILL OPERATE ERROR-FREE, OR IN AN UNINTERRUPTED FASHION, OR THAT SUCH PRODUCTS, SERVICES (INCLUDING SOFTWARE SERVICES), PORTAL AND/OR RELATED MATERIALS ARE COMPATIBLE WITH ANY PARTICULAR APPLICATIONS OR PLATFORMS OTHER THAN THOSE PROVIDED OR SET FORTH IN THE SPECIFICATIONS AND/OR USER GUIDE FOR THE PRODUCTS OR SOFTWARE SERVICES. ROAM DOES NOT WARRANT THAT ANY NONCONFORMANCES IN SOFTWARE SERVICES, PORTAL AND/OR RELATED MATERIALS WILL BE CORRECTED. ROAM DOES NOT GUARANTEE OR MAKE ANY REPRESENTATIONS REGARDING THE USE, ACCURACY, RESULTS, OR OUTPUT OF THE SOFTWARE SERVICES, OR SECURITY OF THE SOFTWARE SERVICES OR ANY INFORMATION TRANSMITTED TO OR FROM CUSTOMER OR ANY USER OVER THE INTERNET, INCLUDING THROUGH THE USE OF E-MAIL. NO WARRANTY SPECIFICALLY SET FORTH ABOVE MAY BE MODIFIED OR AMENDED EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF ROAM. NO AGENT, DISTRIBUTOR, CONTRACTOR, OR OTHER SUPPLIER OF ROAM PRODUCTS HAS THE AUTHORITY TO MODIFY OR AMEND SUCH WARRANTIES WITHOUT EXPRESS WRITTEN AUTHORIZATION FROM ROAM.

**FURTHER LIMITATIONS.** ROAM WILL NOT BE RESPONSIBLE FOR ANY FAILURE OF THE PRODUCTS, SERVICES (INCLUDING SOFTWARE SERVICES), PORTAL OR RELATED MATERIALS WHICH IS THE RESULT OF: EXTERNAL CAUSES, SUCH AS ACCUMULATION OF DEBRIS (NATURAL OR OTHERWISE), SITE CONDITIONS, INCLUDING WITHOUT LIMITATION, HEAVY TREE COVER; CELLULAR, SATELLITE OR RADIO INTERFERENCE; ACTS OF NATURE; PHYSICAL DAMAGE; ENVIRONMENTAL CONDITIONS; VANDALISM; FIRE; POWER FAILURE, IMPROPER POWER SUPPLY OR LOAD, ELECTRICAL CURRENT FLUCTUATIONS OR EXCESSIVE SWITCHING; INDUCED VIBRATION; ANIMAL OR INSECT ACTIVITY; NATURAL CATASTROPHE; FAULT OR NEGLIGENCE OF CUSTOMER OR ANY THIRD PARTY NOT ENGAGED BY ROAM; IMPROPER OR UNAUTHORIZED USE, INSTALLATION, HANDLING, STORAGE, ALTERATION, MAINTENANCE OR SERVICE, FAILURE TO COMPLY WITH ANY APPLICABLE CODES AND/OR RECOMMENDATIONS OR INSTRUCTIONS OF ROAM, OR CUSTOMER'S FAILURE TO PROVIDE NECESSARY INFORMATION; FAILURES RESULTING FROM USE WITH CUSTOMER OR THIRD PARTY SUPPLIED PRODUCTS, PROCESSES, MATERIALS, SOFTWARE, SERVICES, TELECOMMUNICATIONS EQUIPMENT, NETWORKS OR THE INTERNET; OR ANY OTHER OCCURRENCES BEYOND ROAM'S REASONABLE CONTROL.

**NO WARRANTY CREATED BY ADVICE.** NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ROAM OR ITS REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ROAM'S OBLIGATIONS HEREUNDER.

## 6. Infringement Indemnity

**ROAM Obligations.** ROAM shall defend, or at its option settle, any third-party claim or action against Customer on the basis of a claim of infringement by the Products or Software Services (excluding any third-party products or software) of any issued patent, copyright or trade secret of a third party and ROAM shall pay any final judgment entered against Customer with respect to any such infringement in any such proceeding.

**Conditions.** ROAM's indemnification obligations are expressly conditioned on the following: (a) Customer must give prompt written notice to ROAM of any such claim, (b) Customer must, in writing, grant ROAM sole control of the defense of any such claim and of all negotiations for its settlement or compromise, provided that no such settlement or compromise shall impose any monetary obligations on Customer, and (c) Customer must give such assistance and information as ROAM reasonably requires to facilitate the settlement or defense of the claim.

**Infringement Remedies.** In the event any infringement claim, action or allegation is brought or threatened against Customer, ROAM may at its expense and at its sole option (a) procure for Customer the right to use the Products or Software Services or the affected part thereof; (b) replace the Products or Software Services or affected part thereof with other suitable products or software; (c) modify the Products or Software Services or affected part thereof to make them non-infringing; or (d) if none of the foregoing remedies are commercially feasible, terminate this ROAM Customer Agreement, including any applicable Order Forms or Services Confirmations and refund to Customer any fees pre-paid to ROAM for any allegedly infringing Software Services that have not been performed or provide a depreciated or pro rata (in accordance with ROAM's internal accounting policies) refund of fees paid to ROAM for any allegedly infringing Products, as applicable, upon verification, satisfactory to ROAM, that the Software Services are no longer accessible by Customer for its use or Customer's return of the Products to ROAM, as applicable.

**Exclusions.** The foregoing indemnification obligations shall not apply to the extent that the infringement claim arises as a result of (a) any use of the Products or Software Services in a manner other than as specified in this ROAM Customer Agreement, (b) any alteration, modification or customization of the Products or Software Services that was not performed by or on behalf of ROAM, (c) the use of the Products or Software Services in conjunction with any material or apparatus not furnished by ROAM, to the extent such claim is directed against such combined use, (d) any third party products, (e) ROAM's compliance with any of Customer's written specifications or directions, or (f) the continued use by Customer of the Products after being advised of the availability of a replacement or modification that would have avoided the infringement.

**Entire Liability.** This section states the entire liability of ROAM with respect to any claim of infringement of any third party intellectual property right.

## 7. Limitation of Liability

**IN NO EVENT WILL ROAM BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THE SALE OR PERFORMANCE OF ANY PRODUCTS OR SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER AS THE RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER THEORY. IN FURTHERANCE AND NOT IN LIMITATION OF THE FOREGOING, IN NO EVENT WILL ROAM, ITS AFFILIATES, SERVICE PROVIDERS OR LICENSORS BE LIABLE TO CUSTOMER FOR ANY LABOR OR EQUIPMENT REQUIRED TO REMOVE AND/OR REINSTALL ORIGINAL OR REPLACEMENT PARTS, LOSS OF TIME, PROFITS OR REVENUES, LACK OR LOSS OF PRODUCTIVITY, INTEREST CHARGES OR COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, SYSTEMS OR SERVICES, DOWNTIME COSTS, LOSS OR CORRUPTION OF DATA, LOSS OF USE OF PROPERTY OR EQUIPMENT, OR ANY INCONVENIENCE ARISING OUT OF CUSTOMER'S USE OF, OR INABILITY TO USE, THE PRODUCTS OR SOFTWARE SERVICES OR THE PERFORMANCE OR NONPERFORMANCE OF THE SERVICES (INCLUDING SOFTWARE SERVICES), OR ANY BREACH OF WARRANTY OR OBLIGATIONS UNDER WARRANTY. THE TOTAL LIABILITY OF ROAM ON ANY AND ALL CLAIMS OF ANY KIND, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH, OR RESULTING FROM, ROAM'S PERFORMANCE OR BREACH OF ITS WARRANTIES UNDER THIS ROAM CUSTOMER AGREEMENT, OR FROM THE PERFORMANCE OF ANY SERVICES, INCLUDING BUT NOT LIMITED TO THE SOFTWARE SERVICES, OR FROM ROAM'S SALE, DELIVERY, RESALE, REPAIR OR REPLACEMENT OF ANY PRODUCTS OR THE FURNISHING OF ANY SERVICES, SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY CUSTOMER TO OR FOR THE BENEFIT OF ROAM, ALLOCABLE TO THE SPECIFIC PRODUCT OR SERVICES WHICH GIVE RISE TO THE CLAIM, FOR THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED, AND ANY AND ALL SUCH LIABILITY SHALL TERMINATE UPON EXPIRATION OF THE APPLICABLE WARRANTY PERIOD, IF ANY, SET FORTH ABOVE.**

## **8. Confidential Information**

**Definition.** As used in this ROAM Customer Agreement, the term "Confidential Information" means all information, whether or not reduced to writing, related to the business of either party or its affiliates that: (a) is disclosed by one party or its Representatives (as defined below) (the "Disclosing Party") to the other party (the "Recipient") or accessed by the Recipient, and (b) is identified as confidential by the Disclosing Party, or would otherwise reasonably be understood to be confidential under the circumstances. Confidential Information includes but is not limited to data (technical and non-technical), formulae, patterns, compilations (including compilations of customer information), programs (including models), devices, methods (including design methods), techniques, drawings (including equipment drawings), processes, financial information (including pricing), lists of actual or potential customers or suppliers (including identifying information about those customers and suppliers), operational information, planning or strategy information, research and development information, information about existing and future products, and information about personnel matters of the Disclosing Party or its affiliates. Confidential Information of ROAM includes, without limitation, features and functions of the Software Services that are not available to the general public (including screen shots of the same), any documentation or specifications provided to Customer, the commercial terms of this ROAM Customer Agreement (including Order Form pricing), but not its mere existence, and test results whether conducted by ROAM or Customer. Confidential Information of Customer, includes, without limitation, Customer Data.

**Exclusions.** For purposes of this ROAM Customer Agreement, the term "Confidential Information" does not include any data or information which: (a) the Recipient can establish was already known by the Recipient at the time of disclosure hereunder by the Disclosing Party; (b) is or becomes generally known to the public other than as a result of a disclosure by the Recipient; (c) is received by the Recipient from a third party, without restriction on disclosure, and without breaching any obligation of confidentiality about which the Recipient knew or should have known; or (iv) is independently developed by the Recipient without use, directly or indirectly, of information received from Disclosing Party, as demonstrated from the written records of the Recipient.

**Use.** Each of the parties hereto agrees to use the same care and discretion as it employs with its own confidential and proprietary information (but in no event less than reasonable care and discretion) to maintain in confidence, and prevent disclosures of, the Confidential Information, Customer shall not use the Confidential Information except in connection with its use of the Services or as otherwise specifically authorized herein or in writing by ROAM. ROAM shall not use the Confidential Information except in connection with providing, operating, administering, and testing the Services, and (b) providing support to Customer in connection with its use of the Services. Disclosures of the Confidential Information of the Disclosing Party may be made only to affiliates, employees, agents, advisors or independent contractors of the Recipient who are directly involved in performing Recipient's obligations under this ROAM Customer Agreement, who have a specific need to know such information, and who are obligated to hold the information in confidence and otherwise to comply with the terms of this ROAM Customer Agreement (collectively, "Representatives"). The Recipient shall be liable for any unauthorized disclosures of Confidential Information by the Recipient's Representatives. The obligations of confidentiality set forth in this section shall continue with respect to Confidential Information which qualifies as a trade secret under applicable law, at all times thereafter (until no longer deemed a trade secret thereunder), and with respect to all other Confidential Information, for a period of two (2) years after the date of termination of this ROAM Customer Agreement.

**Required Disclosure.** If it is reasonably necessary for the Recipient to disclose any Confidential Information to (a) enforce this ROAM Customer Agreement, (b) comply with a judicial or administrative proceeding or similar process, or (c) comply with a stock exchange rule, the Recipient must promptly notify the Disclosing Party of that obligation. The Recipient shall not produce or disclose any such Confidential Information until the Disclosing Party has: (i) requested protection from the court or other legal or governmental authority issuing the process (with the reasonable assistance of the Recipient) and the request has been denied; (ii) consented in writing to the production or disclosure of such Confidential Information, or (iii) taken no action to protect its interest in the Confidential Information within ten (10) business days (or such shorter period required by order of a court or other legal or governmental authority) after receipt of notice from the Recipient of the obligation to produce or disclose. Notwithstanding the foregoing, the Recipient shall only disclose the minimum portion of the Disclosing Party's Confidential Information which the Recipient is advised by counsel is required for the Recipient to comply with law.

**Return of Information.** Within ten (10) days following the Recipient's receipt of a written request from the Disclosing Party, the Recipient must: (a) deliver to the Disclosing Party all tangible materials containing or embodying the Confidential Information; and (b) purge all electronic materials containing or embodying the Confidential Information, and certify the same to the Disclosing Party in writing. Notwithstanding the foregoing delivery requirement, (i) the Recipient may destroy any notes, analyses, or reports generated by the Recipient to the extent such notes, analyses, or reports contain Confidential Information, and the Recipient shall certify such destruction within such ten (10) day period, (ii) Recipient may retain one file copy of the Confidential Information for archival purposes, and (iii) Recipient's obligations hereunder are subject to its standard policies and procedures for the back-up retention of information in electronic format. Nothing in this section shall restrict ROAM's use of aggregated Customer Data as permitted pursuant to the terms of this ROAM Customer Agreement or require ROAM to purge such Customer Data.

## **9. Audit**

ROAM or its representatives may, in ROAM's sole discretion, audit the number of activated Products being monitored and controlled by Customer through the Portal at any time during the Term of Service, as well as Customer's use of the Software Service to verify compliance with the terms of this ROAM Customer Agreement, provided that no more than one audit may be conducted in any calendar quarter. Customer shall cooperate with the ROAM's audit and provide access to records, equipment, information and personnel reasonably requested by ROAM and directly related to permitted purpose of the audit. If an on-site audit is required, ROAM may conduct audits only during Customer's normal business hours and in a manner that does not unreasonably interfere with Customer's business operations. If the audit determines that the number of users of the Software Services exceeded the number of Authorized Users permitted by this ROAM Customer Agreement or there are activated Products for which Customer is not paying Software Services fees, Customer shall pay to ROAM all fees due for such excess number of users and/or additional activated Products, plus any reasonable costs incurred by ROAM in conducting the audit, within fifteen (15) days of the date of written notification of the audit results.

## **10. U.S. Federal Government End Use Provisions**

ROAM provides the Software Services, including related software and technology, for ultimate U.S. federal government end use solely in accordance with the following: Government technical data and software rights related to the Software Services include only those rights customarily provided to non-governmental entities as defined in this ROAM Customer Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data-Commercial Items) and DFAR 227.7202-03 (Rights in Commercial Computer Software or Computer Software Documentation). Consistent with these provisions all U.S. Government end-users acquire the Software Services and documentation with only those rights set forth herein.

## **11. Miscellaneous**

**Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations), caused by law, labor controversy, war, fire, theft, shortage, inability to obtain materials or shipping space, breakdowns, delays of carriers, manufacturers, or suppliers, acts of God, riot, civil commotion, war, Internet or other service disruptions involving hardware, software or power systems not within such party's possession or reasonable control, or by any similar cause beyond such party's reasonable control.

**Infringement of ROAM Intellectual Property.** Customer agrees to report to ROAM all claims or suspected claims of copyright or other infringement of ROAM's intellectual property or other proprietary rights. Claims of infringement should be directed to Legal Department, Acuity Brands Technology Services, Inc., 1400 Lester Road, Conyers, Georgia 30012.

**Dispute Resolution.** All disputes arising in connection with this ROAM Customer Agreement shall be settled, if possible, by negotiation of the parties. If the matter is not resolved by such negotiations, either party may, by the giving of written notice, cause the matter to be referred to a meeting of appropriate higher management of the parties. Such meeting shall be held within ten (10) business days following the giving of the written notice. If the matter is not resolved within twenty (20) business days after the date of the notice referring the matter to appropriate higher management, or such later date as may be mutually agreed upon, the dispute may be submitted to non-binding mediation at the mutual agreement of the parties. In the event of mediation, mediator fees shall be shared equally by the parties. If the matter is not resolved through such mediation (or within twenty (20) business days after the date of the notice referring the matter to appropriate higher management, or such later date as may be mutually agreed upon, if there is no mediation), either party may then, subject to the terms of this ROAM Customer Agreement, commence legal action in a court of competent jurisdiction in order to resolve the dispute. Notwithstanding the foregoing, each party shall have the right at any time, at its option and where legally available, to commence an action or proceeding in a court of competent jurisdiction, subject to the terms of this ROAM Customer Agreement, in order to seek and obtain a restraining order or injunction to enforce the confidentiality or intellectual property provisions set forth in the this ROAM Customer Agreement.

**Injunctive Relief.** Customer acknowledges and agrees that the Software Services, the Portal and the Related Materials provided in connection with the Software Services possess a special, unique and extraordinary character that makes difficult the assessment of the monetary damages that would be sustained as a result of unauthorized use or disclosure, and that unauthorized use or disclosure may cause immediate and irreparable damage to ROAM for which ROAM would not have an adequate remedy at law. Therefore, Customer agrees that, in the event of such unauthorized use or disclosure, in addition to such other legal and equitable rights and remedies as may be available to ROAM, ROAM shall be entitled to injunctive and other equitable relief without the necessity of proving damages or furnishing a bond or other security.

**Notices.** Any notice or demand which is required or provided to be given under this ROAM Customer Agreement shall be in writing and shall be deemed to have been sufficiently given and received for all purposes on the date of delivery when delivered by hand to the party to whom notice is to be given, on the first business day after being sent when sent by nationally recognized overnight courier, or five days after being sent by certified or registered mail, postage and charges prepaid, return receipt requested, to the address identified in the applicable Order Form or Services Confirmation. Any notices to ROAM shall also be copied to General Counsel at the same address. Rejection or other refusal to accept, or the inability to deliver because of changed address, shall be deemed to be receipt of the notice sent as provided above. Any party may change its address or information about who should receive the notice by giving the other party written notice of such change in the manner set forth above.

**Software Internal to the Products.** Nothing herein shall be construed to grant to Customer, or any third party, any right, title, or interest in or to any intellectual property rights (including, without limitation, any patent, trademark or copyright) in any software that may be installed internally in the Products. The software installed internally in the Products may be used solely as part of the Products. Customer shall not rent, lease or lend the Products, nor may it provide access to the software installed internally in the Products, for a fee or otherwise, to any third party, except only as part of a sale or permanent transfer of the Products. Neither the Products, nor any software installed internally in the Products shall be duplicated, reverse engineered, or decompiled by Customer or any third party, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. Upgrades or supplements to the software installed internally in the Products may be automatically downloaded to the Products.

**Entire Agreement.** The terms set forth in this ROAM Customer Agreement, inclusive of each Order Form or Services Confirmation entered into, and any related Pre-Deployment Scope Checklist, constitute the complete and exclusive terms of the agreement between the parties regarding the subject matter hereof and supersede all other prior and contemporaneous agreements or communications between the parties with respect to the subject matter hereof. No custom, practice, or course of prior dealings between the parties and no usage of trade shall modify or otherwise affect this ROAM Customer Agreement. Notwithstanding the foregoing, no Order Form or Services Confirmation will apply only to any Products or Services covered by any other Order Form or Services Confirmation. Any different or additional terms and conditions proposed by Customer in its purchase order forms (such as preprinted terms and conditions typically found on their reverse side), response to a quotation or other proposal are hereby rejected by ROAM and shall not be incorporated into this ROAM Customer Agreement. ROAM objects to and rejects any terms between Customer and any other party (including but not limited to any ROAM Authorized Supplier), and no such terms shall be a part of or incorporated into this ROAM Customer Agreement, unless specifically agreed to in writing by an authorized representative of ROAM. If the Software Services are to be used in the performance of a U.S. Government contract or subcontract for which mandatory "flowdown" clauses are applicable to ROAM or the Software Services, Customer must notify ROAM and let it review the clauses before ROAM begins performance, so that it may decide whether to perform. If ROAM is notified of the clauses after it starts performance and afterward rescinds its willingness to proceed, ROAM will have no liability for its rescission. Any Order Form, Services Confirmation or Pre-Deployment Scope Checklist may be executed by facsimile or in .PDF format (with the same force and effect as an original signature) and in counterparts.

**Assignment.** Neither this ROAM Customer Agreement, nor any of the rights or obligations under this ROAM Customer Agreement, may be assigned or otherwise transferred (including by operation of law) by either party without the prior written consent of the other party, which shall not be unreasonably withheld or delayed; except that ROAM may assign this ROAM Customer Agreement without consent to any entity directly or indirectly controlling, controlled by or under common control with ROAM and to any entity that acquires all or substantially all of the assets of ROAM to which this ROAM Customer Agreement relates. This ROAM Customer Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted assigns and successors-in-interest.

**Governing Law.** This ROAM Customer Agreement shall be construed and enforced under the laws of the State of Georgia, USA without reference to the choice of law principles thereof. The parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods if otherwise applicable. Customer hereby consents to and submits to the jurisdiction of the federal and state courts located in the State of Georgia; and Customer waives any defenses based upon lack of personal jurisdiction or venue, or inconvenient forum.

**Waiver.** No waiver of any breach of this ROAM Customer Agreement shall be deemed a waiver of any other breach hereof.

**Compliance with Laws.** Each party must comply with all laws, rules and regulations applicable to such party's activities in relation to this ROAM Customer Agreement, including export control laws of the United States and other countries which are applicable to the Products or Software Services.

**Severability.** Each and every provision of this ROAM Customer Agreement is completely severable, and the invalidity of any one or more of such provisions shall not in any way affect the validity of this ROAM Customer Agreement or any of the other provisions thereof. Accordingly, if any provision of this ROAM Customer Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, that provision will be amended so as to best accomplish the objectives of and the same economic effect as the original provision and the remainder of this ROAM Customer Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. If the provision cannot be amended it will be deleted, unless it is an essential term of the contract in which case the party adversely affected by the deletion may terminate this ROAM Customer Agreement.

**Survival.** Any provisions of this ROAM Customer Agreement that by their nature or purpose are intended to survive the expiration or termination of this ROAM Customer Agreement shall continue in full force and effect after termination.

**Third Parties.** This ROAM Customer Agreement does not provide any third party with any remedy, claim, liability, reimbursement, cause of action or other right or privilege. Suppliers of ROAM products and other third parties do not have authority to bind or impose any obligation or liability on ROAM.