

MCM Warranties

1. Warranties.

- 1.1. **MCM Warranties.** MCM warrants that: (i) it has the right to license the Product(s) to Licensee pursuant to this Agreement; (ii) Licensee's permitted use and possession of the Product(s) and Documentation will not violate the terms or conditions of any license, confidentiality agreement, non-competition agreement, employment agreement or any other agreement to which MCM may be subject; and (iii) neither the execution of this Agreement by MCM nor the performance by MCM of its obligations hereunder shall infringe any intellectual property rights of any third party with respect to the Product(s) or Documentation. The foregoing warranties shall survive the Installation Date for a period of one (1) year.
- 1.2. **Material Defects.** MCM warrants the Product(s) shall be free from material defects and shall operate substantially in accordance with the then current applicable Documentation for a period of sixty (60) days following the Installation Date.
- 1.3. **Remedy.** In the event of a breach of Section 8.2 hereof, MCM's sole responsibility for such breach shall be, at MCM's sole election, to: (a) correct such defects or failures to operate in accordance with specifications or provide a work-around solution; (b) replace any defective Product(s); or (c) correct any errors in MCM's Documentation to substantially conform to the intended performance of the Product(s) and resubmit such Documentation to Licensee. The foregoing obligations of MCM are void if (i) MCM does not receive prompt notice in writing from the Licensee of a breach prior to the end of the applicable 60-day period or (ii) MCM's examination of the applicable Product confirms that the Product has been (x) altered or modified by or on behalf of Licensee, other than by MCM, (y) subjected to negligence or computer or electrical malfunction, or (z) used, adjusted or installed in a manner inconsistent with the Documentation or other written instructions provided by MCM to Licensee hereunder, in which event Licensee shall be invoiced for any additional services rendered by MCM to remedy the problem at the then current rates at the time such services are performed.
- 1.4. **Warranty Limitation.** The warranty provided in Section 8.1 does not cover any portion of a Product that malfunctions for reasons not connected to the logic of the Product or for reasons not under the control of MCM. The performance of MCM's obligations under Section 8.3 shall be MCM's total maximum liability and MCM's entire obligation to the Licensee as a consequence of breach of Section 8.2 hereof, and the Licensee shall have no other claims against MCM as a result of such breach.
- 1.5. **Viruses.** Each Product that is provided by Licensor to Licensee under the terms of this Agreement shall be free, at the time of receipt by Licensee, of any programs, subroutines, code, instructions, data or functions, (including but not limited to viruses, worms, date bombs or time bombs), the purpose of which is to intentionally cause the Product to cease operating, or to damage, interrupt, interfere with or hinder the operation of the Product, the system in which it resides, or any other software or data on such system or any other system with which it is capable of communicating or otherwise permit the unauthorized access to Licensee systems or data; provided that the Product may contain a program that enables cessation of access to, or operation of, the Product in the event Licensee does not make timely payment of amounts owed to it by Licensee hereunder. For the avoidance of doubt, the provisions of this Section 8.5 shall apply to each delivery of a Product, in whole or in part, to Licensee including each error correction, patch, update, workaround or other similar interim or partial delivery form of the Product.
- 1.6. **Professional Services.** MCM represents that all Services to be provided by MCM hereunder will be performed by qualified workers, and in a professional and workmanlike manner, and that the services will conform to the applicable requirements and specifications and to the standards applicable in the software industry. MCM agrees that if any such service is not in material compliance with this warranty and such non-compliance is brought to MCM's attention within a reasonable time after such services are performed, then as the sole remedy for a breach of this warranty MCM will re-perform the applicable services at MCM's sole cost and expense.
- 1.7. **Enjoined Software.** MCM warrants that if substantial use of a Product for its intended purpose is enjoined through a preliminary injunction, MCM shall, in its discretion and at no expense to the Licensee, either (i) procure for the Licensee the right to continue using the Product or (ii) replace or modify the Product so that it becomes non-infringing and is of equivalent or superior functionality. If neither of the foregoing alternatives are available, the Licensee may terminate the license granted in Section 1.1 only with respect to those areas where the use of the Product is found infringing. If the license is terminated, the Licensee will be entitled to, and MCM will remit to the Licensee, a refund of a proportionate amount of the fees paid hereunder for the license to use the Product. If the injunction or action is withdrawn or a settlement of such action is reached, the affected license(s) will be reinstated under the terms of this Agreement.

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