
TERMS OF USE:

BY USING THE NEHANET SERVICE, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS (THE "AGREEMENT") GOVERNING YOUR USE OF NEHANET'S SERVICES (THE "SERVICE"). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY.

BACKGROUND

As part of the Service, NEHANET will provide you with use of the Service, including a browser interface and data encryption, transmission, access and storage. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the NEHANET.com website or subsidiary websites, incorporated by reference herein, including but not limited to NEHANET's privacy and security policies. We offer a 30-day free trial of our Services with no further obligation. Please refer to the NEHANET.com website or the subsidiary website for more information.

AGREEMENT

1. Definitions

- 1.1 Agreement means this services agreement, and any materials available on the NEHANET website specifically incorporated by reference herein.
- 1.2 Company means the legal entity specified in the introductory paragraph, its directors, officers, affiliates, agents, and employees.
- 1.3 Content means any information, documents, software, products and services contained or made available by NEHANET to the Company in the course of using the Service.
- 1.4 Company Data means any data, information or material provided or submitted by Company to NEHANET in the course of utilizing the Service.
- 1.5 Service means the online hosted set of design tracking and related applications developed, operated and maintained by NEHANET and made accessible via a URL link from the Company's website.
- 1.6 NEHANET Technology means all of NEHANET's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to Company by NEHANET in providing the Service.
- 1.7 Users means Company, its employees, representatives, consultants, contractors and agents who are authorized to use the Service and have been supplied user identifications and passwords by Company (or by NEHANET at Company's request)
- 1.8 Documentation means any on-line help files or written instruction manuals regarding the use of the Service.
- 1.9 Effective Date shall have the meaning set forth in the introductory paragraph.
- 1.10 Initial Term shall have the meaning set forth in Section 11.1, commencing on the Date that Company signs up for the NEHANET Service, or, in the case of a 30 Day FREE Trial, commencing 30 Days from the Start Date of the 30 Day FREE Trial.
- 1.11 License Fee shall have the meaning set forth in Section 4.1.
- 1.12 Intellectual Property Rights means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, domain name rights, mark work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature.
- 1.13 Confidential Information means this Agreement and all its Schedules, Documentation, data, drawings, benchmark tests, specifications, trade secrets, and any other proprietary information supplied to Company by NEHANET, or by Company to NEHANET and clearly marked as confidential information, and if disclosed orally, confirmed in writing within 30 days of disclosure, including all items defined as confidential information in any other agreement between Company and NEHANET whether executed prior to or after the date of this Agreement.

1.14 Software means the software described in the Sales Contract.

1.15 NEHANET Icon shall have the meaning set forth in Section 2.2.

1.16 Embargoed Countries shall have the meaning set forth in Section 12.1.

1.17 Designated Nationals shall have the meaning set forth in Section 12.1.

2. Grant of License

2.1 Grant. Subject to the terms and conditions of this Agreement, NEHANET hereby grants to Company a non-exclusive, non-transferable limited-term worldwide right to use the Service, for Company's own internal and external business purposes, provided that the Service is not used by more than the number of Users set forth on Schedule A and that Company is current in payment of all undisputed invoices or other charges. Subject to the terms of this Agreement, Company grants to NEHANET the non-exclusive, worldwide right to use, copy, store, transmit and display Company Data solely to the extent necessary to provide the Service as requested by and for the Company. This license transfers to Company neither title nor any proprietary or Intellectual Property Rights to the Service, Software, Documentation, or any copyrights, patents, or trademarks, embodied or used in connection therewith, except for the rights expressly granted herein. NEHANET hereby reserves all rights to the Service, Software, Documentation and any copyrights, patents, or trademarks, embodied or used in connection therewith, except for the rights expressly granted herein. This license transfers to NEHANET neither title nor any proprietary or Intellectual Property Rights to the Company Data, or any copyrights, patents, or trademarks, embodied or used in connection therewith, except for the rights expressly granted herein. Company hereby reserves all rights to the Company Data and any copyrights, patents, or trademarks, embodied or used in connection therewith, except for the rights expressly granted herein.

2.2 NEHANET Icon. In connection with Company's use of the Service, Company agrees that the Service shall display the NEHANET Icon as a default in the upper right hand corner of the Service's graphical user interface. As used herein, "NEHANET Icon" means a graphical icon provided by NEHANET Corporation that contains the animated text "Powered By NEHANET" with a hyperlink to the NEHANET website.

2.3 Ownership. NEHANET alone shall own all right, title and interest, including all related Intellectual Property Rights, in and to the NEHANET Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided to NEHANET by Company or any other party relating to the Service. This Agreement is not a sale of, and does not convey any rights of, ownership in or related to the Service, NEHANET Technology or Intellectual Property owned by NEHANET to Company. The NEHANET name, the NEHANET logo, and the product names associated with the Service are trademarks of NEHANET and no right or license is granted to use them.

2.4 NEHANET warrants that it shall use best efforts to ensure that the Service (1) shall be accurate and free from defects and (2) shall conform to the requirements of this Agreement.

2.5 NEHANET warrants that it has the authority to grant the rights granted pursuant to this Agreement and that the grant of such rights is not in breach of any agreement to which it is a party or otherwise bound.

2.6 NEHANET will perform its obligations under this Agreement in a professional and efficient manner, having the requisite expertise and using due care, skill and diligence.

3. Restrictions

3.1 Company agrees that it will not itself, or through any parent, subsidiary, affiliate, agent or other third party nor will it permit any third party to:

(a) License, sublicense, sell, resell, transfer, assign, distribute or otherwise make available to any third party the Service or the Content,

(b) Modify or make derivative works based upon the NEHANET Technology or the Content, except when mutually agreed to in writing;

(c) Commercially exploit the Service or the Content in any way, including providing processing services to third parties, commercial timesharing, rental or sharing arrangements; or

(d) Provide, disclose, divulge or make available to, or permit use of the Service by any third party (that is not an authorized sales representative, distributor or supplier of the Company).

4. Responsibilities

4.1 Company Responsibilities. Subject to NEHANET's responsibilities pursuant to Section 4.2, Company is responsible for any and all activities that occur under Company's user accounts; provided, however, that Company shall not be responsible for the actions of third parties that do not result from a breach of this Agreement by Company. Company shall: (i) notify NEHANET immediately of any unauthorized use of any password or account or any other known or suspected breach of security of which Company becomes aware; (ii) report to NEHANET immediately and use reasonable efforts to stop immediately any unauthorized copying or distribution of Content that is known or suspected by Company or its Users; (iii) assure that Company's use of the Service shall at all times comply with all applicable local, state, federal, and international laws, regulations, and conventions, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data; and (iv) not impersonate another NEHANET user or provide false identity information to gain access to or use the Service.

4.2 NEHANET Responsibilities. NEHANET shall: (i) use best efforts to ensure that no unauthorized third parties access Company's user accounts, impersonate Company's Users or provide false identity to gain access to or use the Company's user accounts; and (ii) assure that NEHANET's provision of the Service shall at all times comply with all applicable local, state, federal, and international laws, regulations and conventions, including those related to data privacy, international communications, and the exportation of technical or personal data.

5. Account Information and Data:

5.1 All data submitted by Company to the Service, whether posted by Company or by third parties, shall remain the sole property of Company or such third parties, as applicable, unless specifically notified in advance and in writing. Company, not NEHANET, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Company Data, and NEHANET shall be responsible or liable for any destruction, damage, loss or failure to store any Company Data to the extent that the prevention of such destruction, damage, loss or failure is within NEHANET's direct control. NEHANET will create backup versions of the Company Data on a daily basis. Company is responsible for moving these backups to its facilities if it wishes to archive these for a longer period of time.

6. Fee and Other Charges

6.1 Service Fees. Company will pay all fees or charges to its account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. The initial charges will be equal to the current number of total User licenses requested times the User license fee currently in effect. Payments may be made annually, monthly, or quarterly, consistent with the Initial Term, or as otherwise mutually agreed upon. All payment obligations are noncancelable and all amounts paid are nonrefundable. You are responsible for paying for all User licenses ordered for the entire License Term, whether or not such User licenses are actively used.

6.2 User licenses. Company may add licenses on the Service at any time. Added licenses will be subject to the following: (i) added licenses will be coterminous with the preexisting License Term (either Initial Term or renewal term); (ii) the license fee for the added licenses will be the then current, generally applicable license fee; and (iii) licenses added in the middle of a billing month will be charged in full for that billing month. The number of User licenses cannot be decreased in the middle of a term. NEHANET reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may be provided by e-mail.

6.3 Excess Data Storage Fees. The maximum data records storage space provided to Company at no additional charge is a cumulative amount of 50 MB of actual data per User license. If the amount of disk storage required exceeds this limit, Company will be charged an additional \$250.00 per month for every 500 MB over the limit. In addition, the maximum file system storage space provided to Company at no additional charge is a cumulative amount of 150 MB of actual data per User license. If the amount of file system storage required exceeds this limit, Company will be charged an additional \$25.00 per month for every 500 MB over the limit. NEHANET will notify Company when the average storage use per license reaches approximately 90% of the maximum. NEHANET reserves the right to establish or modify its general practices and limits concerning storage of Company Data, but not for the term of this Agreement.

6.4 Billing and Renewal. NEHANET charges and collects in advance for use of the Service. NEHANET will automatically renew and bill your credit card or issue an invoice to you (a) every month for monthly licenses, (b) every quarter for quarterly licenses, (c) each year on the subsequent anniversary for annual licenses, or (d) as otherwise mutually agreed upon. The renewal charge will be equal to the then-current number of total User licenses times the license fee in effect at the time of renewal. Fees for other services will be charged on an as-quoted basis. NEHANET's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and

Company and you shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on NEHANET's income.

6.5 Non-Payment. In addition to any other rights granted to NEHANET herein, NEHANET reserves the right to suspend or terminate this Agreement and Company's access to the Service if Company's account becomes delinquent (falls into arrears) for more than 30 days. Delinquent invoices are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. If Company initiates termination of this Agreement, Company will be obligated to pay the outstanding balance due on Company's account (for the remainder of the contract term). Invoices older than 90 days are automatically referred to collections.

6.6 Suspension of Service and Acceleration. In the event Company's account becomes thirty (30) days or more overdue, in addition to and not in lieu of any of its other rights or remedies under this Agreement, NEHANET may accelerate your unpaid fee obligations for the remainder of the contract term so that all such obligations become immediately due and payable. NEHANET reserves the right to suspend the Service provided to Company. NEHANET also reserves the right to impose a separate reconnection fee should Company thereafter again request access to the Service. Company agrees and acknowledges that NEHANET has no obligation to retain the Company Data if the account is more than 30 days overdue.

6.7 Disputed Amounts. The provisions of Section 6.5 and Section 6.6 shall not apply to any Service Fees or other amounts assessed pursuant to this Agreement that Company is disputing in good faith. Once such dispute has been resolved, Company shall pay such amount that the Parties have agreed upon within ten (10) business days.

7. Limitation of Liability

7.1 Disclaimer. EXCEPT AS PROVIDED IN SECTION 2.4 AND SECTION 2.6, NEHANET MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY, WHETHER EXPRESS, IMPLIED, OR STATUTORY AS TO THE, TIMELINESS, , SUITABILITY, OR ACCURACY OF THE SERVICE. NEHANET DOES NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET COMPANY'S REQUIREMENTS OR EXPECTATIONS, (C) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY COMPANY THROUGH THE SERVICE WILL MEET COMPANY'S REQUIREMENTS OR EXPECTATIONS, OR (D) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO COMPANY STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY NEHANET.

7.2 Internet Delays: NEHANET'S SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. NEHANET IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. NEHANET SHALL USE BEST EFFORTS TO PREVENT AND REMEDY SUCH PROBLEMS.

7.3 Access and Security. NEHANET DOES NOT GUARANTY THE ACCESS, AVAILABILITY, PRIVACY OR SECURITY OF ANY INFORMATION TRANSMITTED OVER OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET.

7.4 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING, REVENUE, PROFITS, USE, BUSINESS INTERRUPTION OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION), REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY COMPANY IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

7.5 Company Indemnity. Company shall indemnify and hold NEHANET harmless from and against judgments finally awarded or settlement amounts agreed in connection with any third party claims related to or arising out of (i) Company's negligent acts or omissions or willful misconduct, (ii) any dispute between Company and any Company Customer, or (iii) Company's use, operation, access to the Service.

7.6 NEHANET Indemnity. NEHANET shall indemnify and hold Company harmless from and against judgments finally awarded or settlement amounts agreed in connection with any third party claims related to or arising out of (i) NEHANET's negligent acts or omissions or willful misconduct or (ii) NEHANET's provision of the Service.

7.7 No Other Warranty. No employee, agent, representative or affiliate of NEHANET has authority to bind NEHANET to any oral representations or warranty concerning the Service. Any written representation or warranty not expressly contained in this Agreement will not be enforceable.

8. Indemnification for Infringement

8.1 Indemnity. NEHANET shall, at its expense, defend or settle any claim, action or allegation brought against Company that the Service infringes any Intellectual Property Rights of any third party and shall pay any final judgments awarded or settlements entered into; provided that Company gives prompt written notice to NEHANET of any such claim, action or allegation of infringement and gives NEHANET the authority to proceed as contemplated herein. NEHANET will have the exclusive right to defend any such claim, action or allegation and make settlements thereof at its own discretion, and Company shall not settle or compromise such claim, action or allegation, except with prior written consent of NEHANET. Company shall give such assistance and information as NEHANET may reasonably require, at NEHANET's expense, to settle or oppose such claims. In the event any such infringement, claim, action or allegation is brought or threatened, NEHANET may, at its sole option and expense:

- (a) Procure for Company the right to continue use of the Service or infringing part thereof; or
- (b) Modify or amend the Service or infringing part thereof, or replace the Service or infringing part thereof with other Service having substantially the same or better capabilities; or
- (c) If neither of the foregoing is commercially practicable, terminate this Agreement.

8.2 Sole Obligation. The foregoing states the entire liability of NEHANET and exclusive remedy of Company with respect to infringement of any Intellectual Property Rights.

9. Proprietary Rights

Company acknowledges and agrees that NEHANET is the exclusive owner of and holds and shall retain all right, title and interest in and to the Service and Documentation, including without limitation all improvements made and Intellectual Property Rights therein and thereto, unless otherwise mutually agreed to and specified in writing.

10. Confidential Information

10.1 Obligations of Confidentiality. Each Party acknowledges that the Confidential Information constitutes valuable trade secrets and each Party agrees that it shall use Confidential Information solely in accordance with the provisions of this Agreement and will not disclose, or permit to be disclosed, the same, directly or indirectly, to any third party without the other Party's prior written consent. Each Party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. However, neither Party bears any responsibility for safeguarding information that is (i) publicly available, (ii) already in the other Party's possession and not subject to a confidentiality obligation, (iii) obtained by the other Party from third parties without restrictions on disclosure, (iv) independently developed by the other Party without reference to Confidential Information, or (v) required to be disclosed by order of a court or other governmental entity.

10.2 Injunctive Relief. In the event of actual or threatened breach of the provisions of Section 11.1, the non-breaching Party will have no adequate remedy at law and will be entitled to seek immediate and injunctive and other equitable relief, without bond and without the necessity of showing actual money damages.

11. Term and Termination

11.1 Term, Service Downgrade and Termination. This Agreement shall become effective upon the Effective Date and shall continue for an initial term of two years. This Agreement will automatically renew for a period equal to the initial term, unless terminated by Company at least 30 days before the expiration of the current term, at the then current NEHANET license fees. In the event that Company terminates this Agreement (other than by reason of Company's breach) NEHANET will make available to Company a file of its Company Data within five (5) days of payment of outstanding fees if any, if Company so requests at the time notice of termination is given.

Company agrees and acknowledges that NEHANET has no obligation to retain the Company Data, and may delete such Company Data, upon delivery of Company Data in a mutually agreed upon machine readable format. For On-Premise Deployments (the NEHANET Service is deployed on Company Servers), the Termination Date will be the date on which NEHANET uninstalls NEHANET Software and removes the NEHANET Database from the Company's Servers.

11.2 Termination for Cause by NEHANET. NEHANET may, by written notice to Company, terminate this Agreement if any of the following events occur:

- (a) Company fails to pay any amount due to NEHANET within thirty (30) days after NEHANET gives Company written notice of such non-payment; or
- (b) Company is in material breach of any non-monetary term, condition or provision of this Agreement, which breach, if capable of being cured, is not cured within thirty (30) days after NEHANET gives Company written notice of such breach; or
- (c) Company (i) terminates or suspends its business activities, (ii) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (iii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes; provided that, no termination under clause (b) or (c) will entitle Company to a refund of any portion of the License Fee.

11.3 Termination for Cause by Company. Company may, by written notice to NEHANET, terminate this Agreement if any of the following events occur:

- (a) NEHANET fails to provide the Service for a period that exceeds five (5) days; or
- (b) NEHANET is in material breach of any other term, condition or provision of this Agreement, which breach, if capable of being cured, is not cured within thirty (30) days after Company gives NEHANET written notice of such breach; or
- (c) NEHANET (i) terminates or suspends its business activities, (ii) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (iii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes.

12. Local Laws and Export Control:

12.1 The Service uses software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of the European Union. The Users acknowledge and agree that it shall use best efforts to ensure that the Service shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to Afghanistan, Burma, Cuba, Iraq, Iran, Libya, Sudan, or any other countries to which the United States and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). By using this site, User represents and warrants that it is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. User agrees to comply strictly with all U.S. and European Union export laws and assumes sole responsibility for obtaining licenses to export or re-export as may be required.

12.2 This site may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000.

12.3 NEHANET makes no representation that the Service is appropriate or available for use in other locations. If Company uses the Service from outside the United States of America and/or the European Union, Company is solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to United States or European Union (including European Union Member States) law is prohibited. None of the Content, nor any information acquired through the use of the Service, is or will be used for nuclear activities, chemical or biological weapons, or missile projects, unless specifically authorized by the United States Government or appropriate European body for such purposes.

13. Miscellaneous

13.1 **Entire Agreement.** The terms and conditions in this Agreement contained herein and the referenced exhibits that are incorporated in this Agreement by this reference, constitute the entire agreement between the Parties with respect to the subject

matter of this Agreement and supersede all previous and contemporaneous agreements and understandings, whether oral or written, between the Parties with respect to the subject matter of this Agreement.

13.2 Company Data Security. In the event that NEHANET's assets, rights and obligations are purchased by an entity that is, directly or indirectly through a subsidiary, a competitor of Company, NEHANET will provide notice, as early as is legally possible, and prior to the completion of any such acquisition, to Company so that Company may take whatever steps necessary to secure or delete Company's confidential data.

13.3 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REFERENCE TO CONFLICT OF LAWS PRINCIPLES.

13.4 Jurisdiction. Each Party hereby irrevocably consents to the exclusive jurisdiction and venue of the Superior Court of the County of Santa Clara and/or the United States District Court for the Northern District of California in connection with any dispute under this Agreement or the enforcement of any right or obligation under this Agreement. The Parties hereby exclude the application hereto of the United Nations Convention on Contracts for the International Sale of Goods.

13.5 Independent Contractors. The Parties are independent contractors. Nothing contained in or done pursuant to this Agreement will constitute either Party the agent of the other Party for any purpose or in any sense whatsoever, or constitute the Parties as partners or joint ventures.

13.6 Force Majeure. Neither Party is liable for any failure, deficiency or delay in the performance of its obligations under this Agreement due to any force majeure, which include but not be limited to any storm, flood, fire, aircraft damage, explosion, electrical or communication line failure, disturbance, war or military action, Government act or administrative delay, equipment failure or non-delivery, inability to obtain materials or any cause or matter whatsoever not within the reasonable control of the Parties.

13.7 Assignment. Neither Party may assign this Agreement, or any of its right or obligations under this Agreement, in whole or part, directly, or indirectly without the prior written consent of the other Party, except that either Party may assign any of its respective rights and obligations under this Agreement without consent in connection with a merger or change of control transaction. Any permitted assigns or successors of this Agreement are bound by all the terms and conditions of this Agreement. Any attempted assignment by a Party in violation of this section shall be void.

13.8 Modification to Terms: NEHANET reserves the right to change the terms and conditions of this Agreement or its policies relating to the Service at any time and shall notify Company in writing, with the updated version of this Agreement on the Service.. Continued use of the Service after thirty (30) days of receipt, shall constitute Company's consent to such changes. If Company does not agree with such changes and terminates the Agreement, NEHANET will refund any License Fees already paid, prorated for the time the Service was used. Any updates shall not be applicable for the term of this Agreement, unless mutually agreed to in writing.

13.9 Notices. All notices, requests, demands, waivers, and other communications required or permitted hereunder must be in writing and will be deemed to have been duly given: (i) when delivered by hand or confirmed facsimile transmission; (ii) one day after delivery by receipted overnight delivery; or (iii) four (4) days after being mailed by certified or registered mail, return receipt requested, with postage prepaid to the appropriate address set forth at the beginning of this Agreement or to such other person or address as either Party will furnish to the other Party in writing pursuant to the above.

13.10 No Waiver. The failure of either Party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other Party of any of the provisions of this Agreement, will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the validity of either Party to enforce each and every such provision thereafter. The express waiver by either Party of any provision, condition or requirement of this Agreement will not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

13.11 Severability. If, for any reason, a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable, such provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the Parties, and the remainder of this Agreement will continue in full force and effect. The Parties shall negotiate in good faith an enforceable substitute provision for any invalid or unenforceable provision that most nearly achieves the intent and economic effect of such provision.

13.12 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

13.13 Counterparts. This Agreement may be executed in counterparts or duplicate originals, both of which will be regarded as one and the same instrument, and which will be the official and governing version in the interpretation of this Agreement.