END USER LICENSE AGREEMENT

This License Agreement (the "Agreement") is made this _____ day of 2022 by and between Starfish Associates, LLC., a New Jersey limited liability company ("Starfish") and _____, a [corporation] ("Customer"). Starfish and the Customer are individually referred to herein as a "Party", and collectively as the "Parties."

1.0   License and Ownership.

   1.1 Pursuant to the terms and conditions specified in this Agreement, Starfish hereby grants to Customer, and Customer hereby accepts from Starfish, a nontransferable, nonexclusive right and license to use the software (the "Solution") identified in the Ordering Document (as defined in Section 3.1) during the Term (as defined in Section 2.1) for Customer's own internal business purposes.

   1.2 The number of the Customer's employees and/or contractors authorized to use the Solution shall be set forth in the Ordering Document.

   1.3 The Solution, including any patents, copyrights, trade secrets, procedures, techniques, data and other intellectual property rights and technology therein, and any derivatives thereof, shall be owned by Starfish, and nothing herein shall be deemed to transfer any ownership interest therein to Customer. Without the prior written consent of Starfish, Customer shall refrain from copying, reverse engineering, disassembling, decompiling, translating or modifying the Solution, or granting any other person or entity the right to do so.

   1.4 Unless otherwise specified or provided in the Ordering Document, Customer shall be solely responsible for procuring all rights and licenses for any systems to which the Solution will connect, including, without limitation, any proprietary hardware and software systems that may be required to utilize the Solution.

2.0   Term and Termination.

   2.1 The "Term" of the license granted under this Agreement shall be perpetual.

   2.2 Notwithstanding Section 2.1, Starfish may terminate this Agreement for "cause" if the Customer breaches its representations or obligations under this Agreement or the Ordering Document and fails to cure such breach within thirty (30) days after receipt of written notice from Starfish alleging said beach.

   2.3 Upon termination of this Agreement, the Customer shall cease using the Solution and Starfish shall cease rendering any services, including without limitation any Technical Support (as defined in Section 5.1).

3.0   License and Professional Fees.

   3.1 The license fee, along with payment terms, for the license granted under this Agreement (the "License Fees") shall be set forth in an addendum attached hereto or a statement of work or other written agreement between Starfish and the Customer (the "Ordering Document"). License Fees do not include Technical Support.

3.2 Fees for the delivery and installation of the Solution (the "Professional Fees", if any, and collectively with the License Fees, the "Fees"), shall be set forth in the Ordering Document.

4.0 **Installation and Acceptance**. Unless specified or provided otherwise in the Ordering Document, Starfish will install and test the Solution in the Customer's pre-production environment. Starfish shall notify Customer when Starfish's installation and preliminary testing has been completed and the Solution is conforming to the specifications (the "Specification") set forth in the "Solution Design Document", which will be prepared by Starfish and accepted by Customer prior to the date on which Starfish notifies the Customer that the Solution has been installed in the Customer's pre-production environment. The Customer shall have ten (10) business days after receipt of notice to test the Solution. Starfish will replace or repair the non-conforming Solution and notify Customer of the replacement or repair. The Customer shall have additional five (5) business day periods after receipt of notice to test the Solution, as replaced or repaired by Starfish. The Solution shall be deemed to be conforming to the Specifications and accepted by the Customer if the Customer does not notify Starfish in writing of a non-conformity prior to the expiration of a five (5) or ten (10) day period (as described above), as the case may be. The "Acceptance Date" shall be the earlier of such date that the Customer affirmatively accepts the Solution or the expiration of the applicable five (5) or ten (10) day period described above. Starfish shall deploy the Solution in the Customer's production environment (the "Application Server") within five (5) business days after the Acceptance Date, or such later date as may be requested by the Customer, provided that the Customer shall provide Starfish with at least five (5) days prior written notice.

5.0 **Support.**

5.1 Starfish offers, on a subscription basis, the "Technical Support" described on <u>Exhibit A</u>.

5.2 Starfish will provide support to Customer by remote access control of Customer's Application Server. The Customer is responsible for confirming and ensuring that this access is available when making a support request. Starfish shall make corrective action commitments only if and when access to the Application Server is available. The Customer shall notify Starfish in writing of any changes in the information systems environment that may impact the Application Server. The Customer is responsible for normal backup procedures of the Application Server pursuant to normal and customary server backup protocol.

6.0 Warranty and Disclaimer.

6.1 Subject to the terms and conditions of this Agreement, Starfish warrants to Customer that the Solution shall conform to the Specifications for a period of ninety (90) days after the Acceptance Date.

6.2 DISCLAIMER. THE WARRANTIES STATED IN THIS SECTION 6 ARE CUSTOMER'S SOLE AND EXCLUSIVE WARRANTIES PERTAINING TO THE SOLUTION AND THE SERVICES RENDERED HEREUNDER, AND STARFISH HEREBY DISCLAIMS ANY OTHER WARRANTY, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7.0 Indemnification.

7.1 Starfish shall indemnify, defend, and hold Customer harmless from and against any and all awards, settlements, damages, liabilities, fines, costs and expenses (including without limitation, reasonable attorneys' fees)(collectively, "Damages") arising out of or related to lawsuits, claims, actions, prosecutions and other proceedings ("Claims") brought by a third party alleging that the Solution infringes, misappropriates or otherwise violates the intellectual property rights of any third party, provided, however, Starfish shall have no indemnification obligation hereunder to the extent attributable to unauthorized use or modification of the Solution by or on behalf of the Customer. In connection with any Claim hereunder, Starfish shall, at its sole expense: (a) obtain all rights and licenses necessary for the Customer to continue using the Solution; or (b) modify the Solution so that it becomes non-infringing and without any loss of functionality or degradation of usability or performance. If Starfish is unable or unwilling to take the foregoing actions, either Party may terminate this Agreement.

7.2 The Customer shall indemnify, defend and hold Starfish harmless from and against any and all Damages arising out of or related to the Customer's breach of any of its representations, warranties, covenants or obligations under this Agreement.

7.3 The indemnified Party shall notify the indemnifying Party promptly and in writing of any Claim for which it is seeking indemnification hereunder. Failure or delay in providing such notice shall not relieve the indemnifying Party of its indemnification obligations, except to the extent the indemnifying Party demonstrates that the defense or settlement of the Claim has been prejudiced thereby. The indemnifying Party shall have the right to control the defense and settlement of any third party Claim or may at any time tender control of the defense or settlement of such Claim to the indemnified Party. The non-controlling party may elect to participate in the defense or settlement of any Claim at its sole cost and expense with counsel of its choice. No compromise or settlement may be committed to without the non-controlling Party's prior written approval (which shall not be unreasonably withheld, conditioned, or delayed).

8.0 EXCLUSION OF CONSEQUENTIAL DAMAGES AND LIMITATIONS. IN NO EVENT SHALL STARFISH BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE. IN THE EVENT THAT, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IF STARFISH IS FOUND LIABLE FOR DAMAGES BASED ON ANY DEFECT OR NONCONFORMITY IN THE SOLUTION, STARFISH'S TOTAL LIABILITY FOR EACH DEFECTIVE SOLUTION SHALL NOT EXCEED THE FEES PAID FOR SUCH DEFECTIVE SOLUTION.

9.0 Survival. Notwithstanding any termination of this Agreement, any payment obligations and the provisions of Sections 1.3, 2.3, 6, 7, 8, 9 and 10 shall remain in full force and effect.

10.0 **General Terms**. The Agreement may not be modified or amended except by an instrument in writing signed by duly authorized officers of both Parties. The Customer cannot assign its rights hereunder without Starfish's prior written consent. The change in control of more than fifty percent (50%) of the Customer's voting interests shall be deemed to be an assignment. Unless otherwise specifically provided, all notices required or permitted by this Agreement shall be in writing and may be delivered personally, or may be sent by a national overnight courier service (e.g. FEDEX) or certified mail, return receipt requested, to the address set forth on the signature page hereto, or as otherwise designated by each party from time to time. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

This Agreement shall be governed by the laws of the State of New Jersey, exclusive of its choice of law rules. Any claim or action brought by one of the Parties in connection herewith shall be brought in the federal or state courts located within the State of New Jersey, and the Parties irrevocably consent to the jurisdiction of such courts. Notwithstanding the foregoing, a Party seeking injunctive relief may do so in any court of competent jurisdiction.

10.1 **Severability**. In the event that any provision hereof is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to the terms. WITHOUT LIMITING THE FOREGOING, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EVERY PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH.

10.2 **Entire Agreement**. This Agreement and the related Ordering Document constitute the entire understanding and contract between the Parties and supersedes any and all prior and contemporaneous, oral or written representations, communications, understandings, and agreements between the Parties with respect to the subject matter hereof. To the extent of a conflict between an Ordering Document and this Agreement, the terms and conditions in the Ordering Document shall control. The Parties acknowledge and agree that neither of the Parties is entering into this Agreement on the basis of any representations or promises not expressly contained herein.

Agreed to and accepted by:

Starfish Associates, LLC: Customer:

By: _____   By: _____

Name: _____   Name: _____

Title: _____   Title: _____

Address: _____   Address: _____

Exhibit A

Technical Support

Technical support for Starfish Solutions (Solution) is provided as follows:

- **Break/Fix Software Support** – Provide remote investigation via phone, email and/or Webex of a reported issue and notification to Customer of the intended corrective action according to the severity levels defined in Attachment 1.

- **Minor Solution Enhancements** – By request, software updates or changes to Solution for minor enhancements will be provided. Minor enhancements are those that Starfish estimates can be completed within one (1) to two (2) business days. In the event a software update or change is not considered minor, a quote will be provided in advance of performing any services.

- **Software Upgrades** – Solution updates that are required to support communication system upgrades will be made available.

Normal business hours are Monday through Friday 9am – 5pm ET, except for company holidays that fall within the hours of support.

The Customer shall contact Starfish and open a support ticket for any issue relating to Solution. If the issue appears to be outside the Solution environment, Starfish will use its best efforts to assist Customer in finding the most appropriate path to resolve the problem.

Technical support can be reached by email:

- Email: support@starfishassociates.com

Standard Support Procedure

- Customer can call or send email requesting technical support.

- An initial response along with a support ticket number will be provided to Customer.

- Support will be provided according to the severity levels defined in Attachment 1.

Attachment 1 – Service Level Objectives

Description	Standard Support
Support hours	Monday to Friday, 9am – 5pm Eastern Time
Number of incidents	Unlimited
Initial response	Upon call receipt or email notification
Email support	Yes
Phone support	Yes

Severity Level	Severity Type	Description	SLO
1	High	Prevents Customer from continuing use of the Solution, or critically impacts the functionality of the Solution or Customer's environment. Causes the Solution to experience downtime, or performance of the Solution is significantly degraded due in whole or in part to one or more errors. No workaround known to Customer. Starfish will use continuous efforts to provide a resolution for any Severity Level 1 error.	Starfish will engage with Customer within 8 hours upon call receipt or email notification on same business day to begin diagnosis and corrective action plan.
2	Medium	Prevents Customer from continuing use of a non-core feature of the Solution, but does not affect the performance or functionality of the Customer's environment in its entirety. Impacts Customer's ability to use a non-core feature of the Solution, the severity of which is significant and may be repetitive in nature. Starfish will use commercially reasonable efforts to provide a resolution for any Severity Level 2 errors.	Starfish will engage with Customer upon call receipt or email notification on same business day to begin diagnosis and corrective action plan.
3	Low	The reported error is minor, not inhibiting any of the necessary functionality of the Solution. Error negligibly impacts Customer's ability to use the Solution, and Solution remains functional. This category may include enhancement requests, common how-to questions, and any Solution issues with a viable workaround. As soon as it is commercially practicable, Starfish will use reasonable efforts to provide a resolution for any Severity Level 3 error.	Starfish will engage with Customer within 1 business day.
4	Request for Information	Includes minor, cosmetic, or documentation-related issues, and enhancement requests that are not time-sensitive. There is no impact on the Solution's existing features, functionality, performance or stability. Starfish will provide updates based on mutual agreement with Customer.	Starfish will engage with Customer within 2 business days.