

## SUBSCRIPTION LICENSE AGREEMENT

**Revision Date:** February 28, 2017

Usage of Licensed Software is subject to the terms of this **SUBSCRIPTION LICENSE AGREEMENT**, (collectively with all Schedules, the “Agreement”).

In order to use the Software, you must agree to be bound by the terms of this Agreement with Supply Chain Wizard, LLC. (the “Company”)

If you do not agree to this Agreement, you may not use the Service.

If you subscribe for a free trial, this Agreement will also be governing that free trial.

In case you are subscribing on behalf of a Client, you represent that you are a duly authorized person representing the Client and you have the authority to accept the terms and conditions of this Agreement on behalf of the Client.

By accepting this agreement via clicking a box indicating your acceptance, you agree to the terms of this Agreement.

A direct competitor of Supply Chain Wizard, LLC may not access the Software without Company’s prior written consent. Accessing the Software for benchmarking, comparison and other competitive purposes is not allowed.

Client and the Company are each referred to as a “Party” to this Agreement and together the “Parties.”

### RECITALS

WHEREAS, Company is the exclusive developer and owner of various software systems and products, individually or collectively referred to herein as the “Licensed Products” which is made available to Client on a subscription;

WHEREAS, Client desires to obtain a license for a subscription to the Company’s Licensed Product as identified on a Commercial Price Quote (and such additional Licensed Products as may be set forth on other Commercial Price Quotes as agreed between Company and Client) in accordance with the terms and conditions of this Agreement, which consists of the following Schedule, which is incorporated herein by this reference:

Schedule “A” – Company’s Acceptable Use Policy

**NOW THEREFORE**, in consideration of the mutual agreements set forth herein, the Parties hereto, intending to be legally bound hereby, agree as follows:

#### 1. **Definitions**

(a) “Customizations” means customizations to a Licensed Product requested by Client and not generally made available to Company’s other clients. Customizations must be mutually agreed upon by the Parties and may be subject to additional Subscription Services Fees.

(b) “Documentation” means the guides, manuals, operating instructions, Specifications and other documentation published by Company and made available to Client, with regard to a Licensed Product. Documentation includes any updated Documentation that Company provides with respect to Upgrades and new versions/releases of a Licensed Product.

(c) “Insolvent” means that a Party (i) ceases to conduct business in the normal course; (ii) becomes insolvent or bankrupt; (iii) enters into suspension of payments, moratorium, reorganization or bankruptcy; (iv) makes a general assignment for the benefit of creditors; (v) makes a statement in writing of its inability to pay its debts as they become due; (vi) suffers or permits the appointment of a receiver for its business or assets; (vii) has filed against it an involuntary petition for bankruptcy that has not been dismissed within sixty (60) days; (viii) files a voluntary petition for bankruptcy or a petition or answer seeking reorganization, or (ix) avails itself of or becomes subject to any other judicial or administrative proceeding that relates to insolvency or protection of creditors’ rights.

(d) “Licensed Product” means Company’s proprietary product made available to Client on a subscription basis pursuant to this Agreement and does not include any source code software.

(e) “Professional Services” mean any of the integration services or custom services that may be performed by Company for Client.

(f) “Subscription Fees” means the Initial Fees and Monthly Subscription Fees set forth on a Commercial Price Quote (and other Commercial Price Quotes, if any)

(g) “Subscription Services” means access to the Company’s Licensed Product, Training, Maintenance and Support provided to Client in accordance with the terms of this Agreement.

(h) “Support” means the help desk and issue resolution services of Company provided to Client with regard to a Licensed Product.

(i) “Training” means training provided by Company to Client on a Licensed Product as set forth on a Commercial Price Quote (and other Commercial Price Quotes, if any).

(j) “Updates” means subsequent releases, modifications, updates, enhancements of the then-currently issued version of Company’s Licensed Product, which is generally made available to Company’s clients in good standing at no additional charge.

(k) “User” means a unique individual who is an employee or contractor of Client (but in no event a competitor of Company) who is granted access rights to a Licensed Product under this Agreement.

(l) “Line” means a unique manufacturing or packaging line of a Client on which OEE Tracker Licensed Product is applied under this Agreement.

## **2. License**

During the Term of this Agreement and subject to the payment Subscription Fees and the terms and conditions of this Agreement, Company hereby grants to Client a non-exclusive, limited, revocable, non-transferable license for Client and its Users to use the Licensed Product identified on a Commercial Price Quote solely for Client’s own business purposes and not for distribution. Subject to Client’s compliance with Company’s Acceptable Use Policy attached as Exhibit “A” attached hereto and the terms and conditions of this Agreement, Company will provide Subscription Services during the Term (as defined below) to Client.

### **3. Service Term**

The Agreement will remain in effect till the expiration of all subscriptions granted unless this Agreement is terminated in accordance with provisions within this Agreement, or either Party gives the other Party notice of its intent not to renew within fifteen (15) days of the end of Term.

Client's subscription is renewed automatically for the same monthly, annually Term as selected on a Commercial Price Quote (and other Commercial Price Quotes, if any).

Subscription terms can be changed upon Client's request at any time during a Term provided that there will be no refunds or credits for partial months of service. If annual subscriptions are altered to monthly, the difference between annual and monthly pricing for the period of subscription before the change will be charged to the Client.

If Client subscribes for a free trial period and prefers not to purchase a subscription before the end of the free trial period, this Agreement shall no longer remain in effect by the end of the free trial period unless stated otherwise in other sections of this Agreement.

Unless Client chooses to purchase a Subscription after or during the trial period, anything entered/imported into the Software by Client will be permanently lost.

### **4. Customer Responsibilities**

(a) Compliance with Company's Acceptable Use Policy. By using or accessing a Licensed Product, Client represents, warrants and agrees that it and its Users will comply with Company's Acceptable Use Policy attached as Schedule "A" hereto and the terms of this Agreement.

(b) Users. Client will identify the names of its designated Users for a Licensed Product, which will be set forth on a Commercial Price Quote (and other Commercial Price Quotes, if applicable). Client will be responsible at all times for the acts and omissions of its Users. Company will issue log-on credentials which are specific to each identified User. Each identified User shall be solely entitled to access a Licensed Product with his/her log-on credentials. Log-on credentials shall not be used by anyone other than the designated User to whom the log-on credentials have been issued. Log-on credentials shall not be transferred from one User to another without express permission from Company.

### **5. Fees and Payment Terms**

(a) Fees. Client is obligated to pay the Subscription Fees described in a Commercial Price Quote for the Licensed Product (and other Commercial Price Quotes for additional Licensed Products, if applicable). In addition to the Subscription Services, Client may request other services for which Professional Services Fees will be due as set forth in a separate Professional Services Agreement.

(b) Invoicing. During the Term, Company will invoice Client for Subscription Fees thirty (30) days in advance of the month in which services are rendered. Monthly Subscription Fees will be payable before the first day of the month for which Subscription Services are to be rendered. Company will also invoice Client for any initial, interim or final payments due for Customizations as set forth on a Commercial Price Quote (and other Commercial Price Quotes, if any) or as otherwise agreed in writing between Client and Company.

(c) Payment. Company shall invoice all amounts due by Client on a monthly basis. Client shall pay all invoices within thirty (30) days of receipt. Company may charge a late fee equal to five percent (5%) of the amount of any invoice that is not paid within fifteen (15) days of its due date, except for any portion of an invoice that is in good faith disputed. Client will work in good faith with Company to reconcile the disputed portion of any invoice. Undisputed overdue invoices will also bear interest at the rate of 1% per month, not to exceed the maximum rate allowed by law. Company may suspend Subscription Services and shall be under no obligation to continue to provide access to the Licensed Product, or provide any other services, if payments are more than thirty (30) days overdue, whether or not Client has received notice of termination of such suspension.

## **6. Termination**

(a) Termination by Client. This Agreement may be terminated by Client prior to expiration of the Term as follows:

(i) if Company fails in a material way to provide its Subscription Services as required under this Agreement or materially breaches any other provision of this Agreement, and in either case does not either cure the failure, or commence implementation of a solution in good faith designed to cure the failure reasonably satisfactory to Client, in each case within thirty (30) days of Client's written notice describing the failure in reasonable detail.

(ii) without cause if Client pays the Subscription Fees remaining for the Term.

(b) Termination by Company. This Agreement may be terminated by Company prior to the expiration of the Term as follows:

(i) immediately if payment of any amount owed to Company, other than amounts disputed by Client in good faith, is overdue by more than thirty (30) days;

(ii) Client materially breaches any other provision of this Agreement and does not either cure the failure, or commence implementation of a solution in good faith designed to cure the failure, in each case within thirty (30) days of Company's written notice describing the failure in reasonable detail.

(iii) Client undergoes a direct or indirect change in ownership or control without Company's prior written consent if the person or entity acquiring control or ownership of Client is a competitor of Company.

(c) Termination by Either Party. Either Party may terminate this Agreement immediately by written notice to the other Party if the Party to whom the written notice of termination was sent has become Insolvent, as herein defined, in the reasonable determination of the notifying Party.

(d) Effect of Termination.

(i) Upon termination of this Agreement, Client and Client's Users shall immediately cease accessing all Licensed Product(s), and Company shall have no obligation to provide any Subscription Services or other service(s) to Client unless specifically agreed to in writing by Company.

(ii) Client shall be obligated to pay (A) all Subscription Fees and all other fees for services provided on or before the date of termination, no refund will be granted for the then-

current month; (B) except for a termination pursuant to under Section 6(a)(i), reimburse Company for any obligations, non-cancellable contracts or expenses that Company reasonably incurred for Client's benefit in connection with this Agreement, reasonably in proportion to Client's benefit (*i.e.*, not attributable to Company's clients as a whole or in general) and attributable to such expenses for the remainder of the then-current Term; and (C) if termination is without cause, all Subscription Fees due for the remainder of the Term.

(iii) Each Party shall return or destroy all Confidential Information (as defined below) belonging to the other Party.

(iv) Upon termination hereof, this Agreement shall be void and of no further force or effect except that Sections 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23 and 24 shall survive the termination hereof.

## **7. Independent Contractors**

At all times during the Term of this Agreement, the relationship between Client and Company shall be one of independent contractor and not one of employer and employee, partners or joint venturers. Neither Party shall have the authority to bind the other Party. Neither Party shall be responsible in any way for the debts, liabilities or obligations of the other Party.

## **8. Confidentiality**

(a) Each Party (each, a "Receiver") undertakes by execution of this Agreement to keep confidential all proprietary and confidential information (collectively, "Confidential Information") of the other Party (each, a "Discloser") including, but not limited to, information (i) the existence of this Agreement, (ii) all concepts, ideas, trademarks, copyrights, trade secrets, methods, methodologies, know how, procedures, operations, processes and techniques (including, without limitation, function, process, system and data models) disclosed by the Discloser, and its Affiliates; (iii) all business and marketing plans, customer lists, financing information, market information, strategies, products, pricing, and personnel information disclosed by the Discloser and its Affiliates; (iv) any information of any nature, type or media, regarding clients of the Discloser or its Affiliates; (v) all templates; the generalized features of the structure, sequence and organization of software, source and object code, algorithms, drawings, engineering information, formulae, hardware information, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; logic, coherence, and logon credentials disclosed by a Discloser and its Affiliates; (vi) any presentation, demonstration or sample product or application embodying or disclosing any Confidential Information provided to or made known by the Discloser or its Affiliates; and (vii) any other information deemed confidential by the Discloser or its Affiliates, which is disclosed in tangible materials or any intangible form, prior or subsequent to the execution of this Agreement including any information or materials regarding Company's Licensed Products (whether actually licensed by Client or not), Subscription Services, Documentation, Training, Maintenance or Support (collectively, "Confidential Information") received from the other Party.

(b) Each Party agrees that it shall not use the Confidential Information of the other Party for any purpose other than for the purposes of this Agreement and shall protect the Discloser's Confidential Information with at least the same degree of care as it normally exercises to protect its own proprietary information of a similar nature but in no event less than the standards that would be employed by a prudent party with regard to the protection of its own proprietary and/or confidential information.

(c) The Recipient may divulge Confidential Information to its employees and professional advisors (collectively, "Permitted Recipients") provided that such Permitted Recipients shall similarly be

bound by the restrictions on disclosure and use set forth herein and the Recipient shall be responsible for breaches of confidentiality by its Permitted Recipients.

(d) The Recipient obligations of confidentiality and non-use with regard to the Discloser's Confidential Information shall not apply to information which, according to tangible evidence (i) becomes available to the Recipient from a source other than the Discloser, which source has no obligation of secrecy with respect to the information, (ii) is developed independently by the Recipient without any portion of the development having been based on the information or data received from the Discloser, (iii) is within the public domain, or (iv) is required to be disclosed by law provided that the Recipient shall first give prompt notice to the Discloser of the need to disclose Confidential Information to permit the Discloser the opportunity to legally prevent such disclosure, and thereafter, the Recipient shall only make the minimum required disclosure necessary to comply with the request.

(e) Upon the written request of a Party, or upon the termination of this Agreement, each Party shall return the other Party's Confidential Information, whether in physical or electronic format, together with all copies. All electronic, magnetic, or computer records of the Confidential Information shall be deleted from any medium on which Confidential Information may have been recorded or stored by the receiving Party, including tapes and computer discs, if such medium is not immediately returned to the disclosing Party upon request.

## 9. Ownership

(a) All materials containing any information or data about Company's Licensed Product(s), Subscription Services, Documentation, Training, Maintenance, Support, Confidential Information or its operations shall remain the sole and exclusive property of the Company. All materials containing any information or data about Client, its Confidential Information or its operations shall remain the sole and exclusive property of Client. All information, inventions, discoveries, patent rights, trademarks and copyrights that result from this Agreement relating to Company's Licensed Product(s), Documentation, Training, Maintenance, Support, business methodologies, trade-secrets and know-how related thereto shall be the sole and exclusive property of Company. Notwithstanding the foregoing, if Company becomes Insolvent and is unable to deliver its Subscription Services, to the extent not prohibited by a court of applicable jurisdiction or by any law, rule or regulation to which Company and its properties are now or in the future subject, Client shall immediately receive from Company a perpetual, worldwide, non-sublicensable, non-assignable, nonexclusive right and license to use a Licensed Product in the version that it then currently uses, conditioned upon the payment by Client of such license fees as may be agreed upon by the Company, receiver or trustee, as the case may be, and the Client.

(b) If backup or archival copies of Documentation are made, Client must reproduce all copyright, trademark, and other notices that appear on the original copy. **Making copies of Licensed Products is strictly prohibited.**

## 10. Limited Warranty

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, CONCERNING ITS LICENSED PRODUCT, SUBSCRIPTION SERVICES, DOCUMENTATION, TRAINING, MAINTENANCE OR SUPPORT INCLUDING ANY IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **11. Limitations of Liability**

COMPANY WILL NOT BE RESPONSIBLE TO CLIENT OR ANY THIRD PARTIES UNDER ANY CIRCUMSTANCES FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, LOSS OF PROFIT, OR LOSSES OF ANY KIND WHICH CLIENT OR SUCH THIRD PARTIES MAY INCUR IN CONNECTION WITH COMPANY'S LICENSED PRODUCT(S), DOCUMENTATION, SUBSCRIPTION SERVICES, TRAINING, MAINTENANCE OR OTHER SERVICES, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGE OR LOSS. Company's total liability in connection with this Agreement for any and all causes of actions and claims, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, misrepresentation and other torts, shall be limited to the lesser of (a) direct damages proven by the Party seeking indemnification, (b) the total amount paid by Client to Company under this Agreement during the 12-month period immediately preceding the date the facts occurred giving rise to the claim for indemnification.

Nothing in this Section shall limit a Party's liability for (i) bodily injury or death proximately caused by such Party's gross negligence or willful misconduct, or (ii) loss or damage to real property or tangible personal property proximately caused by such Party's gross negligence or willful misconduct, or (iii) liability for breach of Section 8 hereof.

## **12. Warranty, Maintenance and Support**

(a) Warranty. Company warrants that the Licensed Product will operate in accordance with the Documentation during the Term ("Warranty Period") provided that Client is in good standing and complies with the Warranty conditions described herein. Company's Warranty for the Licensed Product is conditioned on: (i) the proper operation of the Company's Licensed Product by the Client in accordance with Company's published Documentation, and (ii) Client, nor any person through Client, has introduced any malware affecting the operation of the Company's Licensed Product. If Company's Licensed Product does not perform in accordance with the foregoing Warranty during the Warranty Period, upon written notice by Client during the Warranty Period, Company will use commercial best efforts to correct any deficiencies so that they will perform substantially in accordance with the foregoing Warranty. Client's sole remedy in the event of nonconformity of Company's Licensed Product with the foregoing Warranty will be (i) the correction of the condition making it nonconforming, or (ii) if Company in its reasonable discretion determines that no correction is commercially feasible within a commercially reasonable period of time, not to exceed thirty (30) days unless otherwise mutually agreed in writing by the Parties, the termination of this Agreement hereunder and a full refund of all fees and taxes paid for such nonconforming services. Client shall provide all information reasonably requested to enable Company to reproduce the non-conformity. Company warrants that it will use commercially reasonable efforts to ensure that the Company Licensed Product does not contain any viruses or other harmful code. Client's sole remedy in the event of breach of the foregoing Warranty as a result of a virus known to have been introduced by Company, shall be the payment of damages awarded by a court of competent jurisdiction resulting from the virus or other harmful code, subject to the limitations of liability set forth elsewhere in this Agreement.

(b) Maintenance. The Licensed Product will be maintained by Company during its stated Maintenance Window on an as-needed basis. A weekly maintenance window for the Licensed Product is available to the Company from 4:00am to 7:00am ET every Saturday morning. Maintenance, when needed, will be performed in a manner that allows for continued (i.e., uninterrupted) operations whenever possible, but is not guaranteed. Should a service interruption be necessary, an email notification will be sent out one week prior to the scheduled outage and will be followed up by a reminder notification approximately 72 hours prior to the outage. There are no additional fees due from Client for Maintenance, except as relates to Client-specific Customizations.

(c) Licensed Product Upgrades. Company may release and make available to Client Upgrades to its Licensed Product from time-to-time. Company will have no liability for not producing Upgrades at any time.

(d) Licensed Product End-of-Life (EOL). In some instances, an upgrade of the Licensed Product may result in an End-of-Life statement for the then-current version of a Licensed Product. An EOL statement refers to the practice of officially terminating support for a version of the Licensed Product in favor of a more current and relevant software version. Company will send EOL notifications under the following guidelines:

(i) Company will maintain support for the immediately preceding release of a Licensed Product for a period of two years from the date of release of the then-current Licensed Product.

(ii) EOL notifications for a Licensed Product will be provided at least six (6) months in advance of the official EOL date.

(iii) If Client is in good standing under this Agreement, Client will be provided with upgrades to the current release of a Licensed Product free-of-charge. New releases of a Licensed Product may result in higher Subscription Service Fees. If Client does not agree to the increased Subscription Service Fees within sixty (60) days after receiving notice of such increase, Company may terminate this Agreement without penalty.

(e) Support. Company will provide support for the Licensed Product as set forth in the Service Level Agreement which shall include a Standard Support Level, which is included in the Subscription Services without additional cost upon execution of the Service Level Agreement by Client. Customized support plans may be possible, subject to additional fees, terms, and conditions. Company has no obligation to provide Support for any Licensed Product(s) that is damaged, modified by anyone other than Company, incorporated into other software, or installed in any computing environment not supported by Company, resulting from or to correct any problems caused by, the negligence, abuse or misuse by Client or its Users, or resulting from any causes beyond Company's reasonable control.

(f) Service Level Agreement (SLA). Company provides service level agreements as set forth in Company's Service Level Agreement, which shall include a Standard Service Level, which is included in the Subscription Services without additional cost upon execution of the Service Level Agreement by Client.

(g) No Other Warranty or Support Provisions. The Warranty, Maintenance and Support provisions listed above are the sole and complete offerings being made by Company unless otherwise agreed to by Company and Client in writing. No other warranties are being provided, nor does Company providing technical support or troubleshooting for anything other than its Licensed Product(s). The Software is provided as-is without any warranty during a free trial period.

(h) Open Source Software. Each Licensed Product may be delivered with software that is subject to open source licensing terms ("Open Source Software"). Client agrees that all Open Source Software shall be and shall remain subject to the terms and conditions under which it is provided. The Open Source Software is provided "AS IS," WITHOUT ANY WARRANTY OF ANY KIND, AND SUPPLY CHAIN WIZARD, LLC FURTHER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO OPEN SOURCE SOFTWARE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER SUPPLY CHAIN WIZARD, LLC NOR THE



LICENSORS OF OPEN SOURCE SOFTWARE SHALL HAVE ANY LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OR DISTRIBUTION OF THE OPEN SOURCE SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Copyrights to the Open Source Software are held by the copyright holders indicated in the copyright notices in the corresponding source files.

### **13. No License, Etc.**

Except for the limited circumstances set forth in Section 9 in the event the Company becomes Insolvent, nothing herein shall be construed as granting any license under any trademark, patent, copyright, mask work protection right, moral rights, or any other intellectual property right, by the disclosure of any Confidential Information or the use of a Licensed Product(s) by Client. Client shall not, nor attempt to, assign, transfer or sublicense, or suffer or permit the use of, Company's Confidential Information, intellectual property rights, the Company's Licensed Product(s) or Documentation to or by any third party. Client shall only use Company's Confidential Information, intellectual property rights, Licensed Product, and Documentation for Client's business purposes as set forth on a Commercial Price Quote (and other Commercial Price Quotes, if any).

### **14. Data Use**

Client agrees that Company may collect and use technical user data and related information, including but not limited to technical information about Client's use of Company's Licensed Products, Client's system and application software, and peripherals, and the types and frequency of information accessed using Company's Licensed Products. Company gathers this information to facilitate the provision of software updates, product support and other services to Client (if any) related to the Licensed Products. Company also may use this information, as long as it is in a form that does not personally identify Client or any person or entity associated with Client, to improve its products, services or technologies, or to provide new products, services or technologies to its clients.

### **15. Force Majeure**

Neither Party to this Agreement shall be liable to the other Party for any loss, injury, delay, damages or casualty suffered by the other Party due to any events or circumstances beyond such Party's reasonable control, including, without limitation, strikes, governmental action, unusually severe weather, acts of God or public enemy (each, a "Force Majeure Event"), and any failure or delay by either Party in the performance of its obligations hereunder due to one or more Force Majeure Events will not be considered a breach of this Agreement.

## **16. Notices**

Any notice required or permitted under this Agreement shall be sufficiently given if and when (a) delivered in person, (b) sent by telecopy, (c) three days after mailing by registered or certified mail, postage prepaid, addressed as follows:

Supply Chain Wizard, LLC  
94 Autumn Lane  
Skillman, NJ 08558  
Tel: (609) 300-2017  
Email: finance@supplychainwizard.com

or such other address or number as shall be furnished in writing by any such Party, and such notice or communication shall be deemed to have been given if given in the manner provided in this paragraph.

## **17. Third Party Beneficiaries**

Each Party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person or entity other than the Parties hereto.

## **18. Assignment**

Neither Party may assign or otherwise transfer any of its rights under this Agreement without the other Party's prior written consent, which shall not be unreasonably withheld; except that either Party may assign this Agreement to an affiliate or a successor in connection with a merger, acquisition, or sale of all or substantially all of its assets or a majority of its voting interests. All terms and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns.

## **19. Indemnification**

(a) Mutual Indemnification. Subject to any limitations set forth elsewhere in this Agreement, each Party (an "Indemnifying Party") hereby agrees to indemnify and hold harmless the other Party, its officers, directors, owners, agents and assigns (each, an "Indemnitee"), from and against any third party claim, loss, liability or expense that arises out of the Indemnifying Party's breach of this Agreement, willful misconduct or gross negligence, or violation of applicable law, rule or regulation.

(b) Intellectual Property Infringement. Company agrees to defend, at its sole expense, any third party claim or action brought against Client or its officers, directors, employees and agents ("Client Indemnitees"), claiming that a Licensed Product infringes any patent, copyright, trademark, service mark or other intellectual property right or misappropriates any trade secret, and to indemnify and hold harmless the Client Indemnitees from and against any and all damages and costs, including legal fees, that a court awards against any Client Indemnitee under any such claim or action. Notwithstanding the foregoing the Company will not have any obligation to indemnify Client Indemnitees for any infringement claim that arose out of (i) the use or combination of a Licensed Product with third party products or services, (ii) a modification of a Licensed Product not made by or on behalf of Company; (iii) the use of a Licensed Product in a manner inconsistent with the Documentation; or (iv) use of a Licensed Product by an unauthorized person.

(c) Indemnification Procedure. The Indemnified Party shall promptly notify the Indemnifying Party in writing of the claim, and shall reasonably cooperate with the Indemnifying Party. The Indemnified Party shall fully cooperate with the Indemnifying Party and grants sole authority to the Indemnifying Party to handle the defense of such claim and negotiate any related settlement provided, however that the Indemnified Party shall not be bound by any settlement unless it is agreed to in writing by the Indemnified Party.

(d) Indemnification Obligation. The Indemnifying Party shall pay the costs of such defense and settlement and any costs and damages awarded against the Indemnified Party.

## **20. Governing Law; Arbitration**

This interpretation and enforcement of this Agreement and any disputes with Company or any Affiliate arising out of or relating to this Agreement or a Licensed Product (“Disputes”) shall be governed by New Jersey law, excluding conflicts of law principles. Any Disputes shall be resolved by final and binding arbitration under the rules and auspices of the American Arbitration Association, to be held in New Jersey, with a written decision stating the legal reasoning therefor, issued by the arbitrator(s) at either Party’s request, and with arbitration fees and reasonable attorneys’ fees of both parties to be borne by the Party that ultimately loses. Either Party may obtain injunctive relief (preliminary or permanent) and orders to compel arbitration or enforce arbitration awards in any court of competent jurisdiction.

## **21. Entire Agreement**

This Agreement constitutes the entire agreement of the Parties hereto with regard to the subject matter hereof.

The Company, in its sole discretion, reserves its right to change, modify, update, add or remove any portions of this Agreement. The revised Agreement will be effective immediately after making it available to the Client. Most current version of the Agreement can be reviewed at [www.supplychainwizard.com/legal](http://www.supplychainwizard.com/legal). If the Client is not willing to accept any changes to the Agreement then the Client has the right to terminate this Agreement.

## **22. Applicable Laws**

Client and Company acknowledge that the export, import, and use of certain hardware, software, and technical data are regulated by the United States and other governments. Each Party each agrees to conduct its operations at all times in compliance with all applicable laws and regulations, including the U.S. Export Administration Act, and the regulations promulgated there under by the U.S. Department of Commerce, privacy laws, and any other applicable laws or regulations.

**23. Third Party Service Providers.** Company may engage third party subcontractors and suppliers to provide goods and services hereunder as it determines in its sole discretion. Company shall be responsible to Client for the performance of Company’s third party subcontractors and suppliers and for any breach by a Company’s third party subcontractor or supplier.

**24. Taxes.** All sales, use and consumption taxes, value added charges, and other governmental charges, including any penalties and interest, assessed or imposed by any jurisdiction in connection with the receipt of the Subscription Services and/or the use of a Licensed Product (“Taxes”), excluding income taxes due and payable by Company, shall be borne by Client. Client agrees to indemnify and hold Company harmless from and against any claims, losses, expenses and damages incurred by Company in connection with any Taxes for which Client is liable.

**26. Severability.** All provisions of this Agreement shall be considered as separate terms and conditions, and in the event any one shall be held illegal, invalid or unenforceable, all the other provisions hereof shall remain in full force and effect as if the illegal, invalid, or unenforceable provision were not a part hereof.

**SCHEDULE “A”  
TO THE SUBSCRIPTION LICENSE AGREEMENT  
BETWEEN  
SUPPLY CHAIN WIZARD, LLC  
AND  
CLIENT**

**ACCEPTABLE USE POLICY**

This Acceptable Use Policy is applicable to all users of Supply Chain Wizard, LLC’s Licensed Products. All references to “we,” “us,” “our” and “SCW” shall mean Supply Chain Wizard, LLC. The term “Affiliate” means any of our parent, subsidiary and affiliated companies, and their respective directors, officers, employees, owners, clients or agents.

We encourage you to read this Acceptable Use Policy.

Licensed Products include SCW’s Management Dashboard, Serialization Survey, Serialization Wizard, Regulations Database, KPI Dashboard, Supplier Portal, OEE Tracker, Scheduling Wizard and any other software, software products, databases or software platforms, owned or licensed by SCW.

By using a Licensed Product, you acknowledge that you have read and understood the terms and conditions of this Acceptable Use Policy and that you agree to be bound by all of its provisions.

**Representations**

You hereby represent to us as follows:

- The information you have provided SCW in connection with a Licensed Product is true and correct, and is consistent with the information you have provided to us on IRS Form W-9.
- The account information you have provided us for payment is for the account of the person or entity legally entitled to receive payment. If the recipient is an entity, such entity is not a nonprofit or tax-exempt organization, as defined by the IRS or any state taxing authority.
- You acknowledge and agree that all payments (including, but not limited to electronic fund transfers) made to you by us will be reported to the IRS if and when required to be reported under applicable IRS law, rules and regulations.
- You acknowledge and agree that you are responsible for all taxes, including federal, state, local, sales, use, and value-added taxes, due on all funds paid to you, and that SCW does not and will not withhold any portion of funds payable to you for the payment of any taxes. You agree to indemnify and hold SCW and its Affiliates harmless from and against any taxes, interest, penalties or assessments owed by you to any taxing authority based on amounts payable to you.
- We are not responsible for erroneous payments that are the result of incorrect information provided by you.

**Your Rights**

Your right to use a Licensed Product are conditioned on your compliance with this Acceptable Use Policy and the terms and conditions of this Agreement. No other rights, implied or otherwise, are granted to you.

## **Your Obligations**

### Protect Your Password

You should keep your password confidential and prevent anyone else from using your Licensed Product account. You are responsible for anything that happens through your account up until you (i) notify us of a breach of your password security (email us at [info@supplychainwizard.com](mailto:info@supplychainwizard.com)), (ii) close down your account, or (iii) prove that the breach of your account security was due to a fault of our systems.

### Not Engage in Any Prohibited Conduct

By using or accessing a Licensed Product, you represent, warrant and agree that you will not do, nor attempt to do, any of the following:

- Provide any false personal information in your registration information, or impersonate another person or business entity;
- Allow any other person or entity to use your identification to use Licensed Product;
- Upload, transmit or otherwise distribute “time bomb,” virus, drop dead device, malicious logic, worm, Trojan horse, trap or back door virus, spyware or other malware or other harmful computer code designed to interrupt, destroy or limit the use of any computer software or hardware, or collect, use or disseminate any message from or through any computer;
- Duplicate, license, sublicense, publish, broadcast, transmit, distribute, perform, display, sell, rebrand, otherwise transfer or commercially exploit a Licensed Product except as may be expressly permitted in this Acceptable Use Policy;
- Reverse engineer, decompile, disassemble, decipher or otherwise attempt to derive the source code for any underlying intellectual property used to provide a Licensed Product, or any part thereof;
- Take any action that interferes with, disrupts, disables, overburdens, or impairs, a Licensed Product or any computers, networks or other hardware connected to a Licensed Product;
- Attempt to or actually access a Licensed Product by any means other than through the interface provided by us;
- Attempt to or actually override any security component of a Licensed Product;
- Remove any copyright, trademark or other proprietary rights notices contained in or on a Licensed Product, including those of both SCW or any third party, or infringe or use any brand, logos and/or trademarks without authorization;
- Adapt, modify or create derivative works based on a Licensed Product or technology underlying a Licensed Product, in whole or part;
- Enter, upload or otherwise transmit any material is unlawful, harmful, obscene, defamatory, threatening, harassing, abusive, slanderous, hateful, or embarrassing to any other person or entity as determined by SCW in its sole discretion;
- Use any robot, spider, scraper or other automated means to access or use any data or other information stored or uploaded to a Licensed Product;
- Do anything that violates any local, state, national, or international laws; or
- Do anything that is fraudulent, malicious or could expose SCW to harm or liability.

## **Privacy Policy**

We maintain an information security program that includes appropriate administrative, technical and physical safeguards and other security measures that are designed to: (i) ensure the security and confidentiality of Personal Information; (ii) protect against any anticipated threats or hazards to the security, confidentiality and integrity of Personal Information; and (iii) protect against unauthorized access to or use of Personal Information that could result in the destruction, use, modification or disclosure of Personal Information.

### Non-Disclosure of Personal Information

Our Privacy Policy provides, in part, that we will not disclose your Personal Information to our “authorized employees, agents and subcontractors” other than disclosures made on a need to know basis. “Authorized employees, agents and subcontractors” mean our employees, agents or subcontractors who have a specific legitimate purpose as determined by a senior executive relating to our business or the business to have access to Personal Information. Except as set forth in this section, we will not disclose Personal Information to any other third party unless we have received prior written authorization from you to make a specific disclosure. You acknowledge, consent and agree that we may access, preserve, and disclose your Personal Information and any other information you provide to us in connection with the Licensed Product without your consent if required to do so by law or in a good faith belief that such access, preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce this Acceptable Use Policy; (c) respond to claims of a violation of the rights of third-parties; (d) respond to your requests for customer service; or (e) protect the rights, property, or personal safety, as applicable, of a Licensed Product, our Affiliates, you, other Users or any third party. If we disclose Personal Information we will immediately notify you in writing of such disclosure of Personal Information. We shall use our reasonable best efforts to limit the nature and scope of any necessary disclosure and will only disclose the minimum amount of Personal Information necessary in light of the attendant circumstances; provided, however, that if compelled by law or legal process to disclose your Personal Information, we will not seek a protective order on your behalf without your agreement to reimburse us for our expenses.

You can request our Privacy Policy at [info@supplychainwizard.com](mailto:info@supplychainwizard.com).

## **Our Rights and Obligations**

We reserve the right to update, improve, amend, discontinue or modify in any manner, the content, layout, tools, rules, protocol or any other aspect of a Licensed Product at any time in our sole discretion. We allow you to access a Licensed Product as it may exist and be available on any given day. We have no other obligations, except as expressly stated in the Agreement including this Acceptable Use Policy. We may modify, replace, refuse access to, suspend or discontinue a Licensed Product, partially or entirely. We reserve all rights not expressly granted herein, including, without limitation, title, ownership, intellectual property rights, and all other rights and interest in SCW, each Licensed Product, Documentation, Training, Maintenance and Support and all related items.

## **Disclaimer**

TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, WE DISCLAIM ANY AND ALL IMPLIED WARRANTIES AND REPRESENTATIONS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. IF YOU ARE DISSATISFIED OR HARMED BY A LICENSED PRODUCT OR ANYTHING RELATED TO A LICENSED PRODUCT, YOUR SOLE AND EXCLUSIVE REMEDY SHALL BE TO CEASE USING THE LICENSED PRODUCT.

SCW DOES NOT GUARANTEE THAT ANY OF ITS SERVICES PROVIDED BY OR THROUGH A LICENSED PRODUCT WILL FUNCTION WITHOUT ERROR OR INTERRUPTION. WE ANTICIPATE THAT THE OPERATION OF A LICENSED PRODUCT WILL BE INTERRUPTED FROM TIME TO TIME DUE TO MAINTENANCE, UPDATES, OR TECHNICAL IMPROVEMENTS. WE DISCLAIM ALL LIABILITY FOR DAMAGES CAUSED BY ANY SUCH INTERRUPTION OR

ERRORS IN FUNCTIONING. FURTHERMORE, WE DISCLAIM ALL LIABILITY FOR ANY MISFUNCTIONING, IMPOSSIBILITY OF ACCESS, OR POOR USE CONDITIONS OF A LICENSED PRODUCT DUE TO INAPPROPRIATE EQUIPMENT, DISTURBANCES LINKED TO THE INTERNET SERVICE PROVIDER, TO THE SATURATION OF THE INTERNET NETWORK, AND FOR ANY OTHER REASON UNRELATED TO SCW OR A LICENSED PRODUCT.

### **Termination**

We may terminate your access to a Licensed Product in accordance with the Agreement. The terms of this Acceptable Use Policy shall survive any termination, except the Section entitled “Your Rights” above.

### **General Terms**

#### Severability

If any provision of this Acceptable Use Policy is found to be invalid or unenforceable under mandatory laws of a particular jurisdiction, such provision shall be interpreted as to give maximum effect to its intended purpose and this shall not affect the validity or enforceability of (a) such provision under the laws of any other jurisdiction, or (b) any other provision of this Acceptable Use Policy.

#### No Injunctive Relief

Except as expressly set forth in the Agreement, in no event shall you seek or be entitled to rescission, injunctive or other equitable relief, or to enjoin or restrain SCW, our Affiliates, or the operation of the Licensed Product.

#### Our Failure to Act Not a Waiver

Any failure on our part to act with respect to a breach by you or others, or our failure to take any legal action to which we may be entitled, shall not be construed as a waiver of our right to act with respect to that breach or subsequent, similar or other breaches. Except as expressly and specifically contemplated by this Acceptable Use Policy, no representations, statements, consents, waivers or other acts or omissions by any employee or other person purporting to represent us or any of our Affiliates shall be deemed legally binding on any us or our Affiliates, unless documented in a writing signed by a duly appointed officer of SCW.