

## EXFO's Software Services Terms

These EXFO's Software Services Terms ("**Software Service Terms**") cover Customer's rights and obligations with respect to the use of an EXFO Software Service (as defined below).

Unless there is a separate agreement between you, the Customer, and EXFO concerning EXFO's Software Services, you accept these Software Service Terms by subscribing to a Software Service, through your use of a Software Service, or by continuing to use a Software Service after being notified of a change to these Software Service Terms.

All capitalized terms used but not defined herein shall have the meaning given to them in the Standard Terms and Conditions.

### 1. DEFINITIONS

Unless otherwise defined herein, capitalized expressions used in these Software Service Terms shall have the meanings respectively assigned to them herein or in the Standard Terms.

- 1.1 "**Customer Data**" means any content, materials, data and information that Authorized Users enter into the production system of a Software Service or that Customer derives from its use of and stores in the Software Service (e.g. Customer-specific reports). Customer Data and its derivatives will not include EXFO's Confidential Information.
- 1.2 "**EXFO Materials**" means any materials (including statistical reports) provided, developed or made available by EXFO (independently or with Customer's cooperation) in the course of performance under the Agreement, including in the delivery of any Professional Services to Customer. EXFO Materials do not include the Customer Data, Customer Confidential Information or the Software Service.
- 1.3 "**Free Software Services**" means Software Services or portions thereof that EXFO makes available to Customer free of charge. Free Software Services exclude Software Services offered as a Trial and Purchased Software Services.
- 1.4 "**Purchased Software Service**" means Software Services that Customer or Customer's Affiliate purchases under a Purchase Order or online purchasing portal, as distinguished from Free Software Services or those provided pursuant to a Trial of a Software Service.
- 1.5 "**Software Service**" means any distinct, subscription-based, hosted, supported and operated on-demand solution provided by EXFO under this Agreement. Software Service can be made available by EXFO to Customer as a Purchased Software Service, as Trial or as Free Software Services.
- 1.6 "**Subscription Term**" means the initial subscription term provided on the Purchase Order and, if applicable any renewal subscription term, of a Purchased Software Service.
- 1.7 "**Telemetry**" means any technology that allows remote measurement and reporting of information and data.
- 1.8 "**Trial**" means Purchased Software Service that EXFO makes available to Customer for the purpose of internal evaluation and testing only. Customer may not distribute or deploy such

Trial outside its testing environment. In no event shall Customer use the Trial for development, production or commercial purposes.

## **2. USAGE RIGHTS**

- 2.1 **GRANT OF RIGHTS.** Subject to the terms and conditions of this Agreement, EXFO grants to Customer a non-exclusive and non-transferable right to use the Software Service within the limits of the subscription level chosen by the Customer, in accordance with the Documentation and solely for Customer's and its Affiliates own business operations.
- 2.2 **AUTHORIZED USERS.** Customer may permit Authorized Users to use the Software Service. Access credentials for the Software Service may not be used by more than one (1) individual nor may be connected to a network in a manner that allows more than one (1) Authorized User to upload, access, run or generally use the Software Service concurrently, but may be transferred from one individual to another if the original user is no longer permitted to use the Software Service. Customer is responsible for breaches of the Agreement caused by Authorized Users.
- 2.3 **MOBILE ACCESS.** Authorized Users may access certain Software Services through mobile applications obtained from Third-Party app stores, such as Android or Apple app stores. The use of mobile applications may also be governed by the terms and conditions presented upon download/access to the mobile application.
- 2.4 **TRIAL OF PURCHASED SOFTWARE SERVICE.** If Customer registers for a Trial, EXFO will make the applicable Purchased Software Services available to Customer on a trial basis free of charge until the earlier of (a) the end of the Trial period for which Customer registered to use the applicable Purchased Software Services, or (b) the start date of any subscriptions ordered by Customer for such Purchased Software Services, or (c) termination by EXFO in its sole discretion. Additional Trial terms and conditions may appear on the Trial registration web page. Any such additional terms and conditions are incorporated into these Software Service Terms by reference and are legally binding. ANY CUSTOMER DATA ENTERED INTO THE SOFTWARE SERVICES BY OR FOR CUSTOMER, DURING CUSTOMER'S TRIAL WILL BE PERMANENTLY LOST .
- 2.5 **FREE SOFTWARE SERVICES.** EXFO may make Free Software Services available to Customer. Use of Free Software Services is subject to the terms and conditions of this Agreement. In the event of a conflict between this section and any other portion of this Agreement, this section shall control. Usage of some features or over usage limits requires Customer's purchase of the Purchased Software Services for access to additional resources or services. Customer agrees that EXFO, in its sole discretion, for any commercially reasonable reason, may terminate Customer's access to the Free Software Services or any part thereof. Customer agrees that any termination of Customer's access to the Free Software Services with prior written notice, and Customer agrees that EXFO will not be liable to Customer or any Third Party for such termination.

### **3. CUSTOMER RESPONSIBILITIES**

- 3.1 **CONDITIONS.** EXFO's grant of rights found in Section 2 is conditioned on Customer's payment of the usage rights and continuous compliance with all restrictions and obligations described herein and in the Documentation. If Customer violates any of these restrictions and obligations or any other terms of this Agreement or if continued use may result in material harm to the Software Service or its users, EXFO may suspend or reasonably limit use of the Software Service. EXFO will promptly notify Customer of the suspension or limitation.
- 3.2 **USAGE RESTRICTIONS.** Except as otherwise expressly permitted in these Software Service Terms or by writing between EXFO and the Customer, the Customer will not:
- (i) reproduce, modify, adapt or create derivative works of the Software Service;
  - (ii) use the Software Service for or in the interest of any Third Party;
  - (iii) sell, loan, transfer, export, license or provide access to the Software Service to a Third Party;
  - (iv) remove or modify any program markings or any notice of EXFO's or Third Party licensors' proprietary rights;
  - (v) incorporate the Software Service into a product or service Customer provides to a Third Party;
  - (vi) interfere with or otherwise circumvent mechanisms in the Software Service intended to limit use;
  - (vii) reverse engineer, disassemble, decompile, translate or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs to any Software Service;
  - (viii) remove or obscure any proprietary or other notices contained in any Software Service;
  - (ix) use the Software Services for competitive analysis or to build competitive products;
  - (x) conduct or authorize penetration tests or other types of security assessment of the Software Services, without EXFO's prior written consent;
  - (xi) publicly disseminate information regarding the performance of the Software Services;  
or
  - (xii) encourage or assist any Third Party to do any of the foregoing.
- 3.3 **CUSTOMER RESPONSIBILITIES.** Customer will (a) be responsible for Authorized Users' compliance with these Software Service Terms, Agreement, Documentation and applicable laws, (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Software Services, and the interoperation of any Third Party applications with which Customer uses the Software Services, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Software Services and Customer Data, and notify EXFO

promptly of any such unauthorized access or use, (d) use Software Services and Customer Data only in accordance with these Software Service Terms, Agreement, Documentation, and applicable laws, and (e) comply with terms of service of any Third Party applications with which Customer uses the Software Services. Any use of the Software Services in breach of the foregoing by Customer or Authorized Users that in EXFO's judgment threatens the security of EXFO's services, may result in EXFO's immediate suspension of the Software Services, however EXFO will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.

- 3.4 **THIRD PARTY SERVICES.** The Software Service may include integrations with web services made available by Third Parties that are accessed through the Software Service and subject to terms and conditions with those Third Parties. These Third Party web services are not part of the Software Service and the Agreement does not apply to them. NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY IN THIS AGREEMENT, EXFO EXPRESSLY DISCLAIMS ANY WARRANTY, RESPONSIBILITY OR LIABILITY WITH REGARD TO THE THIRD PARTY WEB SERVICES.

#### **4. EXFO RESPONSIBILITIES**

- 4.1 **ACCESS.** EXFO provides access to the Software Service as described in this Agreement. EXFO makes the Software Service available and is responsible for its operation and support up to the level purchased by Customer, as the case may be.
- 4.2 **SECURITY.** EXFO will maintain appropriate administrative, physical, and technical safeguards for protection of Customer Data. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access, modification, or suppression of Customer Data, other than by Customer or Authorized Users.
- 4.3 **SUPPORT.** EXFO provides applicable EXFO standard support for the Software Services to Customer at no additional charge, or upgraded support if purchased by the Customer.
- 4.4 **MODIFICATIONS.** As the Software Service evolves, EXFO may improve or modify the Software Service (including support and maintenance services). This includes the option to remove functionality from the Software Service where EXFO either provides a functional equivalent or where this does not materially reduce key functionality of the Software Service. Functionality beyond the initial scope of the Software Service may be subject to additional terms such as usage limitations and Customer's use of such additional functionality shall be subject to those terms. Where in justified cases, EXFO removes functionality from the Software Service without providing a functional equivalent, EXFO shall provide Customer 3 months' advance notice.

#### **5. DATA**

- 5.1 **OWNERSHIP OF CUSTOMER DATA.** Customer is responsible for the Customer Data and entering it into the Software Service. Subject to clause 5.2, Customer retains all rights in and related to the Customer Data.
- 5.2 **LICENSING CUSTOMER DATA.** Customer grants to EXFO and its Affiliates a worldwide, perpetual and non-exclusive right to:

- (i) host, reproduce, process and use the Customer Data as required to operate, provide, improve and support the Software Service and as set out in the Agreement;
  - (ii) modify, create, exploit, distribute, communicate and sell derivative works based on anonymized Customer Data;
  - (iii) sublicense these rights to subcontractors who have signed agreements with EXFO that are consistent with these Software Service Terms.
- 5.3 PERSONAL DATA. Customer will collect and maintain all Personal Data contained in the Customer Data in compliance with applicable data privacy and protection laws. EXFO Telemetry does not include Personal Data.
- 5.4 ACCESS TO CUSTOMER DATA.
- (i) During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical limitations, in which case EXFO and Customer will find a reasonable method to allow Customer access to Customer Data.
  - (ii) Upon request by Customer or at the end of the Agreement, EXFO will delete the Customer Data remaining on servers hosting the Software Service unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.
  - (iii) Customer is solely responsible for exporting Customer Data from the Free Software Services or trial of Purchased Software Services prior to termination of Customer's access to the Free Software Services or trial of Purchased Software Services for any reason, provided that if EXFO terminates Customer's account, except as required by law EXFO will provide Customer a reasonable opportunity to retrieve its Customer Data.

## **6. PAYMENT FOR PURCHASED SOFTWARE SERVICE**

- 6.1 FEES. Except as otherwise specified herein or by EXFO, (i) fees are based on Purchased Software Services subscriptions purchased or actual usage, as the case may be, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant Subscription Term.
- 6.2 RENEWAL. Except as expressly provided in the applicable Purchase Order, renewal of promotional or one-time priced subscriptions will be at EXFO's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume or subscription length for any Software Services has decreased from the prior Subscription Term will result in re-pricing at renewal without regard to the prior Subscription Term's per-unit pricing.

## **7. TERM AND TERMINATION**

- 7.1 TERM. The term of this Agreement shall commence on the earlier of: (i) availability of the Software Service or; (ii) email notification from EXFO that the Software Service is available. The term of the Purchased Software Service shall continue for the Subscription Period unless otherwise specified in writing. The term of the Free Software Services shall continue indefinitely unless otherwise specified by EXFO in writing.

- 7.2 TERMINATION. A party may terminate the Agreement:
- (i) for cause upon 30 calendar days' prior written notice of the other party's material breach of any provision of the Agreement (including Customer's failure to pay any money due hereunder within thirty (30) days of the payment due date) unless the breaching party has cured the breach during such thirty (30) day period;
  - (ii) if a modification materially degrades the overall functionality of the affected Software Service, Customer may terminate its subscription to the affected Software Service by providing written notice to EXFO within thirty (30) calendar days of EXFO's applicable notice. If EXFO does not receive timely notice, Customer is deemed to have accepted the modification;
  - (iii) if EXFO fails to correct the deficient Software Service, Customer may terminate its subscription for the affected Software Service. Any termination must occur within three (3) months of EXFO's failure to correct the deficient Software Service;
  - (iv) if the Software Service does not materially conform to all representations and descriptions of functionality and service made available to Customer in writing;
  - (v) if the Purchased Software Service does not materially respect the Availability Level established by EXFO, if any, Customer may terminate its subscriptions for the affected Purchased Software Service by providing EXFO with written notice within thirty (30) calendar days after the failure, unless EXFO has cured the breach during such thirty (30) day period;
  - (vi) as permitted under Sections 8.1.4, or 13.4 (with termination effective thirty (30) calendar days after receipt of notice in each of these cases); or
  - (vii) immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise materially breaches Sections 11 or 13.6.
- 7.3 REFUND AND PAYMENTS. In case of termination by Customer for EXFO's fault, Customer will be entitled to:
- (i) a pro-rata refund in the amount of the unused portion of prepaid fees for the terminated subscription calculated as of the effective date of termination (unless such refund is prohibited by Export Laws); and
  - (ii) a release from the obligation to pay fees due for periods after the effective date of termination.
- 7.4 EFFECT OF EXPIRATION OR TERMINATION. Upon the effective date of expiration or termination of the Agreement:
- (i) Customer's right to use the Software Service and all EXFO Confidential Information will end;
  - (ii) Confidential Information of the disclosing party will be retained, returned, or destroyed as required by the Agreement or applicable law; and
  - (iii) termination or expiration of the Agreement does not affect other agreements between the Parties.

7.5 SURVIVAL. Sections 1, 5, 7, 8, 9, 10, 11, 12 and 13 will survive the expiration or termination of the Agreement.

## **8. WARRANTIES**

8.1 COMPLIANCE. Each Party warrants its current and continuing compliance with all laws and regulations applicable to it and represents that it has validly entered into this Agreement and has the legal power to do so.

8.2 EXFO WARRANTY. EXFO warrants that it will provide the Purchased Software Service materially in conformance with the Documentation and with the degree of skill and care reasonably expected from a skilled and experienced global supplier of services substantially similar to the nature and complexity of the Purchased Software Service.

8.3 REMEDY. If a breach of the warranty set forth in this Section 8.2 occurs, Customer's sole and exclusive remedy is that EXFO will provide corrections to the non-conformances which are reproducible by EXFO. If EXFO fails to correct the deficient Purchased Software Service, Customer may, after providing EXFO with thirty (30) calendar days written notice to repair the deficiency, terminate its subscription for the affected Purchased Software Service in accordance with Section 7.2(v). Any termination must occur within the (3) months of EXFO's failure to correct the deficient Purchased Software Service.

8.4 DISCLAIMER. EXFO makes no representations and extends no warranties of any kind (other than those set forth in Section 8.2) with respect to (i) the use, sufficiency or accuracy of the Software Service; (ii) the sufficiency or accuracy of the reports or tests performed utilizing the Software Service; (iii) any Third Party web services or websites; or (iv) the EXFO server or that the Software Service or the EXFO server performance will perform error-free and uninterrupted. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE (EVEN IF EXFO KNOWS OR HAS BEEN MADE AWARE OF SUCH PURPOSE), AND THE WARRANTY AGAINST INFRINGEMENT OF PATENTS OR OTHER INTELLECTUAL PROPERTY RIGHTS. THE SOFTWARE SERVICE IS NOT FAULT-TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS THAT REQUIRE FAILS-SAFE PERFORMANCE SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATIONS SYSTEMS, AIR TRAFFIC CONTROL, EMERGENCY RESPONSE, TERRORISM PREVENTION OR RESPONSE, LIFE SUPPORT OR WEAPONS SYSTEMS ("HIGH RISK ACTIVITIES") THE FAILURE OF WHICH COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. EXFO EXPRESSLY DISCLAIMS ANY WARRANTY OF FITNESS FOR HIGH RISKS ACTIVITIES.

8.5 RESERVED RIGHTS. EXFO reserves the right, in any way and without notice, to revise, not to revise, update or modify the Software Service, or the information upon which the Software Service is based. Except as otherwise expressly set forth in this Agreement, EXFO assumes no obligation to (i) protect the Software Service against obsolescence; (ii) provide any

improvements to the Software Service; (iii) maintain the Software Service; or (iv) provide other services with respect to the Software Service.

## **9. INTELLECTUAL PROPERTY RIGHTS**

9.1 OWNERSHIP. Title in the Software Service and Documentation remains with EXFO. Except for any rights expressly granted to Customer under the Agreement, EXFO and its Affiliates or licensors own all Intellectual Property rights in and derivative works of: (i) the Software Service; (ii) EXFO Materials; (iii) Documentation; and (iv) any Professional Services, design contributions, related knowledge or processes, whether or not developed for Customer.

10. **PRIVACY NOTICES.** Customer and Authorized Users consent to EXFO's collection, use and disclosure of information associated with the Software Service solely in accordance with the relevant EXFO Privacy Notice, as it may be updated by EXFO from time to time.

## **11. LIMITATION OF LIABILITY**

11.1 LIABILITY CAP. EXFO'S AGGREGATE LIABILITY UNDER THIS AGREEMENT, IF ANY, IS LIMITED TO I) THE ANNUAL FEES FOR SUBSCRIPTION OR (II) THE TOTAL FEES ACTUALLY RECEIVED BY EXFO FOR THE SOFTWARE SERVICE. IF ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY, DISCLAIMERS AND EXCLUSIONS OF WARRANTY AND DAMAGES SET FORTH IN THIS AGREEMENT SHALL REMAIN IN EFFECT.

11.2 INDIRECT DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, EXFO IS NOT LIABLE FOR ANY INDIRECT DAMAGES, LOST PROFITS, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THIS AGREEMENT OR THE FURNISHING OF THE SOFTWARE SERVICE OR THIRD PARTY SOFTWARE SERVICE, WEBSITES OR LINKS (INCLUDING HYPERLINKS) THERETO, INCLUDING THE USE OR INABILITY TO USE THE SOFTWARE SERVICE OR THE THIRD PARTY SOFTWARE SERVICE, WEBSITES OR LINKS (INCLUDING HYPERLINKS) THERETO, EVEN IF EXFO KNOWS OR HAS BEEN MADE AWARE OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. EXFO IS NOT RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: CUSTOMER OR AUTHORIZED USERS' CUSTOMIZATION OR MODIFICATION TO THE SOFTWARE SERVICE AS EXPRESSLY PERMITTED HEREIN, CUSTOMER OR AUTHORIZED USERS' INABILITY TO USE THE SOFTWARE SERVICE AS A RESULT OF ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE EXFO SERVER FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS.

11.3 TRIAL. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, DURING THE TRIAL THE SOFTWARE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND EXFO SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE SOFTWARE SERVICES FOR THE TRIAL PERIOD UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE EXFO'S LIABILITY WITH RESPECT TO THE SOFTWARE SERVICES PROVIDED DURING THE TRIAL SHALL NOT EXCEED \$1,000.00. WITHOUT LIMITING THE FOREGOING,



EXFO AND ITS AFFILIATES DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT: (A) CUSTOMER'S USE OF THE SOFTWARE SERVICES DURING THE TRIAL PERIOD WILL MEET CUSTOMER'S REQUIREMENTS, (B) CUSTOMER'S USE OF THE SOFTWARE SERVICES DURING THE TRIAL PERIOD WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) USAGE DATA PROVIDED DURING THE TRIAL PERIOD WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE "LIMITATION OF LIABILITY" SECTION HEREIN, CUSTOMER SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO EXFO AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF CUSTOMER'S USE OF THE SOFTWARE SERVICES DURING THE TRIAL PERIOD, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER'S INDEMNIFICATION OBLIGATIONS HEREUNDER.

11.4 FREE SOFTWARE SERVICES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE FREE SOFTWARE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND EXFO SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE FREE SOFTWARE SERVICES UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE EXFO'S LIABILITY WITH RESPECT TO THE FREE SOFTWARE SERVICES SHALL NOT EXCEED \$1,000.00. WITHOUT LIMITING THE FOREGOING, EXFO AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT: (A) CUSTOMER'S USE OF THE FREE SOFTWARE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, (B) CUSTOMER'S USE OF THE FREE SOFTWARE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) USAGE DATA PROVIDED THROUGH THE FREE SOFTWARE SERVICES WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE "LIMITATION OF LIABILITY" SECTION HEREIN, CUSTOMER SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO EXFO AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF CUSTOMER'S USE OF THE FREE SOFTWARE SERVICES, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER'S INDEMNIFICATION OBLIGATIONS HEREUNDER.

## **12. GENERAL**

12.1 Neither the execution of this Agreement or anything in it, or the Software Service, shall be construed as providing nor implying any arrangement or understanding that EXFO will make any purchase, lease, examination or test of, or give any approval with respect to, any product or service.

12.2 Customer may not assign, in whole or in part, this Agreement, or any license, rights or obligations granted, to any Third Party, including without limitation, any subsidiary, affiliate or entity owned or controlled by Customer, or pursuant to any merger, consolidation or other Customer reorganization, without the prior written consent of EXFO.

12.3 EXFO and Customer agree to comply with all applicable laws. Specifically, Customer will comply with all applicable export and import control laws and regulations of the United States and any foreign jurisdiction in which the Software Service is used and, in particular,

Customer will not export or re-export the Software Service without all required United States and foreign government licenses. Customer acknowledges and understands that the Software Service contains encryption technology that may require an export license from the U.S. State Department when exported or re-exported to government end-Authorized Users, Internet or telecommunications service providers providing services specific to government end-Authorized Users. Export of the Software Service to certain countries is prohibited. Customer will defend, indemnify, and hold harmless EXFO from and against any violation of such laws or regulations by Customer or any of its agents, officers, directors, or employees.

13. **INCORPORATED TERMS.** Unless otherwise agreed by the Parties in writing, the terms and conditions of the Standard Terms are incorporated herein by reference.