Sphinx OEM Agreement

This OEM Agreement is by and between Sphinx Technologies Inc. ("Licensor"), a corporation registered in the state of Washington, with a principal place of business at 19512 Evanstone Ave N, Shoreline, WA 98133, and Customer (as identified on the Order Form). This Sphinx OEM Agreement and the Order Form collectively make up the entire agreement of the parties concerning Product (the "Agreement.") This Agreement is effective as of the Effective Date of the Order Form

1. Definitions.

"CPU" means a single central processing unit within a computer.

"Customer Application" means the software, hardware, system or other Customer-owned application described on the Order Form, if any.

"Deployed" means one copy of Product sold, shipped, distributed, or otherwise deployed on one Server as part of an Integrated Product.

"Distributor" means a third party authorized to distribute an Integrated Product as permitted in this Agreement.

"Download Website" means the Licensor website located at http://www.sphinxsearch.com/, or an alternative site as Licensor may notify to Customer.

"Effective Date" means the date on which Sphinx transmits written, faxed, or emailed acceptance of Customer's Product order placed pursuant to the Order Form.

"End User" means an end user of an Integrated Product.

"EULA" means a written End User License Agreement between Customer and End Users (or a Distributor and End Users) which governs each End User's right to use an Integrated Product. Each EULA must be (a) accepted by each End User; and (b) consistent with the terms and conditions of this Agreement and include terms substantially similar to those set forth in Attachment A of this Agreement.

"GPL License" means version 2 of the GNU General Public License published by the Free Software Foundation.

"Integrated Product" means the product resulting from integrating a copy of the Product with a Customer Application.

"License Fee" means the nonrefundable fee(s) payable to Sphinx for each Deployed copy of Product (except as expressly set forth in Section 4.1). The specific License Fees are set forth on the Order Form.

"Maintenance Release" means a new generally-available release of the Product during the Term that typically includes fixes and perhaps minor new feature or enhancements. Maintenance Release version numbers assigned by Sphinx are designated by changes to the right of the leftmost decimal point.

“Major Release” means a new generally-available release of the Product during the Term that typically includes significant new features and/or enhancements. Major Release version numbers assigned by Sphinx are designated by changes to the left of the leftmost decimal point.

“Order Form” means the applicable Sphinx Order Form document signed by the parties or otherwise accepted by Sphinx.

“Product” means a complete and unchanged copy of the object code of the Sphinx search engine software product, limited to the version(s) listed on the Order Form and limited to the code obtained by Customer from the Download Website.

“Server” means a single machine which processes data using one or more CPUs. In the event such a machine contains Server Blades, each Server Blade is a separate Server.

“Server Blade” means a complete computing system on a single circuit board. A Server Blade will include one or more CPUs, memory, disk storage, operating system and network Connections. A Server Blade is designed to be hot-pluggable into a space-saving rack; each rack may contain many Server Blades.

“Term” means the entire period of the Agreement as set forth on the Order Form, subject to Section 5.

Other capitalized terms may be defined herein in the context in which they appear, and will have the indicated meaning throughout this Agreement (including any attachments, exhibits, addenda and the like, unless otherwise set forth therein).

2. License Grant.

2.1. License Grant. In consideration of the fees set forth in this Agreement and subject to the terms and conditions of this Agreement, Licensor grants to Customer a limited, worldwide (subject to applicable export restrictions), nonexclusive, and non-transferable license during the Term to:

(a) download the Product from the Download Website;

(b) create Integrated Products by integrating the Product with the Customer Application(s), provided that supporting software (see Product definition above) may only be used along with a copy of the search engine software portion of Product;

(c) use the Product source code, only as may be made available at the Download Website at Licensor’s sole discretion, solely to facilitate the integration in 2.1(b) above provided that Customer does not modify the source code other than any changes that may automatically occur during normal compilation of source code into object code;

(d) reproduce and directly, and indirectly through Distributors, distribute and sublicense (pursuant to a EULA) copies of Product as included in the Integrated Product, limited to the then-current quantity of Product for which License Fees have been paid; and

(e) support distributed copies of the Integrated Products.

2.2. Forbidden Uses. Customer shall not (and shall not permit third parties to):

(a) use (except as necessary to perform under Section 2.1(b)) or distribute the Product in any way except as part of an Integrated Product;

(b) use the Product or Integrated Products to operate in or as a time-sharing, outsourcing, service bureau, hosting, application service provider or managed service provider environment;

(c) use or make available the Product or Integrated Products under a lease or rental;

(d) use or make available the Product or Integrated Products as a general search engine or pursuant to a public or open source license;

(e) modify the Product (or without limitation the source code of the Product) except as expressly permitted in Section 2.1(c); or

(f) change or delete any proprietary notices which appear in the Product.

2.3. Distributors. Customer may appoint Distributors for the purpose of reproducing, distributing, and sublicensing Integrated Products as permitted by Section 2.1(d), provided that Customer shall: (a) require each Distributor to agree in writing to comply with an agreement that is (i) consistent with this Agreement with respect to the licensing and deployment of the Product or Integrated Products; and (ii) no less protective of the Product as are Customer's own agreements in which it grants licenses and/or distribution rights for the Customer Application; (b) enforce its agreements with Distributors and inform Licensor of any known breach thereof as it relates to the Integrated Products; and (c) defend, hold harmless and indemnify Licensor for any damages and expenses suffered by Licensor as a result of the acts or omissions of its Distributors that would constitute a breach of this Agreement if such acts or omissions were by Customer.

3. Delivery. Customer shall obtain the Product by download from the Download Website. Licensor will provide Customer with a password to an appropriate portion of the Download Website, if deemed necessary.

4. Fees and Payments; Taxes; Audits.

4.1. License Fees. Customer shall pay to Sphinx a License Fee for each Product copy Deployed in an Integrated Product. The specific license fees are set forth on the Order Form. The license fees are nonrefundable.

4.2. Payments. All purchases under this Agreement are due upon the date(s) set forth in this Agreement and are payable within thirty (30) days from the date of Licensor's invoice. Payment shall be made without any right of set-off or deduction. All payments made pursuant to this Agreement shall be made in the quoted currency and are nonrefundable. Any amount not paid when required to be paid under this Agreement shall accrue interest at the rate of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum) on the remaining amount required to be paid, or at the highest amount permitted by applicable law (if lower), such interest to accrue on a daily basis from the payable date until the remaining amount is paid.

4.3. Taxes. All fees are exclusive of applicable local, state, federal and international sales, value added, withholding and other taxes and duties of any kind. Customer shall be responsible for payment of taxes and duties of any kind payable with respect to the licensing of Product or the purchase of Support arising out of or in connection with this Agreement, other than taxes levied or imposed based upon Licensor 's net income. Without limitation, Customer will be responsible

for all applicable sales taxes unless it first claims a sales tax exemption by providing Licensor with an exemption certificate acceptable to the applicable authorities.

4.5. Audits. During the term of this Agreement and for five (5) years following termination, Licensor shall have the right (at Licensor's own expense) to conduct periodic reviews of Customer's records relating to its reproduction, use, and distribution of the Product for the purpose of verifying Customer's compliance with the terms of this Agreement. Licensor shall exercise this right upon no fewer than thirty (30) days' prior notice. Customer will provide Licensor with reasonable accommodation for the review, including reasonable use of available office equipment and access to all relevant Customer personnel and records during normal business hours. Licensor shall deliver to Customer a copy of the results of any such review. If an underpayment is identified, Customer shall immediately pay the full amount of any underpayment. Customer shall also pay Licensor the cost of any review, including (without limitation) travel expenses and the costs of any attorneys and consultants, if the review determines that Customer has underpaid fees for the period audited in excess of five percent (5%) of the proper amount owed to Licensor.

5. Term and Termination.

5.1. Term. This Agreement shall commence on the Effective Date and continue for the Term unless terminated earlier as set forth below.

5.2. Termination. Licensor may terminate this Agreement upon written notice to Customer in the event of Customer's (a) unauthorized use of Product, (b) failure to make timely payment to Licensor, or (c) subject to its obligations under Section 9 of this Agreement, should the Product become, or in Licensor's reasonable opinion is likely to become, the subject of a claim of intellectual property infringement or trade secret misappropriation. Otherwise, either party may terminate this Agreement immediately in the event the other party commits a material breach of this Agreement and fails to remedy that breach within thirty (30) days of receipt of notice of material breach.

5.3. Expiration. Customer shall immediately discontinue distribution of Integrated Products upon expiration or termination of this Agreement.

5.4. Survival. Expiration or termination of this Agreement for any reason will not terminate the rights of existing End Users on whose behalf Customer has paid applicable License Fees to Licensor and who are subject to a EULA. Sections 1, 4, 5, 6, 8, 9, 10, and 11 of this Agreement shall survive the termination of this Agreement for any reason.

6. Proprietary Rights. The intellectual property and proprietary rights of whatever nature in the Product and related documentation, including derivative works, are and shall remain the exclusive property of Licensor. Except as expressly set forth in this Agreement, nothing in this Agreement should be construed as transferring any aspects of such rights to Customer or any third party. Licensor reserves any and all rights not expressly granted in this Agreement. Customer shall include in the Integrated Products a notice that the Integrated Products include software whose copyright is owned by, or licensed from, Licensor.

7. Support. Support shall be subject to the terms of this Agreement and the terms of Licensor's then-current (a) support policies, (b) designation of supported platforms, and (c) description of Support features. Any Support will solely be third-level support provided directly to Customer for the Product as included in the Integrated Product. Customer shall be responsible for

providing first- and second-level support (e.g. accepting and responding to contacts and requests made by End Users). Licensor shall not be obligated to support any Customer Application.

8. Disclaimer of Warranties. THE PRODUCT AND SUPPORT ARE PROVIDED TO CUSTOMER "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, WARRANTIES CONCERNING THE INSTALLATION, USE OR PERFORMANCE OF THE PRODUCT OR SUPPORT. SPHINX TECHNOLOGIES INC. DISCLAIMS ANY AND ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY FITNESS FOR A PARTICULAR PURPOSE AND/OR NON-INFRINGEMENT. SPHINX TECHNOLOGIES INC. DOES NOT WARRANT THAT THE PRODUCT OR SUPPORT WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED. Without limiting the generality of the foregoing disclaimer, Product is not specifically designed, manufactured or intended for use in the planning, construction, maintenance, control, or direct operation of nuclear facilities; aircraft navigation, control or communication systems; weapons systems; or direct life support systems.

9. Indemnification and Infringement.

9.1. If Licensor receives information about an infringement claim related to Product, Licensor may, at its expense but without obligation to do so, either: (a) procure for Customer the right to continue to use Product; (b) replace Product with a functional equivalent; (c) modify Product so that it becomes non-infringing (including disabling the challenged functionality); or (d) repurchase the affected licenses less depreciation at the rate of twenty five percent (25%) per year, or pro rata for part of the year, from the date of payment to the date of removal of the Product, and terminate the Agreement. If Licensor selects option (b), (c) or (d), Customer shall immediately refrain from use of the allegedly infringing Product.

9.2. If as a result of a Claim, a court of competent jurisdiction issues a final injunction (which has not been appealed) against Customer’s use of any part of Product, Licensor will, at its sole option, perform one of the remedy options listed in Section 9.1. If Licensor selects option (b), (c) or (d), Customer shall immediately refrain from use of the allegedly infringing Product.

9.3. Licensor shall have no liability for any Claim arising out of or relating to (a) Customer’s use of the Product after Licensor notifies Customer to discontinue use due to such a Claim; (b) the combination of the Product with a non-Licensor application, product, data or business process; (c) damages attributable to the value of a non-Licensor application, product, data or business process; (d) modifications to Product other than modifications made by Licensor; (e) changes made by Licensor to Product in accordance with any designs, specifications or instructions provided to Licensor by or on behalf of Customer; (f) continued use or distribution of any Product for which Licensor has provided Customer with modifications or substitute Product if use of such modifications or substitute Product would have prevented the Claim; or (g) use of the Product in a manner prohibited under the Agreement. Customer shall reimburse Licensor for any costs or damages that result from any of the foregoing actions.

9.4. Customer hereby agrees to indemnify Licensor against any damages finally awarded against Licensor by a court of competent jurisdiction in connection with: (a) an allegation that one or more of the Customer Applications infringes any copyright owned by the third party; (b) the use of the Product in a manner prohibited under this Agreement, or in a manner for which the Product was not designed; (c) integration or use of the Product with one or more Customer Applications, where use of the Product alone would not infringe; (d) changes made by Customer

to the Product, where use of unmodified Product would not infringe; (e) changes made to the Product by Licensor in compliance with any designs, specifications or instructions provided by or on behalf of Customer; or (f) bodily injury, property damage or any other damage or injury due to the use or inability to use an Integrated Product; provided that: (x) Customer is given prompt written notice of the claim; and (y) if Customer has elected to pay for defense of the claim and so notified Licensor in writing: (i) Customer is given immediate and complete control over the defense and/or settlement of the claim; and (ii) Licensor provides cooperation and assistance in the defense of such claim and does not prejudice in any manner Customer's conduct of such claim.

9.5. The foregoing provisions of Section 9 state the parties' entire obligations and liability with respect to the infringement or violation of any third-party property right, and shall be subject to the limitations in Section 10 of this Agreement.

10. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY OR THEIR SUPPLIERS HAVE ANY LIABILITY FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) ANY LOST PROFIT OR LOST SAVINGS (WHETHER RESULTING FROM IMPAIRED OR LOST DATA, SOFTWARE OR COMPUTER FAILURE, SUPPORT FAILURE, OR ANY OTHER CAUSE), EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR CUSTOMER'S AND ANY DISTRIBUTOR'S INFRINGEMENT OR MISAPPROPRIATION OF LICENSOR'S INTELLECTUAL PROPERTY RIGHTS, IN ANY EVENT, AND NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, THE AGGREGATE LIABILITY OF A PARTY FOR ANY REASON AND UPON ANY CAUSES OF ACTION UNDER THIS AGREEMENT SHALL BE LIMITED TO (i) FOR LICENSOR'S LIABILITY, THE AMOUNT PAID TO LICENSOR UNDER THIS AGREEMENT; AND (ii) FOR CUSTOMER'S LIABILITY, THE AMOUNT PAID OR OWING TO LICENSOR UNDER THIS AGREEMENT.

11. Miscellaneous.

11.1. Severability. If any part of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision shall then be enforceable and enforced.

11.2. Assignment. Customer may not assign this Agreement or its rights or obligations under this Agreement to any person or party, whether by operation of law or otherwise, without Licensor's prior consent (at Licensor's sole discretion). Any attempt by Customer to assign this Agreement without Licensor's prior consent, where such consent is required, shall be null and void. Subject to the foregoing conditions, this Agreement shall be binding upon and inure to the benefit of each party and its respective successors and assigns. There are no intended third party beneficiaries of this Agreement.

11.3. No Waiver; Limitations. Failure by either party to exercise any right or remedy under this Agreement does not signify acceptance of the event giving rise to such right or remedy. To the extent permitted by applicable law, no action, regardless of form, arising out of this Agreement may be brought by Customer more than one (1) year after the cause of action has accrued.

11.4. Governing Law.

11.4.1. This Agreement shall be governed in all respects by the laws of the United States of America and by the laws of the State of Washington, as such laws are applied to agreements entered into and to be performed entirely within Washington between Washington residents. Each party consents to the personal jurisdiction of the state and federal courts located in Washington for any lawsuit filed there by either party against the other arising from or related to this Agreement.

11.4.2. Notwithstanding Section 11.4.1, either party may enforce any judgment rendered by such court in any court of competent jurisdiction, and Licensor may seek injunctive or other equitable relief in any jurisdiction in order to protect its intellectual property rights.

11.4.3. Any action brought under this Agreement shall be conducted in the English language.

11.4.4. Customer shall comply at its own expense with all relevant and applicable laws related to the use and distribution of Product as permitted in this Agreement.

11.5. Notices. Unless otherwise agreed to by the parties, any notice, authorization, or consent required or permitted to be given or delivered under this Agreement shall be in writing and addressed and delivered to the other party's address. Notice shall be deemed to have been received by a party, and shall be effective: (a) on the day given, if sent by confirmed facsimile transmission; (b) on the fifth business day after which such notice is deposited prepaid in the local postal system; or (c) on the day received, if sent with a reputable, expedited overnight or international courier or hand delivered. Either party may change its address for notice purposes upon issuance of notice thereof in accordance with this Section.

11.6. Attorneys Fees. Subject to Section 10, for the purposes of any action between the parties relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

11.7. Independent Contractors. The parties enter into this Agreement as, and shall remain, independent contractors with respect to one another. Nothing in this Agreement shall create a partnership, joint venture, agency, or employment relationship between the parties.

11.8. Confidentiality. Neither party shall disclose the financial or other terms of this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Licensor shall have the right to identify Customer as a commercial licensee of Licensor's software, including by making reference thereto on the Licensor's website.

11.9. GPL. Customer understands that the Product is generally available pursuant to the GPL License. This Agreement replaces the GPL License solely with respect to Customer's uses, distributions, and sublicensing of the Product as expressly permitted in this Agreement. This Agreement does not replace or otherwise amend any Customer rights or obligations pursuant to the GPL License with respect to any uses, distributions, or sublicensing of the Product not expressly addressed by this Agreement.

11.10. Entire Agreement. This Agreement comprises the entire agreement between the parties regarding the subject matter hereof and supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement. Except as otherwise set forth herein, this Agreement may be amended or modified only in a writing executed by both parties. Licensor's acceptance of any document submitted by Customer to Licensor shall not be construed as an acceptance of provisions which are in any way in conflict or inconsistent with, or in addition to, this

Agreement, unless such terms are separately and specifically accepted in writing by an authorized representative of Licensor. This Agreement may be incorporated in other documents or executed via facsimile or via emailed PDF-format document (or other mutually agreeable document format), and a facsimile or emailed copy of either party's signature shall be deemed and be enforceable as an original thereof. This Agreement may be executed in counterparts, both of which taken together shall constitute one single Agreement between the parties.

Sphinx OEM Agreement

Attachment A
Minimum End User License Agreement Terms

EULAs must, at a minimum:

1. Restrict the End User's license to a limited, non-exclusive, non-transferable license to run one copy of the object code version of the Product on one machine or instrument solely as integrated with, and for running and extracting data from a Customer Application.

2. Limit the End User's rights to internal business purposes. If the Integrated Product is licensed for concurrent or network use, the EULA must prohibit End User from allowing more than the maximum number of authorized users to access and use the Product concurrently.

3. Permit the End User to make copies of the Product only for backup and archival purposes.

4. Prohibit the End User from: (a) copying the Product onto any public or distributed network; (b) using the Product to operate in or as a time-sharing, outsourcing, service bureau, application service provider or managed service provider environment; (c) using the Product as a general search engine, as a stand alone application or with applications other than Customer Applications under this license; (d) changing any proprietary rights notices which appear in the Product; or (e) modifying the Product.

5. Indicate that all third party licensors and suppliers retain all right, title and interest in third party software and all copies thereof, including all copyright and other intellectual property rights.

6. Permit the End User to transfer the license granted by the EULA only if (a) End User complies with any transfer terms imposed by Customer and delivers all copies of the Integrated Product to the transferee along with the EULA, (b) transferee accepts the terms and conditions of the EULA as a condition to any transfer, and (c) End User's license to use the Integrated Product terminates upon transfer.

7. Require the End User to comply with all applicable export laws and regulations.

8. Require End User to immediately destroy all copies of the Product upon termination of the EULA.