

**BEGRAPH SUBSCRIPTION AGREEMENT**  
**NEXT LIMIT ANALYTICS S.L.**

BY CHECKING THE ACCEPTANCE BOX OR ACCESSING OR USING ALL OR ANY PORTION OF BEGRAPH, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AS PUBLISHED ON BEGRAPH'S WEBSITE AT [WWW.BEGRAPH.NET](http://WWW.BEGRAPH.NET) (AS MAY BE RELOCATED BY NEXT LIMIT ANALYTICS S.L. FROM TIME TO TIME). YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY YOU AND LEGALLY BINDING BETWEEN YOU AND NEXT LIMIT ANALYTICS S.L. OR THE APPLICABLE NEXT LIMIT ANALYTICS S.L. AFFILIATE ("NEXT LIMIT"). IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, DO NOT ACCESS OR USE BEGRAPH. IF YOU WISH TO USE BEGRAPH AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATION, PARTNERSHIP OR SIMILAR ENTITY, THEN YOU MUST BE AUTHORIZED TO SIGN FOR AND BIND THE ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS AGREEMENT AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT AND AUTHORITY TO DO SO. IN THE EVENT YOU ARE REDIRECTED TO BEGRAPH'S WEBSITE, YOU AGREE THAT YOUR USE IS SUBJECT TO ANY TERMS OF SERVICE POSTED THEREON.

This BEGRAPH Subscription Agreement ("**Agreement**") is between Next Limit Analytics S.L. and the customer (individual or entity) that has purchased a subscription to BEGRAPH ("**you**" or "**your**"). "**Next Limit**" means the **Next Limit Analytics S.L.** entity designated on the applicable Ordering Document. "**Ordering Document**" means any order on a Next Limit order form which references this Agreement. Each Ordering Document which references this Agreement shall be deemed a part of this Agreement. The "**Effective Date**" of this Agreement is the date which is the earlier of (a) your initial access to BEGRAPH through any online provisioning, registration or order process, or (b) the effective date of the first Ordering Document referencing this Agreement.

**1. BEGRAPH**

**1.1. Provision of BEGRAPH.** BEGRAPH is a hosted service permitting you to access Next Limit's data visualization products, as such products may be modified, enhanced, and/or updated from time to time ("**BEGRAPH**"). BEGRAPH is described more fully in the current version of any supporting product help and technical specifications documentation provided by Next Limit to you ("**Documentation**"). BEGRAPH is provided on a subscription basis for a set term designated herein or in the applicable Ordering Document (each, a "**Subscription Term**"). This Agreement applies only to BEGRAPH and does not grant you rights to any other Next Limit services or software.

**1.2. Evaluation Access.** If Next Limit has made available to you free, trial or evaluation access to BEGRAPH ("**Evaluation Access**"), you may use such access solely for the purpose of evaluating BEGRAPH to determine whether to purchase a subscription from Next Limit. You may not use Evaluation Access for any other purposes, including but not limited to competitive analysis, commercial, professional or for-profit purposes. Evaluation Access is limited to five (5) days from the date you activate your Evaluation Access, unless otherwise specified by Next Limit in the applicable Ordering Document or a separate writing from Next Limit ("**Evaluation Period**"). Unless you purchase a subscription for BEGRAPH, your Evaluation Access may be terminated and, in any event your right to access and use BEGRAPH automatically expires at the end of the Evaluation Period. Upon any termination or expiration of the Evaluation Period, your Evaluation Access will cease and you will no longer have access to any Customer Data used in connection with such Evaluation Access. Notwithstanding any other provision of this Agreement, Evaluation Access is provided "AS IS" without warranty or support of any kind, express or implied. Next Limit may terminate your Evaluation Access at any time for any reason and without liability of any kind. IF YOU SUBSEQUENTLY PURCHASE A SUBSCRIPTION TO BEGRAPH, YOUR EVALUATION ACCESS SHALL IMMEDIATELY TERMINATE AND YOU EXPRESSLY AGREE THAT, UNLESS YOU HAVE A SEPARATE SIGNED AGREEMENT GOVERNING YOUR ACCESS TO AND USE OF BEGRAPH, THIS AGREEMENT, AND THE TERMS AND CONDITIONS HEREIN, SHALL GOVERN YOUR USE OF SUCH NON-EVALUATION VERSION.

**1.3. Access to BEGRAPH.** Subject to the terms and conditions of the Agreement, and except as set forth in Section 5 (Term and Termination) Next Limit hereby grants to you a non-exclusive, non-transferable, non-sublicensable (except as permitted under Section 1.5), worldwide right during the applicable Subscription Term to access and use BEGRAPH solely for your business purposes but only in accordance with: (i) the Documentation; (ii) the restrictions in Section 1.1 (Provision of BEGRAPH), Section 1.7 (General Restrictions), and Section 2 (Customer Data and Customer Obligations) and (iii) any restrictions designated on the applicable Ordering Document, including, but not limited to the number of Authorized Users

("Access Grant"). You will use reasonable efforts to prevent any unauthorized access to or use of BEGRAPH and the Documentation and will promptly notify Next Limit in writing of any unauthorized access or use of which you become aware and provide all reasonable cooperation to prevent and terminate such access or use.

**1.4. Authorized Users.** "**Authorized Users**" means those uniquely identified individuals subject to an Access Grant who are authorized by you to use and access BEGRAPH for any purpose regardless of whether those individuals are actively using BEGRAPH at any given time. The Authorized Users will receive user IDs and passwords to access BEGRAPH. These credentials are granted to individual, named persons and may not be shared. You will ensure that all Authorized Users keep these credentials strictly confidential. Each Authorized User's access right may be further specified on the applicable Ordering Document and the technical capabilities available to each Authorized User within BEGRAPH shall be as set forth in the Documentation. Subscriptions to BEGRAPH may be reassigned between uniquely identified individuals over time, but may not be reassigned so frequently as to enable the sharing of a single BEGRAPH subscription between multiple users. You may allow your Contractors and Affiliates to access BEGRAPH as Authorized Users in accordance with this Agreement, provided you shall remain liable for all acts and omissions of your Affiliates and Contractors as if their breach were your own. "**Affiliate**" means each legal entity that is directly or indirectly controlled by you on or after the Effective Date, for so long as such entity remains directly or indirectly controlled by you (where "**controlled**" means the ownership of, or the power to vote, directly or indirectly, a majority of any class of voting securities of a corporation or limited liability company, or the ownership of any general partnership interest in any general or limited partnership). "**Contractor**" means those independent third parties who perform services related to this Agreement for you, but solely to the extent they are acting on your behalf.

**1.5. Client Sublicensees.** Subject to the terms and conditions of this Agreement, during the Subscription Term, you may permit third-parties ("**Client Sublicensees**") to be Authorized Users of your account to BEGRAPH, but only so the Client Sublicensees may (1) interact with visualizations generated by you through your use of BEGRAPH and based on Customer Data (as defined in Section 2.1) or (2) themselves create visualizations using Customer Data, provided that in each case the Customer Data excludes Client Sublicensee data unless such Client Sublicensee data is combined with Customer Data or is relevant to your provision of services to that particular External Viewer. In providing such access to Client Sublicensees, you may not act as "Marketing Service Provider", "Service Bureau" or other entity with a similar business model. Client Sublicensees may not use or access BEGRAPH for any other purposes except as expressly permitted in this Section

1.5. You shall ensure that all Client Sublicensees' use of BEGRAPH is limited as described in this Section 1.5 by designating the appropriate access levels for Client Sublicensees within BEGRAPH. You shall be solely responsible for your relationships with Client Sublicensees and notify Client Sublicensees that Next Limit shall have no warranty, support or other obligation

or liability. You shall be liable for all acts and omissions of Client Sublicensees as if their acts or omissions were your own.

**1.6. Third-Party Code.** BEGRAPH may contain or be provided with components which are licensed from third parties ("**Third Party Code**"), including components subject to the terms and conditions of "open source" software licenses ("**Open Source Software**"). Open Source Software may be identified in the Documentation, or in a list of the Open Source Software provided to you upon written request. To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification or reverse engineering.

**1.7. General Restrictions.** As a condition to the rights granted to you hereunder, you shall not (and shall not allow any third party to): (a) decompile, disassemble, or otherwise reverse engineer BEGRAPH or any Third Party Code or attempt to reconstruct or discover any source code, APIs, underlying ideas, algorithms, file formats or programming interfaces of BEGRAPH or the Third Party Code by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions, or as permitted by an applicable Open Source Software license); (b) distribute, sell, sublicense, rent, lease or use BEGRAPH or any Third Party Code (or any portion thereof) for time sharing, hosting, service provider or like purposes, except as expressly permitted under Section 1.5 of this Agreement; (c) remove any product identification, proprietary, copyright trademark, service mark, or other notices contained in BEGRAPH or any Third Party Code (including any reports or data printed via the use of BEGRAPH); (d) modify any part of BEGRAPH or any Third Party Code, create a derivative work of any part of BEGRAPH or any Third Party Code, or incorporate BEGRAPH or any Third Party Code into or with other software, except to the extent expressly authorized in writing by Next Limit or as permitted by an applicable Open Source Software license; (e) publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to BEGRAPH; (f) utilize any equipment, device, software, or other means designed to circumvent or remove any form of copy or other protection used by Next Limit in connection with BEGRAPH, or use BEGRAPH together with any user credentials or other copy protection device not supplied by Next Limit or through an Authorized Partner; (g) use BEGRAPH to develop a product which is competitive with any Next Limit product offerings; (h) use unauthorized user credentials or distribute or publish such credentials except as may be expressly permitted by Next Limit in writing; (i) enable access to BEGRAPH for a greater number of Authorized Users than the sum quantity of subscriptions purchased on the applicable Ordering Document(s);

(j) reassign subscription access rights between Authorized Users so frequently as to enable a single subscription to be shared between multiple users; (k) assert, nor will you authorize, assist or encourage any third-party to assert, against Next Limit or any of its affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding BEGRAPH or any support you have purchased or used hereunder; (l) use BEGRAPH to develop a product that converts any Next Limit file format to an alternative report file format used by any general-purpose report writing, data analysis or report delivery product that is not the property of Next Limit; or (m) automate processes, including without limitation, API calls, or refreshes of visualizations or workspaces, if such automation has a detrimental impact on Next Limit's ability to provide BEGRAPH to its other customers.

## **2. CUSTOMER DATA AND YOUR OBLIGATIONS**

**2.1 Customer Data.** "**Customer Data**" means any business information or other data which you input, or provide to Next Limit for inputting, into BEGRAPH.

### **2.2 Your Obligations**

(a) **General.** You are solely responsible for the accuracy and content of all Customer Data. You represent and warrant to Next Limit that (i) you have sufficient rights in the Customer Data to authorize Next Limit to process, distribute and display the Customer Data as contemplated by this Agreement and the Documentation, (ii) the Customer Data and its use hereunder will not violate or infringe the rights of any third party, and (iii) your use of BEGRAPH and all Customer Data is at all times compliant

with your privacy policies and all applicable local, state, federal and international laws, regulations and conventions, including without limitation those related to data privacy, international communications and the exportation of technical or personal data.

(b) **Health Information.** You will not upload to BEGRAPH or publish thereon any patient, medical or other protected health information regulated by HIPAA or any similar federal or state laws, rules or regulations ("**Health Information**") and acknowledges that Next Limit is not a Business Associate and that BEGRAPH is not HIPAA compliant. "**HIPAA**" means the Health Insurance Portability Act, as amended and supplemented. Next Limit shall have no liability under this Agreement for Health Information, notwithstanding anything to the contrary herein.

(c) **Payment Card Data.** You will not upload to BEGRAPH or publish thereon any payment card information. You acknowledge that BEGRAPH is not compliant with the Payment Card Industry Data Security Standards.

**2.3 Rights in Customer Data.** As between the parties, you shall retain all right, title and interest (including any and all intellectual property rights) in and to your Customer Data as published on BEGRAPH. Subject to the terms of this Agreement, you hereby grant to Next Limit a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, and distribute, perform and display (including publicly), modify and create derivative works of the Customer Data solely to the extent necessary to provide BEGRAPH in accordance with this Agreement and the Documentation.

**2.4 Storage of Customer Data.** Next Limit does not provide an archiving service. Next Limit agrees it shall not intentionally delete any Customer Data from BEGRAPH prior to termination or expiration of Customer's applicable subscription. Except as otherwise set forth herein, Next Limit expressly disclaims all other obligations with respect to storage of Customer Data.

## **3. OWNERSHIP**

**3.1. Next Limit Technology.** Notwithstanding anything to the contrary contained herein, except for the limited access and use rights expressly provided herein, Next Limit and its licensors retain all right, title and interest (including, without limitation, all patent, copyright, trade secret and other intellectual property rights) in and to BEGRAPH, the Documentation, the Third Party Code, any other Next Limit deliverables and any and all related and underlying software (including interfaces), databases (including data models, structures, and any other non-customer specific data and statistical data), technology, reports, documentation, as well as any related process or methodology provided or used by Next Limit, and with respect to each of the foregoing, any copies, modifications, improvements, derivative works, or enhancements thereto however developed or provided (including any which incorporate any of your ideas Feedback or suggestions)(collectively, "**Next Limit Technology**"). You acknowledge that you are obtaining only a limited right to access and use BEGRAPH on a hosted basis and that irrespective of any use of the words "purchase", "sale", "sublicense" or like terms hereunder no ownership rights are being conveyed to you under this Agreement or otherwise, and further acknowledge that nothing contained in this Agreement shall be construed to convey to you ownership of any intellectual property rights in or to any Next Limit Technology or any related methodologies or processes. Nothing in this Section 3.1 shall be deemed as granting Next Limit ownership of Customer Data or in any way impacting your ownership of Customer Data.

**3.2. Feedback.** From time to time, you may submit comments, information, questions, data, ideas, descriptions of processes, or other information to Next Limit ("**Feedback**"). You agree that all Feedback is and shall be given entirely voluntarily. Feedback, even if designated as confidential by you, shall not, absent a separate written agreement, create any confidentiality obligation for or upon Next Limit. You will not give Feedback that is subject to license terms that seek to require any Next Limit product, technology, service or documentation incorporating or derived from such Feedback, or any Next Limit intellectual property, to be licensed or otherwise shared with any third party. Next Limit may in connection with any of its products or services freely use, copy, disclose, license, distribute and exploit any Feedback in any manner it sees fit without any obligation, royalty or restriction based on intellectual property rights or otherwise.

#### 4. SUBSCRIPTION TERM, FEES & PAYMENT

**4.1. Subscription Term.** Unless otherwise specified on the applicable Ordering Document, each Subscription Term shall begin on the effective date of the applicable Ordering Document and will expire one (1) month or twelve (12) months thereafter. Approximately thirty (30) days prior to the expiration of the Subscription Term, Next Limit may notify you of its opportunity to renew the Subscription Term. Any renewals require mutual agreement and all applicable fees for such renewals will be at Next Limit's then-current rates. If your subscription is not renewed, your access to BEGRAPH will terminate at the end of the then-current Subscription Term.

**4.2. Fees and Payment.** You shall pay all fees set forth in the applicable Ordering Document. All payments shall be made in the currency noted on the applicable Ordering Document within thirty (30) days of the date of the applicable electronic invoice. Except as expressly set forth herein, all fees are non-refundable once paid. Unless timely provided with a valid certificate of exemption or other evidence that items are not taxable, Next Limit will invoice you for all applicable taxes including, but not limited to, VAT, GST, sales tax, consumption tax and service tax. If any withholding tax is required by applicable law to be paid by you in relation to payments due to Next Limit hereunder, you will provide Next Limit with official receipts and/or certificates from the appropriate taxing authorities to establish that any applicable taxes have been paid.

**4.3. Suspension of Services.** If your account is thirty (30) days or more overdue, in addition to any of its other rights or remedies (including but not limited to any termination rights set forth herein), Next Limit reserves the right to suspend your access to BEGRAPH without liability to you until such amounts are paid in full. Within a reasonable time after written notice by Next Limit that your use of the BEGRAPH service is having a detrimental impact on Next Limit's ability to provide BEGRAPH to its other customers, Next Limit reserves the right, at its sole discretion, to suspend or limit your access to BEGRAPH.

#### 5. TERM AND TERMINATION

**5.1. Term.** This Agreement is effective as of the Effective Date and expires on the date of expiration or termination of the Subscription Term(s).

**5.2. Termination for Cause.** Either party may terminate this Agreement (including all related Ordering Documents) if the other party (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach including without limitation your failure to pay, provided that Next Limit may terminate this Agreement immediately upon any breach of Section 1.7 (General Restrictions) or if you violate any other restrictions contained in Section 2 (Customer Data and You Obligations), or Section 11 (Export Control); (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter). Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

**5.3. Effect of Termination.** Upon any termination or expiration of this Agreement, you shall immediately cease any and all use of and access to BEGRAPH and destroy (or, at Next Limit's request, return), any Next Limit Confidential Information in its possession. You acknowledge that, except as exported or printed prior to termination or expiration by you as may be permitted through the functionality of BEGRAPH, following termination or expiration it shall have no further access to any Customer Data input into BEGRAPH, and that Next Limit may delete any such data at any time. Except where an exclusive remedy is specified in this Agreement, the exercise by either party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

**5.4. Survival.** The following Sections shall survive any expiration or termination of this Agreement: Sections 1.7 (General Restrictions), 3 (Ownership), 4.2 (Fees and Payment), 5(Term and Termination), 6.3 (Warranty Disclaimer), 8 (Limitation of Remedies and Damages), 9.2 (Indemnification by You), 10 (Confidential Information) and 12 (General Terms).

#### 6. LIMITED WARRANTY

**6.1. Limited Warranty.** Next Limit warrants to you that BEGRAPH will operate in substantial conformity with the applicable Documentation. Next Limit does not warrant that your use of BEGRAPH will be uninterrupted or error-free, nor does Next Limit warrant that it will review the Customer Data for accuracy or that it will preserve or maintain the Customer Data without loss. Next Limit's sole liability (and your sole and exclusive remedy) for any breach of this warranty shall be, in Next Limit's sole discretion and at no charge to you, to use commercially reasonable efforts to correct the reported non-conformity, or if Next Limit determines such remedy to be impracticable, to allow you to terminate the applicable Subscription Term and receive as its sole remedy a refund of: (a) the monthly subscription fees specified in the applicable Ordering Document which are allocable to the thirty (30) day period prior to the date the warranty claim was made and (b) any fees you have pre-paid for use of BEGRAPH or related services it has not received as of the date of the warranty claim.

**6.2. Exclusions.** The above warranty shall not apply: (i) unless you make a claim within thirty (30) days of the date on which the condition giving rise to the claim first appeared; (ii) if BEGRAPH is used with hardware or software not authorized in the Documentation; (iii) if the error was caused by misuse, unauthorized modifications or third-party hardware, software or services; (iv) to any Evaluation Access or other use provided on a no charge or evaluation basis; or (v) to any visualizations created using BEGRAPH ("Graphs"), such functionality is provided purely for reference purposes. Next Limit makes every effort to ensure the Graphs are free of errors but does not warrant the Graphs features are accurate. The boundaries and names shown and the designations used in the Graphs do not imply endorsement or acceptance by Next Limit.

**6.3. Warranty Disclaimer.** THIS SECTION IS A LIMITED WARRANTY AND, EXCEPT AS EXPRESSLY SET FORTH IN IN THIS SECTION, BEGRAPH, INCLUDING WITHOUT LIMITATION THE GRAPHS AND THE THIRD-PARTY CODE ARE PROVIDED "AS IS". NEITHER NEXT LIMIT NOR ITS LICENSORS MAKES ANY OTHER WARRANTIES, CONDITIONS OR UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. YOU MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES SHALL BE LIMITED AS PROVIDED HEREIN. NEXT LIMIT SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF NEXT LIMIT.

**7. SUPPORT AND SECURITY.** During the Subscription Term, BEGRAPH is subject to the support terms and security procedures set forth in the then-current Documentation.

#### 8. LIMITATION OF REMEDIES AND DAMAGES

**8.1. BUT FOR:** (1) BREACH OF SECTION 1.5 (CLIENT SUBLICENSEES), SECTION 1.7 (GENERAL RESTRICTIONS), OR SECTION 11 (EXPORT CONTROL), OR (2) DAMAGES ARISING OUT OF CLIENT SUBLICENSEE'S USE OF BEGRAPH, INCLUDING YOUR OBLIGATIONS UNDER SECTION 9.2, NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, COSTS OF DELAY OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

**8.2. BUT FOR:** (1) BREACH OF SECTION 1.5 (CLIENT SUBLICENSEES), SECTION 1.7 (GENERAL RESTRICTIONS), OR SECTION 11 (EXPORT CONTROL), OR (2) DAMAGES ARISING OUT OF CLIENT SUBLICENSEE'S USE OF BEGRAPH, INCLUDING YOUR OBLIGATIONS UNDER SECTION 9.2, EACH PARTY'S ENTIRE LIABILITY AND OBLIGATION TO THE OTHER PARTY SHALL NOT EXCEED THE LESSER OF (A) FEES PAID OR OWED BY YOU TO NEXT LIMIT UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRECEDING THE CLAIM OR (B) EUR 1,000,000.

**8.3. Failure of Essential Purpose.** The parties agree that the limitations specified in this Section 8 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

## **9. INDEMNIFICATION**

**9.1. Next Limit Indemnification.** Next Limit shall defend you from and against any claim by a third party alleging that BEGRAPH, when used as authorized under this Agreement, infringes a EU patent, EU copyright, or EU trademark and shall indemnify and hold you harmless from and against any damages and costs awarded against you or agreed to in settlement by Next Limit (including reasonable attorneys' fees). Provided that Next Limit shall have received from you: (i) prompt written notice of such claim (but in any event notice in sufficient time for Next Limit to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (iii) all reasonably necessary cooperation from you. If your use of BEGRAPH is (or in Next Limit's opinion is likely to be) enjoined, if required by settlement or if Next Limit determines such actions are reasonably necessary to avoid material liability, Next Limit may, in its sole discretion: (a) substitute for BEGRAPH substantially functionally similar programs and documentation; (b) procure for you the right to continue using BEGRAPH; or if (a) and (b) are not commercially reasonable, (c) terminate the Agreement and refund to you the subscription fees paid by you for the portion of the Subscription Term which was paid by you but not rendered by Next Limit. The foregoing obligations of Next Limit shall not apply: (1) if BEGRAPH is modified by any party other than Next Limit, but solely to the extent the alleged infringement is caused by such modification; (2) if BEGRAPH is combined with other non-BEGGRAPH services or processes not provided or authorized by Next Limit, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of BEGRAPH; (4) to any action arising as a result of Customer Data or any third-party components contained within or uploaded to BEGRAPH; or (5) if you settle or make any admissions with respect to a claim without Next Limit's prior written consent. THIS SECTION 8 AND 9 SETS FORTH NEXT LIMIT AND ITS LICENSOR'S SOLE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

**9.2. Indemnification by You.** Subject to this Section 9, you shall defend Next Limit from and against any and all claims by third parties (including any Client Sublicensees and Contractors) resulting from or relating to: (i) the Customer Data, including without limitation any claim based on your breach or alleged breach of Section 2.2 (Customer Data and Your Obligations) or alleging that the Customer Data infringes upon any valid patent, copyright, trademark, trade secret, or other proprietary right of, or otherwise harms, such third party; (ii) any breach by you of Section 1.5 (Client Sublicensees); or (iii) a Client Sublicensee's use of BEGRAPH, and shall indemnify and hold Next Limit harmless from and against any damages and costs awarded against Next Limit or agreed in settlement by you (including reasonable attorney's fees) resulting from such claims, provided that you shall have received from Next Limit: (i) prompt written notice of such claim (but in any event notice in sufficient time for you to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (iii) all reasonably necessary cooperation from Next Limit. You may not settle any such claim relating to BEGRAPH without Next Limit's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

## **10. CONFIDENTIAL INFORMATION.**

**10.1. Use of Confidential Information.** Each party (as "Receiving Party") agrees that all code, inventions, know-how, business, technical and financial information it obtains from the disclosing party ("Disclosing Party") constitute the confidential property of the Disclosing Party ("Confidential Information"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any software, pricing, documentation or technical information provided by Next Limit (or its agents), performance information relating to BEGRAPH, and the terms and conditions of this Agreement shall be deemed Confidential Information of Next Limit without any marking or further designation. Customer Data

shall be deemed your Confidential Information without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information to anyone other than its affiliates, employees and consultants ("Representatives") who have a need to know and who agree in writing to keep the information confidential on terms no less restrictive than those contained in this Agreement. Both Next Limit and you will ensure that their respective Representatives comply with this Agreement and will be responsible for any unauthorized use or disclosure of Confidential Information by such Representatives. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Receiving Party who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information could cause substantial harm for which damages alone would not be a sufficient remedy, and therefore upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

**10.2. Privacy Policy:** Your use of the Software, Support and Maintenance or Professional Services is subject to Next Limit Software's Privacy Policy.

**11. Export Control.** You acknowledge that BEGRAPH is subject to E.U. export control and economic sanctions laws, regulations and requirements and to import laws, regulations and requirements of foreign governments. You agree that (1) all use, exports, and imports related to this Agreement will be in compliance with these laws and regulations and (2) you shall not allow any third party to export, re-export, or transfer any part of Software in violation of these laws and regulations.

## **12. GENERAL TERMS**

**12.1. Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Next Limit may assign this Agreement to any affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of Next Limit's assets or voting securities. You may not assign or transfer this Agreement, in whole or in part, without Next Limit's written consent except that you may assign this Agreement, in whole but not in part, without Next Limit's written consent in connection with any merger, consolidation, sale of all or substantially all of your assets, or any similar transaction provided that: (i) the assignee must not be a direct competitor of Next Limit; (ii) you provide prompt written notice of such assignment to Next Limit; (iii) the assignee is capable of fully performing your obligations under this Agreement, and (iv) the assignee agrees to be bound by the terms and conditions of this Agreement. Any attempt to transfer or assign this Agreement without such written consent will be null and void.

**12.2. Severability.** If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

**12.3. Governing Law; Jurisdiction and Venue.** Excluding conflict of laws rules, this Agreement shall be governed by and construed under (a) the laws of the State of Washington, U.S. if you are located in North or South America, (b) the laws of Japan if you are located in Japan, (c) the laws of Singapore if you are located in Asia (excluding Japan) or Australia, or (d) the laws of England and Wales if you are located outside of North or South America, Asia and Australia. All disputes arising out of or in relation to this Agreement shall be submitted to the exclusive jurisdiction of the courts of (i) Seattle, Washington when the laws of Washington apply, (ii) Tokyo, Japan when the laws of Japan apply, (iii) Singapore when the laws of Singapore apply, or (iv) London when the laws of England and Wales apply. Nothing in this section shall restrict Next Limit's right to bring an action (including for example a motion for injunctive relief) against you in the jurisdiction where your place of business is located. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information

Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction, do not apply to this Agreement.

**12.4. Attorneys' Fees and Costs.** The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

**12.5. Next Limit's Customer List.** You agree that Next Limit may disclose you as a customer of Next Limit and use your name and logo on Next Limit's web site and in Next Limit's promotional materials.

**12.6. Notice.** Any notice or communication required or permitted under this Agreement shall be in writing or in electronic format. If to Next Limit by mail, such notice or report shall be sent to Next Limit at Albasanz 15, 28037 Madrid (Spain) "Legal Department". If to Next Limit by email, such notice or report shall be sent to: [oficina@nextlimit.com](mailto:oficina@nextlimit.com). If to you such notice or report shall be sent to the mailing or email address you provided upon placing your order. Notices and reports sent by mail shall be deemed given: (a) upon receipt if by personal delivery; (b) upon receipt if sent by certified or registered mail (return receipt requested); or (c) one day after it is sent if by next day delivery by a major commercial delivery service. Any notices and reports sent by email shall be effective upon receipt of the same.

**12.7. Amendments; Waivers.** From time to time, Next Limit may modify this Agreement. Unless otherwise specified by Next Limit, changes become effective for existing subscription customers upon renewal of the then-current Subscription Term. Next Limit will use reasonable efforts to notify you of the changes through communications through BEGRAPH, email, or other means. You may be required to click to accept the modified Agreement before using BEGRAPH in a renewal Subscription Term, and in any event continued use of BEGRAPH during the renewal Subscription Term will constitute your acceptance of the version of the Agreement in effect at the time the renewal Subscription Term begins. Further, from time to time, Next Limit may modify the BEGRAPH Support Policy referenced in Section 7, however Next Limit shall not substantially reduce the overall level of beneficial service provided to you under the BEGRAPH Support Policy existing as of commencement of the then-current Subscription Term, unless such reduction results from governmental regulation or requested modifications by you or is otherwise agreed to by you. Except as set forth in this Section 12.7, no supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by you, including any electronic invoicing portals and vendor registration processes, will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

**12.8. Entire Agreement.** This Agreement (including each Ordering Document, and any other mutually agreed exhibits or attachments) is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. You acknowledge that BEGRAPH is an on-line, subscription-based product, and that in order to provide improved customer experience Next Limit may make changes to BEGRAPH (which may include making available different or substitute code compared to those available as of the Effective Date), and Next Limit will update the Documentation accordingly.

**12.9. Independent Contractors.** The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

**12.10. Audit Rights.** You understand that Next Limit may monitor your use of BEGRAPH in order to verify that you have not exceeded its permitted number of Authorized Users. If Next Limit becomes aware of any excess

usage of BEGRAPH, then you will pay for the excess usage and for any ongoing excess usage at Next Limit's then-current rates. Upon Next Limit's written request, you shall furnish Next Limit with a signed certification certifying that BEGRAPH is being used pursuant to the terms of this Agreement, including any access and user limitations. With prior reasonable notice, Next Limit may audit your compliance with this Agreement, your use of BEGRAPH, and your software monitoring system and records, provided such audit is during regular business hours. If such inspections or audits disclose that you have accessed or permitted access to BEGRAPH in a manner that is not permitted under this Agreement, then Next Limit may terminate this Agreement pursuant to Section 5 and you are liable for the reasonable costs of the audit in addition to any other fees, damages and penalties Next Limit may be entitled to under this Agreement and applicable law.

**12.11. Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which occur after the signing of this Agreement and which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by the government or other governmental agencies, in so far as such an event prevents or delays the affected party from fulfilling its obligations and such party is not able to prevent or remove the force majeure at reasonable cost.

**12.12. Authorized Partner.** If you received BEGRAPH under an agreement ("Partner Agreement") with an authorized Next Limit reseller, partner ("Authorized Partner") then, notwithstanding anything to the contrary in this Agreement: (a) your use of BEGRAPH is subject to any additional terms in the Partner Agreement, including any limitations on use of BEGRAPH in conjunction with third-party applications; and (b) you agree to pay the Authorized Partner the fees agreed in the Partner Agreement and you have no direct payment obligations to Next Limit for that purchase under Section 5 above. If your warranty and support terms stated in your Partner Agreement are different than what is stated in Section 6 or 7 herein, then Next Limit has no warranty or support obligations to you under this Agreement (although the disclaimers of warranties in Section 6.3 still apply to you). If your warranty and support terms passed on in your Partner Agreement are as stated herein, then Section 6 and 7 shall apply to you as written. Notwithstanding anything in this Agreement to the contrary, (i) the Partner Agreement may not modify any of the remaining terms of this Agreement and (ii) the Partner Agreement is between you and the Authorized Partner and is not binding on Next Limit. Next Limit may terminate this Agreement (including your right to use BEGRAPH) in the event Next Limit fails to receive payment for your use of BEGRAPH from the Authorized Partner or if you breach any term of this Agreement.

**12.13. Third Party Beneficiaries.** Next Limit Software, Inc., its affiliates and its licensors may be third party beneficiaries of this Agreement. No other third party, including without limitation Client Sublicensees under Section 1.5, is intended to be a beneficiary of this Agreement entitled to enforce its terms directly.

**12.14. Language.** Regardless of any language into which this Agreement may be translated, the official, controlling and governing version of this Agreement shall be exclusively the English language version.