

## SOFTWARE LICENSE AND SUPPORT SERVICES AGREEMENT

THIS LICENSE AND SUPPORT SERVICES AGREEMENT IS ENTERED INTO BY AND BETWEEN PURCHASER (THE ENTITY IDENTIFIED IN THE QUOTATION “LICENSEE”) AND APPLIED MATERIALS, INC. (“APPLIED”), AND IS MADE EFFECTIVE AS OF THE DATE OF LICENSEE’S FIRST DOWNLOAD AND/OR USE OF THE SOFTWARE. BY PROCEEDING TO INSTALL AND USE THIS SOFTWARE, LICENSEE HEREBY IRREVOCABLY ACCEPTS THE TERMS AND CONDITIONS OF THIS AGREEMENT ON BEHALF OF LICENSEE AND REPRESENTS AND WARRANTS THAT LICENSEE HAS ALL NECESSARY AUTHORITY TO BIND LICENSEE TO THIS AGREEMENT. IF LICENSEE DOES NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, LICENSEE SHALL NOT COMPLETE THE INSTALLATION OR ATTEMPT TO USE THE SOFTWARE.

PLEASE READ THE FOLLOWING AGREEMENT CAREFULLY. THESE TERMS AND THE TERMS IN THE QUOTATION PROVIDED BY APPLIED TAKE PRECEDENCE OVER ANY CONFLICTING TERMS CONTAINED IN ANY PURCHASE ORDER USED TO PURCHASE A LICENSE TO THE SOFTWARE AND/OR ANY OTHER DOCUMENTS, AGREEMENTS OR TERMS PROVIDED BY LICENSEE IN CONNECTION WITH THE ORDERING OF SOFTWARE HEREUNDER. THIS AGREEMENT GOVERNS LICENSEE’S DOWNLOAD, INSTALLATION AND USE OF THE SOFTWARE, DOCUMENTATION AND ANY SUPPORT SERVICES PROVIDED WITH THE SOFTWARE. APPLIED MAY MODIFY THIS AGREEMENT AT ANY TIME WITHOUT NOTICE TO LICENSEE BY POSTING A REVISED AGREEMENT ON ITS WEBSITE OR ANY OTHER LOCATION WHERE THE SOFTWARE MAY BE ACCESSED. LICENSEE’S CONTINUED USE OF THE SOFTWARE CONSTITUTES LICENSEE’S ACCEPTANCE OF ANY MODIFICATIONS TO THIS AGREEMENT THAT APPLIED MAY MAKE.

**1. DEFINITIONS.** As used in this Agreement, the following capitalized terms shall have the meanings ascribed to them below.

**1.1 “Documentation”** means the end-user documentation accompanying the Software.

**1.2 “Intellectual Property Rights”** means all copyrights, trade secrets, patents, patent applications, moral rights, contract rights, and other proprietary rights throughout the world, but specifically excluding any trademarks or service marks.

**1.3 “Licensed Seat”** means the right to have one (1) end user operate the Software or a portion of the Software at any given time, a specified number of which are purchased by Licensee pursuant to the quotation provided by Applied to Licensee.

**1.4 “License Term”** means the limited period of time set forth in the applicable quotation during which Licensee may exercise the license to the Software. If no License Term is specified in the applicable quotation, then the License Term will be deemed to be one (1) year.

**1.5 “Software”** means the computer software, in executable code form, identified in the applicable quotation that references the purchased Software. Software shall not include source code.

**1.6 “Support Services”** means Updates and Technical Support as described in Schedule 1.

**1.7 “Third-Party Software”** means any third-party software that is furnished to Licensee by Applied for use in conjunction with the Software, but is licensed to Licensee directly from a third party under separate terms and conditions set forth

under a separate license agreement provided by the third party.

**1.8 “Updates”** means either error corrections or new releases of the Software containing error corrections and/or enhancements to the Software.

## **2. FEES, CHARGES AND TAXES**

**2.1 Fees.** Licensee agrees to pay the applicable license fees for the Software and the applicable fees for the Support Services, as set forth on an invoice submitted to Licensee by Applied or one of its authorized distributors, plus any applicable sales, use, excise, or other taxes, as specified in such invoice. All amounts will be paid in US dollars, unless otherwise designated in the invoice.

**2.2 Charges.** Any amount not paid when due will be subject to finance charges equal to 1.5% of the unpaid balance per month or the highest rate permitted by applicable law, whichever is less, determined and compounded daily from the date due until the date paid. Licensee agrees to reimburse any costs or expenses (including, but not limited to, reasonable attorneys’ fees) incurred by Applied or its authorized distributors to collect any amount that is not paid when due. Amounts due from Licensee under this Agreement may not be withheld or offset by Licensee against amounts due to Licensee for any reason.

**2.3 Taxes.** Other than net income taxes imposed on Applied and/or its authorized distributors, Licensee will bear all taxes, duties, and other governmental charges (collectively, “Taxes”) resulting from Licensee’s purchase of the Software license and Support Services. Licensee will pay any additional taxes as are necessary to ensure that the net amounts received by Applied and/or its distributors after all such Taxes are paid are equal to the amounts that Applied and/or its authorized distributors would have been entitled to as if the taxes did not

exist. If Applied is audited by any taxing authority or other governmental entity in connection with taxes under this Agreement, Licensee agrees to reasonably cooperate in order to respond to any audit inquiries in an appropriate and timely manner, so that the audit and any resulting controversy may be resolved expeditiously. Licensee agrees to pay any penalty, interest, additional tax, or other charge that may be levied or assessed as a result of the delay or failure by Licensee, for any reason, to pay any tax or file any return or information required by law, rule or regulation or by this Agreement to be paid or filed by Applied.

### 3. Software License

**3.1 License Grant.** Subject to the terms and conditions of this Agreement, Applied hereby grants to Licensee a non-exclusive, non-transferable and non-assignable (except to the extent expressly permitted under **Section 12.3 (Assignment)**) license (without the right to sublicense), during the applicable License Term and subject to the license type described in Section 3.2, to: (a) install the Software at the physical site and/or on the specific computers agreed by the parties and specified by Applied on or before delivery of the license key file; (b) use, reproduce, perform, and display the Software solely to the extent necessary to operate such Software in accordance with the Documentation for Licensee's internal operations; *provided, however*, that Licensee will not permit the maximum number of users concurrently accessing the Software at any time to exceed the total number of Licensed Seats purchased by Licensee; (c) make up to two (2) copies of the Software solely for nonproduction backup and disaster recovery purposes; and (d) use and make a reasonable number of copies of the Documentation for the sole purpose of operating the Software as permitted herein. Applied's obligation to deliver the Software and Documentation under this Agreement are completed when Applied sends Licensee the license key file to the email address provided by Licensee.

**3.2 License Type.** Licensee may not exceed the scope of the applicable license type, either a LAN License or a WAN License, as applicable. If no license type is set forth in the applicable quotation provided by Applied, then the license type is a LAN License. "**LAN License**" means a license of the Software that permits Licensee's permitted users located within a local area network as defined in the quotation to use the Software. "**WAN License**" means a license of the Software that permits Licensee's permitted users located in either a regional or global wide area network as defined in the quotation to use the Software.

**3.3 Restrictions.** Licensee agrees and acknowledges that the Software and its structure, organization, and source code constitute valuable trade secrets of Applied and its suppliers. Accordingly, Licensee agrees to use best efforts to ensure that no unauthorized use of the Software, Third-Party Software, or the Documentation is made and agrees not to (a) modify, adapt, alter, translate, or create derivative works of the Software or Third-Party Software; (b) merge the Software or Third-Party Software with other software; (c) sublicense, lease, rent, loan, or otherwise transfer the Software or Third-Party Software to any third party; (d) use the Software or Third-Party Software in any service bureau or time-sharing arrangement, or to otherwise process records, generate output data, or operate the Software or Third-Party Software for the direct benefit of any third party; (e) permit any third party to use the Software, Third-Party Software, or the Documentation in any form; (f) reverse-engineer, decompile, disassemble, or otherwise attempt to derive

the source code for the Software or Third-Party Software; (g) publish or provide any Software benchmark or comparison test results, or (h) otherwise use or copy the Software or Third-Party Software except as expressly permitted under **Section 3.1 (License Grant)** or, with respect to Third-Party Software, except as expressly permitted in the separate agreement between Licensee and the third party. Licensee will not remove any intellectual property or proprietary notices contained within the Software or the Documentation, and will reproduce such notices in all copies that it makes. Licensee agrees and acknowledges that Applied may employ software or hardware license keys, license servers, and other license management mechanisms designed to enforce the usage restrictions set forth in this Agreement, some of which may cause the Software to automatically communicate with remote servers operated by Applied or its contractors. Licensee consents to Applied's use of the foregoing, and agrees not to attempt to circumvent any such license management mechanisms. Licensee shall devote its best efforts, consistent with the practices and procedures under which it protects its own most valuable proprietary information and materials, to protect the Program against any unauthorized or unlawful use or copying.

**3.4 Third-Party Software.** In the event that Applied delivers Third-Party Software to Licensee for use in connection with the Software, Licensee agrees and acknowledges that such Third-Party Software is not "Software" within the meaning of this Agreement, is not subject to the license grants, warranties, indemnification, or other terms and conditions of this Agreement, and is separately licensed to Licensee by that third party.

**4. OWNERSHIP.** The Software and Documentation are licensed, not sold, notwithstanding the use of colloquial terms such as "purchase" or "sale" to describe the acquisition of licenses by Licensee under this Agreement. All physical copies of the Software and Documentation shall remain the property of Applied and are deemed to be on loan to Licensee during the License Term. As between Applied and Licensee, Applied retains exclusive ownership of the Software, the Documentation, all patches, Updates, upgrades, bugfixes, derivative works and modifications created thereto, including all Intellectual Property Rights related thereto. To the extent that Licensee has or acquires any ownership rights in any of the foregoing, Licensee hereby assigns to Applied all such rights. There are no implied licenses granted under this Agreement, and all rights not expressly granted in this **Section 3.1 (License Grant)** are reserved to Applied.

**5. SUPPORT SERVICES.** Applied or its authorized distributor shall provide Support Services for the Software to Licensee for a specified term as set forth in the applicable quotation from Applied or its authorized distributor ("Support Services Period"). The initial Support Services Period shall commence when Applied sends Licensee the license key file to the email address provided by Licensee. Following the initial Support Services Period, and any Support Services renewal period, Support Services may be renewed by Licensee for an additional 12-month term (or as specified in the applicable quotation) by notifying Applied or its authorized distributor in writing at least 60 days prior to the end of the then-current Support Services Period that it desires to renew Support Services at the end of that period. Any changes or modification in prices or fees for Support Services shall be effective when such services come up for renewal.

**6. TERM AND TERMINATION.** This Agreement will enter into effect upon the Effective Date and continue in full force and effect for the duration of the License Term unless earlier terminated as expressly permitted by this Agreement. This Agreement and Licensee's authorization to use the Software and utilize the Support Services shall terminate automatically if Licensee fails to comply with any provision of this Agreement. No notice shall be required from Applied or its authorized distributor to give effect to such termination. Termination will not limit Applied from pursuing other remedies such as injunctive relief, nor relieve Licensee of any payment obligations that arose prior to termination. Upon any termination of this Agreement, all licenses granted to Licensee hereunder will immediately terminate, and Licensee will immediately cease its use of the Software and Documentation, and return all copies thereof. **SECTION 1 (DEFINITIONS), SECTION 4 ( OWNERSHIP), SECTION 6 (TERM AND TERMINATION), SECTION 7 (CONFIDENTIALITY), Section 8.2 (DISCLAIMER OF OTHER WARRANTIES), SECTION 10 (LIMITATION OF LIABILITY), SECTION 12 (GENERAL),** and all payment obligations incurred prior to termination of this Agreement shall survive such termination.

**7. CONFIDENTIALITY.** For purposes of this Agreement, **"Confidential Information"** means (a) the Software and Documentation; and (b) all other non-public or proprietary information disclosed by Applied to Licensee in the course of activity pursuant to this Agreement, including such information disclosed in contemplation of this Agreement prior to the Effective Date, whether disclosed in oral, written, graphic, machine recognizable model or sample form, or any derivation thereof. Licensee will not use any Confidential Information for any purpose not expressly permitted by this Agreement, and will disclose such Confidential Information only (a) to Licensee's employees and consultants (i) who have a need to know such Confidential Information in order for Licensee to exercise its rights under this Agreement and (ii) who are under a duty of confidentiality no less restrictive than Licensee's duty hereunder. Licensee will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Licensee protects its own confidential or proprietary information of a similar nature and with no less than reasonable care. Licensee shall inform each such employee and consultant of its confidentiality obligations under this Agreement, and will be liable for any breach of confidentiality by any such employee or consultant. Notwithstanding the foregoing, Licensee's obligations under this section with respect to any Confidential Information will terminate if such information: (1) was already known to Licensee at the time of disclosure by Applied, without any duty of confidentiality to Applied; (2) is disclosed to Licensee by a third party who had the right to make such disclosure without any confidentiality restrictions; (3) is, or through no fault of Licensee has become, generally available to the public; or (4) is independently developed by Licensee without access to, or use of, the Confidential Information. In addition, Licensee will be allowed to use or disclose the Confidential Information to the extent that such use or disclosure is approved in writing by Applied, or required by law or by the order of a court or similar judicial or administrative body, provided that Licensee notifies Applied of such required disclosure promptly and in writing and cooperates with Applied in any lawful action to contest or limit the scope of such required disclosure. Promptly upon termination or expiration of this Agreement, Licensee will either return to Applied all Confidential

Information in Licensee's possession or control; or destroy and permanently erase all such Confidential Information, and certify to Applied in a written officer's certificate that it has complied with its obligations under this section.

## **8. LIMITED WARRANTY**

**8.1 Performance Warranty.** For a period of ninety (90) days after first delivery of the Software to Licensee (the **"Warranty Period"**), Applied warrants that the Software, when used in accordance with its Documentation as permitted under this Agreement, will substantially conform to its Documentation. In the event that the Software fails to conform to this warranty, Licensee will notify Applied in writing of such nonconformity, including a sufficient level of detail to allow Applied to reproduce such nonconformity, and will reasonably cooperate with Applied in diagnosing such nonconformity. Subject to the foregoing, as Licensee's sole and exclusive remedy for (and Applied's entire liability in connection with) any breach of the foregoing warranty, Applied will (a) use commercially reasonable efforts to correct any material reproducible nonconformity in the Software by developing and issuing a patch, bugfix, error correction, or workaround to Licensee at no charge; or (b) if Applied determines in its sole discretion that it is unable to provide the foregoing after a reasonable number of attempts, grant to Licensee a pro-rated refund of license fees paid by Licensee with respect to the nonconforming Software, in which case this Agreement (and the licenses granted to Licensee hereunder) will be immediately terminated. Any patch, bug fix, error correction, or workaround will not extend the original Warranty Period. Notwithstanding anything to the contrary herein, Applied is not responsible for any nonconformity that (i) is not reported in accordance with this section during the Warranty Period; (ii) is attributable in whole or in part to any modifications to the Software made by any party other than Applied; (iii) is attributable in whole or in part to any misuse, abuse, or use of the Software outside the scope of the licenses granted in this Agreement or in a manner that is otherwise in violation of this Agreement or the Documentation; (iv) cannot be reproduced by Applied despite the application of its commercially reasonable efforts to do so, or (v) arises from combining Software with any other software that is not compatible with the Software as set forth in the Documentation.

**8.2 Disclaimer of Other Warranties.** EXCEPT TO THE EXTENT EXPRESSLY SET FORTH IN SECTION 8.1 (PERFORMANCE WARRANTY), THE SOFTWARE, THIRD-PARTY SOFTWARE, AND DOCUMENTATION ARE PROVIDED ON AN "AS IS" BASIS, AND APPLIED EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WITH RESPECT THERETO, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, QUIET ENJOYMENT, AND ACCURACY. THE FOREGOING DISCLAIMERS APPLY TO LICENSEE AND ANY THIRD PARTIES. WITHOUT LIMITING ANY OF THE FOREGOING, APPLIED MAKES NO WARRANTY THAT THE SOFTWARE, THIRD-PARTY SOFTWARE, OR THE DOCUMENTATION OR ANY SUPPORT SERVICES IS FAULT TOLERANT, ERROR FREE, FREE FROM INTERRUPTIONS OR OTHER FAILURES, OR THAT THE

SOFTWARE, THIRD-PARTY SOFTWARE, OR THE DOCUMENTATION WILL MEET LICENSEE'S REQUIREMENTS. APPLIED IS NOT OBLIGATED TO INDEMNIFY LICENSEE FROM ANY CLAIM OR ACTION, INCLUDING INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS OR ACTIONS.

**9. INDEMNIFICATION.** Licensee agrees to protect, defend, indemnify and hold harmless Applied and its officers, directors, employees, agents, and third party service providers from and against any and all claims, demands, costs, expenses, losses, liabilities and damages of every kind and nature (including, without limitation, reasonable attorneys' fees) imposed upon or incurred by Applied directly or indirectly arising from (i) Licensee's use of and access to this Software or the Services related to the Software; (ii) Licensee's violation of any provision of this Agreement or the policies or agreements which are incorporated herein; and/or (iii) Licensee's use of the Third-Party Software or other violation of any third-party right, including without limitation any intellectual property or other proprietary right. The indemnification obligations under this section shall survive any termination or expiration of this Agreement or Licensee's use of this Software, Third-Party Software, or the Services related to the Software provided by Applied.

#### **10. LIMITATION OF LIABILITY**

IN NO EVENT WILL APPLIED OR ITS SUPPLIERS BE LIABLE TO LICENSEE OR ANY OTHER PERSON FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, OR ANY DAMAGES FOR LOST DATA, LOST PROFITS, LOSS OF GOODWILL, BUSINESS INTERRUPTION, WORK STOPPAGE OR COMPUTER FAILURE OR MALFUNCTION THAT ARISE FROM OR RELATE TO THIS AGREEMENT, EVEN IF APPLIED OR ITS SUPPLIERS KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

APPLIED'S CUMULATIVE LIABILITY TO LICENSEE IN CONNECTION WITH ANY CLAIM RELATING TO ANY SOFTWARE, THIRD-PARTY SOFTWARE, DOCUMENTATION, MATERIALS OR SERVICES SHALL NOT EXCEED THE TOTAL LICENSE FEES PAID BY LICENSEE FOR THE SPECIFIC SOFTWARE THAT IS THE SUBJECT OF SUCH CLAIM. IN ADDITION, IN NO EVENT WILL APPLIED'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT, SOFTWARE, THIRD-PARTY SOFTWARE, DOCUMENTATION, MATERIALS OR SERVICES WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, EXCEED THE SUM OF ALL AMOUNTS PAID BY LICENSEE TO APPLIED UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM. APPLIED WILL NOT BE LIABLE FOR ANY CLAIM ARISING MORE THAN TWO (2) YEARS PRIOR TO THE INSTITUTION OF SUIT THEREUPON.

THE PARTIES ACKNOWLEDGE THAT THE TERMS OF THIS SECTION 10 (LIMITATION OF LIABILITY) REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT, AND THAT APPLIED WOULD NOT ENTER

INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS OF LIABILITY. THESE LIMITATIONS SHALL APPLY EVEN IF ANY EXCLUSIVE REMEDY IS FOUND TO FAIL OF ITS ESSENTIAL PURPOSE.

#### **11. AUDIT RIGHTS**

**11.1** Applied reserves the right to periodically audit Licensee's use of the Software and Third-Party Software to ensure that Licensee is using the Software and Third-Party Software in compliance with this Agreement. During Licensee's standard business hours and upon at least ten (10) days prior written notice, Applied may visit Licensee's facility(ies) and Licensee will make available to Applied or its representatives any requested records pertaining to the Software and/or Third-Party Software, provided that Applied shall be entitled to conduct no more than two (2) audits in any twelve (12) month period. The cost of any requested audit will be solely borne by Applied, unless such audit discloses (a) an underpayment or amount due to Applied in excess of five percent (5%) of the initial license fee for the Software and/or Third-Party Software, or (b) Licensee is not substantially in compliance with this Agreement, in which case Licensee shall pay all costs related to the audit. Any underpayment of fees disclosed by any such audit will be paid to Applied immediately, together with the applicable late payment charges.

#### **12. GENERAL**

**12.1 Independent Contractors.** This Agreement is not intended to establish any partnership, joint venture, employment, or other relationship between the parties except that of independent contractors.

**12.2 Governing Law; Dispute Resolution.** This Agreement, and any and all actions arising from or in any manner affecting the interpretation of this Agreement, will be governed by, and construed solely in accordance with, the laws of the State of California, without giving effect to any conflicts of laws principles that would require the application of the laws of a different state. If any dispute arising out of or related to this Agreement is not resolved amicably by Applied and Licensee, such dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("ICC") in effect as of the date of the quotation before three (3) arbitrators (unless otherwise mutually agreed by Applied and Licensee), with the first appointed by Applied, the second by Licensee and the third, who shall be the presiding arbitrator, by the other two (2) co-arbitrators, in consultation with Applied and Licensee (or, if such two (2) co-arbitrators fail to agree within sixty (60) days, by the ICC Court). The Expedited Procedure Provisions of the ICC Rules shall not apply. The seat of arbitration shall be San Francisco, California and the language of the arbitration will be English. Applied and Licensee agree to apply the International Bar Association Rules on the Taking of Evidence in International Arbitration. Applied and Licensee undertake to maintain confidentiality as to the existence of the arbitration proceedings and as to all submissions, correspondence and evidence relating to the arbitration proceedings. This provision shall survive the termination of the arbitral proceedings. During the pendency of the arbitral proceedings, Applied and Licensee shall share equally the costs of such arbitration as assessed by the ICC. Applied and Licensee shall bear its own attorneys' fees incurred. The award rendered by the arbitrators may be entered in any court having jurisdiction over the party or parties to the dispute against which

enforcement is sought, or a court in any other competent jurisdiction where the assets of said disputing party or parties are located. The written award of the arbitrators will be final and binding. Nothing in this Section prevents Applied or Licensee from seeking interim relief in a court of competent jurisdiction, and such action shall not be incompatible with the agreement to arbitrate contained herein or the availability of interim measures of protection under the ICC Rules. For that purpose both Applied and Licensee consent to the jurisdiction of the courts located in Santa Clara County, California. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

**12.3 Assignment.** Licensee may not assign this Agreement or any of the licenses granted hereunder (whether expressly, by implication, or by operation of law, including in connection with any merger or sale of assets or business), or delegate its performance under this Agreement, to any third party without obtaining Applied's prior written consent. Applied may freely assign this Agreement without consent. Any purported transfer, assignment, or delegation in violation of this Section 12.3 without the appropriate prior written consent will be null and void when attempted and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of the successors and permitted assigns of Applied and Licensee.

**12.4 No Third Party Rights or Beneficiary.** Unless otherwise set forth in an applicable quotation, no subsidiary, joint venture, partner, agent or other affiliate of Licensee shall have any rights hereunder. Notwithstanding anything herein to the contrary, nothing in this Agreement shall be deemed or construed to confer any rights of third-party beneficiary on any person or entity.

**12.5 Notices.** Any notice, approval, authorization, consent, or other communication required or permitted to be delivered to either party under this Agreement must be in writing and will be deemed to be properly delivered and given on receipt (or when delivery is refused) if delivered (a) by hand, or (b) by prepaid courier or express delivery service, or (c) by email (with a confirming copy sent by courier on the next business day).

**12.6 Modifications; Waivers.** This Agreement may not be modified except by a writing signed by authorized representatives of both parties. A waiver by either party of its rights hereunder shall not be binding unless contained in a writing signed by an authorized representative of the party waiving its rights. The non-enforcement or waiver of any provision on one occasion shall not constitute a waiver of such provision on any other occasions unless expressly so agreed in writing. It is agreed that no use of trade or other regular practice or method of dealing between the parties hereto shall be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.

**12.7 Severability.** If any provision of this Agreement is found or held to be invalid or unenforceable by any tribunal of competent jurisdiction, then the meaning of such provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of this Agreement, which will remain in full force and effect.

**12.8 Compliance with U.S. Export Laws.** Licensee acknowledges that the laws and regulations of the United States restrict the export and re-export of certain commodities and technical data of United States origin, which

may include the Software, Third-Party Software, Documentation and related materials. Licensee agrees that Licensee will not export or re-export the Software, Third-Party Software, Documentation or related materials in any form without the appropriate United States and foreign government licenses.

**12.9 Equitable Relief.** Notwithstanding Section 12.2, (a) Licensee acknowledges that Applied would suffer immediate and irreparable harm or which monetary damages would be an inadequate remedy if Licensee were to breach its obligations under **Section 3.3 (Restrictions)**, or **SECTION 7 (CONFIDENTIALITY)**, or exceed the scope of a license granted herein and (b) Licensee therefore expressly agrees that Applied will be entitled to obtain equitable relief, including injunctive relief, from any court having jurisdiction, in order to protect Applied's rights and interests in connection with the foregoing. Such remedy will be in addition to such other remedies as may be available at law or in equity.

**12.10 Force Majeure.** The inability of Applied to perform any of its obligations under this Agreement shall not be deemed a breach or create any liability if the same shall arise from any cause or causes beyond the reasonable control of such party, including, but not limited to, acts of God, fire, flood, earthquake, epidemic or pandemic, war, labor strikes, or failure or delays in transportation.

**12.11 Government Rights.** The Software, Documentation and related materials provided under this Agreement are commercial computer software and documentation developed exclusively at private expense, and in all respects are proprietary data belonging solely to Applied. If the Software, Documentation and related materials are acquired by or on behalf of agencies or units of the Department of Defense (DoD), then, pursuant to DoD FAR Supplement Section 227.7202 and its successors (48 C.F.R. 227.7202) the Government's right to use, reproduce or disclose the Software, Documentation and related materials acquired under this Agreement is subject to the restrictions of this Agreement. If the Software, Documentation and related materials are acquired by or on behalf of civilian agencies of the United States Government, then pursuant to FAR Section 12.212 and its successors (48 C.F.R. 12.212), the Government's right to use, reproduce or disclose the Software, Documentation and related materials acquired under this Agreement is subject to the restrictions of this Agreement.

**12.12 Construction.** The headings of sections of this Agreement are included solely for convenience of reference and are not to be used to interpret, construe, define, or describe the scope of any aspect of this Agreement. As used in this Agreement, the word "including" means "including but not limited to." For purposes of this Agreement, the word "will" shall be equivalent in meaning to the word "shall," both of which describe an act or forbearance which is mandatory under this Agreement. The word "may" describes an act or forbearance which is optional under this Agreement. Unless otherwise expressly stated to the contrary herein, all remedies are cumulative, and the exercise of any express remedy by either party does not by itself waive such party's right to exercise its other rights and remedies available at law or in equity.

**12.13 Entire Agreement.** APPLIED AND LICENSEE AGREE THAT THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDES ALL PROPOSALS AND

PRIOR AGREEMENTS, WHETHER ORAL OR WRITTEN, PURCHASE ORDERS AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF. For the sake of administrative convenience, Licensee may elect to utilize its standard form of purchase order in connection with the purchase of licenses to the Software hereunder; provided, however, that the terms and conditions of this Agreement will supersede and prevail over any contradictory or inconsistent terms that may be printed on such form of purchase order, and any additional terms printed on such purchase order will be of no effect.

**Schedule 1 –Support Services:**

In consideration for Support Services Period fees (which also may be referred to as “Maintenance Fees”) set forth in the applicable Applied quotation, Applied (or one of its authorized distributors, as applicable) shall make the following Support Services available to Licensee.

1. **Updates.** Provided that Licensee is current on its Maintenance Fee payments to Applied, Applied shall make available to Licensee all Updates that Applied makes generally available to its customers that purchase Support Services. Applied will notify Licensee from time to time as Updates become available. Such Updates become part of the Software as that term is used in the Agreement when the Updates are made available to Licensee by Applied. Licensee shall be responsible for all aspects of installing the Updates on its servers, including the cost of installing such Updates, scheduling the installation of such Updates and providing the personnel to perform the installation.
2. **Technical Support.** Provided that Licensee is current on its Maintenance Fee payments to Applied or one of Applied’s authorized distributors (“Agent”), Applied or its Agent shall make Support Services available for diagnosing and troubleshooting incidents reported in support requests. After receiving such support request, Applied or its Agent will provide Licensee with a recommended course of action which could include, without limitation, (i) proceeding in good faith in an attempt to resolve the incident with Licensee’s cooperation, or (ii) recommending that Licensee seek additional professional services from Applied or other parties for the incident due to the fact that it is outside the scope of Applied’s or its Agents Support Services. Support Services includes only remote services during Applied’s or its Agents’ regular business hours, excluding holidays observed by Applied or its Agent.