

## Master License Agreement

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, CLICKING ON AN “ACCEPT” BUTTON, OR OTHERWISE USING THE PROGRAM, YOU (“LICENSEE” OR “CUSTOMER”) AGREE TO THE TERMS OF THIS MASTER LICENSE AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND LICENSEE TO THESE TERMS IN WHICH CASE THE TERMS “LICENSEE” AND “CUSTOMER” SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE TO THESE TERMS,

\* DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, CLICK ON AN “ACCEPT” BUTTON, OR USE THE PROGRAM; AND

\* PROMPTLY RETURN THE UNUSED MEDIA, DOCUMENTATION, AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM IT WAS OBTAINED FOR A REFUND OF THE AMOUNT PAID. IF THE PROGRAM WAS DOWNLOADED, DESTROY ALL COPIES OF THE PROGRAM.

This Master License Agreement (“**Agreement**”) is by and between Licensee and **HCL Technologies Limited**, a company duly organized and existing under the laws of India and having its registered offices at 806 Siddharth, 96 Nehru Place, New Delhi-110019 (“**Licensor**” or “**HCL**”), and governs the receipt and use of HCL Programs and related Support (as defined below). Licensor and Licensee hereinafter referred to individually or collectively, respectively, as “**Party**” or “**Parties**.”

### 1.0 DEFINITIONS AND INTERPRETATIONS

#### 1.1 Definitions

“**Affiliate**” means an entity that controls, is controlled by or shares common control with HCL or Customer, where such control arises from either (a) a direct or indirect ownership interest of more than 50%, or (b) the power to direct or cause the direction of the management and policies, whether through the ownership of voting stock, by contract, or otherwise, equal to that provided by a direct or indirect ownership of more than 50%.

“**Documentation**” means the user guide, help information and/or other technical documentation generally provided by Licensor to licensees of a Program.

“**Fees**” means license, Support, and other fees as specified in an Order or provided under this Agreement.

“**Licensed Capacity**” means the quantity of each Program licensed as mentioned in the Order.

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v1.0: January 2018

**“Order”** means an agreed written or electronic document, subject to the terms and conditions of this Agreement that identifies the Programs and Third Party Software to be licensed, the Licensed Capacity thereof, applicable Fees, and the Support to be purchased.

**“Program(s)”** means the object code of the software and all accompanying Documentation delivered to Customer, including all items delivered by HCL to Customer under Support, but excluding Third Party Commercial Software except as expressly provided herein.

**“Support”** means the support services available for the Program as further specified in the Agreement and/or an Order.

**“Territory”** means the country or countries where Customer is licensed to install the Programs as further detailed in the Order.

**“Third Party Software”** means third party software, libraries and components incorporated in or included with a Program. Licensee shall be responsible for obtaining licenses for any commercially available Third Party Software identified in an Order (**“Third Party Commercial Software”**) directly from the licensor thereof.

## **1.2 Interpretations**

In this Agreement, unless the context otherwise requires:

- (i) References to parties, sections, paragraphs or attachments are references to parties, sections, paragraphs or attachments of this Agreement;
- (ii) Words denoting persons only shall include corporations, partnerships and unincorporated associations;
- (iii) References to any Party shall, where relevant, be deemed to be references to or to include, as appropriate, their respective successors or permitted assigns;
- (iv) Headings have been included for convenience only and shall not be used in construing any provision herein; and
- (v) References to any enactment shall be deemed to include references to such enactment as re-enacted, amended, or extended from time to time.

## **2.0 AGREEMENT STRUCTURE**

Licenses are granted and Support is obtained solely in connection with Orders executed by both parties. Each Order is subject to the terms of this Agreement and deemed to be a discrete contract, separate from each other Order, unless expressly stated otherwise therein. In the event of a direct conflict between this Agreement and the terms of any Order, the terms of the Order shall prevail solely with respect to such Order and only to the extent that such conflicting terms

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are necessary to satisfy the requirements of applicable, local laws; otherwise, the terms of this Agreement shall prevail. Orders may be entered into under this Agreement by and between (a) HCL or an Affiliate of HCL; and (b) the Customer or an Affiliate of Customer. With respect to an Order, the term HCL (or Licensor) or Customer (or Licensee) as used in this Agreement will be deemed to refer to the entities that execute such Order. Neither execution of this Agreement nor anything contained herein shall obligate either Party to enter into any Orders. In the event an Order is proposed by HCL, and is deemed to constitute an offer, then acceptance of such offer is limited to its terms. In the event Customer proposes or accepts an Order by submitting a purchase order, order document, acknowledgment, or other communication, then regardless of whether HCL acknowledges, accepts, fully or partially performs under any such document, HCL objects and rejects any additional or different terms in such document and none of such additional or different terms will become part of the agreement between the Parties even if HCL uses or refers to such document for invoicing purposes.

### **3.0 LICENSE GRANT**

Subject to the terms, conditions, and other restrictions set forth in this Agreement and the Order, HCL grants Customer a non-exclusive, non-transferable, non-sublicensable license in the Territory to install, access, and use the Programs (i) up to the Licensed Capacity; (ii) for Customer and its Affiliates' internal business use; and (iii) in accordance with the Documentation and the applicable Order (collectively, a "**License**"). Affiliates may use and access the Programs and Support under the terms of this Agreement, and Customer is fully responsible for its Affiliates compliance with the terms of this Agreement and the Order. Licensee and its Affiliate may not use or access the Programs outside the Territory except as otherwise specified in an Order.

### **4.0 LICENSE RESTRICTIONS**

The License grant under Section 3.0 above is subject to Licensee's agreement and compliance with each of the following (For the purposes of this Section 4.0, the term Program shall include all Third Party Software that incorporated in or included with the Program or otherwise provided by HCL in connection with an Order):

- (i) The Program contains certain materials and Third Party Software licensed from a third party, and Customer assumes responsibility for these materials and their use in the Program. Part of the Third Party Software and other software integrated with the Program is open source software whereby the source code thereof is available to the public for inspection and use by others ("**Open Source Software**"), and the terms and conditions of the applicable license agreement permit recipients of such Open Source Software to freely (and without the payment of any fee or royalty) copy, modify and distribute the Open Source Software's source code. The Program is subject to the applicable open source license with respect to such Open Source Software;

- (ii) The Program, including the Third Party Software contained in the Program, is licensed, and not sold, and neither HCL nor any third party passes any title to the Program to Customer;
- (iii) Customer may not and will not copy, operate, or otherwise use the Program, including any Third Party Software contained in the Program, in excess of the Licensed Capacity or other than as set forth in the License above nor prepare any derivative work thereof, or otherwise use, copy, modify, distribute, assign, sublicense, lease, rent, or otherwise transfer the Program, including any Third Party Software contained in the Program, except as expressly permitted in this Agreement or except to the extent required by law;
- (iv) Customer will not use the Programs in an outsourcing or service bureau environment on its behalf and/or on behalf of non-affiliated third parties or allow the Programs to be used by an outsourcing or service bureau provider on behalf of the Customer;
- (v) Customer will not distribute the Program, including any Third Party Software contained in the Program, to end-users as on-premises distributions and the Customer will not offer the Program or such Third Party Software as a cloud service or software-as-a-service to any end-users;
- (vi) Customer is prohibited from reverse engineering, reverse assembling, reverse compiling, translating, or otherwise trying to discover the source code form of any software provided in object code form of the Program, including any Third Party Software contained in the Program, except as permitted by the national or regional law of the places where the Customer does business (without the opportunity for contractual waiver), and then only with respect to the particular copy of object code incorporated into that particular Program or Third Party Software;
- (vii) Customer will not use any of the Program's components, files, modules, audio-visual content, or related licensed materials separately from that Program;
- (viii) Customer will not attempt to disable or circumvent any of the licensing mechanisms within the Program;
- (ix) Warranties provided, including any implied warranties, are provided solely by the HCL entity licensing the Program under the terms of an Order and not by any third party or other HCL entities;
- (x) Customer will reproduce all copyright notices and other legends of ownership on each copy, or partial copy, of the Program and will ensure that anyone who uses the Program (accessed either locally or remotely) does so only on Licensee's behalf and complies with the terms of this Agreement;
- (xi) If the Program is replaced by a trade-up Program, the license for the Program getting replaced will be promptly terminated;

- (xii) When Licensee receives an update, fix, or patch to a Program, Licensee accepts any additional or different terms that are applicable to such update, fix, or patch that are specified in its Documentation. If no additional or different terms are provided, then the update, fix, or patch is subject solely to this Agreement. If the Program is replaced by an update, Licensee agrees to promptly discontinue use of the replaced Program;
- (xiii) If HCL licenses the Program for a fixed term, Licensee's License is automatically terminated at the end of the fixed term, unless Licensee and HCL otherwise agree in writing;
- (xiv) The restrictions in this Section 4.0 apply to each copy of the Program, including any Third Party Software included in the Program, that Licensee makes.

## **5.0 WARRANTY AND EXCLUSIONS**

### **5.1 Limited Warranty**

HCL warrants that (a) the Program will perform substantially in accordance with its Documentation for a period of three (3) months from the date of the first Order (the “**Warranty Period**”); (b) HCL has used commercially reasonable efforts consistent with industry standards to scan for and remove any software viruses; and (c) other than passwords or license keys that may be required for the operation of the Program, there are no codes that are not addressed in the Documentation and that are designed to delete, interfere with, or disable the normal operation of the Program in accordance with the License (the “**Warranty**”). Licensee agrees that Documentation and other Program and Third Party Software content may be supplied only in the English language, unless otherwise required by local law without the possibility of contractual waiver or limitation. The exclusive remedy for any breach of the foregoing warranty shall be that HCL, at its own expense, and in response to written notice of a warranty claim, shall at its option: (i) repair or replace the Program to conform to above standard, or (ii) refund to Customer amounts paid for the non-conforming Program.

The Warranty applies only to the unmodified portion of the Program and does not apply to (a) any problems caused by hardware, computer or software other than the Program, by Third Party Software, by misuse of the Program or use of the Program other than in accordance with the License, or by modification of the Program, or (b) claims made either outside the Warranty Period or not in compliance with the notice and access requirements set forth in this Agreement. No warranty is provided for additional Licensed Capacity, Third Party Software, Programs provided pursuant to Support, or Programs provided pursuant to Section 7.0 of this Agreement. Licensor does not warrant that the Program will meet Licensee's requirements or that the operation of Program will be uninterrupted or error-free or that defects in the Program will be corrected. No oral or written information or advice given by Licensor or a Licensor authorized representative will create a warranty.

### **5.2 Exclusions**

THE LIMITED WARRANTIES EXPRESSLY SET FORTH IN SECTION 5.1 ARE LICENSEE'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THE WARRANTY PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO LICENSEE.

THESE WARRANTIES GIVE LICENSEE SPECIFIC LEGAL RIGHTS. LICENSEE MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

THE WARRANTIES IN THIS SECTION 5.0 ARE PROVIDED SOLELY BY THE HCL ENTITY LICENSING THE PROGRAM AND NOT BY A THIRD PARTY OR ANY OTHER HCL ENTITY. THE DISCLAIMERS IN THIS SECTION 5.2, HOWEVER, ALSO APPLY TO ALL HCL ENTITIES AND THEIR LICENSORS AND SUPPLIERS OF THIRD PARTY SOFTWARE. THOSE SUPPLIERS PROVIDE SUCH SOFTWARE WITHOUT WARRANTIES OR CONDITION OF ANY KIND.

## **6.0     SUPPORT**

HCL may offer, and Customer may acquire, Support services in an Order for the total Licensed Capacity of a Program. Once Support is acquired for a Program, Customer is automatically enrolled in Support on an annual basis for all Licensed Capacity of that Program, unless either Party terminates Support on all Licensed Capacity of a Program upon thirty (30) days advance written notice before the next Support anniversary date. The annual Fee for Support shall be as specified in each Order. A further description of Support is available at <https://www.hcltech.com/products-and-platforms/support> and incorporated herein by reference. HCL may change its Support terms to be effective upon Customer's support anniversary date. HCL reserves the rights to discontinue Support for a Program (including for prior releases or outdated versions of a Program) if HCL generally discontinues such services for all licensees of such Program, provided such discontinuance of Support shall be applicable from the next Support renewal term. If Customer terminates Support, but then re-enrolls in Support, HCL reserves the right to charge a reinstatement Fee. Unless otherwise expressly provided in an Order, HCL is not responsible for providing any support services for Third Party Commercial Software, and Licensee shall obtain such support directly from the licensor of such Third Party Commercial Software or its designees.

## **7.0 TRIAL LICENSE**

HCL may determine in its sole discretion to make certain software available to Customer without an Order and without charge. Unless such software is accompanied by a separate licensing agreement (in which case such licensing agreement shall govern use of such software), such software is deemed to be a Program pursuant to this Agreement except that (a) it is provided to Customer solely so that Customer may evaluate internally whether to acquire a license for the software for a Fee; (b) the license term for such software is 30 days; (c) the software is provided “AS IS” and without warranty or support of any kind; and (d) the software cannot be put into any productive use as part of Customer’s business processes and if used, Customer assumes the risk thereof. HCL may terminate all or any of Customer’s rights to these products for HCL’s convenience upon notice to Customer.

## **8.0 PAYMENT AND DELIVERY**

Customer will pay the License Fee and/or a Support Fee specified in an applicable Order for each Program and any specified Third Party Software upon receipt of an invoice. For Programs that are delivered electronically, Customer agrees upon request from HCL to provide HCL with documentation supporting that the designated items were received electronically. For Programs and Third Party Software that HCL provides to Licensee in tangible form, HCL fulfills its shipping and delivery obligations upon the delivery of such items to the HCL-designated carrier, unless otherwise agreed in writing by Licensee and HCL. The Programs and Third Party Software are accepted the day HCL delivers them either physically to the carrier or by providing access code(s) for electronic download, whichever occurs first; however, such acceptance will not affect the Warranty Period provided in this Agreement. Overdue amounts payable under an Order shall bear interest from the original due date at the rate of 1.0% per month or the maximum legal rate, whichever is less.

## **9.0 TAXES**

Any Fee quoted or provided by HCL is exclusive of all taxes. If any authority imposes on the Program or Third Party Software or related services a duty, tax (including sales tax or VAT), levy, or fee, excluding those based on HCL’s net income, then Licensee agrees to pay that amount, or else supply exemption documentation. Licensee is responsible for any personal property taxes for the Program or Third Party Software from the date of delivery. If any authority imposes a customs duty, tax, levy, or fee for the import into or the export, transfer, access, or use of the Program or Third Party Software outside the country in which the original Licensee was granted the license, then Licensee agrees that it is responsible for, and will pay, any amount so imposed.

## **10.0 INTELLECTUAL PROPERTY RIGHTS.**



Notwithstanding the use of the terms “purchase,” “sale”, or any similar terminology in connection with a transaction contemplated by this Agreement, as between Customer and HCL, except for the nonexclusive Licenses expressly granted to Customer under Section 3.0, HCL and its licensors and suppliers retain all right, title, and interest in and to the Program, Third Party Software, and Support, and all materials, code, documentation and works of authorship relating thereto or that HCL may deliver to Customer as part of Support or other services provided in connection with the Programs, as well as any modifications, enhancements, customizations, updates, revisions or derivative works thereof and all related intellectual property and proprietary rights subsisting in the foregoing. Licensor shall have the sole right to obtain, hold, and renew, in its own name and/or for its own benefit, all patents, copyrights, and/or other appropriate protection in the Program, Third Party Software, Support, or other such materials. There are no implied licenses under this Agreement or an Order, and all rights not expressly granted hereunder or thereunder are reserved to HCL and its Affiliates and licensors.

## **11.0 LICENSEE DATA AND DATABASES**

To assist Licensee in isolating the cause of a problem with the Program, HCL may request that Licensee (1) allow HCL to remotely or physically access Licensee’s system, or (2) send Licensee information or system data to HCL. However, HCL is not obligated to provide such assistance unless HCL and Licensee enter a separate written agreement under which HCL agrees to provide to Licensee that type of Support, which is beyond HCL’s warranty obligations in this Agreement. Licensee acknowledges that HCL uses information about errors and problems to improve its products and services, and assist with its provision of related support offerings. Licensee grants HCL the right to use such information and other feedback regarding the Programs and Third Party Software for these purposes, including the right to use HCL entities and subcontractors (including in one or more countries other than the one in which Licensee is located).

Licensee remains responsible for (1) any data and the content of any database Licensee makes available to HCL (“**Licensee Data**”); (2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data); and (3) backup and recovery of any database and any stored data, including all Licensee Data. Licensee will not send or provide HCL access to any personally-identifiable information, whether as part of Licensee Data or in electronic or any other form, and will be responsible for reasonable costs and other amounts that HCL may incur relating to any such information intentionally or mistakenly provided to HCL or to the loss or disclosure of such information by HCL, including liabilities arising out of any third party claims.

## **12.0 AUDIT**

Customer agrees that HCL may annually audit relevant books and records (including electronic records), devices, computers, servers, and systems of Customer, its Affiliates, consultants, service providers and contractors (collectively, “**Customer Entity(ies)**”), relating to the Program and Third Party Software in order to verify their use in compliance with this Agreement and/ or



the Order. HCL may make copies of any such books and records to the extent necessary to verify Customer's compliance with the terms hereof. HCL may conduct the audit itself or at its option engage an independent third party to do such audit, provided that such third party is subject to confidentiality obligations consistent with Section 17.0. The audit may be conducted at any sites of Customer Entities, where the Program or Third Party Software is installed, used or accessed from, including remotely. HCL shall bear its own costs in connection with an audit. HCL will provide fifteen (15) calendar days' notice prior to an audit, except where there is a reasonable cause to suspect that there is an infringement of intellectual property rights, in which case only two (2) business days' notice will be required. Any such audit will be performed during Customer Entity's normal business hours and in a manner that minimizes the disruption to its business. Customer Entities shall provide all assistance reasonably necessary for HCL to carry out such audit. If the audit reveals underpayments, Customer shall promptly make such payments. If the audit reveals under-reporting of usage, Customer shall promptly pay for the differentials at HCL's then list price for the Program and/or Third Party Software. HCL's rights and remedies in this Section shall be without prejudice to other rights and remedies HCL has under this Agreement or in any Order, at law or in equity. HCL's rights under this provision shall survive any termination or expiry of an Order or this Agreement for two years.

### **13.0 TERMINATION**

Upon thirty (30) days' advance written notice, either Party may terminate this Agreement on a prospective basis; provided however, such termination will have no effect on Orders placed prior to the effective date of the termination, and such Orders will remain in full force and effect under the terms of this Agreement and the applicable Order. HCL may (i) terminate an Order and the Licenses to the Programs in that Order if Customer fails to pay the applicable Fees due under that Order within thirty (30) days of receipt of written notice from HCL of non-payment; (ii) terminate any or all Orders, Licenses to the Programs, and/or this Agreement, without notice or cure period, if Customer violates the intellectual property rights of HCL, its Affiliates or its licensors, or uses the Program outside the scope of the License; or (iii) terminate all Licenses, Orders, and this Agreement in whole or part if Customer commits any other material breach of this Agreement and fails to cure the breach within thirty (30) days after HCL notifies Customer in writing of the breach. Upon termination of a License, (a) Customer will immediately uninstall and stop using the relevant Program, (b) upon HCL's request, Customer will immediately return such Program to HCL, together with all related Documentation and copies or certify its destruction in writing, and (c) all Support obligations of HCL under the Agreement or an Order will terminate.

### **14.0 LIMITATION OF LIABILITY**

#### **14.1 EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL HCL AND ANY OF ITS AFFILIATES, LICENSORS, OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, DATA OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE PROGRAMS, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH THIS AGREEMENT, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF LICENSOR OR ANY OF ITS AFFILIATES, AND EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### **14.2 LIMITATION OF LIABILITY AND REMEDIES.**

NOTWITHSTANDING ANY DAMAGES THAT CUSTOMER MIGHT INCUR FOR ANY REASON WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ALL DAMAGES REFERENCED IN SECTION 14.1 ABOVE AND ALL DIRECT OR GENERAL DAMAGES), THE ENTIRE LIABILITY OF HCL AND ANY OF ITS AFFILIATES, LICENSORS, AND SUPPLIERS IN CONNECTION WITH THIS AGREEMENT, AND CUSTOMER'S EXCLUSIVE REMEDY FOR ALL OF THE FOREGOING (EXCEPT FOR ANY REMEDY OF REPAIR OR REPLACEMENT ELECTED BY LICENSOR WITH RESPECT TO ANY BREACH OF THE LIMITED WARRANTY), SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER UNDER THE APPLICABLE ORDER FOR THE LICENSE OF THE APPLICABLE PROGRAM GIVING RISE TO SUCH DAMAGES IN THE 12 MONTHS PRIOR TO THE OCCURRENCE OF THE CLAIM. THE FOREGOING LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS (INCLUDING DISCLAIMERS UNDER SECTIONS 5.0) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE. THE LIMITATION OF LIABILITIES DESCRIBED IN THIS AGREEMENT ALSO APPLY TO ANY THIRD PARTY SUPPLIER OF ANY THIRD PARTY SOFTWARE OR ANY PART THEREOF. SUCH THIRD PARTY SUPPLIER IS AN INTENDED BENEFICIARY OF THIS AGREEMENT, AND ANY RIGHTS OF INDEMNIFICATION. A LIST OF SUCH THIRD PARTY BENEFICIARIES WILL BE PROVIDED ON WRITTEN REQUEST.

#### **15.0 NEW PRODUCTS/VERSIONS; PROGRAM OBSOLESCENCE**

- 15.1 Licensor may bring out new products or new version of Programs with new or additional functionality or technology, or in a new platform, as driven by customer and industry requirements. Licensor may offer such new products or version to Licensee to migrate to or adopt and may require a new Order to do so.

- 15.2 Based on industry directions and technology changes, Licensor may discontinue further releases of the Programs. In such a situation, Licensor may continue to ship released versions of Programs, and all shipped versions shall be governed by this Agreement.

## **16.0 EXPORT RESTRICTIONS**

Licensee will comply with all applicable export and import laws and associated embargo and economic sanction regulations, including those of the United States, that prohibit or restrict the export, re-export, or transfer of products, technology, services, or data, directly or indirectly, to certain countries, or for certain end uses or end users. Licensee acknowledges that the Program is subject to U.S. export laws and regulations. Licensee agrees that, unless authorized by the U.S. export license or regulation, it will not export or re-export the Program provided by HCL under this Agreement or an Order to (i) those countries (or nationals of countries) considered embargoed/terrorist countries under U.S. export laws and regulations or (ii) prohibited end users or end uses, including but not limited to: nuclear, space or missiles, and weapons systems (including chemical and biological). At the time of this Agreement, those countries considered embargoed/terrorist are: Cuba, Iran, North Korea, Sudan and Syria.

## **17.0 CONFIDENTIALITY**

Except as otherwise expressly permitted in this Agreement, Licensee will hold in confidence the Programs, Third Party Software, Documentation and all other non-public or proprietary information made available by Licensor (“**Confidential Information**”). Licensee agrees that the Programs and Documentation furnished by HCL will be treated as proprietary trade secrets of Licensor, and Licensee will not make any Confidential Information available in any form to any person other than to its employees and to contractors located on its premises with a need to know, subject to restrictions no less stringent than those contained herein (in the case of non-employees such restrictions shall be contained in a written agreement executed by the applicable contractor). Licensee represents to Licensor that it maintains a system of confidentiality to protect its own confidential business information, including written agreements with employees, and that the Confidential Information will be protected by such system using no less than a reasonable degree of care. If Licensee at any time becomes aware of any unauthorized use or disclosure of Confidential Information, Licensee will promptly and fully notify the Licensor of all facts known to it concerning such unauthorized use or disclosure and reasonably cooperate with Licensor in seeking a protective order or other appropriate remedy to limit such disclosure.

## **18.0 GOVERNING LAW AND DISPUTE RESOLUTION**

- 18.1 Governing Law. Both Parties agree to the application of the laws of the country in which Licensee obtained the Program license to govern the interpretation and enforcement of all of Licensee’s and HCL’s respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

18.2 Jurisdiction. All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license.

## **19.0 GENERAL**

19.1 Additional Terms. In addition to the definitions given in the Agreement, the additional terms defined in Exhibit A hereof applies to any Order placed under this Agreement, which terms are hereby incorporated into this Agreement.

19.2 Third-Party Beneficiary. Licensee understands that Third Party Software and portions of the Programs and related documentation may have been licensed to Licensor from third parties and that such third parties are intended third-party beneficiaries of the provisions of this Agreement. Except for the foregoing, no right or cause of action for any third party is created by this Agreement or any transaction under it, nor is HCL responsible for any third party claims against Licensee.

19.3 Severability. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect. The parties agree that any invalid provision shall be deemed to be restated so as to be enforceable to the maximum extent permissible under law consistent with the original intent and economic terms of the invalid provision. Each provision of this Agreement, which provides for a limitation of liability, disclaimer of warranties or exclusion of remedies is severable from and independent of any other provision. Further, in the event that any remedy hereunder is determined to have failed of its essential purpose, all limitations of liabilities and exclusions of damages shall remain in effect. Nothing in this Agreement affects any statutory rights of persons that cannot be waived or limited by contract.

19.4 Business Contacts. Licensee authorizes HCL and its contractors and business partners to store and use Licensee's business contact information wherever they do business, in connection with HCL products and services, or in furtherance of HCL's business relationship with Licensee.

19.5 Force Majeure. Neither Party will be liable for any failure or delay in the performance of its obligations under this Agreement if such failure or delay is due to acts of God, fire, flood, natural catastrophe, acts of any government or of any civil or military authority, national emergencies, acts of terrorism, riots, war, insurrection, strikes, or any occurrence beyond the reasonable control of such Party.

19.6 FCPA. Each Party will comply, at its own expense, with all applicable laws, including, without limitation, all laws prohibiting corruption and bribery (such as, if applicable, the U.S. Foreign Corrupt Practices Act of 1977), laws governing transactions with government and public entities, antitrust and competition laws, insider trading, securities, and financial reporting laws, laws governing consumer transactions, and laws regarding data privacy, where such compliance has any direct or indirect connection or relation to this Agreement or either Party's exercise of rights or satisfaction of obligations under this Agreement.

- 19.7 Non-reliance. In entering into this Agreement, neither party is relying on any representation not specified in this Agreement, including but not limited to any representation concerning: (1) the performance or function of the Program or Third Party Software, other than as expressly warranted in Section 5.0 above; (2) the experiences or recommendations of other parties; or (3) any results or savings that Licensee may achieve. Licensee acknowledges that it has not relied on any promises, inducements, representations, or other statements made by Licensor regarding the commercial viability, profitability, or success in the marketplace of any products or services, and that Licensee's decision to enter into this Agreement or an Order is made independently.
- 19.8 Assignment and Transfers. Licensee will not assign or transfer this Agreement, or a License or Program under an Order separate from this Agreement, without the written consent of the Licensor except in the event of a merger with or into, or a transfer of all or substantially all of Licensee's assets to a third party who assumes all of Licensee's liabilities and obligations under the Agreement and expressly agrees in writing to be so bound. Except as mentioned in the preceding sentence, any attempted assignment or transfer by Licensee of this Agreement or Programs is null and void.
- 19.9 Relationship of Parties. This Agreement shall not be construed to establish any form of partnership, agency, franchise, or joint venture of any kind between Licensee and Licensor, nor to constitute either Party as the agent, employee, legal representative, or any other form of representative of the other.
- 19.10 Other Agreements Do Not Apply. The license and intellectual property indemnification terms of Licensee's other agreements with HCL (such as a services agreement with Customer where HCL is the service provider) do not apply to Program Licenses granted under this Agreement.
- 19.11 Entire Agreement. This Agreement, including any terms and supplemental documents incorporated herein, supersedes any and all prior oral or written communications, proposals, conditions, representations, and warranties, between Licensee and HCL concerning Licensee's use of the Program.
- 19.12 No Waiver. A waiver by a Party of any breach of this Agreement or Order will not be construed as a waiver of any subsequent breach. No waiver will be implied from conduct or failure to enforce rights, nor be effective, unless in writing signed on behalf of the Party against whom the waiver is asserted.
- 19.13 Notices. All notices required or permitted by this Agreement shall be in writing and shall be valid and sufficient if sent by: (1) registered or certified mail, return receipt requested, postage prepaid; (2) by facsimile (provided the receipt of the facsimile is evidenced by a printed record of completion of transmission); (3) by e-mail; or (4) by express mail or courier service providing a receipt of delivery. Notices shall be effective upon receipt as demonstrated by reliable confirmation. Notices shall be addressed to the Parties using the contact information given in the applicable Order or this Agreement. Either Party

may change its address or other contact information by a notice given to the other Party in the manner set forth above.

- 19.14 Limitation of Claims. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation: (a) neither party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than 2 years after the cause of action arose; and (b) upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.
- 19.15 Survival. Such provisions of this Agreement, which generally can survive after termination or expiration of any similar agreement, shall also survive any termination or expiration of this Agreement, particularly the provisions of Sections 4, 5.2, 8, 10, 11, 12, 13, 14, 16, 17, 18 and 19.