

Excelero Inc.
MASTER SOFTWARE LICENSE AGREEMENT



This Master Software License Agreement (this “Agreement”) is a legal agreement between you, the individual or entity that has agreed to pay for the rights granted herein (“End User”), and Excelero, Inc., a Delaware corporation (“Excelero”). This Agreement governs End User’s possession and use of the Software and the Documentation (each as defined below).

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING OR USING THIS SOFTWARE, YOU AGREE TO THE TERMS OF THIS MASTER SOFTWARE LICENSE AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY OR LEGAL ENTITY TO THESE TERMS.

1. SOFTWARE LICENSE.

1.1 LICENSE GRANT. Subject to the terms and conditions of this Agreement and/or the order form or purchase order mutually executed by the parties referencing this Agreement ("Order Form"), Excelero hereby grants to End User a non-exclusive, non-transferable, non-sublicenseable right and license to use the Excelero software product(s) designated in the Order Form and/or accompanied by this Agreement in object code form (the "Software") and Documentation for internal business purposes, subject to any usage limitations or other restrictions set forth herein or in the Order Form. This Agreement supersedes any other agreement between Excelero and End User with respect to the Software.

1.2 RESTRICTIONS ON USE. End User will not, directly or indirectly: a) sublicense, sell, resell, transfer, assign, distribute, share, lease, rent, make any commercial use of, outsource, use on a timeshare or service bureau, or use in an application service provider or managed service provider environment, the Software; b) copy the Software onto any public or distributed network, except for an internal and secure cloud computing environment; c) cause or permit the decompiling, disassembly, or reverse engineering of any portion of the Software, or attempt to discover or permit the discovery of any source code or other operational mechanisms of the Software; d) modify, adapt, translate or create derivative works, nor allow any of those actions to occur, based on all or any part of the Software; e) modify any proprietary rights notices which appear in the Software or components thereof; f) use any Software in violation of any applicable laws and regulations (including any export laws, restrictions, national security controls and regulations) or outside of the license scope set forth in Section 1.1; g) disclose to the public the results of any internal performance testing or benchmarking studies of or about the Software, without first (x) sending the results and related study(ies) to Excelero, and (y) obtaining Excelero's written approval of the assumptions, methodologies and other parameters of the testing or study; or h) ship, transfer, or export the Software or any component thereof or use the Software in any manner, prohibited by law, including without limitation to, sell, distribute, export or download Software: (a) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea, Sudan, Lebanon or Syria,

(b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals, (c) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S. or Israeli government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval, or (d) otherwise in violation of any export or import restrictions, laws or regulations of the U.S. or Israel or any foreign agency or authority. End User agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list.

1.3 UNAUTHORIZED USE. End User shall notify Excelero immediately of any unauthorized use of any password or account or any other known or suspected breach of security or misuse of the Software. End User is responsible for use of the Software by any and all employees, contractors, or other users that it allows to access the Software.

1.4 SUPPORT AND MAINTENANCE. To the extent that End User has paid for a perpetual license to use the Software, and subject to End User's payment of the applicable Support and Maintenance fees, Excelero will provide End User with Support and Maintenance for the Software that is the subject of such Order Form, as set forth in Exhibit A. For subscription license models, Excelero will provide End User with Support and Maintenance for the Software as set forth in Exhibit A solely during the subscription term as set forth in the Order Form.

1.5 FEEDBACK. End User may provide suggestions, feedback and other information to Excelero regarding possible improvements in the operation, functionality or use of the Software ("Feedback"). End User agrees that Excelero shall have the full, unencumbered right to use, incorporate and otherwise fully exercise and exploit any such Feedback in connection with its products and services.

2. FEES.

2.1 PRICING AND AUDITS. End User will be billed for those amounts and at those prices set forth in the applicable Order Form. End User will maintain, and Excelero will be entitled to audit, any records relevant to End User's use of the Software hereunder. Excelero may audit such records on reasonable notice at Excelero's cost (or if the audits reveal material non-compliance with this Agreement, at End User's cost).

2.2 PAYMENTS. End User shall pay those amounts set forth in Excelero's invoices, subject to the license model and payment terms set forth therein. All payment obligations are non-cancelable and all amounts paid are non-refundable (except in accordance with Section 6.1). The fees paid by End User are exclusive of all taxes, levies, or duties imposed by taxing authorities, if any, and End User shall be responsible for payment of all such taxes, levies, or duties, excluding taxes based on Excelero's income. End User represents and warrants that the billing and contact information provided to Excelero is complete and accurate. End User shall pay interest on all payments not received by the due date at a monthly rate of one and a half percent (1.5%) or the maximum amount allowed by law, whichever is lesser.

3. CONFIDENTIALITY

3.1 SCOPE AND RESTRICTIONS. "Confidential Information" means all information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party") that is designated in writing or identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential due to the nature of the information disclosed and the circumstances surrounding the disclosure. The Receiving Party will: (i) not use the Disclosing Party's Confidential Information for any purpose outside of this Agreement; (ii) not disclose such Confidential Information to any person or entity, other than its (a) employees, consultants, agents and professional advisers who have a "need to know" for the Receiving Party to exercise its rights or perform its obligations hereunder, provided that such employees, consultants and agents are bound by agreements or, in the case of professional advisers, ethical duties respecting such Confidential Information in accordance with the terms of this Section 3; and (iii) use reasonable measures to protect the confidentiality of such Confidential Information. If the Receiving Party is required by applicable law or court order to make any disclosure of such Confidential Information, it will first give written notice of such requirement to the Disclosing Party, and, to the extent within its control, permit the Disclosing Party to intervene in any relevant proceedings to protect its interests in its Confidential Information, and provide full cooperation to the Disclosing Party in seeking to obtain such protection. Further, this Section 3 will not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt; (ii) is or has become public knowledge or publicly available through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by the Receiving Party without use or reference to the Confidential Information.

3.2 EQUITABLE RELIEF. The Receiving Party acknowledges that unauthorized disclosure of Confidential Information could cause substantial harm to the Disclosing Party for which damages alone might not be a sufficient remedy and, therefore, that upon any such disclosure by the Receiving Party the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law or equity.

4. PROPRIETARY RIGHTS. Excelero and/or its licensors, as the case may be, own and shall retain all proprietary rights, including all copyright, patent, trade secret, trademark and all other intellectual property rights, in and to the Software, and all improvements, enhancements and derivatives thereof. Other than the limited license set forth in Section 1.1 above, no right is granted to End User herein. Third party components included in the Software are subject to the applicable third party terms and conditions.

5. TERM AND TERMINATION. This Agreement will be in effect as of the effective date of the applicable Order Form and continue until terminated as set forth below. If either party fails to comply in any material respect with any provision of this Agreement or any Order Form, and such material breach has not been cured within thirty (30) days after receipt of written notice thereof, the non-breaching party may terminate this Agreement and/or the affected Order Form, except that Excelero may immediately terminate this Agreement and/or the affected Order Form upon End User's breach of Section 1.2. Upon expiration or termination of this Agreement or any Order Form for any reason and unless End User has paid for a perpetual license to use the Software, End User shall cease any further use of the applicable Software and destroy any copies of the applicable Software and Documentation within End User's possession or control. Upon expiration or termination of this Agreement, the Receiving Party will return or destroy, at the Disclosing Party's option, the Disclosing Party's Confidential Information in the Receiving Party's possession or control. All fees that have accrued as of such expiration or termination, and Sections 1.2, 1.3, 1.5, 2, 3, 4, 5, 6.2, 7, 8, 9, 10 and 11, will survive any expiration or termination of this Agreement or the affected Order Form. To the extent that End User has paid for a perpetual license to use the Software and subject to End User's full payment of all applicable fees (including Support and Maintenance fees), Excelero shall continue to provide End User with Support and Maintenance in accordance with the terms set forth in Exhibit A.

6. WARRANTIES.

6.1 LIMITED WARRANTY. Excelero warrants that, during the first ninety (90) days following the date the Software is made available to End User (the "Warranty Period"), the Software will, in all material respects, conform to the functionality described in the technical documentation for the Software made available by Excelero ("Documentation"). Excelero's sole and exclusive liability, and End User's sole and exclusive remedy, for a breach of this warranty shall be that Excelero shall be required to use commercially reasonable efforts to make the Software conform in all material respects the Documentation, and if Excelero is unable to restore such material functionality within thirty (30) days from the date of written notice of said non-compliance, as End User's sole and exclusive remedy, End User shall be entitled to terminate this Agreement upon written notice and receive a refund of the license fees which have been paid for such Software. The foregoing warranty shall be subject to the following conditions: (A) the Warranty claim is made in writing, with sufficient detail, within the Warranty Period; (B) Excelero determines that the defect is not due to any misuse, abuse, neglect, negligence, or unauthorized repair or modification of the Software; and (C) the failure or error is reproducible by Excelero. Any fix, patch, or workaround provided as part of the foregoing remedy will not re-commence the Warranty Period and are warranted for the remainder of the Warranty Period, as then in effect.

6.2 WARRANTY DISCLAIMER. EXCEPT AS EXPLICITLY PROVIDED HEREIN, THE SOFTWARE AND ALL RELATED SERVICES ARE PROVIDED "AS IS" AND EXCELERO EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT THERETO, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR THE CONTINUOUS, UNINTERRUPTED, ERROR-FREE OR SECURE ACCESS TO OR OPERATION OF THE SOFTWARE OR ANY RELATED SERVICES.

7. INDEMNIFICATION.

7.1 By EXCELERO. Excelero agrees to defend at its expense End User against any third party claim to the extent such claim alleges that the Software infringes or misappropriates any United States patent, or any copyright, trademark or trade secret, of a third party, and Excelero shall pay all costs and damages finally awarded against End User by a court of competent jurisdiction as a result of any such claim. In the event that the use of the Software is, or in Excelero's sole opinion is likely to become, subject to such a claim, Excelero, at its option and expense, may (a) replace the applicable Software with functionally equivalent non-infringing technology, (b) obtain a license for End User's continued use of the applicable Software, or (c) terminate this Agreement or the affected Order Form and provide a refund of the license fees paid for the Software (reduced based on a five (5)-year straight line depreciation schedule). The foregoing indemnification obligation of Excelero will not apply: (1) if the Software is modified by someone other than by Excelero; (2) if the Software is combined with other non-Excelero products, applications, processes or service not provided by Excelero, but solely to the extent the claim would not have occurred if not for such combination; (3) to any unauthorized use of the Software; or (4) End User's failure to use updated or modified Software provided by Excelero to avoid infringement or misappropriation (the foregoing are collectively referred to as "Excluded Claims"). THE FOREGOING PROVISIONS OF THIS SECTION STATE THE ENTIRE LIABILITY AND ALL OBLIGATIONS OF EXCELERO AND THE EXCLUSIVE REMEDY OF END USER, WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADE SECRETS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY RIGHTS WITH RESPECT TO THE SOFTWARE.

7.2 By END USER. End User agrees to defend at its expense Excelero against any third party claim to the extent such claim arises from: (i) End User's breach of this Agreement, (ii) an Excluded Claim or, (iii) End User's negligence or willful misconduct, and End User shall pay all costs and damages finally awarded against Excelero by a court of competent jurisdiction as a result of any such claim.

7.3 INDEMNIFICATION REQUIREMENTS. In connection with any claim for indemnification under this Section 7, the indemnified party must promptly provide the indemnifying party with notice of any claim that the indemnified party believes is within the scope of the obligation to indemnify, provided, however, that the failure to provide such notice shall not relieve the indemnifying party of its obligations under this Section 7, except to the extent that such failure materially prejudices the indemnifying party's defense of such claim. The indemnified party may, at its own expense, assist in the defense if it so chooses, but the indemnifying party shall control the defense and all negotiations relative to the settlement of any such claim. Any settlement intended to bind the indemnified party shall not be final without the indemnified party's written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

8. LIMITATION OF LIABILITY.

8.1 EXCEPT FOR LIABILITY ARISING OUT OF END USER'S BREACH OF SECTION 1.2 OR EITHER PARTY'S BREACH OF SECTION 3, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES FOR LOSS OF REVENUES OR PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2 EXCELERO'S LIABILITY HEREUNDER FOR ANY DAMAGES (WHETHER FOR BREACH OF CONTRACT, MISREPRESENTATIONS, NEGLIGENCE, STRICT LIABILITY, OTHER TORTS OR OTHERWISE) OR LIABILITY, UNDER ANY LEGAL THEORY, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL FEES PAID TO EXCELERO HEREUNDER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM GIVING RISE TO SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

9. FORCE MAJEURE. Except for payment obligations, neither party hereto will be liable for defaults or delays (except for payment obligations) due to Acts of God, or the public enemy, acts or demands of any government or governmental agency, fires, floods, accidents, or other unforeseeable causes beyond its control and not due to its fault or negligence.

10. U.S. GOVERNMENT RIGHTS. As defined in 48 C.F.R. §2.101, DFAR §252.227-7014(a)(1) and DFAR §252.227-7014(a)(5) or otherwise, all Software and Documentation provided in connection with this Agreement are “commercial items,” “commercial computer software” and/or “commercial computer software documentation.” consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

11. MISCELLANEOUS. This Agreement shall be governed by and construed under the laws of the State of California, U.S.A. The parties consent to the exclusive jurisdiction and venue of the courts located in and serving Santa Clara, California. The United Nations Convention on Contracts for the International Sale of Goods is hereby disclaimed. Failure by either party to exercise any of its rights under, or to enforce any provision of, this Agreement will not be deemed a waiver or forfeiture of such rights or ability to enforce such provision. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be amended to achieve as nearly as possible the same economic effect of the original provision and the remainder of this Agreement will remain in full force and effect. This Agreement (including all Order Forms and exhibits hereto) represents the entire agreement between the parties and supersede any previous or contemporaneous oral or written agreements or communications regarding the subject matter of this Agreement. Any modification to this Agreement must be in writing and signed by a duly authorized agent of both parties. This Agreement shall control over additional or different terms of any purchase order, confirmation, invoice or similar document, even if accepted in writing by both parties, and waivers and amendments to this Agreement shall be effective only if made by non-pre-printed agreements clearly understood by both parties to be an amendment or waiver to this Agreement. The rights and remedies of the parties hereunder will be deemed cumulative and not exclusive of any other right or remedy conferred by this Agreement or by law or equity. No joint venture, partnership, employment, or agency relationship exists between the parties as a result of this Agreement. This Agreement may not be assigned by either party without the prior written approval of the other, except that either party may assign this Agreement to a successor to all or substantially all of the business or assets to which this Agreement relates, and Excelero may assign this Agreement to any of its affiliates; and any purported assignment in violation of this section shall be void. Excelero may give notice to End User by electronic mail to End User's e-mail address on record in End User's account information, or by written communication sent by first class mail or pre-paid post to End User's address on record in End User's account information. End User may give notice to Excelero at any time by any letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to Excelero at the following address: Excelero Inc., 2784 Homestead Rd. #363, Santa Clara, CA 95051, USA, Attn: Legal. For purposes hereof, “including” means “including without limitation”.

EXHIBIT A

SUPPORT AND MAINTENANCE TERMS AND CONDITIONS

Maintenance & Support Services. Subject to End User's payment of applicable Support and Maintenance fees as detailed in the applicable Order Form, Excelero will provide the following standard Maintenance and Support services to End User for the Support Term set forth in such Order Form with respect to the Software licensed pursuant to such Order Form.

- "Maintenance" means the provision by Excelero to End User of any Releases or Workarounds that are made generally available by Excelero to customers who subscribe for Excelero's Maintenance and Support services offering.
- A "Release" is one of the following:
 - A "Major Release" means a specific edition of the Software that contains major functionality changes. The content and timing of all Major Releases will be determined by Excelero in its sole discretion. Major Releases are signified by version changes to the left of the decimal point (e.g. 2.0 to 3.0) following the product name.
 - A "Minor Release" means a specific edition of the Software that contains minor, but significant functionality changes. The content and timing of all Minor Releases will be determined by Excelero in its sole discretion. Minor Releases are signified by version changes to the right of the decimal point (e.g. 2.5 to 2.6) following the product name.
- "Workaround" means a software patch, error correction, or feasible change in operating procedures whereby the Software is made sufficiently functional so that End User can continue to use the Software. Excelero may provide Workarounds for a release to resolve a Service Issue for up to twelve (12) months after the earlier of (i) the date the subsequent Release is first made commercially available, and (ii) the date the current Release is no longer made available as a commercial offering by Excelero. After such twelve (12) month period, Excelero is not obligated to provide Workarounds but will support End User's update of the Software to the latest Release. Where Workarounds are to be delivered to resolve a Service Issue, Excelero will provide End User with a single copy of a Workaround on suitable media or shall make available the applicable Workaround for download by End User from Excelero's web site.
- "Support" means the e-mail and telephone technical services that Excelero offers regarding the use and function of the Software. Excelero will provide Support and respond to Service Issues as further described below.
- A "Service Issue" is an End User inquiry regarding the functionality or use of the Software.

End User agrees that Excelero's Support obligations concerning the Software's use with third party products, including compilers, operating systems and other software, shall be limited to those items set forth in the Documentation. Service Issues are assigned a classification at the time of End User's initial contact with Excelero, and are classified according to the severity levels set forth below. Excelero will initially respond in accordance with the estimated response times based on the service tier (e.g. MC or Premium) for hours for the applicable region as set forth below. Failure to contact End User within the estimated response time period because the End User is unavailable (e.g., phone busy, no answer, in a meeting, or out of the office) does not constitute Excelero's noncompliance with the response commitment. End User shall cooperate with Excelero to provide reproducible results for any errors reported. Excelero's ability to provide Support will depend, in some cases, on the ability of the End User representatives to provide accurate and detailed information and to aid Excelero in handling a Service Issue. End User shall provide Excelero with reasonable access to End User systems, premises and staff as needed to provide Support. Excelero will provide Support for each Release for at least twelve (12) months after the subsequent Release is first made commercially available. After such period, Excelero will provide Support, as needed, to End User to update its use of the Software to the latest Release of the Software. For clarity, however, Support is provided only during the Support Term of End User's license to the Software.

Service Issue Classification	Response Time (MC)	Response Time (Premium)	Next Steps
Severity 1 Critical Business Impact: Software is not functioning or is stopped or severely impacted so that End User cannot reasonably continue use of Software and no Workaround is available.	4 hours	One business day	Once the Service Issue is verified, Excelero will engage development staff during Excelero's business hours (but in no event later than 12 hours after the Service Issue is verified) until a Workaround is achieved.
Severity 2 Major Business Impact: Software is functioning inconsistently causing significantly impaired End User usage and productivity, such as periodic work stoppages and feature crashes.	4 hours	One business day	Once the Service Issue is verified, Excelero will engage development staff during Excelero's business hours (but in no event later than 24 hours after the Service Issue is verified) until a Workaround is achieved.
Severity 3 Minor Business Impact: Software is functioning inconsistently causing slightly impaired End User usage and productivity, but End User can work around such inconsistency or impairment.	One business day	Two business days	Once the Service Issue is verified, Excelero will consider a Workaround, if appropriate in Excelero's sole discretion, and Software enhancements for such Service Issue for inclusion in a subsequent Release.
Severity 4 No Business Impact: Software is functioning consistently but End User requests minor changes in Software such as Documentation Updates, cosmetic defects or enhancements.	One business day	Two business days	Once contact has been made with End User, Excelero will consider Software enhancements for inclusion in subsequent Release.

End User Point of Contact. End User will designate a specific individual to be the primary point of contact for Support and Maintenance communications with Excelero and will deliver contact information for such individual to Excelero's support team.

On-Site Support. End User may elect to purchase specific on-site support packages and software consultancy services in accordance with Excelero's standard consulting terms, details of which can be obtained from Excelero. The purpose of on-site support is to help End Users optimize deployment of the Software, including, notwithstanding the generality of the foregoing, installation, setup, configuration, interfacing and additional support offerings.

Exclusions to Maintenance Services. Maintenance services do not include the right to access new or bundled product offerings made available by Excelero, unless licenses for such offerings are separately purchased. Excelero will not have any obligation to provide Maintenance services for problems in the operation or performance of the Software to the extent caused by any of the following:

- Modifications to the Software made by a party other than Excelero;
- End User's use of the Software other than as authorized in this Agreement or as provided in the Documentation;
- End User's use of other than those releases of the Software covered by Maintenance services; or
- End User's failure to use any error corrections or updates thereto provided to End User by Excelero to address such problem.

HOURS OF SERVICE & CONTACT INFORMATION

For all End Users:

Contact us by:	At:	During:
Email	support@excelero.com	Anytime (24x7x365)
Phone	+1 888 668-6374 (Option '1')	Anytime (24x7x365)

All contact information is subject to change upon written notice from Excelero.

LAPSE OF SUPPORT SERVICES

If coverage for Maintenance and Support services lapses as a result of End User's failure to renew Maintenance and Support services, reinstatement of the Maintenance and Support services for the upcoming Support Term will require payment by End User of a reinstatement fee to Excelero for such Maintenance and Support services, as specified in the Order Form.

Excelero's sole and exclusive liability and End User's sole and exclusive remedy for any bugs, errors or support issues, shall be provision of support by Excelero in accordance with this Exhibit A.