# Software License Agreement

## (Click Version)

This Software License Agreement, including the Order Form which by this reference is incorporated herein, (this "**Agreement**"), is a binding agreement between SOUTHERN CALIFORNIA SOFTWARE LABS, LLC ("**Licensor**") and the person or entity identified on the Order Form as the licensee of the Software ("Licensee"). Licensor and Licensee may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

LICENSOR PROVIDES THE SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT LICENSEE ACCEPTS AND COMPLIES WITH THEM. BY SELECTING THE "TERMS OF SERVICE" CHECKBOX YOU (A) ACCEPT THIS AGREEMENT AND AGREE THAT LICENSEE IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT: (I) YOU ARE 18 YEARS OF AGE OR OLDER/OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) IF LICENSEE IS A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF LICENSEE AND BIND LICENSEE TO ITS TERMS. IF LICENSEE DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, LICENSOR WILL NOT AND DOES NOT LICENSE THE SOFTWARE TO LICENSEE AND YOU MUST NOT DOWNLOAD/INSTALL THE SOFTWARE OR DOCUMENTATION.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR YOUR OR LICENSEE'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NO LICENSE IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION, OR OTHERWISE) UNDER THIS AGREEMENT, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY SOFTWARE THAT LICENSEE DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF LICENSOR'S SOFTWARE.

1.    Definitions.

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through ownership of more than 50 % of the voting securities of a Person.

"**Agreement**" has the meaning set forth in the preamble.

"**Authorized User**" means each of the individuals authorized to use the Software as identified in the Order Form.

"**Authorized Databases**" means each of the databases identified in the Order Form.

"**Confidential Information**" has the meaning set forth in 66.1.

"**Disclosing Party**" has the meaning set forth in 66.1.

"**Documentation**" means Licensor's user manuals, handbooks, and installation guides relating to the Software available at [URL] that Licensor provides or makes available to Licensee which describe the functionality, components, features, or requirements of the Software, including any aspect of the installation, configuration, integration, operation, or use of the Software.

"**Force Majeure Event**" has the meaning set forth in Error: Reference source not found13.6.

"**Indemnitee**" has the meaning set forth in 1210.3.

"**Indemnitor**" has the meaning set forth in 1210.3.

"**Initial Term**" has the meaning set forth in Error: Reference source not found12.1.

"**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights Laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

"**Licensor Indemnitee**" has the meaning set forth in 1210.2.

"**Losses**" means all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"**Maintenance Release**" means any update, upgrade, release, or other adaptation or modification of the Software, including any updated Documentation, that Licensor may provide to Licensee from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements, or other changes to the

user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Software, but does not include any New Version.

"**New Version**" means any new version of the Software that Licensor may from time to time introduce and market generally as a distinct licensed product (as may be indicated by Licensor's designation of a new version number), and which Licensor may make available to Licensee at an additional cost under a separate written agreement.

"**Open Source Components**" means any software component that is subject to any open source license agreement, including any software available under the GNU Affero General Public License (AGPL), GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache License, BSD licenses, or any other license that is approved by the Open Source Initiative.

"**Open Source License**" has the meaning set forth in 42.3.

"**Overages**" has the meaning set forth in Section 2.2.

"**Overage Fees**" has the meaning set forth in Section 5.1.

"**Permitted Use**" means use of the Software by an Authorized User for the benefit of Licensee in the ordinary course of its internal business operations.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

"**Receiving Party**" has the meaning set forth in 66.1.

"**Renewal Term**" has the meaning set forth in Error: Reference source not found12.2.

"**Representatives**" means, with respect to a Party, that Party's employees, officers, directors, consultants, agents, independent contractors, service providers, and legal advisors.

"**Software**" means the executable, object code version of the Statetrace Core, and any Maintenance Releases provided to Licensee pursuant to this Agreement.

"**Term**" has the meaning set forth in Section 12.2.

"**Third-Party Materials**" means materials and information, in any form or medium, that are not proprietary to Licensor, including any third-party: (a) documents, data, content or specifications; (b) software, hardware or other products, facilities, equipment or devices; and (c) accessories, components, parts or features of any of the foregoing.

2.    <u>License</u>.

2.1     License Grant. Subject to and conditioned on Licensee's payment of Fees and compliance with all other terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-sublicensable, and non-transferable (except in compliance with 1513.1) license to use the Software and Documentation solely for the Permitted Use during the Term.

2.2     Scope of Licensed Access and Use. Licensee may install, use, and run one copy of the Software on Licensee's network for use by at most the number of Authorized User(s) as set forth in the Order Form and at most the number of Authorized Database(s) as set forth in the Order Form. In the event additional users are added by Licensee that exceed the number of Authorized User(s) as set forth in the Order Form or whenever additional databases are added by Licensee that exceed the number of Authorized Database(s) as set forth in the Order Form ("**Overages**"), Licensee shall promptly inform Licensor, by written notice, of Overages, and such Overages shall be subject to appropriate adjustment of the license fees as set forth in the Order Form.

2.3     Open Source Licenses. The Software includes software, content, data, or other materials, including related documentation, that are owned by Persons other than Licensor and that are provided to Licensee on licensee terms that are in addition to and/or different from those contained in this Agreement ("**Open Source Licenses**"). A list of all materials included in the Software and provided under Open Source Licenses is set forth in Schedule **A** to this Agreement, and the applicable Open Source Licenses are accessible via links therefrom. Licensee is bound by and shall comply with all Open Source Licenses. Any breach by Licensee or any of its Authorized Users of any Open Source Licenses is also a breach of this Agreement.

2.4     Security Measures. The Software may contain technological measures designed to prevent unauthorized or illegal use of the Software. Licensee acknowledges and agrees that: (a) Licensor may use these and other lawful measures to verify Licensee's compliance with the terms of this Agreement and enforce Licensor's rights, including all Intellectual Property Rights, in and to the Software; (b) Licensor may deny any individual access to and/or use of the Software if Licensor, in its sole discretion, believes that person's use of the Software would violate any provision of this Agreement, regardless of whether Licensee designated that person as an Authorized User; and (c) Licensor and its Representatives may collect, maintain, process and use diagnostic, technical, usage and related information, including information about Licensee's computers, systems and software, that Licensor may gather periodically to (i) to verify Licensee's compliance with the terms of this Agreement and enforcing the Licensor's rights, including all Intellectual Property Rights in and to the Software and (ii) improve the performance of the Software or develop Maintenance Releases. This information will be treated in accordance with Licensor's privacy policy, as amended from time to time, which can be viewed at: [URL] or a successor website address. In the event the contained technological measures inform Licensor that Licensee is exceeding the number of Authorized User(s) or Authorized Database(s), Licensor shall promptly inform, by written notification, Licensee of Licensee's Overages, which shall thereafter be subject to any appropriate adjustment of the license fees as set forth in the Order Form.

3.      License Restrictions. Except as this Agreement expressly permits, and subject to 42.3 with respect to Open Source Components, Licensee shall not, and shall not permit any other Person to:

        (a)      copy the Software, in whole or in part;

        (b)      modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improvements of any Software;

        (c)      rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software to any third party;

        (d)      reverse engineer, disassemble, decompile, decode, or adapt the Software, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part;

        (e)      bypass or breach any security device or protection used for or contained in the Software or Documentation;

        (f)      remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any trademarks, terms of the Documentation, warranties, disclaimers, or Intellectual Property Rights, proprietary rights or other symbols, notices, marks, or serial numbers on or relating to any copy of the Software or Documentation;

        (g)      use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any Person, or that violates any applicable Law;

        (h)      use the Software for purposes of: (i) benchmarking or competitive analysis of the Software; (ii) developing, using, or providing a competing software product or service; or (iii) any other purpose that is to Licensor's detriment or commercial disadvantage;

        (i)      use the Software in or in connection with the design, construction, maintenance, operation, or use of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Software could lead to personal injury or severe physical or property damage; or

        (j)      use (i) the Software or Documentation other than for the Permitted Use or in any manner or for any purpose or application not expressly permitted by this Agreement or (ii) any Open Source Components in any manner or for any purpose or application not expressly permitted by the controlling Open Source License.

4.      Maintenance Releases. During the Term, Licensor will provide Licensee with all Maintenance Releases (including updated Documentation) that Licensor may, in its sole discretion, make generally available to its licensees at no additional charge. All Maintenance

Releases provided by Licensor to Licensee are deemed Software. Licensee will install all Maintenance Releases as soon as practicable after receipt. Licensee does not have any right hereunder to receive any New Versions of the Software that Licensor may, in its sole discretion, release from time to time.

5.      Fees and Payment.

5.1      License Fees and Payment. Licensee shall pay Licensor the license fees ("**License Fees**") set forth in the Order Form and in accordance with the terms of this Section 5. If the Term is renewed for any Renewal Term(s) pursuant to Section 12.2, Licensee shall pay the then-current standard license fees that Licensee charges for the Software during the applicable Renewal Term. All License Fees are payable in advance, except in the event overages occur and appropriate adjustment of the license fees have to be made ("**Overage Fees**"), such Overage Fees shall be made on a month-to-month basis in the manner set forth in the Order Form.

5.2      Taxes. All Fees and other amounts payable by Licensee under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Licensee is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Licensee hereunder, other than any taxes imposed on Licensor's income.

5.3      Late Payment. If Licensee fails to make any payment when due then, in addition to all other remedies that may be available to Licensor, Licensor may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law; Licensee shall reimburse Licensor for all reasonable costs incurred by Licensor in collecting any late payment of amounts due or related interest, including attorneys' fees, court costs, and collection agency fees; and if such failure continues for 30 days following written notice thereof, Licensor may: (i) disable Licensee's use of the Software (including by means of a disabling code, technology or device); (ii) withhold, suspend or revoke its grant of a license hereunder; or (iii) terminate this Agreement under Section 12.3.

5.4      No Deductions or Setoffs. All amounts payable to Licensor under this Agreement shall be paid by Licensee to Licensor in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable Law).

6.      Confidentiality.

6.1      Confidential Information. In connection with this Agreement, each Party (the "**Disclosing Party**") may disclose or make available Confidential Information to the other Party (the "**Receiving Party**"). Subject to 76.2, "**Confidential Information**" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations,

plans, strategies, customers, and financial information, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, whether or not marked, designated, or otherwise identified as "confidential."

6.2    Exclusions. Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

6.3    Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall for three years:

(a)    not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

(b)    except as may be permitted under the terms and conditions of 86.4, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 9; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 9;

(c)    safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; and

(d)    promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to prevent further unauthorized use or disclosure; and

(e)    ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 9.

Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 9 with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

6.4     Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party will: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under 76.3; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this 86.4, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party will disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, on the Disclosing Party's request, will use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

7.     Intellectual Property Rights.

7.1     Intellectual Property Ownership. Licensee acknowledges and agrees that:

(a)     the Software and Documentation are licensed, not sold, to Licensee by Licensor and Licensee does not have under or in connection with this Agreement any ownership interest in the Software or Documentation, or in any related Intellectual Property Rights;

(b)     Licensor is the sole and exclusive owner of all right, title, and interest in and to the Software and Documentation, including all Intellectual Property Rights relating thereto, subject only to the rights of third parties in Open Source Components and the limited license granted to Licensee under this Agreement; and

7.2     Licensee Cooperation and Notice of Infringement. Licensee shall, during the Term:

(a)     take all commercially reasonable measures to safeguard the Software and Documentation (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access;

(b)     at Licensor's expense, take all such steps as Licensor may reasonably require to assist Licensor in maintaining the validity, enforceability and Licensor's ownership of the Intellectual Property Rights in the Software and Documentation;

(c)     promptly notify Licensor in writing if Licensee becomes aware of: (i) any actual or suspected infringement, misappropriation or other violation of Licensor's Intellectual Property Rights in or relating to the Software or Documentation; or (ii) any claim that the Software or Documentation, including any production, use, marketing, sale or other disposition of the Software or Documentation, in whole or in part, infringes, misappropriates or otherwise violates the Intellectual Property Rights or other rights of any Person; and

(d)     fully cooperate with and assist Licensor in all reasonable ways in the conduct of any Action by Licensor to prevent or abate any actual or threatened infringement, misappropriation or violation of Licensor's rights in, and to attempt to resolve any Actions relating to, the Software or Documentation, including having Licensee's employees testify when requested and making available for discovery or trial relevant records, papers, information, samples, specimens and the like.

7.3     No Implied Rights. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to Licensee or any third party any Intellectual Property Rights or other right, title, or interest in or to any of the Software or Documentation.

8.     Representations and Warranties.

8.1     Mutual Representations and Warranties. Each Party represents, warrants, and covenants to the other Party that:

(a)     it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

(b)     it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, and authorizations it grants and is required to grant under this Agreement;

(c)     the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such Party; and

(d)     when executed and delivered by both Parties, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

9.     Limited Warranties, Exclusive Remedy, and Disclaimer/Warranty Disclaimer.

9.1     Solely with respect to Software for which Licensor receives a License Fee, Licensor warrants that, for a period of [NUMBER IN WORDS] ([NUMBER]) days following the purchase date set forth in the Order Form:

(a)     any media on which the Software is provided will be free of material damage and defects in materials and workmanship under normal use; and

(b)     the Software will substantially contain the functionality described in the Documentation, and when properly installed on a computer meeting the specifications set forth in, and operated in accordance with, the Documentation, will substantially perform in accordance therewith.

THE FOREGOING WARRANTIES DO NOT APPLY, AND LICENSOR STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY MATERIALS.

9.2     The warranties set forth in Section 9.1(a) and Section 9.1(b) will not apply and will become null and void if Licensee breaches any provision of this Agreement, or if Licensee, any Authorized User, or any other Person provided access to the Software by Licensee or any Authorized User, whether or not in violation of this Agreement:

(a)     installs or uses the Software on or in connection with any hardware or software not specified in the Documentation;

(b)     modifies or damages the Software, or the media on which it is provided, including abnormal physical or electrical stress; or

(c)     misuses the Software, including any use of the Software other than as specified in the Documentation.

9.3     If, during the period specified in Section 9.1, any Software covered by the warranty set forth in such Section fails to perform substantially in accordance with the Documentation, and such failure is not excluded from warranty pursuant to the Section 9.2, Licensor will, subject to Licensee's promptly notifying Licensor in writing of such failure, at its sole option, either:

(a)     repair or replace the Software, provided that Licensee provides Licensor with all information Licensor requests to resolve the reported failure, including sufficient information to enable the Licensor to recreate such failure; or

(b)     refund the License Fees paid for such Software, subject to Licensee's ceasing all use of and, if requested by Licensor, returning to Licensor all copies of the Software.

If Licensor repairs or replaces the Software, the warranty will continue to run from the initial date specified in the Order Form, and not from Licensee's receipt of the repair or replacement. The remedies set forth in this Section 9.3 are Licensee's sole remedies and Licensor's sole liability under this Agreement.

9.4     EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 9.1, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO LICENSEE "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, LICENSOR, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF

PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, THE LICENSOR PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE LICENSED SOFTWARE WILL MEET THE LICENSEE'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED

10.    Indemnification.

     10.1    Licensor Indemnification. Licensor shall indemnify, defend, and hold harmless Licensee from and against any and all Losses incurred by the Licensee resulting from any Action by a third party that the Software or Documentation, or any use of the Software or Documentation in accordance with this Agreement, infringes or misappropriates such third party's US Intellectual Property Rights, copyrights, or trade secrets. This Section 12.1 does not apply to the extent that the alleged infringement arises from:

        (a)    Open Source Components or other Third-Party Materials;

        (b)    combination, operation, or use of the Software in or with, any technology (including any software, hardware, firmware, system, or network) or service not provided by Licensor or specified for Licensee's use in the Documentation;

        (c)    modification of the Software other than: (i) by Licensor  in connection with this Agreement; or (ii) with Licensor's express written authorization and in strict accordance with Licensor's written directions and specifications;

        (d)    use of any version of the Software other than the most current version or failure to timely implement any Maintenance Release, modification, update, or replacement of the Software made available to Licensee by Licensor;

        (e)    use of the Software after Licensor's notice to Licensee of such activity's alleged or actual infringement, misappropriation, or other violation of a third party's rights;

        (f)    negligence, abuse, misapplication, or misuse of the Software or Documentation by or on behalf of Licensee, Licensee's Representatives, or a third party;

        (g)    use of the Software or Documentation by or on behalf of Licensee that is outside the purpose, scope, or manner of use authorized by this Agreement or in any manner contrary to Licensor's instructions;

        (h)    events or circumstances outside of Licensor's commercially reasonable control (including any third-party hardware, software, or system bugs, defects, or malfunctions); or

(i) Third-Party Claims or Losses for which Licensee is obligated to indemnify Licensor pursuant to 1210.2.

10.2 <u>Licensee Indemnification</u>. Licensee shall indemnify, defend, and hold harmless Licensor and its officers, directors, employees, agents, subcontractors, permitted successors and permitted assigns (each, a "**Licensor Indemnitee**") from and against any and all Losses incurred by the Licensor Indemnitee resulting from any Action by a third party:

(a) that any Intellectual Property Rights or other right of any Person, or any Law, is or will be infringed, misappropriated, or otherwise violated by any:

(i) use or combination of the Software by or on behalf of Licensee or any of its Representatives with any hardware, software, system, network, service, or other matter whatsoever that is neither provided by Licensor nor authorized by Licensor in this Agreement and the Documentation or otherwise in writing; and

(ii) information, materials, or technology directly or indirectly provided by Licensee or directed by Licensee to be installed, combined, integrated, or used with, as part of, or in connection with the Software or Documentation;

(b) relating to facts that, if true, would constitute a breach by Licensee of any representation, warranty, covenant, or obligation under this Agreement;

(c) relating to negligence, abuse, misapplication, misuse or more culpable act or omission (including recklessness or willful misconduct) by or on behalf of Licensee or any of its Representatives with respect to the Software or Documentation or otherwise in connection with this Agreement; or

(d) relating to use of the Software or Documentation by or on behalf of Licensee or any of its Representatives that is outside the purpose, scope or manner of use authorized by this Agreement or the Documentation, or in any manner contrary to Licensor's instructions.

10.3 <u>Indemnification Procedure</u>. Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to 1110.1 or 1210.2. The Party seeking indemnification (the "**Indemnitee**") shall cooperate with the other Party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action without the Indemnitee's prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such Action, the Indemnitee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate. The Indemnitee's

failure to perform any obligations under this Section 12.3 will not relieve the Indemnitor of its obligations under this Section 12, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

10.4    Mitigation. If the Software, or any part of the Software, is, or in Licensor's opinion is likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Licensee's use of the Software is enjoined or threatened to be enjoined, Licensor may, at its option and sole cost and expense:

(a)    obtain the right for Licensee to continue to use the Software materially as contemplated by this Agreement;

(b)    modify or replace the Software, in whole or in part, to seek to make the Software non-infringing, while providing materially equivalent features and functionality, and such modified or replacement software will constitute Software under this Agreement; or

(c)    if, after Licensor's exercise of commercially reasonable efforts, none of the remedies set forth in the above 1310.4(a) or 1310.4(b) is reasonably available to Licensor, terminate this Agreement, in its entirety or with respect to the affected part or feature of the Software, effective immediately on written notice to Licensee, in which event:

(i)    Licensee shall cease all use of the Software and Documentation immediately on receipt of Licensee's notice; and

(ii)    provided that Licensee fully complies with its post-termination obligations set forth in Error: Reference source not found12.5, Licensor shall promptly refund to Licensee, on a pro rata basis, the share of any license fees prepaid by Licensee for the future portion of the Term that would have remained but for such termination.

10.5    Sole Remedy. THIS SECTION 10 SETS FORTH LICENSEE'S SOLE REMEDIES AND LICENSOR'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SOFTWARE OR DOCUMENTATION OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

11.    Limitations of Liability.

11.1    IN NO EVENT WILL LICENSOR BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY (a) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES OR PROFITS, (b) LOSS OF GOODWILL OR REPUTATION, (c) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY

LICENSED SOFTWARE OR OPEN SOURCE COMPONENTS OR OTHER THIRD-PARTY MATERIALS, (d) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, (e) COST OF REPLACEMENT GOODS OR SERVICES, OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

11.2    CAP ON MONETARY LIABILITY. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN 1411.3, IN NO EVENT WILL THE AGGREGATE LIABILITY OF LICENSOR ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED TWICE THE TOTAL AMOUNTS PAID TO LICENSOR UNDER THIS AGREEMENT IN THE TWELVE–MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

11.3    Exceptions. The exclusions and limitations in 1411.2 do not apply to Licensor's obligations under 1110 (Indemnification) or liability for Licensor's gross negligence or willful misconduct.

12.    Term and Termination.

12.1    This Agreement and the license granted hereunder shall remain in effect for the term set forth in the Order Form or until earlier terminated pursuant to this Agreement's express provisions (the "**Initial Term**").

12.2    Renewal. Following expiration of the Initial Term, Licensee may renew this Agreement for an additional successive term by providing the Licensor with written notice for an additional successive term ("**Renewal Term**") at least 30 days prior to the expiration of the then-current term (each a "**Renewal Term**" and, collectively, together with the Initial Term, the "**Term**"). Licensor may increase Fees after the first contract year of the Initial Term, including any contract year of any Renewal Term, by providing written notice to Licensee.

12.3    Licensor may terminate this Agreement, effective upon written notice to Licensee, if Licensee, breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after Licensor provides written notice thereof.

12.4    Licensor may terminate this Agreement, effective immediately, if Licensee files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its

creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property.

12.5    Upon expiration or earlier termination of this Agreement, the license granted hereunder shall also terminate, and Licensee shall cease using and destroy all copies of the Software and Documentation. No expiration or termination shall affect Licensee's obligation to pay all Licensee Fees that may have become due before such expiration or termination, or entitle Licensee to any refund, in each case except as set forth in Section 9.3(b).

12.6    Surviving Terms. The provisions set forth in the following sections, and any other right, obligation or provision under this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: this Section 12.6, 11, 65, Error: Reference source not found6, 87, 1110, 1311, and 1513.

13.    Miscellaneous.

13.1    All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be instituted in the federal courts of the United States of America or the courts of the State of California in each case located in the City of San Diego and County of San Diego, and each party irrevocably submits to the non-exclusive jurisdiction of such courts in any such legal suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

13.2    Licensor will not be responsible or liable to Licensee, or deemed in default or breach hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning, or Licensee equipment, loss and destruction of property, or any other circumstances or causes beyond Licensor's reasonable control.

13.3    All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth in the Order Form (or to such other address as may be designated by a party from time to time in accordance with this Section 13.3).

13.4    This Agreement, together with all exhibits attached hereto and all other documents that are incorporated by reference herein, constitutes the sole and entire agreement between Licensee and Licensor with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

13.5    Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Licensor's prior written consent, which consent Licensor may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving Licensee (regardless of whether Licensee is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which Licensor's prior written consent is required. No delegation or other transfer will relieve Licensee of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 13.5 is void. Licensor may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Licensee's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

13.6    Force Majeure. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, (except for any obligations to make payments), when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt written notice to the other party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

13.7    This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

13.8    This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or

delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

13.9    If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

13.10   For purposes of this Agreement, (a) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Annexes, Schedules, and Exhibits refer to the Sections of, and Annexes, Schedules, and Exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

13.11   The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

13.12   Export Regulation. The Software may be subject to US export control laws, including the US Export Control Reform Act and its associated regulations. Licensee will not directly or indirectly, export, re-export, or release the Software to, or make the Software accessible from, any country, jurisdiction or Person to which export, re-export, or release is prohibited by applicable Law. Licensee will comply with all applicable Laws and complete all required undertakings (including obtaining any necessary export license or other governmental approval) prior to exporting, re-exporting, releasing, or otherwise making the Software available outside the US.

13.13   US Government Rights. Each of the Documentation and the software components that constitute the Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Accordingly, if Licensee is an agency of the US Government or any contractor therefor, Licensee only receives those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

# SCHEDULE A

# OPEN SOURCE LICENSES