

Composite Contract Number: \_\_\_\_\_

**COMPOSITE SOFTWARE, INC.  
LICENSE AND SERVICES AGREEMENT**

This License and Services Agreement (this "Agreement") is entered into as of \_\_\_\_\_, 20\_\_ (the "Effective Date") by and between Composite Software, Inc., a corporation with its principal place of business at 2655 Campus Drive, Suite 200, San Mateo, California 94403 ("Composite"), and \_\_\_\_\_, a corporation with its principal place of business at \_\_\_\_\_ ("Licensee").

In consideration of the mutual promises contained herein, the parties agree as follows:

**1. Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

"Confidential Information" means any and all information disclosed by one party or such party's contractor or agent to the other party and (i) identified as confidential, whether in oral or written form, or (ii) which by its nature (including, but not limited to, know-how, software source code and documents, benchmark testing and results, and information related to the current, future, and proposed products and services of such party, financial information and any third party proprietary information disclosed by the disclosing party) or circumstances surrounding its disclosure should be reasonably regarded as confidential. Confidential Information does not include information which can be shown by the receiving party as (a) already in the possession of the receiving party without an obligation of confidentiality, (b) hereafter rightfully furnished to the receiving party by a third party without a breach of any legal or contractual obligation, (c) that is or becomes publicly available without breach of this Agreement, (d) furnished by the disclosing party to a third party without restriction on subsequent disclosure, or (e) independently developed by the receiving party without reliance on the Confidential Information.

"Documentation" means the user manuals and operator instructions delivered by Composite with the Products.

"Licensed Materials" means the Products and the Documentation.

"Order Form" means Composite's standard form for ordering Product licenses and services as mutually agreed and signed by both parties and referencing this Agreement.

"Product" or "Products" means the object code version of the computer software program(s) owned or distributed under license by Composite and subsequent Updates thereto (subject to payment of Support Fees), for which Licensee is granted a license pursuant to this Agreement.

“Professional Services” means any consulting services to be performed by Composite pursuant to Section 4.2 of this Agreement.

“Standard Technical Support” means the technical support services specified in Exhibit A of this Agreement.

“Support Fees” means the fees payable annually for Standard Technical Support.

“Updates” means updated versions of the Products and Documentation, which encompass improvements, extensions and other changes to the Products, which are made available to Product licensees who are current in their payment of Support Fees and for which Composite does not charge separately.

## **2. License Grant.**

2.1 License Rights. Subject to the terms and conditions of this Agreement, Composite hereby grants to Licensee a limited, nonexclusive, perpetual (subject to termination under Section 10) and nontransferable license, without the right to sublicense, to install, use and display in object code form the number of copies of the Product ordered on the appropriate operating system or application for which it is ordered, with the scope of use limitations regarding the type of license (development, staging, production or failover) set forth in the Order Form and any other restrictions set forth in this Agreement or the Order Form, and to use the Documentation solely in support of Licensee’s authorized use of the Product.

2.2 Restrictions. Except as expressly permitted in this Agreement, Licensee agrees not to (a) reproduce, modify, translate or create any derivative work of all or any portion of any Licensed Materials, (b) sell, sublicense, rent, lease, loan, provide, distribute or otherwise transfer all or any portion of any Licensed Materials to any third party, (c) reverse engineer, decompile, use for competitive analysis, reverse assemble or otherwise attempt to gain access to the source code of all or any portion of any Product, (d) display or disclose the Licensed Materials to any person other than employees or consultants of Licensee, (e) use any Product for third-party training, commercial time-sharing, application or business service hosting applications for third parties or service bureau use, or use any part of the Product, including third party code, independently from the Product as a whole, (f) remove, alter, cover or obfuscate any copyright notices or other proprietary rights notices placed or embedded on or in any Licensed Materials, (g) otherwise use the Licensed Materials except as expressly allowed under this Agreement or (h) cause or permit any third party to do any of the foregoing. Licensee may make two (2) copies of the Licensed Materials solely for back-up purposes; provided that such copies include all intellectual property right notices that appear on the original. Any copy of the Licensed Materials is the exclusive property of Composite.

2.3 Reservation of Rights. Composite reserves all rights not otherwise expressly granted in this Agreement and no licenses are granted by implication, estoppel or otherwise. Licensee agrees that title to all portions of the Licensed Materials and the copyright, patent, trade secret and all other intellectual property rights in the Licensed Materials, including derivative works, are and remain the exclusive property of Composite and its licensors.

2.4 Audit Rights. During the term of this Agreement and for three (3) years thereafter, Composite or an independent third party auditor selected by Composite and paid for by Composite, may inspect Licensee's premises, books and records upon Composite's reasonable request, for the purposes of determining whether Licensee has complied with the terms of this Agreement. Composite will pay the expenses of the audit, unless such audit reveals an underpayment of five percent (5%) or more, in which case Licensee will promptly pay Composite the reasonable fees and expenses incurred by Composite for such audit.

2.5 Third Party Software. Licensee acknowledges that the Products contains or is provided with copyrighted software of Composite's suppliers as identified in the Documentation ("Third Party Software") which are obtained under a license from such suppliers. Licensee's use of any Third Party Software shall be subject to and Licensee agrees to and shall comply with the applicable restrictions and other terms and conditions agreement set forth in the Documentation.

### **3. Invoicing, Payment and Taxes.**

#### **3.1 Invoicing and Payment.**

3.1.1 Fees. Fees are as set forth on an Order Form. Unless otherwise specified in an Order Form, payment for license fees, Support Fees, or other fees are due and payable within thirty (30) days Composite's invoice date. Unless otherwise set forth in an Order Form, payments shall be in United States dollars.

3.1.2 Taxes. The fees listed in this Agreement are exclusive of taxes and other similar charges; Licensee shall be responsible for, and shall pay or reimburse Composite for, all taxes, duties, and like charges arising out of the transactions contemplated by this Agreement other than taxes based on Composite's net income.

### **4. Services.**

4.1 Standard Technical Support Services. Subject to annual payment by Licensee of the applicable Support Fees, Composite will provide Standard Technical Support for Products licensed by Licensee hereunder in accordance with the terms set forth in Exhibit A.

#### **4.2 Professional Services.**

4.2.1 Licensee may order Professional Services from Composite under a "Statement of Work" specifying the Professional Services to be provided as mutually agreed upon in writing by the parties. Unless otherwise agreed in writing, such Professional Services will be provided at Composite's standard fee schedule. Any scheduled service dates will be agreed upon mutually, subject to availability of Composite personnel. Composite's daily rate is based

on an eight-hour workday. Licensee shall reimburse Composite for documented travel and out-of-pocket expenses incurred in performing the Professional Services.

4.2.2 All Professional Services provided by Composite shall be rendered in accordance with and subject to the terms of this Agreement. If any terms in a Statement of Work conflict with the terms of this Agreement, the terms of this Agreement shall supersede the terms of such Statement of Work for that engagement.

4.2.3 Licensee shall make available all information, data, facilities and personnel support reasonably requested by Composite for providing the Professional Services. Composite may pass along to Licensee any increased costs which result from Licensee's failure to provide such support. In addition, any delay in the provision of Professional Services due to the delay of Licensee to perform their obligations shall extend the time required by Composite to perform the Professional Services. Licensee will designate a project manager to be Licensee's primary contact for all aspects of the Professional Services to be performed hereunder.

4.2.4 For a period of one (1) year after the completion of the applicable Statement of Work, Licensee shall not solicit for employment, or other capacity, directly or indirectly, the services of Composite's employees or consultants providing the Professional Services on such Statement of Work.

**5. Ownership.** As between the parties, Licensee owns all right, title and interest in and to its software, programming documentation, technical ideas, and any intellectual property rights therein developed or owned prior to commencement of this Agreement and Composite only receives limited license to such Licensee technology for the limited purpose of providing the Professional Services under this Agreement. As between the parties, Composite owns all right, title and interest in and to its software, programming documentation, technical ideas, and any intellectual property rights therein developed or owned prior to commencement of this Agreement, including without limitation, the Licensed Materials, ("Composite Prior Technology") and any derivative works, improvements enhancements or modifications made to the Composite Prior Technology pursuant to this Agreement and Licensee receives only the limited license as set forth in Section 2 above unless otherwise expressly set forth in a Statement of Work pursuant to Section 4.2.1. To the extent Licensee provides to Composite any suggestions, ideas, modifications, feedback, error identifications or other information related to the Licensed Materials or the use of the Licensed Materials ("Feedback"), Licensee hereby grants to Composite a fully paid-up, irrevocable, perpetual, worldwide, nonexclusive license, with right to grant sublicenses, to use such Feedback to improve Composite's products and services and to use, reproduce, prepare derivative works of, perform, display, make, sell and otherwise distribute such products and services. Licensee shall keep the Products and Documentation free and clear of all claims, liens and encumbrances.

**6. Nondisclosure.**

6.1 The parties agree, on behalf of themselves, their affiliated companies, and their employees, independent contractors and consultants, that they shall not use, except as

otherwise expressly permitted hereunder, or disclose to any third person, including any of its affiliates, or to any employee of the receiving party without a need to know, either during or after the term of this Agreement, any Confidential Information.

6.2 The parties and their respective employees, independent contractors and consultants shall use the same degree of care as used to protect their own confidential information of a similar nature, but in no event less than reasonable care, to avoid disclosure of Confidential Information.

6.3 In the event of a breach of this Section 6, money damages will not be an adequate remedy, and therefore, in addition to any other legal or equitable remedies, the disclosing party shall be entitled to seek an injunction or other equitable relief against such breach without necessity of posting bond or security, which is expressly waived.

6.4 Notwithstanding the foregoing, the party to whom Confidential Information was disclosed (the “Recipient”) shall not be in violation of this Section 6 with regard to a disclosure that was in response to a valid order by a court or other governmental body, provided that the Recipient provides the other party with prior written notice of such disclosure in order to permit the other party to seek confidential treatment of such information.

6.5 Authorized Disclosure. Each party shall only disclose the terms and conditions of this Agreement: (a) as required by law; (b) to such party’s legal counsel accountants, banks, and financing sources and their advisors; or (c) in confidence, in connection with an actual or proposed merger, acquisition, or similar transaction. Upon execution of this Agreement, Composite shall be entitled to identify Licensee as Composite’s customer. Additionally, subject to Licensee’s prior written consent, Licensee agrees to participate on a mutually agreed to basis, to provide references to Composite prospects and industry media analysts, and issue a joint press release announcing the relationship with Composite.

## **7. Indemnification.**

### **7.1 Infringement Claims.**

7.1.1 Composite will defend, at its own expense, any action against Licensee to the extent that the action is based upon a third party action that the Licensed Materials infringe such third party’s United States patent, copyright or trademark, or misappropriates such third party’s trade secrets and Composite will pay those costs and damages finally awarded against Licensee or agreed to in a monetary settlement of such claim that are specifically attributable to such claim. The foregoing obligations are conditioned on Licensee notifying Composite promptly in writing of such action, Licensee giving Composite sole control of the defense thereof and any related settlement negotiations, and Licensee cooperating and, at Composite’s request and expense, reasonably assisting in such defense.

7.1.2 Notwithstanding the foregoing, Composite will have no obligation under this Section 7 or otherwise with respect to any infringement claim based upon (i) any use of the Licensed Materials not in accordance with this Agreement, (ii) any use of the Licensed

Materials in combination with other products, equipment, software, or data not supplied by Composite, (iii) Licensee's continued use of any non-current, unaltered version of the Licensed Materials following notification by Composite of the need to use a more recent version of the Licensed Materials, or (iv) any modification of Licensed Materials by any person other than Composite.

7.1.3 In the event the Licensed Materials are held or are reasonably believed by Composite to infringe a third party's rights, Composite may, at its sole option and at its expense, (i) replace or modify the Licensed Materials to be noninfringing, (ii) obtain for Licensee the right to continue using the Licensed Materials, (iii) substitute the Licensed Materials with other software reasonably suitable to Licensee, or, if none of the foregoing are available on commercially reasonable terms, (iv) terminate the license for the Licensed Materials, refund the license fees paid for those Licensed Materials as depreciated over a three (3) year straight-line basis and accept return of the Licensed Materials.

7.1.4 THIS SECTION 7 STATES COMPOSITE'S ENTIRE LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY INFRINGEMENT.

## **8. Warranties and Remedies.**

8.1 **Product Warranty.** For a period of thirty (30) days after shipment of a Product to Licensee (the "Software Warranty Period"), Composite warrants that such Product, when properly installed and used as permitted under this Agreement and in accordance with the instructions in its Documentation (including use on a computer hardware and operating system platform supported by Composite), will operate in all material respects as described in its Documentation. Composite will, at its own expense and as its sole obligation and Licensee's exclusive remedy for any breach of this warranty, use commercially reasonable efforts to correct any reproducible error in the Products reported to Composite by Licensee in writing during the Software Warranty Period in accordance with the Standard Technical Support terms attached hereto as Exhibit A, or, if Composite determines that it is unable to correct the error, Composite will refund to Licensee all License Fees actually paid, in which case this Agreement and Licensee's right to use the Products will be terminated. Composite shall have no obligation to undertake correction of errors caused by Licensee's modifications to the Product or Licensee's use of the Product on an unauthorized platform, in conjunction with another vendor's products resulting in the error, or in a manner contrary to instructions in the Documentation.

8.2 Composite does not warrant Licensee's use of the Products will be error-free or uninterrupted, that the Product will operate in combinations other than as specified in the Documentation, or that all Product errors will be corrected. Composite does not warrant that each Product will meet Licensee's requirements, that the Products will operate in the combinations that Licensee may select for use or with all non-Composite software used by Licensee. Composite is not obligated to remedy any Product error that can not be reproduced with the latest Update.

8.3 As an accommodation to Licensee, at Licensee's request and in Composite's sole discretion, Composite may supply Licensee with (i) pre-production releases of Products labeled "Alpha," "Beta" or otherwise, which are not suitable for production use, or (ii) shareware items containing code developed by Composite or its licensees and partners. Notwithstanding anything to the contrary in this Agreement, such pre-production releases or shareware are provided to Licensee "AS IS" without warranty of any kind, express, implied or statutory, and neither party will be responsible to the other for any losses, claims or damages of whatever nature arising out of Licensee's use of such items. Standard Technical Support does not include support or updating of shareware items. Licensee will promptly report any error condition discovered in a pre-production release, and provide Composite with appropriate test data if necessary to resolve problems encountered by Licensee with a pre-production release.

8.4 Services Warranty. Composite warrants that its Standard Technical Support, Professional Services and other services will be of a professional quality conforming to generally accepted industry standards and practices. This warranty shall be valid for thirty (30) days from completion of service. For any breach of this warranty, Licensee's sole and exclusive remedy and Composite's sole obligation shall be (i) the re-performance of the services, or (ii) if Composite is unable to perform the services as warranted, recovery of the fees paid to Composite for such deficient services.

**8.5 DISCLAIMERS. THE EXPRESS WARRANTIES IN THIS SECTION 8 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, AND COMPOSITE DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE PRODUCTS AND DOCUMENTATION AND SERVICES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, TITLE OR FITNESS FOR A PARTICULAR PURPOSE.**

**9. Limitation of Liability. IN NO EVENT WILL COMPOSITE BE LIABLE FOR ANY LOSS OF PROFITS OR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES INCLUDING ANY LOST DATA ARISING FROM OR RELATING TO THIS AGREEMENT. COMPOSITE'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SERVICES OR THE PRODUCTS, WHETHER IN AN ACTION IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID TO COMPOSITE HEREUNDER DURING THE TWELVE (12) MONTHS PRECEDING ANY ACTION FOR THE RELEVANT LICENSE OR SERVICE. THE LIMITATIONS IN THIS SECTION SHALL APPLY EVEN IF COMPOSITE OR ANY OF ITS SUPPLIERS ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**

## **10. Term and Termination.**

10.1 Term. This Agreement will begin on the Effective Date and will continue indefinitely unless terminated pursuant to the terms of this Agreement or otherwise agreed by the parties.

10.2 Termination. Licensee may terminate this Agreement or any license at any time, with or without cause, upon thirty (30) days prior written notice to Composite. Composite may terminate this Agreement or any license granted hereunder, effective immediately upon written notice to Licensee, if:

(a) Licensee breaches any provision in Section 2 or Section 6 and does not cure the breach within seven (7) days after receiving written notice thereof from Composite,

(b) Licensee breaches any other provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from Composite or

(c) If (i) Licensee files or has filed against it a petition under any applicable law relating to insolvency or the protection of its creditors, (ii) Licensee makes an assignment for the benefit of creditors or (iii) a receiver or similar official is appointed for all or a substantial portion of Licensee's assets.

10.3 Effects of Termination. Upon termination or expiration of this Agreement, any amounts owed to Composite under this Agreement before such termination or expiration will be immediately due and payable, and Licensee must promptly discontinue all use of the Licensed Materials, erase all copies of the Licensed Materials from Licensee's computers, and return to Composite or destroy all copies of the Licensed Materials on tangible media in Licensee's possession or control and certify in writing to Composite that it has fully complied with these requirements. Termination of this Agreement will not limit or restrict any of the remedies otherwise available under this Agreement.

10.4 Survival. Sections 1 ("Definitions"), 2.2 ("License Restrictions"), 2.3 ("Reservation of Rights"), 2.4 ("Audit Rights"), 2.5 ("Third Party Software") 3 ("Invoicing, Payment and Taxes"), 5 ("Ownership"), 6 ("Nondisclosure"), 7 ("Indemnification"), 8 ("Warranties, Remedies"), 9 ("Limitation of Liability"), 10.3 ("Effects of Termination"), and 11 ("General Terms") and accrued but unpaid payment obligations will survive termination of this Agreement for any reason.

## **11. General Terms.**

11.1 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns. Licensee shall not assign or otherwise transfer this Agreement or any rights or obligations hereunder, in whole or in part, whether by operation of law or otherwise, without Composite's prior written consent. Any purported transfer, assignment or delegation without such prior written consent will be null and void and of no force or effect. Composite shall have the right to assign this Agreement to any successor substantially all of its business or assets to which this

Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise.

11.2 Export Law Assurances and Government Regulation. Licensee understands that the Licensed Materials are subject to export control laws and regulations. Licensee may not download or otherwise export or re-export the Licensed Materials or any underlying information or technology except in full compliance with all United States and other applicable laws and regulations, in particular, but without limitation, none of the Licensed Materials or any underlying information or technology may be downloaded or otherwise directly or indirectly exported or re-exported to: (1) any countries that are subject to US export restrictions (as of the Effective Date including, but not necessarily limited to, Cuba, Iran, North Korea, Sudan, and Syria); (2) any end user who Licensee knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapon, or rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems; or (3) any end user who has been prohibited from participating in the US export transactions by any federal agency of the US government. Licensee hereby agrees to the foregoing and represents and warrants that Licensee is not located in, under control of, or a national or resident of any such country or on any such list. Licensee understands that the requirements of the export laws may vary depending on the product delivered and may change over time, and that to determine the controls applicable to a particular transaction, it is necessary to refer to the U.S. Export Administration Regulations and the Office of Foreign Assets Control Regulations. The Licensed Materials and services are commercial items as defined by the Federal Acquisition Regulation (“FAR”) at FAR 2.101 and are licensed to the government under the applicable terms of FAR Part 12, “Acquisition of Commercial Items” and/or DFAR 227.7202, “Commercial computer software and commercial computer software documentation”. Any use, modification, reproduction, release, performance, display, or disclosure by the U.S. Government shall be governed solely by, and prohibited, except as expressly permitted under, the terms of this Agreement.

11.3 Entire Agreement. This Agreement and the Order Forms, Statements of Work, addendums, appendices and exhibits referencing this Agreement are incorporated herein and constitute the entire agreement between the parties regarding the subject hereof and supersede all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties. The terms and conditions on any purchase order or similar document submitted by Licensee to Composite will have no effect.

11.4 Force Majeure. Neither party will be responsible for failure of performance, other than for an obligation to pay money, due to causes beyond its control, including, without limitation, acts of God or nature; labor disputes; sovereign acts of any federal, state or foreign government; or shortage of materials.

11.5 Governing Law, Disputes. This Agreement will be governed by the laws of the State of California as such laws apply to contracts between California residents performed entirely within California. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any legal action or proceeding relating to this

Agreement shall be instituted in a state or federal court in San Francisco or San Mateo County, California, and each party hereby submits to the personal jurisdiction of such courts. Except for actions for nonpayment or breach of Composite's proprietary rights in the Products, no action, regardless of form, arising out of this Agreement may be brought by either party more than two years after the cause of actions has accrued.

11.6 Notices. All notices, consents and approvals under this Agreement must be delivered in writing by courier, or by certified or registered mail (postage prepaid and return receipt requested), to the other party at the address set forth beneath such party's signature, and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner. Either party may change its address by giving notice of the new address to the other party.

11.7 Severability. If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, Licensee agrees that Section 8 will remain in effect notwithstanding the unenforceability of any provision in Section 6.

11.8 Waiver. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

11.9 Authorized Signatory. Licensee signatory affirms as follows: By signing, I affirm that I have the authority to enter into this Agreement to authorize the commitment and release of funds within Licensee equal to or greater than the total amount indicated in the associated Order Form.

**LICENSEE:**

**COMPOSITE:**

Composite Software, Inc.

\_\_\_\_\_

\_\_\_\_\_

Signature

Signature

\_\_\_\_\_

\_\_\_\_\_

Printed Name/Title

Printed Name/Title

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Date

Date