

Parabon's Software License and Maintenance Agreement

This Frontier Enterprise License and Maintenance Agreement (the "**Agreement**") is made as of the ____ day of _____ 2009 ("**Effective Date**") between Parabon Computation, Inc., with principal offices at 11260 Roger Bacon Drive, Suite 406, Reston VA 20190 ("**Parabon**"), and [\[Insert Gov't Agency Name\]](#) with principal offices at _____ ("**Client**") for the purpose of establishing the terms and conditions under which Client shall license and use Parabon Computation's Software (defined below) pursuant to contract number [\[Insert Gov't Contract Number\]](#) ("**Award**");

1. DEFINITIONS.

1.1. "**Add-on Software**" shall mean software that is provided to Client, as well as any updates thereto, that are provided to Client under the aforementioned Award, but excluding the Frontier Development Software, the Frontier Server Software, the Frontier Compute Engine Software, Parabon Crush™, and Parabon Watchman™.

1.2. "**Frontier Grid**" shall mean a collection of computers running the Frontier Server Software and the Frontier Compute Engine Software that collectively are able to execute Jobs.

1.3. "**Frontier Software Development Kit**" or "**Frontier SDK**" shall mean Parabon's proprietary Frontier Application Programming Interface (API) and other Frontier software tools used for the development of applications that can run on a Frontier Grid.

1.4. "**Frontier Development Software**" shall mean the Frontier SDK, Frontier Integrated Development Environment (IDE) for Eclipse, Frontier Rapids™, Frontier JumpStart™, Parabon Origin™ Evolutionary SDK, as well as any updates or upgrades thereto that are provided to Client by Parabon hereunder.

1.5. "**Data**" shall mean any and all information processed by Client using the Software and any related materials including without limitation instructions and explanations pertaining to such information.

1.6. "**Frontier Enterprise**" or "**Frontier Platform**" means Parabon's proprietary software used to provide exclusively to Client computational power collection, aggregation and distribution capabilities and includes, without limitation, the Frontier Development Software, Frontier Server Software, the Frontier Compute Engine Software, and any Add-on Software.

1.7. "**Frontier Server Software**" shall mean the version of Parabon's proprietary server software configured and installed under the aforementioned Award which, among other things, communicates with the Frontier Development Software and the Frontier Compute Engine Software, as well as any updates or upgrades thereto that are provided to Client by Parabon hereunder.

1.8. "**Job**" or "**Jobs**" shall mean each group of Data submitted by Client for processing on a Frontier Grid for Client's internal business purposes.

1.9. "**Job Results**" shall mean the results of a Job.

1.10. "**Marks**" shall mean the trademarks, trade names, service marks, designs, characters, logos and other indicia of origin of Parabon.

1.11. "**Node**" shall mean a CPU licensed to run a copy of the Frontier Compute Engine Software installed on Client's network.

1.12. "**Frontier Compute Engine Software**" shall mean the version of Parabon's proprietary Frontier Computing Engine software configured and installed under the aforementioned Award that utilizes the spare computational power of a Node to process a Job (or portions thereof) during idle time, as well as any updates or upgrades thereto that are provided to Client by Parabon hereunder.

1.13. "**Parabon Blitz™**" shall mean Parabon's distributed testing service application, built to take advantage of the computational power of the Frontier Platform, configured and installed under the aforementioned Award.

1.14. “**Parabon Crush™**” shall mean Parabon’s data mining, statistical analysis and predictive modeling application, configured and installed under the aforementioned Award, that is built to take advantage of the computational power of the Frontier Platform.

1.15. “**Parabon Watchman™**” shall mean Parabon’s sensor placement optimization application configured and installed under the aforementioned Award, that is built to take advantage of the computational power of the Frontier Platform.

1.16. “**Software**”, “**Licensed Software**” or “**Parabon Software**” shall mean all software manufactured by Parabon Computation, Inc. (“**Parabon**”) comprising the Frontier Platform, Parabon Blitz™, Parabon Crush™, Parabon Watchman™, and all enhancements and additions that are identified in a mutually agreed upon Order Form and provided to Client under this Agreement.

1.17. “**Order Forms**” shall mean a mutually agreed upon written document issued by the Client that identifies the Software it wants to license and services it desires to obtain.

2. SOFTWARE LICENSE

2.1. License. Client is hereby granted a [\[temporary or perpetual\]](#), non-exclusive, non-transferable license to allow Client to (a) use the Software solely for purposes of allowing Client to access, organize and submit Jobs to the Frontier Server Software and receive Job Results, (b) use the Frontier Server Software to process Jobs solely intended for Client’s internal business purposes, all in accordance with the terms and conditions of this Agreement, (c) use the Frontier Compute Engine Software on up to a maximum of [\[insert # of Node licenses\]](#) Nodes, for the purpose of processing the Jobs, and (d) use any Add-on Software, if applicable.

2.2 Restrictions. Client shall not (i) copy, duplicate or modify the Software or incorporate any of the Software in any other work; (ii) rent, lease, loan, resell, transfer or use the Software in a time share or service bureau basis, (iii) reverse compile, disassemble, reverse engineer or otherwise reduce to human perceivable form any of the Software, (iv) submit any Jobs to be processed on a third party's behalf or (v) submit any Job or use or attempt to use the Software for any unlawful purpose.

2.3 [*Optional* - Inclusion based on if Blitz is licensed] [Parabon Blitz™ Clause](#): Further Client acknowledges that the license to use Parabon Blitz under this Agreement restricts its use to network targets owned and controlled by the Client. Moreover, Client agrees not to use Parabon Blitz for malicious or illegal purposes.

2.4 Sublicenses. Client shall not sublicense any of the rights set forth in this Section 22 without the prior written permission of Parabon.

3. MAINTENANCE AND SUPPORT SERVICES

3.1 Maintenance Services. For a term of one year from the day the Licensed Software is shipped to Client, and for successive one-year terms thereafter unless terminated by Client upon sixty (60) days written notice, Parabon shall provide Client with maintenance services (the “Maintenance Services”) as follows: (a) provide to Client all bug fixes, updates, upgrades and patches for the Licensed Software that are generally released to Parabon’s Maintenance Services customers within Parabon’s sole discretion in order to remedy any errors or defects; (b) maintain the performance of Licensed Software in accordance with the specifications and documentation; and c) provide technical phone support and other services as described in Order Forms. Unless otherwise set forth in an applicable Order Form, Parabon shall respond to any request for Maintenance Services due to a failure of the Licensed Software to perform in accordance with its specifications or documentation by telephone or electronic mail response by a qualified and knowledgeable representative within one business day of receipt of such request. The Fees for Maintenance Services shown in Order Forms include one year of Maintenance Services and shall be invoiced to Client upon delivery of the Licensed Software. Thereafter, the Fees for Maintenance Services shall be invoiced at the same rate as the previous Maintenance Services term, subject to annual

increases not to exceed 5%. If Client ceases paying for Maintenance Services as described herein, Parabon shall have no further obligations to provide such services and may immediately terminate the provision of Maintenance Services. Client shall reimburse all reasonable travel expenses incurred in connection with providing any Maintenance Services at any licensed site or otherwise on Client's premises. The parties hereby acknowledge that Maintenance Services will include from time to time in Parabon's sole discretion product releases that contain enhanced functionality, provided that there are no time lapses between annual maintenance periods paid for by Client. Client understands and agrees that if Client discontinues and then resumes the use of Maintenance Services, Client will be required to pay Parabon the entire Maintenance Services Fees for the period of discontinuance, plus the Maintenance Services then commencing.

3.2 Support Services. Parabon shall provide Client with all technical support services as outlined in the corresponding Order Form.

4. CONSULTING AND PROFESSIONAL SERVICES.

4.1. Parabon shall provide to Client Professional and/or Consulting Services related to the Licensed Software ("Services") as specified in the corresponding Order Form. Unless otherwise agreed to by the parties, additional services performed by Parabon which relate to the Licensed Software, shall be charged at Parabon's then current rates. Any such work will be subject to a separate Order Form signed by both parties.

5. ORDER FORMS

5.1. Client may issue to Parabon written Order Forms identifying the Licensed Software and services Client desires to obtain from Parabon. Such Order Forms shall be consistent with the terms and conditions of this Agreement. It is the parties' intent that the initial version of each Order Form shall be generated by Parabon. Parabon shall accept any mutually agreeable Order Forms or alterations thereto which do not establish new or conflicting terms and conditions from those set forth in this Agreement or any applicable Order Form. In the event of a conflict between the terms of this Agreement or Order Form, the applicable terms of this Agreement shall prevail over the conflicting terms of such Order Form. Parabon may reject an Order Form that does not meet the conditions described above by promptly providing to Client a written explanation of the reasons for such rejection. In order to be valid, all Order Forms submitted by Client must be substantially in the form of Exhibit A attached hereto and shall be executed by authorized representatives of each party prior to taking effect. Each executed Order Form shall be attached hereto and incorporated herein as Order Form 01, 02, etc.

6. FEES

6.1. Fees. Parabon will charge and Client agrees to pay all the applicable fees indicated on the applicable Order Form.

6.2. Taxes. The fees set forth in this Agreement do not include taxes. If Parabon is required to pay any sales, use, property, value-added or other taxes, duties or the like (other than taxes on the net income of Parabon) on the licenses or services provided pursuant to this Agreement or pertaining to Client's use of the Licensed Software, then such taxes shall be billed to and paid by Client.

6.3. Invoices and Payment. All invoices are due and payable in United States Dollars (USD) within thirty (30) days after the invoice date. If Parabon has not received payment within five (5) days after the due date, interest shall accrue on past due amounts at the lower of 1.5% per month or the maximum rate allowed by law commencing with the due date and continuing until fully paid. Unless otherwise provided in the applicable Order Form, Parabon shall invoice Client annually for any recurring fees set forth in Section 3.1.

7. PROPRIETARY RIGHTS

7.1. Parabon Ownership. Client acknowledges that Parabon owns all intellectual property rights in the Software provided under the Award, including without limitation all software components, systems, programs, operating instructions, and any associated documentation, and all customizations, developments and derivative works made from the Software ("**Parabon Materials**"). The parties agree that, except as stated herein, this Agreement does not grant Client any rights to patents, copyrights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses in respect of the foregoing, including without limitation any related documentation or licensed materials.

8. CONFIDENTIAL INFORMATION.

8.1. Definition. "**Confidential Information**" shall mean any information in any form including without limitation oral, written, graphic, optical or electromagnetic forms, which Parabon or Client desires to protect against unrestricted disclosure or use and so notifies the other party at the time of disclosure. Without limiting the generality of the foregoing, Confidential Information shall always include all Parabon Materials. Confidential Information shall not include information which (i) is or becomes generally known to the public through no act or omission of the recipient; (ii) was in the recipient's possession prior to the disclosure hereunder without an obligation of confidentiality; (iii) is disclosed to the recipient by a third party not under an obligation of confidentiality; or (iv) was independently developed by the recipient, if such development is documented in records made contemporaneously with such development.

8.2. Obligations. Each party will keep the other party's Confidential Information confidential, using the same level of care it uses to protect its own information of like importance, which in no event will be less than reasonable care, and shall not use or disclose such information to any third party except as necessary to perform its obligations hereunder.

9. TERM AND TERMINATION

9.1. Term. This Agreement shall commence on the Effective Date and shall continue in perpetuity unless terminated on grounds set forth in section 9.2.

9.2. Termination for Material Breach. This Agreement and the licensed rights granted hereunder may be terminated by either party in the event that the other party has not performed any material obligation or has otherwise breached any material term of this Agreement (a) immediately upon receipt of written notice thereof if the breach or nonperformance is incapable of cure, or (b) upon the expiration of thirty (30) days (or any longer cure period authorized by the non-breaching party with respect to any individual breach) after receipt of written notice thereof if the breach or nonperformance is capable of cure and has not then been cured.

9.3. Rights and Obligations Upon Termination. The obligations of the parties, as listed in Sections, 6, 7, 8, 9, 10, 11, 12, and 14 shall survive termination of this Agreement. Upon termination, all licenses granted hereunder shall immediately terminate and each party shall return and make no further use of software, equipment, property, materials and other items (and all copies thereof) belonging to the other party.

10. WARRANTY DISCLAIMER. EXCEPT AS SET FORTH HEREIN, PARABON MAKES NO REPRESENTATIONS AND NO EXPRESS OR IMPLIED WARRANTIES OF ANY TYPE WITH RESPECT TO THE LICENSED SOFTWARE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SOFTWARE FOR ANY PARTICULAR PURPOSE OR NONINFRINGEMENT.

11. INDEMNIFICATION. Client assumes sole responsibility for results obtained from the use of the Software by Client.

12. LIMITATION OF LIABILITY. Client acknowledges that data processing entails the likelihood of some human and machine errors, omissions, delays, and losses, including inadvertent loss of data or damage

to media, which may give rise to loss or damage. Accordingly, Client agrees that PARABON SHALL NOT BE LIABLE ON ACCOUNT OF ANY SUCH ERRORS, OMISSIONS, DELAYS, OR LOSSES UNLESS CAUSED BY THEIR WILLFUL MISCONDUCT. Client is responsible for adopting reasonable measures to limit its exposure with respect to such potential losses and damages, including without limitation examination and confirmation of results prior to use thereof, provision for identification and correction of errors and omissions, preparation and storage of backup Data, replacement of lost or damaged Data or media, and reconstruction of Data. Client agrees to maintain at all times alternative methods capable of substitution for the Software's performance under this Agreement. Client is also responsible for complying with all local, state, and federal laws pertaining to the use and disclosure of any Data or Job Results.

13. EXPORT LAWS. Client agrees to comply fully with all relevant export laws and regulations of the United States ("Export Laws") to ensure that neither the Software nor any direct product thereof are (i) exported, directly or indirectly, in violation of Export Laws; or (ii) intended to be used for any purposes prohibited by the Export Laws.

14. GENERAL

14.1. Audits. Client shall maintain reasonable books and records regarding its use of the Licensed Software. Parabon may up to twice per calendar year, upon reasonable notice to the Client and during Client's regular business hours, enter Client's premises and conduct a commercially reasonable audit only of Client's records that pertain to the Licensed Software to ascertain compliance with the terms and conditions of the Agreement and any Order Forms. Client shall reasonably cooperate with Parabon with respect to any such audit. Client agrees to pay Parabon within 30 days of written notification any underpayment of fees discovered during such audit.

14.2. Other Projects. This Agreement shall not prevent Parabon from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided hereunder.

14.3. Severability. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.

Client acknowledges that it has read and understands the provisions of this Agreement. The parties have executed this Agreement as of the Effective Date. Accepted and agreed to on behalf of:

PARABON:
By: _____
Name: _____
Title: _____

CLIENT:
By: _____
Name: _____
Title: _____