

END USER LICENSE AGREEMENT

General Terms and Conditions

The following terms and conditions form part of and apply to the End User License Agreement ("**Agreement**") made and entered into by and between **Counterpoint Consulting Inc.**, a Virginia corporation with a place of business at 8300 Boone Blvd., Suite 350, Vienna, Virginia 22182 ("**Licensor**"), and the Ordering Activity ("**Customer**" or, **Licensee**") identified on the executed Licensed Software Order Form referencing or attaching these General Terms and Conditions ("**Order Form**"), effective as of the date of the last signature on the Order Form.

1. DEFINITIONS

Capitalized terms used but not defined elsewhere in this Agreement shall have the following meanings:

A. "**Affiliate**" means any commercial (i.e., non-governmental) legal entity in which a Party, directly or indirectly, holds more than 50% of the shares or voting rights or controls or is under common control with that legal entity. Any such entity shall be considered an Affiliate for only such time as such interest or control is maintained.

B. "**Affiliate User**" means an Affiliate of Licensee designated in an Order Form as an authorized entity user of the Licensed Software and Documentation.

C. "**Authorized User**" means Licensee's and its Affiliate User's respective employees, agents, contractors, consultants, suppliers or other individuals, including named users, who are authorized by Licensee or the Affiliate User to use the Licensed Software.

D. "**Control**" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity, whether through ownership, by contract or otherwise.

E. "**License Fees**" means the fees payable by Licensee in consideration for the license rights granted by Licensor with respect to the Licensed Software and Documentation.

F. "**Licensed Software**" means Licensor's software product licensed to Licensee under this Agreement, as described in the Order Form.

G. "**Open Source Software**" means software defined by the Open Source Initiative as constituting 'opens source software.'

H. "**Parties**" means both of Licensor and Licensee.

I. "**Party**" means Licensor or Licensee as the context requires.

J. "**Software Support**" means the support services provided or to be provided by Licensor in respect of the Licensed Software during a Support Period, as set forth in **Exhibit B**.

K. "**Support Fees**" means the fees payable by Licensee to Licensor in consideration for Licensor's agreement to provide Software Support during the relevant Support Period.

L. "**Support Period**" means the Initial Support Period specified on the Order Form and each succeeding one-year period for which Licensee subscribes to receive Software Support from Licensor.

M. "**Warranty Period**" means the time period during which the limited warranty set forth in Section 5.A is in effect and applicable.

2. LICENSE GRANT AND RESTRICTIONS

A. Subject to Licensee's continuing compliance with this Agreement, including timely payment of all amounts owed to Licensor, Licensor hereby grants to Licensee a [perpetual], revocable, personal, nonexclusive, nontransferable, non-sublicensable license to permit Authorized Users to access and use the Licensed Software, as a whole, for the internal operations of Licensee and, as applicable, any Licensee Affiliates identified on the Order Form as Authorized Affiliate Users. Except as otherwise expressly provided on the Order Form, the Licensed Software is provided only in executable binary code form and may only be installed and used within the United States.

B. Licensee may use the Licensed Software's documentation supplied from time to time by Licensor ("**Documentation**") solely in support of its permitted use of the Licensed Software. Licensee may make a reasonable number of copies of the Software and Documentation for permitted uses, but all such copies remain the property of Licensor and must preserve and include all proprietary rights and attribution notices contained in the original.

C. The Licensed Software may contain or be shipped with software owned and licensed by third parties ("**Third Party Software**"), which may be proprietary software or Open Source Software. Third Party Software is licensed to Licensee under the terms of the third party technology license agreement, if any, specified in the Documentation, notice files or readme files, as the case may be. Licensor's obligation to make any Third Party Software available to Licensee pursuant to this Agreement applies only if and for so long as Licensor continues to have rights from the applicable third-party provider to do so.

D. Licensee shall not cause or permit reverse engineering (unless required by law for interoperability), disassembly or de-compilation of the Licensed Software programs (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs) or extraction of any ideas, algorithms, or procedures from the Licensed Software.

E. Licensee shall not disclose or give or permit access to the Licensed Software or Documentation to any person who is involved in any way in the design or development of a product that is or is intended to become a competitive alternative to the Licensed Software.

F. If the Licensed Software and Documentation are acquired under or pursuant to this Agreement by any instrumentality of the U.S. Government or on its behalf, the Software is licensed as "Commercial Computer Software" pursuant to FAR 12-212 or DFARS 227.7202-1, whichever is applicable.

G. Licensee is solely responsible for furnishing a suitable operating environment for the Licensed Software, in accordance with any requirements and specifications that may be contained in the Documentation.

H. Licensee shall not disclose or permit the disclosure of the results of any benchmark tests of the Licensed Software without Licensor's prior written consent.

I. This Agreement does not convey to Licensee title or ownership of the Licensed Software or Documentation, but only a right of limited use in accordance with this Agreement. All terms and conditions of this Agreement are material terms of the license rights granted by this Agreement, and all rights not expressly granted are reserved by Licensor.

J. Licensee is not entering into this Agreement in reliance on any promise or commitment of Licensor to deliver additional features or functionality for the Licensed Software.

3. LICENSE FEES AND SUPPORT FEES

A. As compensation for the license rights provided under this Agreement, Licensee will pay Licensor the applicable License Fees in accordance with the Purchase Order Form.

B. If Licensor has offered to provide and Licensee has ordered Licensed Software Support Services, Licensor shall provide the Licensed Software Support Services ordered, as described in **Exhibit B** or the executed Order Form, in consideration for which Licensee shall pay the corresponding Support Fees in accordance with Order Form.

C. Any other professional services to be provided by Licensor or its contractors in connection with Licensee's implementation and use of the Licensed Software shall be provided pursuant to a separate professional services agreement between the Parties.

4. CONFIDENTIALITY

A. Licensee acknowledges and agrees that the Licensed Software, the Documentation, but not this Agreement nor the pricing terms, are confidential information of Licensor ("**Confidential Information**"), that the Confidential Information will remain the property of Licensor, and that Licensee will not be deemed by virtue of this Agreement or any access to the Confidential Information to have acquired any right, title or interest in or to the Confidential Information.

Licensor recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

B. Licensee agrees: (i) to hold the Confidential Information in strict confidence; (ii) to limit disclosure of the Confidential Information to Authorized Users having a need to know the Confidential Information for the purposes of this Agreement; (iii) not to disclose any Confidential Information to any third party who is not an Authorized User except with Licensor's prior written consent; (iv) to use the Confidential Information solely and exclusively in accordance with the terms of this Agreement in order to carry out its obligations and exercise its rights under this Agreement; (v) to afford Licensor's Confidential Information at least the same level of protection against unauthorized disclosure or use as Licensee normally uses to protect its own information of a similar character, but in no event less than reasonable care; and (vi) to notify Licensor promptly of any unauthorized use or disclosure of the Confidential Information of which Licensee becomes aware and to cooperate with and assist Licensor in every reasonable way to stop or minimize such unauthorized use or disclosure.

C. Licensee shall obligate its Authorized Users to protect the confidentiality of the Confidential Information in accordance with this section 4 and shall be responsible and liable to Licensor for their failure to do so.

5. LIMITED WARRANTIES AND REMEDIES FOR BREACH OF WARRANTY

A. Licensor warrants that during a Warranty Period of 90 days following delivery of the Licensed Software to Licensee (or such other Warranty Period as may be specified in the Order Form), performance of the Licensed Software will not deviate materially from the Documentation (each such material deviation, a "**Defect**"). If Licensee believes there has been a breach of this warranty, it must notify Licensor in writing within the Warranty Period describing the Defect in sufficient detail to enable Licensor to recreate it. If there has been a confirmed breach of this warranty, Licensor's obligation and remedy will be for Licensor to correct the Defect or replace the item at no charge. However, if Licensor is unable to correct a breach of this warranty after repeated efforts, Licensee will also be entitled to an equitable adjustment in the License Fees (up to the total amount of the License Fees) to equitably reflect any reduction in the value of the Licensed Software as a result of the uncorrected Defect(s). Licensor may investigate and correct reports of Defects at Licensor's offices to the extent possible.

B. Licensor warrants that the Licensed Software and Documentation do not, to Licensor's knowledge, infringe, misappropriate, or otherwise violate any third party copyrights, patents or trade secrets in existence on the effective date of this Agreement and which arise or are enforceable under the laws of the United States.

(1) If such a proceeding is brought or appears to Licensor to be likely to be brought, Licensor may, at its sole option and expense, either obtain the right for Licensee to continue using the allegedly infringing item(s) or replace or modify the item(s) to resolve such proceeding. If Licensor finds that neither of these alternatives is available to it on commercially reasonable terms, Licensor may require Licensee to return the allegedly infringing item(s), in which case Licensee will receive a refund of the License Fees paid by it for the returned item(s), less a reasonable adjustment for depreciation of the returned item(s) to reflect the period it was available for Licensee's use.

This section 5.B states Licensor's obligation under this Agreement to Licensee and Licensee's remedy with respect to any claim for breach of the warranty set forth herein..

C. Licensor is not responsible for any claimed breaches of the foregoing warranties caused by any of the following: (i) modifications made to the Licensed Software or Documentation by anyone other than Licensor and its contractors working at Licensor's direction; (ii) the combination, operation or use of the Licensed Software or Documentation with any items that Licensor did not supply or was not made known that is determined to be the cause of the breach; (iii) Licensee's failure to use any new or corrected versions of the Licensed Software or Documentation made available by Licensor; (iv) a violation of any terms or conditions of this Agreement by Licensee or its personnel; or (v) Licensor's adherence to Licensee's specifications or instructions.

D. Licensor does not warrant that the Licensed Software will be error-free, that its operation will be uninterrupted or that all Defects will be corrected. Licensee acknowledges that it is responsible for the results obtained from use of the Licensed Software, including the completeness, accuracy and content of such results. Licensee acknowledges further that it is responsible for independent verification and testing of any such results prior to using them in its business operations.

E. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE.

6. LIMITATION OF LIABILITY

A. If Licensee should become entitled to claim damages from Licensor arising under or in connection with this Agreement (including without limitation, for breach of contract, breach of warranty, negligence or other tort claim), Licensor will be liable only for the amount of Licensee's actual direct damages, not to exceed, in the aggregate for all claims, an amount equal to the sum of the License Fees and Support Fees paid by Licensee to Licensor for and in respect of the annual Support Period during which the claim arose. This limit also applies to Licensor's licensors. It is the maximum liability for which Licensor and its licensors are collectively responsible.

B. The limitations of liability set forth in this section 6 are intended to survive and apply notwithstanding the failure of any limited or remedy for breach of warranty set forth in this Agreement. The Parties agree that the foregoing limitations are not to be read to limit any liability to an extent that would not be permitted under applicable Federal law.

7. TERMINATION

A. Licensee may terminate this Agreement at any time, for any reason or no reason, by giving Licensor written notice to that effect.

B. Within 30 days after the expiration or termination of this Agreement for any reason, Licensee must, at Licensor's option, either deliver to Licensor or destroy the original and all copies of the Licensed Software and the Documentation, including partial copies and copied

portions contained in compilations, and certify in writing to Licensor that Licensee has fully performed its obligations under this paragraph.

C. Any provision of this Agreement that imposes or contemplates continuing obligations on a Party, including but not limited to sections 2, 4, and 6, will survive the expiration or termination of this Agreement.

8. LAW AND DISPUTES

A. This Agreement will be governed by Federal laws

B. Both Licensor and Licensee agree to comply fully with all relevant export laws and regulations to ensure that no software or technical data provided pursuant to this Agreement is exported or re-exported, directly or indirectly, in violation of law.

C. At the written request of either Party, the Parties will attempt to resolve any dispute arising under or relating to this Agreement through the informal means described in this section 9.C. Each Party will appoint a senior management representative who does not devote substantially all of his or her time to performance under this Agreement. The representatives will furnish to each other all non-privileged information with respect to the dispute that the Parties believe to be appropriate and germane. The representatives will negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. Formal proceedings for the resolution of the dispute may not be commenced until the earlier of: (i) the designated representatives conclude that resolution through continued negotiation does not appear likely; or (ii) 30 days have passed since the initial request to negotiate the dispute was made; *provided, however*, that a Party may file earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or to apply for interim or equitable relief.

9. GENERAL

A. Any legal notice or other communication required or permitted to be made or given by either Party pursuant to this Agreement will be in writing, in English, and will be deemed to have been duly given: (i) five (5) business days after the date of mailing if sent by registered or certified U.S. mail, postage prepaid, with return receipt requested; (ii) when transmitted if sent by facsimile, provided a confirmation of transmission is produced by the sending machine and a copy of the notice is promptly sent by another means specified in this section; or (iii) when delivered if delivered personally or sent by express courier service. All notices will be sent to the other Party at its address as set forth in the Order Form, or at such other address as the Party may specify in a notice given in accordance with this section.

B. Neither Party may assign or otherwise transfer any right or obligation set forth in this Agreement (whether by operation of law or otherwise) without the other Party's prior written consent, except that a Party may assign any right or obligation set forth in this Agreement to an Affiliate or to a successor entity in the event of a merger, consolidation or sale of such Party's business or all or substantially all of such Party's stock or assets, provided the assignee agrees in writing to assume all of the assignor's obligations and liabilities under this Agreement, and provided further that the substitution of the rights of the assignee for the rights of the assignor does not materially increase the scope of Licensee's use of the Licensed Software or materially increase the burden or risk imposed on the other Party by this Agreement. Any purported assignment in violation of the preceding sentence will be void. This Agreement will be binding upon the Parties' respective successors and permitted assigns.

C. This Agreement constitutes the entire agreement between the Parties, and supersedes all other prior or contemporaneous communications between the Parties (whether written or oral) relating to the subject matter of this Agreement. This Agreement may be modified or amended solely in a writing signed by both Parties.

D. The provisions of this Agreement will be deemed severable, and the unenforceability of any one or more provisions will not affect the enforceability of any other provisions. In addition, if any provision of this Agreement, for any reason, is declared to be unenforceable, the Parties will substitute an enforceable provision that, to the maximum extent possible under applicable law, preserves the original intentions and economic positions of the Parties.

E. No failure or delay by a Party in exercising any right, power or remedy will operate as a waiver of that right, power or remedy, and no waiver will be effective unless it is in writing and signed by the waiving Party. If a Party waives any right, power or remedy, the waiver will not waive any successive or other right, power or remedy the Party may have under this Agreement.

F. The Exhibits referred to in and attached to this Agreement are made a part of it as if fully included in the text.

G. This Agreement may be executed in separate counterparts, including by facsimile, and by the Parties on the same or separate counterparts. Any signed copy of this Agreement made by reliable means (e.g., photocopy or facsimile) will be considered an original, and all signed counterparts will constitute one and the same instrument, and will become effective (except as otherwise provided therein) when signed by each Party and delivered to the other Party.

EXHIBIT A

to

**END USER LICENSE AGREEMENT
Licensed Software Order Form - SAMPLE**

Licensee Information	
Licensee Name:	
Dept/Division Name: (if applicable)	
State of Formation & Entity Type:	
Tax ID No.:	
Address:	
Contact Person:	
Email:	
Telephone:	
Facsimile:	
Invoices to Be Sent to:	
Authorized Affiliates	
Number of Authorized Affiliates:	0
Name of Authorized Affiliates:	N/A
Authorized User Information	
Name of Administrative User:	
Admin. User Contact Information:	
No. of Authorized Users:	N/A
Licensed Software	
Product Name:	
License Fee (non-recurring fee):	\$ 00.00 , payable upon execution of this Order Form.
Licensor Notice Address:	Counterpoint Consulting Inc.
	8300 Boone Blvd., Suite 350, Vienna, VA 22182
	Attn: Contracts
Support Period	
Initial Support Period:	May 1, 2018 – April 30, 2019
Support Fee (annual recurring fee):	\$ 0.00, due upon execution of this Order Form.
Renewal:	Support Services will automatically renew for successive one-year periods unless either Party gives the other at least 60 days prior written notice of non-renewal, or Licensee fails to pay the Support Fee for an upcoming renewal period by the first day of such period.
Payment Terms	
1. <u>Currency and Mode of Payment.</u> Except as otherwise expressly provided on this Order Form, all amounts due are to be paid in United States Dollars, by wire transfer of immediately available funds to an account designated by Licensor.	
2. <u>Taxes and Other Government Charges.</u> Licensor's stated prices and fees exclude all applicable taxes, customs duties, and other governmental fees and charges. Unless Licensee is exempt from payment of taxes and other governmental fees and charges otherwise due in respect of the transactions effected by this Agreement and provides Licensor the appropriate exemption certificate(s), Licensee agrees to pay directly or reimburse Licensor for all taxes and other governmental fees and charges arising out of this Agreement or Licensor's performance under this Agreement, excluding taxes on Licensor's net income. Licensee shall pay Licensor's invoices without deducting any present or future taxes, withholdings or other charges except those deductions it is legally required to make. If Licensee is legally required to make any deductions, it will pay Licensor such additional amounts as are necessary to make the net amount remaining after such deductions equal to the stated amount due on Licensor's invoice.	
3. <u>Payment Timing.</u> The License Fee and Initial Support Fee shown above are due and payable upon execution of this Order Form. Licensor will	

invoice Licensee for the Support Fee for each subsequent Support Period at least 30 days prior to the expiration of the then-current Support Period.

Binding Legal Agreement

By signing this Order Form where indicated below, Licensee and Licensor are entering into a binding legal contract consisting of this Order Form and the accompanying End User License Agreement General Terms and Conditions and Software Support Terms.

Licensee:

By: _____

Name: _____

Title: _____

Date: _____

Licensor:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT B

to

END USER LICENSE AGREEMENT Software Support Terms

1. SUPPORT SERVICES

A. Licensee may purchase Support Services for the Licensed Software for 12-month periods during which Licensors is offering such services, at Licensors then-current prices (each, a “**Support Period**”). Licensee may obtain such services only if (i) Licensee has paid the Support Fees for all prior Support Periods; and (ii) Licensee incorporates into the Licensed Software within 180 days of the issue date all releases and corrections to the Licensed Software that Licensors has made available to Licensee.

B. The Support Services are the following: (i) Licensors will consult with Licensee for a reasonable amount of time by telephone (or via chat if offered by Licensors) during Licensors normal business hours to assist Licensee in the use of the Licensed Software; (ii) Licensors will supply computer program code to correct any confirmed Defects (as defined in section 5.A of this Agreement) in the Licensed Software; and (iii) Licensors will provide Licensee with all enhancements to the Licensed Software which Licensors develops and generally makes available at no charge to other licensees of the Licensed Software (“**Enhancements**”). Licensors reserves the right to develop and offer feature and function upgrades to the Licensed Software at additional charge.

C. Licensors may investigate and correct suspected Defects at Licensors offices to the extent possible. If Licensee requires Licensors to travel to Licensees place of business to perform Support Services that could have reasonably been corrected at Licensors place of business, Licensee will reimburse Licensors for the reasonable travel time and travel and other out-of-pocket expenses of Licensors personnel. If a suspected Defect is determined to be attributable to a cause other than the Licensed Software as delivered by Licensors, then Licensee will pay for Licensors work on a time-and-materials basis at Licensors then-current rates.

2. LICENSE

All Enhancements and corrections to the Licensed Software and Documentation provided by Licensors under this **Exhibit B** will become a part of the Licensed Software and Documentation for the purposes of this Agreement at the time they are provided to Licensee and are hereby licensed to Licensee as part of the Licensed Software and Documentation pursuant to the terms and conditions of this Agreement.

3. SUPPORT FEES

Support Fees will be invoiced and payable in accordance with the Order Form. Licensors will not be obligated to provide Support Services in any Support Period unless the Support Fees for the Support Period have been paid in full or as otherwise negotiated.
