

**Apryse Software Corp.**

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Apryse Software Corp. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**IMPORTANT – READ THIS CAREFULLY BEFORE DOWNLOADING, INSTALLING, USING OR ELECTRONICALLY ACCESSING THIS PROPRIETARY PRODUCT.**

**Apryse Software Corp.**

**License Agreement**

This agreement is a legal agreement between Apryse Software Corp. (“Apryse”) and the Ordering Activity under GSA Schedule contracts identified in the Order (“You”) are acting (“Licensee”) as the licensee of the Software (defined below) (“Agreement”). You agree that You are the Licensee or you are an employee or agent of Licensee and are entering into this Agreement for license of the Software by Licensee for Licensee’s business purposes as described in and in accordance with this Agreement. You hereby agree that you enter into this Agreement on behalf of Licensee and that you have the authority to bind Licensee to this Agreement. Apryse recommends that You print a copy of this Agreement and retain such copy for Licensee’s records and future reference.

APRYSE IS WILLING TO LICENSE THE SOFTWARE AND PROVIDE SERVICES TO LICENSEE ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS IN THIS AGREEMENT. BY EXECUTING AN ORDER FOR THE SOFTWARE, INCLUDING ANY UPDATES, UPGRADES, OR NEWER VERSIONS, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND THIS AGREEMENT, AND THAT LICENSEE AGREES TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT.

IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, APRYSE IS UNWILLING TO LICENSE THE SOFTWARE TO LICENSEE OR PROVIDE THE SERVICES TO LICENSEE, AND THEREFORE, DO NOT COMPLETE THE DOWNLOAD PROCESS, ACCESS OR OTHERWISE USE THE SOFTWARE, AND SELECT THE “I DO NOT ACCEPT THIS AGREEMENT.” IF YOU DO NOT ACCEPT THIS AGREEMENT, LICENSEE SHOULD IMMEDIATELY RETURN THE SOFTWARE AND CEASE ANY USE OF THE SOFTWARE. LICENSEE MAY RECEIVE A FULL REFUND IF THE SOFTWARE (INCLUDING WRITTEN MATERIALS) IS PROMPTLY RETURNED TO APRYSE WITHIN FIVE (5) DAYS AFTER THE DATE OF LICENSE.

IF LICENSEE HAS ENTERED INTO A APRYSE SOFTWARE LICENSE AGREEMENT OR OTHER SOFTWARE LICENSE AGREEMENT WITH APRYSE OR ITS AUTHORIZED AGENT OR PARTNER, WHICH GOVERNS LICENSEE’S USE OF THE SOFTWARE AND SERVICES, THEN THE TERMS OF THAT AGREEMENT GOVERN AND TAKE PRECEDENCE OVER THIS AGREEMENT. IF LICENSEE HAS NOT ENTERED INTO SUCH AN AGREEMENT WITH APRYSE PRIOR TO LICENSEE’S DOWNLOADING INSTALLATION OF THIS SOFTWARE, THEN LICENSEE’S RIGHT TO INSTALL AND USE THIS SOFTWARE IS SUBJECT TO LICENSEE’S AGREEMENT TO THIS AGREEMENT.

**1. LICENSE GRANTS.** The software product accompanying this Agreement contains several kinds of materials that have different types of licenses identified in each Order. Apryse offers its products to its licensees as (a) an on-premise solution licensed by licensees for licensees’ own use as an end user (“End User License” as further defined below), (b) a cloud-based solution hosted by the licensees that such licensees make available as a hosted solution to licensees’ end user customers (“ASP License”), or (c) as an on-premise solution where the licensees (i) are value-added resellers of the Apryse software, (ii) distribute the Apryse software to licensees’ customers solely as part of a licensee on-premise bundled offering, and (iii) license the bundled offerings to licensees’ customers for such customers’ own use on-premise as end users (“ISV License”).

**1.1 End User License; License Types**

**(a) Definitions.**

- (i)** “Documentation” means the user guides and manuals provided by Apryse to Licensee for installation and/or use of the Software.
- (ii)** “Compute Resource” means a physical computer, or virtual computer such as a virtual machine (VM) or container.
- (iii)** “License Term” means the license term for each Software product Licensed by Licensee specified in the applicable Order.
- (iv)** “License Type” means the type of License applicable to the Software, as more fully described in an Order.
- (v)** “Order” means a purchase order, Apryse’s online order process, or other ordering document issued by Licensee under this Agreement to Apryse that is accepted by Apryse.
- (vi)** “Services” means the maintenance and support services described in Section 5 below.
- (vii)** “Software” means the applications or computer software owned or licensed by Apryse chosen by Licensee and listed in an Order to which Licensee purchases a License pursuant to this Agreement, in machine-readable, object code form, including any Documentation and Updates.
- (viii)** “Update” means an error correction, patch, bug fix, modification, option or new release of the Software that is generally made available to purchasers of Services at no additional charge other than media and handling charges.

**(b) End User License. If Licensee has obtained an End User License to the Software for Licensee's own internal business purposes, the following terms shall apply and take precedence over any preceding inconsistent or conflicting terms:** Subject to the terms and conditions of this Agreement, Apryse grants to Licensee during the License Term (subject to Section 6 of the Agreement), non-exclusive, non-transferable, non-sublicensable license to copy and install the particular number of copies of each Software application licensed by Licensee from Apryse or its authorized agent or partner, for the purpose as set forth in the applicable Documentation for the Software and to the extent permitted by Licensee's payment of applicable license fees, if any, under a Apryse approved License Type and/or your Software license key subject to the Software product specific terms specified in this Agreement, the technical restrictions of the Software and/or any additional licensing terms specified by Apryse via Documentation, notification and/or Apryse's License FAQ located on the Apryse website ([www.apryse.com](http://www.apryse.com)), and other applicable limitations set forth in an Order ("End User License"). Each individual Software application may be installed and used solely on the number of computers set forth in the Order, if applicable, and used for Licensee's business operations in accordance with the applicable provisions of this Agreement. The License to the Software is limited to the quantities specified in each applicable Order.

**(c) License Types.**

**(i) Consumption - Components: Designer(s) + Engine + Manager**

**(1) Designer component**

**a.** The Designer in combination with desktop versions of Microsoft Office creates an Integrated Design environment (IDE) for Document Template design.

**(2) Engine component**

**a.** The Engine is the processing component of the solution. The Engine process the Templates created with the Designer.

**b.** The Engine may be installed on an unlimited number of computer resources including but not limited to: desktop computers, servers, virtual machine(s) and containers.

**c.** One license is valid for the Engine to run on an unlimited number of compute resources including but not limited to: desktop computers, servers, virtual machine(s) and containers.

**(3) Manager Component**

**a.** The Manager is a Web application that manages the storage, access, and production of your templates in a centralized location, with a deployment functionality.

**(4) Pricing:**

**a.** Designer: Unlimited

**b.** Engine: Pay-Per-Page model.

**c.** Manager: Additional Fee

**(ii) Instance - Components: Any combination of Designer(s) + Engine(s) + Manager**

**(1) Designer component**

**a.** The Designer in combination with desktop versions of Microsoft Office creates an Integrated Design environment (IDE) for Document Template design.

**b.** The Designer may be installed and used solely on one computer or virtual machine for use per licensed user.

**c.** Each License is valid for Designer running under the credentials of a single user. If Licensee runs the Designer on a shared compute resource such as a virtual machine (VM) or application server (i.e. Citrix server) under multiple user credentials, a separate License is required for each user.

**(2) Engine component may be installed only on the number of servers Licensed by Licensee.**

**a.** The Engine is the processing component of the solution. The Engine processes the Templates created with the Designer.

**b.** Licensee must have a separate License for each computer resource on which Licensee executes the Software.

**c.** A Server License has a maximum number of "cores." This is the total number of cores the Software "sees," therefore a dual core processor is two cores and hyper-threading (if turned on) counts as multiple cores because each hyper-thread is a distinct core as seen by the software. If the License is used on a server where the number of cores Licensed is greater than or equal to number of cores on the machine, the number of threads that may call Apryse is unlimited. If the number of cores Licensed is less than the number of cores on the machine, then the number of threads is limited to the core limit of the License.

d. The Test Server License is for testing purposes only. It may not be used as a production or end user system. The Test Server output is watermarked.

e. The Development Server License is for development purposes only. It may not be used as a production or end user system. The Developer License allows a single report to be concurrently generated, for a maximum of 250 reports per day, and the output is watermarked.

(3) Manager Component

a. The Manager is a Web application that manages the storage, access, and production of your templates in a centralized location, with a deployment functionality.

(4) Pricing:

a. Designer: Pay-Per-Server model.

b. Engine: Pay-Per-Server model.

c. Manager: Additional Fee

**1.2 End User Evaluation License. If Licensee has obtained an End User License to the Software for trial or evaluation purposes, the following terms shall apply to such License Type and take precedence over any preceding inconsistent or conflicting terms unless and until Licensee purchases a product License for a License Term:** Subject to the terms and conditions of this Agreement, Apryse hereby grants Licensee a limited, revocable, non-exclusive, non-sublicensable, non-transferable license to install the Software on the number of computers permitted by Apryse and use the Software for a period of fourteen (14) days, or as extended, following acceptance of this Agreement (“Evaluation Period”), in accordance with the Documentation provided therewith, solely for Licensee’s internal business purpose of evaluating and testing the Software to determine whether to purchase a License for a License Term (“Evaluation License”). Licensee may elect to obtain a License to the Software by notifying Apryse in writing prior to the expiration of the Evaluation Period, agreeing to an Order, and paying the applicable fees in accordance with this Agreement. Upon payment of such fees, Licensee shall receive a license key to procure Licensee’s future use of such Software under the License for the License Term. **If Licensee does not procure a license key prior to expiration of the Evaluation Period, Licensee’s evaluation license shall expire and terminate, and the Software will cease to function.** Licensee hereby acknowledges and agrees that, during the Evaluation Period, Apryse may collect usage statistics and data from the Software and verify that Licensee has the latest version of the Software and matching license key. During the Evaluation Period, the Software is provided for trial and internal evaluation purposes “AS-IS”, WITHOUT ANY WARRANTIES OF ANY KIND and Licensee’s use of the Software is entirely at its own risk. Except as altered in this Section, all terms of this Agreement shall apply and govern Licensee’s use of the Software during the Evaluation Period explicitly excluding Sections 6 and 10.

**1.3 ASP License. If Licensee has obtained an ASP License to the Software to provide access and use to software to Customers as a Hosted Service, the following terms shall apply to such License Type and take precedence over any preceding inconsistent or conflicting terms:**

(a) Definitions.

(i) “ASP Bundled Offering” means the offering of the Software with a Licensee Hosted Service product, where the main functionality of the ASP Bundled Offering is not report or document generation.

(ii) “Customer” means an entity that remotely accesses the ASP Bundled Offering from Licensee for use of the Software for such entity’s own internal business purposes and not for further distribution.

(iii) “Customer Agreement” means a written agreement between Licensee and Customer which, at a minimum, contains contractual provisions that provide substantially the same protections and restrictions for the Software and Documentation as set forth in this Agreement.

(iv) “Customer Key” means the license key for the Software supplied to Customer.

(v) “Hosted Service” means a service that makes software accessible to a user via the Internet and where the user is not a licensee of a copy of the software and any other services are merely ancillary to the usage of the software and/or other integrated software components.

(vi) “Licensee Marks” means all trademarks, service marks, trade names, logos or other words or symbols identifying or associated with the business of Licensee.

(vii) “Price List” means the applicable Apryse fee schedule that is in effect when Software or Services are ordered by Licensee.

(viii) “Apryse Marks” means those trademarks and service marks identifying or associated with the Software that Apryse permits Licensee to use in accordance with this Agreement.

**(b) Appointment.** Subject to the terms and conditions of this Agreement, Apryse hereby appoints Licensee as a non-exclusive application service provider utilizing the Software solely as part of an ASP Bundled Offering to Customers for the Order Term.

**(c) License Grant.** Subject to the terms and conditions of this Agreement, Apryse hereby grants Licensee a non-exclusive, non-transferable, non-sublicensable license for the Order Term to:

- (i)** market the Hosted Service using the Software as part of an ASP Bundled Offering to Customers under the Licensee Marks;
- (ii)** grant access to the Software and Documentation as party of the Hosted Services and to provide remote access to the Software solely as part of an ASP Bundled Offering to Customers through a Customer Agreement.
- (iii)** demonstrate the Hosted Services to potential Customers;
- (iv)** use the Software internally to test and integrate the Software into the ASP Bundled Offering and provide Level 1 Support for the Software; and
- (v)** use the technical support documentation supplied by Apryse for Licensee to provide Level 1 Support in accordance with the terms of this Agreement.

**1.4 ISV License. If Licensee has obtained an ISV License to the Software as a value-added reseller to distribute the Software to Customers as part of a Licensee Offering, the following terms shall apply to such License Type and take precedence over any preceding inconsistent or conflicting terms:**

**(a) Definitions.**

- (i)** “Customer” means an entity that licenses the ISV Bundled Offering from Licensee for use of the Software on the Customer’s premises for such entity’s own internal business purposes and not for further distribution.
- (ii)** “Licensee Offering” means the Licensee products licensed for on-premises use to a Customer and related services described in the Order.
- (iii)** “ISV Bundled Offering” means the license of the Software with a Licensee Offering product, where the main functionality of the ISV Bundled Offering is not report or document generation.

**(b) Appointment.** Subject to the terms and conditions of this Agreement, Apryse hereby appoints Licensee for the term of this Agreement as a non-exclusive value-added reseller of the Software solely as part of an ISV Bundled Offering to Customers.

**(c) License Grant.** Subject to the terms and conditions of this Agreement, Apryse hereby grants Licensee a non-exclusive, non-transferable, non-sublicensable license to:

- (i)** market the Software as part of an ISV Bundled Offering to Customers under the Licensee Marks;
- (ii)** license and distribute the Software, Customer Keys and Documentation to Customers solely as part of an ISV Bundled Offering through a Customer Agreement;
- (iii)** demonstrate the Software to potential Customers;
- (iv)** use the Software to test and incorporate the Software into the ISV Bundled Offering and provide Level 1 Support for the Software; and
- (v)** use the technical support documentation supplied by Apryse for Licensee to provide Level 1 Support in accordance with the terms of this Agreement.

**2. END USER LICENSE RESTRICTIONS.** The Software is licensed and not sold. All rights not expressly granted to Licensee in this Agreement are reserved by Apryse. Licensee shall not, and shall not permit any third party to: (a) modify, prepare derivative works, transfer, sublicense, or relicense the Software, or use the Software for third party transactions, commercial time-sharing, rental or service bureau use; (b) cause or permit the reverse engineering (except to the extent expressly allowed by local law), disassembly or decompilation of the Software; or (c) use the developer system version in a production or end user system. Licensee may make one copy of the Software for archival or backup purposes which copy shall be subject to the terms of this Agreement.

**3. ASP LICENSE AND ISV LICENSE RESTRICTIONS AND REQUIREMENTS.**

**3.1 Restrictions.** Licensee shall not, nor permit any third party to, (i) decompile, reverse assemble or otherwise reverse engineer the Software, (ii) use the Software for third party transactions, commercial time-sharing, rental or service bureau use, application services or, except as expressly authorized herein, publicly perform or publicly display the Software, (iii) make copies of the Software and Documentation, except for one copy for back-up or archival purposes or as expressly allowed in this Agreement, (iv) use or disclose Software keys except as expressly authorized in this Agreement, (v) provide an application programming interface to the Software or authorized modifications of the Software, (vi) distribute the Software in any format for development or application compilation purposes, or (vii) use or incorporate the Software or any portion of the Software in any Licensee products which would compete directly or indirectly with the Software. Except as otherwise provided in this Agreement, Licensee shall not alter, modify or change the Software.

**3.2 Copies and Keys.** Licensee of an ISV License may make copies of the Software as required for the ISV Bundled Offering for a Customer. The ISV Bundled Offering shall only be supplied to Customer with a Customer Key obtained from Apryse. Licensee shall not supply Customer a Customer Key other than the Customer Key provided by Apryse and shall obligate Customer to treat the Customer Key as Confidential Information of Apryse.

**3.3 Software Changes.** Apryse reserves the right, from time to time, to add, change or discontinue Software upon giving one hundred and twenty (120) days' notice to Licensee. If a Software product is discontinued, Licensee may continue to distribute the discontinued Software product for the remaining Term, but Apryse shall not be obligated to provide Services for the discontinued Software product beyond the 12-month period beginning after the end of the 120-day notice period. In the event that Apryse adds, changes or discontinues the Software in a manner that materially diminishes the functionality of the Software that Licensee has contracted for, Licensee shall be entitled to a pro rata refund for any fees paid not used.

**3.4 Requirements and Responsibilities.**

(a) Licensee agrees not to make any reference or claim about Apryse or the Software other than presenting current information that has been published by Apryse or approved by Apryse in writing.

(b) Licensee agrees not to use deceptive, misleading, illegal or unethical practices in marketing, licensing and supporting the Software to Customers.

(c) Licensee agrees to comply with all applicable laws and regulations in performing its duties under this Agreement.

(d) Licensee agrees that, in connection with its performance of its duties hereunder, it shall not make any payments, in money or any other item of value or make any offers or promises to pay any money or any other item of value to (a) any government official, (b) any foreign political party, (c) any candidate for foreign political officer or (d) any other person or entity, with the knowledge that such payment, offer or promise to pay will be made to any government official for the purpose of influencing such government official to make one or more business decisions favorable to Licensee in connection with the resale of Apryse Software or Services. Licensee further represents that no government official is a principal, owner, officer, employee or agent of any entity in which Licensee has an interest, and no government official has any material financial interest in the business of the Licensee.

(e) Licensee shall maintain complete and accurate books and records in connection with the activities under this Agreement, including not manipulating server transaction records to avoid paying the proper Fees. Such records shall include executed Customer Agreements.

(f) Upon Apryse's request, Licensee shall provide Apryse with a copy of the Licensee's standard Customer Agreement for the Software.

(g) Licensee shall comply with the following license limitations:

(i) Licensee must have a separate license for each License Type on which Licensee executes the Software as described in Section 1.1(c) and each Customer Agreement held by Licensee shall contain, at a minimum, the requirements and restrictions for the applicable License Type for each End User License.

(ii) Licensee shall ensure that Customer will keep a port open at all times so that Apryse may retrieve reports and access the applicable Bundled Offering as reasonably necessary.

(iii) A Server License has a maximum number of "cores." This is the total number of cores the Software "sees," therefore a dual core processor is two cores and hyper-threading (if turned on) counts as multiple cores because each hyper-thread is a distinct core as seen by the software. If the License is used on a server where the number of cores Licensed is greater than or equal to number of cores on the machine, the number of threads that may call Apryse is unlimited. If the number of cores Licensed is less than the number of cores on the machine, then the number of threads is limited to the core limit of the License.

(iv) The Test Server License is for testing purposes only. It may not be used as a production or end user system. The Test Server output is watermarked.

(v) The Development Server License is for development purposes only. It may not be used as a production or end user system. The Developer License allows a single report to be concurrently generated, for a maximum of 250 reports per day, and the output is watermarked.

(h) Licensee shall keep Apryse informed as to any problems encountered with the Software and any resolutions arrived at for those problems, and to communicate promptly to Apryse any and all modifications, design changes or improvements of the Software suggested by any customer, employee or agent.

(i) Licensee shall: (a) acquire no right, title or interest in the Apryse Marks; (b) it shall not use the Apryse Marks as part of Licensee's corporate or trade name, if any, or permit any third party to do so without the prior written consent of Apryse; and (b) it will promptly notify Apryse of any improper use by any third party of the Apryse Marks or of similar marks.

**4. TRAINING.** If Licensee has obtained an ASP License or an ISV License, Apryse agrees to make available to Licensee's staff, at Licensee's expense, ongoing training in the marketing, sale and use of the Software, at Apryse's then current rates in accordance with the GSA Schedule Pricelist, for Licensee to perform its obligations under this Agreement. For any on-site training services requested by Licensee and accepted by Apryse in writing, Licensee shall pay Apryse for all agreed to fees and for actual, reasonable travel and out-of-pocket expenses in accordance with FAR 31.205-46 and the Federal Travel Regulation (FTR). Licensee shall only be liable for such



travel expenses as approved by Licensee and funded under the applicable ordering document

## **5. MAINTENANCE AND SUPPORT SERVICES.**

**5.1 Provision.** For each End User License, Apryse shall provide First Level Support Services described in Section 5.2. For ASP Licenses and ISV Licenses, Apryse shall make available to Licensee only and not to Licensee's Customers, Second Level Support Services as described in Section 5.4. ASP Licensee and ISV Licensees are responsible for providing to their Customers First Level Support Services as described in Section 5.2 and Section 5.3.

**5.2 First Level Support Services.** Apryse shall take reasonable steps to correct material nonconformities with the Software specifications in the applicable Documentation. Services shall commence on the initial delivery of the Software to Licensee and shall continue for the period set forth in the Order ("Services Term"). Services will be provided from Apryse's offices through the use of email and internet-based support only. Email and internet-based support is for the purpose of providing advice and assistance to Licensee on the use of the Software, and will include basic information and instructions, including assistance with the general use of the Software, optimization of the available functions, installation of the Software, research problems reported to Apryse by Licensee, and expected functionality of future Software and Updates. Services will include the right to receive Updates to the Software at no additional charge if and when Apryse makes them generally available.

**5.3 ASP License and ISV License First Level Support.** Licensees of an ASP License or an ISV License shall:

- (a) collect Customer's diagnostics as requested by Apryse to assist Apryse in providing Second Level Support services.
- (b) provide telephone assistance or if applicable on-site assistance in researching and finding solutions to problems in the use of the Software, if these problems have been caused by an error in the Software as installed at Customer's site.
- (c) have resources available who are able and capable of giving instruction and training in the use of the Software to existing and new Customers.
- (d) coordinate all Second Level Support requirements with Apryse and working directly with Customers on all matters pertaining to First Level Support requirements.
- (e) provide Customers with Updates.
- (f) designate two members of its technical staff as Licensee's sole representatives for contact with Apryse regarding Apryse technical support obligations under this Agreement. The technical contacts shall also be the main contacts for First Level Support requests by Customers.

**5.4 Second Level Support Services.** Second Level Support means the following online and telephone technical support provided by Apryse to Licensee for the purpose of providing advice and assistance to Licensee to support Licensee's Customers on the operation and use of the Software:

- (a) advice and assistance to support Licensee's Customers on Software functionality, debugging and troubleshooting in accordance with then-current Apryse support policies;
- (b) research problems reported by Licensee; and
- (c) provide Licensee with Updates.

**5.5 Covered Software.** Apryse will provide Services for the most current release of the Software. Once a release has been made generally available, Licensee should convert to the latest release in order to insure uninterrupted service and continued support.

**5.6 Hours of Operation.** Services via telephone are available between the hours of 8:00 a.m. and 5:00 p.m., U.S. MST, weekdays, excluding U.S. holidays observed by Apryse (the "Hours of Operation"). Licensee may receive Services by telephone by calling Apryse's customer support number set forth in the Documentation. Telephone Services will be provided in the English language only and Licensee must speak, write, and understand English. Services via the internet are available for extended hours via the Apryse Helpdesk Center which may be accessed from the Apryse website at [www.apryse.com](http://www.apryse.com).

**5.7 Exclusions.** Apryse is not required to perform Services with respect to the following: (i) assistance in resolving problems due to Licensee's modification of the Software; (ii) problems encountered as a result of non-Apryse product offerings co-resident on the system hub machine; (iii) assistance in resolving software problems other than those associated with Software, including, but not limited to, problems with the hardware and its operating system, communications and system administration-related problems; (iv) assistance in migrating to new releases of other software products; (v) assistance in resolving problems due to using the Software in an operating environment not authorized by Apryse; (vi) Licensee's failure to use the Software in accordance with the applicable Documentation; and (vii) Licensee's failure to use error corrections previously provided by Apryse.

**5.8 Licensee's Responsibilities.** Licensee shall cooperate fully with Apryse's reasonable requests for information, personnel and time necessary to provide Services, including providing information for Apryse to reproduce the errors reported by Licensee.

## **6. PRICING MODELS; FEES, PAYMENT, AND TAXES.**

### **6.1 License Pricing Models.**

(a) **Pay-per-Page.** Subscription model wherein each time a report is run, the Software checks in with the Apryse license server for approval. If approval is received, the report is run, and the page total is then sent back to the license server to be charged against the customer's account. Customer prepays for N pages per month; with overages assessed for all pages over the base amount.

(b) **Pay-per-Server.** Subscription model wherein a customer prepays for N individual Licenses. (Overages are charged for any "scaled out" servers, if applicable, as described below.)

(i) **Connected mode:** The Software will communicate with the Apryse license server at various times while running for approval to run on that machine. If unable to communicate for an extended period of time, the Software will cease operation.

(ii) **Disconnected mode:**

(1) **Pay-per-server License with expiration date.**

(2) **Limited to run only on computers specified by host name or IP address.**

**6.2 Fees.** In consideration of the Software and Services and any accompanying Licenses provided to Licensee by Apryse hereunder, Licensee shall pay Apryse or its authorized reseller as applicable the License fees, Services fees, expenses, set forth on the applicable invoice provided by Apryse based on the applicable Order. Apryse or its authorized reseller as applicable shall state separately on invoices taxes excluded from the fees, and the Licensee agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k)

**6.3 Payment.** Licensee shall pay all invoices as follows: Licensee shall pay all fees and expenses at the time of purchase. Monthly, quarterly, and annual billing cycles are available. Depending on what option Licensee chooses, the Order will be renewed at the end of each subscription month, quarter, or year. Payment may be made using a credit card or other payment methods accepted by Apryse in the Order. Apryse will charge Licensee's credit card or other payment account at the time of purchase of the License and when there are other charges as specified in the License Type (e.g. overages). Customer shall maintain complete and accurate billing and credit card and payment information on file with Apryse. All payments received by Apryse are non-refundable except as otherwise expressly provided in this Agreement. All fees and expenses are quoted in U.S. dollars and Licensee shall pay the fees and expenses in U.S. dollars..

**6.4 Reporting.** Licensee understands and acknowledges that the Software contains License verification capabilities which will contact the Apryse license server before each report or document is generated to verify that the License is valid and inform the Apryse license server that a report is being run. The information sent to Apryse shall contain information about the usage of the Software, including, without limitation, information detailing the number of pages generated by the Software, and the number of users, and the number of servers running reports (collectively "Usage Information"). Licensee hereby grants Apryse permission to operate these reporting capabilities to obtain reports that contain such Usage Information ("Reports") in order to verify Licensee's compliance with the terms of this Agreement. If Licensee fails to pay Apryse the additional amounts due Apryse may (a) cause the Software to suspend operation until such time as Licensee brings its account completely current, or (b) exercise any other rights under the Agreement. If the Reports reveal any other nonconformance with this Agreement, Apryse may seek its remedies available to it under this Agreement.

## **7. TERM AND TERMINATION.**

**7.1 Term.** The initial term of this Agreement shall commence after Licensee submits the Order for Licenses and when payment has been received by Apryse and continue for the initial term set forth in the Order unless terminated earlier by a party in accordance with this Section ("Initial Term"). Thereafter, this Agreement may be renewed for additional periods equal to the Initial Term (each, a "Renewal Term"), by executing a written order for the Renewal Term. The Initial Term and each Renewal Term are collectively referred to as the "Term."

**7.2 Termination.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Apryse shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

**7.3 Effect of Termination.** Upon termination Licensee shall promptly cease using and delete the Software from Licensee's system and destroy the Documentation and any copies of the Software or Documentation. Upon termination of this Agreement, any applicable fees owed by Licensee through the date of termination shall become due and payable. Licensee shall promptly return to the other all Confidential Information of Apryse that Licensee may have in Licensee's possession or control. For ASP Licenses and ISV Licenses, upon termination of this Agreement (a) all rights and licenses of and obligations of and restrictions on Apryse hereunder shall terminate, except that licenses granted to Customers in accordance with this Agreement will remain in effect in accordance with their terms; (b) Licensee will, at the option of Apryse, destroy or return all Software, Software keys, catalogues, and literature in its possession, custody or control in whichever form held (including all copies or embodiments thereof) and will cease using the Software, Services and Apryse Marks. Notwithstanding the termination of this Agreement for any reason, the rights and duties of the parties under Sections 7.3, 8, 9,

11, 12 and 13 and all payment obligations and license restrictions of this Agreement shall survive such termination and remain in full force and effect.

**8. INTELLECTUAL PROPERTY.** Subject only to the Licenses expressly granted in this Agreement, as between Apryse and Licensee, Apryse shall be the sole owner of all intellectual property rights in and to the Software, Software keys, and the Documentation. Licensee shall not remove any of Apryse's or its licensor's copyright, trademark and other proprietary notices contained on or in the Software or the Documentation, and Licensee will reproduce all such notices on all copies permitted to be made by Licensee under this Agreement. Apryse may utilize all ideas, suggestions, feedback, improvements data, reports or the like that Licensee provides to Apryse or otherwise makes with respect to the Software or the Services without any obligation to Licensee. To the extent that Licensee has or later obtains any intellectual property rights in and to the Software or Services or any future enhancement or modification thereto or any part thereof, by operation of law or otherwise, Licensee hereby disclaims such rights, assigns and transfers such rights exclusively to Apryse, and agrees to provide reasonable assistance to Apryse, to give effect to such assignment and to protect, enforce and maintain such rights. Licensee shall not remove any of Apryse's or its licensor's copyright and other proprietary notices contained on or in the Software, Services, Documentation or any other materials delivered to Licensee, and Licensee will reproduce all such notices on all copies permitted to be made by Licensee under this Agreement

**9. CONFIDENTIAL INFORMATION.** "Confidential Information" means (a) the Software, the Documentation and any business or technical nonpublic information of Apryse, including without limitation, License keys provided to Licensee by Apryse; (b) any other information of Apryse that is specifically designated by Apryse as confidential or proprietary; and (c) reserved. Confidential Information shall not include information that (i) is in or enters the public domain without breach of this Agreement through no fault of Licensee; (ii) Licensee were demonstrably in possession of prior to first receiving it from Apryse without obligation of restrictions; (iii) Licensee can demonstrate was developed by Licensee independently and without use of or reference to the Apryse's Confidential Information; or (iv) Licensee receive from a third party without restriction on disclosure and without breach of a nondisclosure obligation. Licensee shall maintain the Confidential Information in strict confidence during the Term and, until such time as the Confidential Information enters the public domain pursuant to items (i) through (iv) above. Licensee shall exercise no less than reasonable care with respect to the handling and protection of such Confidential Information. Licensee shall use the Confidential Information only during the Term and as expressly permitted herein and shall disclose such Confidential Information only to Licensee's employees as is reasonably required in connection with the exercise of Licensee's rights and obligations under this Agreement (so long as those employees are subject to binding use and disclosure restrictions at least as protective as those set forth herein). Apryse recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

## **10. WARRANTIES AND DISCLAIMERS.**

**10.1 By Apryse.** Apryse warrants that, for a period of ninety (90) days from initial delivery of the Software to Licensee, the Software will, when properly installed and used in accordance with the Documentation, perform substantially in accordance with the specifications for the Software as described in the applicable Documentation. As Licensee's exclusive remedy and Apryse's sole obligation for breach of this warranty, Apryse shall use commercially reasonable efforts to correct any reproducible error in the Software constituting a breach of the warranty at no additional charge. Apryse does not warrant that Licensee's use of the Software will be error-free, virus-free or uninterrupted. Apryse makes no other warranty, express or implied, with respect to any Services or Software provided by Apryse under this Agreement. APRYSE HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS AND OTHER TERMS, WHETHER STATUTORY, ARISING FROM COURSE OF DEALING, OR OTHERWISE, INCLUDING WITHOUT LIMITATION TERMS AS TO QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT.

**10.2 ASP Licensee and ISV Licensee Warranties.** For ASP Licenses and ISV Licenses, Licensee represents and warrants that neither this Agreement (or any term hereof) nor the performance of or exercise of rights under this Agreement, is restricted by, contrary to, in conflict with, ineffective under, requires registration or approval or tax withholding under, or affects Apryse's proprietary rights (or the duration thereof) under, or will require any termination payment or compulsory licensing under, any law or regulation of any organization, country, group of countries or political or governmental entity located within or including all or a portion of the territories where Licensee sells the ASP Bundled Offering or ISV Bundled Offering to Customers. Licensee will not make or publish any representations, warranties, or guarantees on behalf of Apryse or its suppliers concerning the Products that are inconsistent with any warranties made by Apryse to its end users concerning the Products without Apryse's specific prior written approval.

## **11. INDEMNIFICATION.**

**11.1 By Apryse.** Apryse agrees to have the right to intervene to defend Licensee from and against any third party claims alleging that the Software or Documentation as furnished to Licensee and used within the scope of this Agreement infringes any U.S. patent issued as of the Effective Date, or any copyright, trademark or is a misappropriation of any trade secret of such third party and Apryse will pay all final judgments awarded or settlements entered into on such claims. The foregoing indemnity obligation shall not extend to any claims of infringement arising out of or related to (i) a modification of the Software or Documentation by anyone other than Apryse or its duly authorized agent;

(ii) the incorporation into the Software or Documentation of any information provided by or requested by Licensee; (iii) a combination of the Software with any third party software or equipment not specified in the Documentation and where such combination is the cause of such infringement; or (iv) the use of a version of the Software other than the then-current version if the infringement would have been avoided by using of the then-current version. In the event the Software or Documentation are held or are believed by Apryse to infringe, Apryse may, at its sole option and expense, elect to (a) modify the Software or Documentation so that they are non-infringing; (b) replace

the Software with non-infringing Software which are functionally equivalent; (c) obtain a License for Licensee to continue to

use the Software as provided hereunder; or if none of (a), (b), or (c) is commercially reasonable, then (d) terminate the License for the infringing Software or Documentation and refund the License fees paid for that Software or Documentation, prorated over a five (5) year term from the Effective Date. This Section 11.1 states Apryse's entire liability and Licensee's sole and exclusive remedy for any infringement of third-party proprietary rights of any kind. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

## **11.2 Reserved..**

**11.3 Indemnification Procedure.** The party seeking indemnification must (a) give prompt notice of the claim to the other party; (b) grant sole control of the defense or settlement of the claim or action to the other party; and (c) provide reasonable cooperation to the other party and, at the other party's request and expense, assistance in the defense or settlement of the claim.

**12. LIMITATION ON LIABILITY.** NEITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, SUFFERED BY THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTIONS OR OTHER ECONOMIC LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY USE OF OR FAILURE TO BE ABLE TO USE THE SOFTWARE OR SERVICES. APRYSE SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATED TO (i) TRANSACTIONS PERFORMED USING THE SOFTWARE OR SERVICES; OR (ii) MODIFICATIONS TO THE SOFTWARE OR SERVICES BY LICENSEE, WHETHER SUFFERED BY LICENSEE OR ANY THIRD PARTY. APRYSE'S TOTAL AGGREGATE LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE FEES PAID BY LICENSEE HEREUNDER FOR THE SOFTWARE OR SERVICE THAT IS THE SUBJECT OF THE ACTION. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT. LICENSEE ACKNOWLEDGE THAT APRYSE'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED IN THIS SECTION WILL APPLY REGARDLESS OF WHETHER ANY LIMITED OR EXCLUSIVE REMEDY SPECIFIED IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY TO LIABILITY ARISING FROM ANY BREACH OF SECTIONS 1, 2, 3, OR 7 AND ANY OBLIGATIONS UNDER SECTION 11. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

## **13. GENERAL TERMS.**

**13.1 Publicity.** Apryse may, in its reasonable discretion, contact any Customer at any time for any purpose related to such Customer's use of the ASP Bundled Offering or ISV Bundled Offering, as applicable. Apryse may, and Licensee shall ensure that Apryse has the rights necessary, to use the name of any Customers in connection with promoting the Apryse products and services to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71 .

**13.2 Notices.** All notices required under this Agreement shall be (a) in writing, (b) deemed to have been duly made and received when (i) personally served, (ii) delivered by commercially established courier service, or (iii) ten (10) days after deposit in mail via certified mail, return receipt requested, to the addresses specified in the Order or at such other address as the parties shall designate in writing from time to time, and, (c) for notices to Apryse, marked "Attention: Contracts Department".

**13.3 Export Control..** Any use of the Software shall be in compliance with all relevant international, U.N., Canada, USA or EU sales, export control, economic sanctions, import and anti-boycott laws, restrictions and regulations ("**Trade Control Laws**") and Licensee agrees to comply with them. Licensee represents and warrants that Licensee is not located in a country that is subject to embargo, or that has been designated by the United States as a "terrorist supporting" country; and that Licensee is not identified in any Canadian, United States or EU sanction list of prohibited or restricted parties, or owned 50% or more directly or indirectly, in the aggregate by one or more such prohibited or restricted individuals or entities. Licensee further represents and warrants that it will comply with relevant Trade Control Laws in connection with any activities under this Agreement. Licensee shall indemnify and hold Licensor and its directors, officers, employees, and affiliates harmless from any and all claims, actions, causes of action, suits, proceedings, complaints and damages, losses, liabilities, settlements, awards, fines, costs and expenses related to Licensee violation or alleged violation of any Trade Control Law or of this Section. Licensor shall have the right to terminate this Agreement immediately upon Licensor's determination that Licensee has violated or attempted to violate any Trade Control Law or this Section.

**13.4 U.S. Government End Users.** For any Software or Documentation licensed directly or indirectly on behalf of a unit or agency of the United States Government, this provision applies. The Software and Documentation: (a) was developed at private expense and are in all respects the proprietary information of Apryse; (b) were not developed with government funds; (c) are a trade secret of Apryse for all purposes of the Freedom of Information Act; (d) are commercial items and thus, pursuant to Section 12.212 of the Federal Acquisition Regulations (FAR) and DFAR Supplement Section 227.7202, Government's use, duplication or disclosure of the Software or Documentation is subject to the restrictions set forth by Apryse.

## **13.5 Reserved.**

**13.6 Integration and Modification.** This Agreement sets forth the entire agreement between the parties and supersedes any and all prior proposals, agreements or communications, written or oral, of the parties with respect to the subject matter hereof. This Agreement sets forth the general terms and conditions applicable to all Services provided by Apryse to Licensee under the specific terms and conditions set forth in the applicable order, renewal notice, or quotation provided by Apryse, if any. The provision and receipt of Services are expressly conditioned on the acceptance of the terms in this Agreement. No other terms apply. No terms and conditions proposed by either party shall be binding on the other party unless accepted in writing by both parties, and each party hereby objects to and rejects all terms and conditions not so accepted. This Agreement may not be modified, altered or amended, except by written instrument duly executed by both parties.

**13.7 Miscellaneous.** No failure or delay by either party in exercising any right hereunder will operate as a waiver thereof. If Licensee wishes to assign or otherwise transfer this Agreement to anyone, Licensee must obtain Apryse's prior written consent, which consent shall not be unreasonably withheld. This Agreement will be binding on the parties, their successors and permitted assigns. This Agreement will be construed under the Federal laws of the United States. The parties hereby disclaim the application of the 1980 U.N. Convention on Contracts for the International Sale of Goods. The English language version of this Agreement shall be controlling in the interpretation or application of the terms of this Agreement. If any provision of this Agreement is, for any reason, held invalid or illegal in any respect by an arbitrator or a court of competent jurisdiction, such inability or illegality shall not affect the validity of this Agreement itself and there shall be substituted for the affected provision, a valid and enforceable provision which most closely approximates the intent and economic effect of the invalid provision. If such provision cannot be amended so as to be valid and enforceable, then such provision is severable from this Agreement, and the remaining provisions of this Agreement shall remain valid and enforceable.

Effective May 10, 2023