

**SiliconExpert Technologies, Inc.**

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

1. **Scope.** This Rider and the attached SiliconExpert Technologies, Inc. ("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extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions: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.

## SUBSCRIPTION END USER LICENSE AGREEMENT

This Subscription End User License Agreement (the "Agreement"), effective as of the date of latest signature below (the "Effective Date"), is made by and between SiliconExpert Technologies, Inc., a California corporation with its principal place of business at 245 Main St Cambridge, MA 02142 ("SE") and the Ordering Activity under GSA schedule contracts identified in the Order form or other Government Customer, \_\_\_\_\_ (hereafter "Client"). SE and Client may be referred to individually as a "Party" and collectively as "Parties".

In consideration of the mutual promises and covenants set forth herein, the Parties hereby agree as follows:

### 1. DEFINITIONS.

- 1.1. **"Base License"** means the license to Tool(s) as set forth in section 2 below and in an Order.
- 1.2. **"BOM"** means Client's bill of material used for producing Client's products.
- 1.3. **"BOM Manager Tool"** means SE's hosted web-based BOM Manager Tool, which allows Users to scrub and manage the BOM with information stored in a centralized location, run reports, and receive email alerts when updates occur for parts in the BOM.
- 1.4. **"Deliverable"** means specific work, materials and/or services provided by SE to Client pursuant to an Order.
- 1.5. **"MPN"** means original manufacturer part numbers.
- 1.6. **"Part Search Tool"** means SE's hosted, web-based Part Search Tool that allows Users to search for information about semiconductors, passives, & other electronic and computer parts.
- 1.7. **"Order"** means the quoted statement of work, or other written document, attached as Exhibit A, defining agreed-upon scope and associated business terms regarding the provision of Tools and/or Services executed by both SE and Client.
- 1.8. **"Professional Services"** means any consulting, training, implementation, or technical services provided by SE to Customer, as set out in the Order.
- 1.9. **"Services"** means the services performed by or on behalf of SE and provided to Client as set out in an Order, including Professional Services and API.
- 1.10. **"Services License"** means the license to API as set forth in section 2.2 below and in an Order.
- 1.11. **"Silicon Expert's Part Database"** means SE's proprietary database of information for more than 1 billion electronic components made by various suppliers of electronic and computer products.
- 1.12. **"Software"** means software tools, software code (in source and object forms), algorithms, user interface designs, architecture, toolkits, plug-ins, objects and documentation, network designs, processes, know-how, methodologies, trade secrets, and any related intellectual property rights throughout the world, as well as any of the modifications, or extensions of the above, owned, developed, or licensed by SE used to support the Tools. Software specifically excludes Silicon Expert's Parts Database and is only applicable to the actual software program that supports the Tools.
- 1.13. **"Standard Module"** means basic information about a part such as manufacturer, description, lifecycle, RoHS (Y/N), data sheet link and classification codes.

- 1.14. **“Technical Module”** means parametric data and package specifications.
- 1.15. **“Term”** means the term of the Agreement or Base License as set forth in Section 4 below.
- 1.16. **“Tool”** or **“Tools”** means the technology and database services hosted by or on behalf of SE and provided to Client as set out in an Order, including the BOM Manager Tool and Part Search Tool, and Open Market Tool.. Tools are brand agnostic. SE’s parent company, Arrow Electronics, Inc., is only one of thousands of distributors and suppliers leveraging the SE platform, thereby providing an unbiased picture of the current electronic components market.
- 1.17. **“User”** means an individual (either an employee or temporary worker of Client) who may use or access the Tools on behalf of Client.
- 1.18. **“Application Programming Interface (“API”)** means a software interface to SE’s comprehensive database and tools which allows integration with customer websites, PLM, design or CAD tools as set out in an Order.

## 2. LICENSE.

- 2.1. License Grant to Tool(s).** Subject to the terms and conditions of this Agreement, SE hereby grants to Client during the Term of the applicable Base License a non-transferable, non-exclusive license to access the Tool(s) via a secure website for its internal business purposes. Client will be provisioned a unique URL link with a specific username and password for each user to enable authorized Users to access the Tool. SE hereby grants Client an annual subscription license for access to the Tool(s) as described below in Exhibit A attached.
- 2.2. License Grant to API.** Subject to the terms and conditions of this Agreement, SE hereby grants to Client during the Term of the applicable Services License a non-transferable, non-exclusive license to access the API for its internal business purposes. SE hereby grants Client an annual subscription license for access to API as described below in Exhibit A attached.
- 2.3. License Grant to Open Market Tool.** SE hereby grants to Client during the Term a license to access Open Market Tool via a secure website. Client will be given a unique URL link with a specific username and password to access the Open Market Tool, which will enable licensed users to obtain part information.
- 2.4. License Restrictions.** As a condition of the license granted, Client agrees that the Tools will be used solely for Client’s internal, lawful use.

**2.4.1.** Client shall not, directly or indirectly:

- (i) allow any third party to use any Tool;
- (ii) provide any reports, printouts or information generated by a Tool to any third party;
- (iii) remove, obscure, or alter any proprietary notices associated with the Tool;
- (iv) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Tools or Software; modify, translate, or create derivative works based on the Tools or Software (except to the extent expressly permitted by SE or applicable law); or
- (v) use the Tool in violation of any applicable law or regulation or in a manner that would cause a risk to the security or operations of SE or any of its customers.

Client agrees that SE is the owner or licensee of all intellectual property rights in and to the Tools and the Software, and that no right, title, or interest in any intellectual property rights in the Software or Tools is transferred to Client, whether express or implied. Client shall be permitted to provide

enough information to Client's customers to address a reasonable number of business-related issues. For clarity, Client shall not be permitted to repackage, resell, or otherwise redistribute reports, printouts or information generated by the Tools to any third party. Use of the Base License and any additional license(s) is limited to Client Users at the location identified in the Order only (if applicable). Client is expressly prohibited from accessing or using the Tools, or allowing its Users to access or use the Tools, in any country or location where access or usage is restricted by laws or regulation. SE reserves all other rights not expressly granted in this Agreement.

**2.4.2. Terms of Use.** By issuing an Order, Client expressly agrees to be bound by the Terms of Use contained in this document and to follow the Terms of Use and all applicable laws and regulations governing the Site. SE reserves the right to change the Site Terms of Use at any time effective immediately upon posting on the Site.

Client is further responsible for complying with any applicable terms and conditions of any third party data, products, services, and platforms used by Client in conjunction with the Tools and Services. SE may derive and compile from Client's usage of the Tools aggregated and/or analytical information, so long as such aggregated or analytical information does not reveal any specific information about Client or any User. Such aggregated data and metadata may be used by SE to create and/or improve Software, Tools, services, products, and procedures. SE shall have the full right to use or incorporate into the Software or Tools any suggestions, ideas, or feedback provided by Client or any User relating to the Tools and/or Software, without compensation to Client or any authorized User.

3. **PROFESSIONAL SERVICES.** Subject to the terms and conditions of this Agreement, Client may issue an Order for Professional Services and, if applicable, Deliverables created pursuant to an Order, which will be added to this Agreement by written addendum in the form attached as Exhibit B. SE or SE's subcontractor may perform the Professional Services and deliver the materials as described in the Order.

**3.1. Loyalty Package** is a value-added professional service which is bundled with the Base License. The Loyalty Package contains customized data which is solely generated for Client and shall not be repackaged, resold or otherwise redistributed.

#### 4. **TERM AND TERMINATION.**

##### 4.1. **Term.**

**4.1.1.** This Agreement will become effective as of the Effective Date and will apply to each Order for Tools and/or Services from the effective date of the Order until the expiration of the applicable Base License term as set forth in the applicable Order, or the period of performance for Services, unless terminated in accordance with the provisions set forth herein.

**4.2. Right to Terminate.** Termination shall be governed by the terms of an Order. If the SE believes a Government Customer to be in breach, it must file a claim with the Prime Contractor and continue to diligently pursue performance.

5. **PAYMENT TERMS.** Fees and payment terms shall be as set forth in the applicable Order.

6. **CONFIDENTIALITY.** It is understood and agreed that the terms of this Agreement are confidential, and no news release, advertisement or public announcement, or denial or confirmation of the same, concerning any part of the subject matter of this Agreement will be made by either Party hereto without the prior written consent of the other Party in each instance. Further, the Parties acknowledge that, during the Term of this Agreement, they may become aware of Confidential Information (as defined below) pertaining to the other Party and its operations and that disclosure of such information would materially and adversely affect such other Party. Confidential Information means:

- (i) as to SE, the Software, the Tools, and Silicon Expert's Parts Database;
- (ii) the terms of this Agreement and any Order; and

- (iii) any non-public, confidential, or proprietary information, data or know-how that has been disclosed by a Party to this Agreement to the other Party in writing, orally or by access to the disclosing Party's premises and identified by the disclosing Party as confidential or proprietary.

The receiving Party shall protect and safeguard received Confidential Information using the same degree of care used to protect its own confidential or proprietary information of like importance, but in any case, using no less than a reasonable degree of care.

With respect to such Confidential Information, the receiving Party shall:

- (i) use it solely for the purposes specifically provided in this Agreement; and
- (ii) not disclose it to a third party, for a period of five (5) years from the date of disclosure or in perpetuity if the Confidential Information constitutes a trade secret under applicable law.

Notwithstanding the foregoing, the receiving Party may disclose Confidential Information received hereunder to those of its employees, consultants, affiliates, agents or subcontractors ("Representatives") who have a need to access the Confidential Information to further the purposes of this Agreement, and who are bound to protect the received Confidential Information from unauthorized use and disclosure under the terms of a written agreement with terms no less restrictive than this Agreement. The receiving Party is liable for any unauthorized use of Confidential Information by its Representatives.

The foregoing obligations do not apply to information that:

- (i) was rightfully in the possession of, or was known by, the receiving Party prior to its receipt from the disclosing Party, free of any obligation of confidence;
- (ii) is or becomes generally known to the public through no fault of the receiving Party subsequent to the time of disclosing Party's communication thereof to the receiving Party;
- (iii) is rightfully obtained by the receiving Party from a third party, without an obligation to keep such information confidential; or
- (iv) is independently developed by the receiving Party without benefit of, reference to, or use of the disclosing Party's Confidential Information.

In the event the receiving Party is required to disclose Confidential Information pursuant to a judicial or governmental order, or valid subpoena, such Party, if legally permitted, will promptly notify the other Party in order to facilitate disclosing Party's seeking a protective order or other appropriate remedy from the proper authority. The confidentiality provisions set forth in this Section will survive any termination of this Agreement.

7. **WARRANTY DISCLAIMER.** SE DOES NOT WARRANT THAT USE OF THE TOOLS WILL BE UNINTERRUPTED OR ERROR FREE, NOR DOES SE MAKE ANY WARRANTY AS TO THE ACCURACY OR RESULTS THAT MAY BE OBTAINED FROM USE OF TOOLS. SE WARRANTS THAT THE TOOLS WILL, FOR A PERIOD OF SIXTY(60) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH TOOLS WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, TOOLS ARE PROVIDED "AS IS". SE DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, RELATED TO THE TOOLS, SOFTWARE, SILICON EXPERT'S PART DATABASE, OR ANY TANGIBLE OR INTANGIBLE MATERIALS PROVIDED IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF THE DATA, AND NONINFRINGEMENT. CLIENT ACKNOWLEDGES THAT DATA IS BEING TRANSMITTED OVER THE INTERNET AND SE HAS NO CONTROL OVER THE FUNCTIONING OF THE INTERNET AND MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE PERFORMANCE OF THE INTERNET. CLIENT IS RESPONSIBLE FOR ALL MANAGEMENT FUNCTIONS AND DECISIONS RELATING TO THE TOOLS AND SERVICES, INCLUDING WITHOUT LIMITATION, EVALUATION, AND ACCEPTANCE OF THE ADEQUACY OF THE SCOPE OF THE TOOLS AND SERVICES IN ADDRESSING CLIENT'S NEEDS. CLIENT IS RESPONSIBLE FOR THE RESULTS ACHIEVED FROM USING THE TOOLS OR SERVICES AND FOR ESTABLISHING AND MAINTAINING ITS INTERNAL CONTROLS.

8. **INDEMNIFICATION.**

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**8.1.** Subject to Section 9 below, SE will have the right to intervene to defend and hold harmless Client and its officers, directors, and employees (the "Client Indemnified Parties") for all costs and damages finally awarded, including

reasonable attorney's fees and expenses, arising from a claim by a third party that the Tools furnished and used within the scope of this Agreement infringe a copyright, patent right, trademark or other proprietary right or misappropriation of a trade secret of a third party provided that:

- (i) Client notifies SE promptly in writing of the claim;
- (ii) SE has control of the defense and all related settlement negotiations, and
- (iii) Client provides SE with assistance, information and authority necessary to perform the above.

SE shall have no obligation to indemnify, defend or otherwise hold harmless the Client Indemnified Parties and SE shall have no liability for any claim of infringement or misappropriation based on:

- a) information provided by Client, or
- b) data in the Tools, it being understood such data is publicly available data from the part manufacturers, or
- c) alterations or modifications of the Tools, unless authorized and under the direction of SE, or
- d) the combination, operation, or use of any Tools or software furnished under this Agreement with programs, data, or hardware not furnished or authorized in writing by SE, if such infringement would have been avoided by the use of the Tools without such programs, data or hardware, or
- e) the combination, operation, or use of any Tools or software furnished under this Agreement in a manner or for an application other than that for which they were designed or intended (collectively (c) – (e), "Excluded Uses").

In the event the Tools are held to infringe or Client's use of them is enjoined, SE may attempt to mitigate the extent of any alleged infringement and shall have at its option and expense the right to:

- a) modify the Tools to be non-infringing while retaining all original features, functions and quality;
- b) obtain for the Client a license to continue using the Tools;
- c) substitute the Tools with non-infringing software which is equivalent in features, functions, and quality acceptable to Client; or
- d) if none of the foregoing remedies are commercially feasible, terminate the license for the infringing Tools, refund a pro-rata portion of all amounts paid by Client for the infringing Tools during the lesser of the then current Term or over a five (5) year period from the date of the applicable license purchased hereunder.

The foregoing sets forth Client's sole remedies and SE's entire liability for the subject matter hereof. 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.

- 9. LIMITATION OF LIABILITY.** TO THE EXTENT ALLOWED BY APPLICABLE LAW, SE WILL NOT HAVE ANY LIABILITY OR OBLIGATION TO CLIENT OR ANY OTHER PERSON FOR ANY CLAIM, LOSS, DAMAGE, OR EXPENSE CAUSED IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, BY THE INADEQUACY OF ANY TOOL OR ITS OUTPUTS FOR ANY PURPOSE, BY ANY DEFICIENCY, DEFECT, OR ERROR IN ANY TOOL OR ITS OUTPUT (WHETHER OR NOT COVERED BY ANY WARRANTY), BY THE USE OR PERFORMANCE OF ANY TOOL OR BY ANY FAILURE OR DELAY IN SE'S PERFORMANCE HEREUNDER, OR FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL, COST OR REPLACEMENT GOODS OR SERVICES (COVER), CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER CAUSED, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY OR LOSS OF BUSINESS OR PROFIT, WHETHER OR NOT CLIENT HAS INFORMED SE OF THE POSSIBILITY OR LIKELIHOOD OF ANY SUCH DAMAGES. EXCEPT WITH RESPECT TO THE PARTIES' OBLIGATIONS AND COVENANTS UNDER SECTION 2.4 – LIMITS AND REGARDING CONFIDENTIALITY, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM ANY PROVISION OF THIS AGREEMENT, OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, SUCH AS, BUT NOT LIMITED COST OF PROCUREMENT OF

SUBSTITUTE GOODS OR SERVICES. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT REGARDLESS OF BASIS (INCLUDING TORT, CONTRACT, INDEMNIFICATION OR OTHERWISE), EXCEED THE AMOUNT PAID OR PAYABLE BY CLIENT TO SE UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE ACT OR OMISSION GIVING RISE TO THE CLAIM. THE ABOVE LIMITATIONS OF LIABILITY SHALL NOT APPLY TO CLIENT'S PAYMENT OBLIGATIONS ARISING UNDER THIS AGREEMENT AND/OR ANY ADDENDUMS THERETO. 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.

**10. GOVERNMENT CONTRACTS.** If Client's order is placed under a contract with the United States Government, SE agrees to comply only with those contract provisions and regulations with which, pursuant to law, it must comply and of which Client has, at the time of order placement, placed SE on written notice. All rights in technical data and software owned or licensed by SE or the manufacturer are hereby reserved and deemed restricted or limited.

**11. EXPORT COMPLIANCE.** The Tools or their output may be subject to export or resale restriction or regulation. The Parties agree to abide by all applicable export control laws and regulations governing the transfer, export, or re-export of technical data including, but not limited to, the U.S. Department of Commerce Export Administration Regulations and the economic sanctions regulations administered by the U.S. Treasury Department's Office of Foreign Assets Control. To the extent applicable, the discloser shall inform the recipient if any information or data provided may be subject to export control laws and regulations. Neither party shall disclose, transfer, export, or re-export, directly or indirectly (deemed export), any software, technology (or direct products thereof) provided or developed under this Agreement to any destination, end user, or end use prohibited by applicable export control laws and regulations without the proper authorization from the governing authority. This clause shall survive termination, expiration, or lapse of the Agreement.

**12. GOVERNING LAW; DISPUTE MECHANISM.** For legal action arising from business transacted within North America, this Agreement will in all respects be governed by and construed in accordance with Federal laws of the United States. For all other business transacted, the Parties will mutually agree in writing to the applicable governing law and jurisdiction. The application of the UN Convention on Contracts for the International Sale of Goods dated January 1, 1988 (UNCISG) BGBI 96/1988 and all its relevant and valid amendments shall expressly be excluded.

In the event that 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 Schedule Contract.

In the event of a dispute between the Parties arising out of or related to the subject matter of this Agreement, which solely concerns monetary damages or money due, the Parties agree that a meeting shall be held promptly attended by representatives of each party having decision-making authority regarding the dispute to attempt in good faith to negotiate a resolution of the dispute. If within thirty (30) days after such meeting the parties have not succeeded in negotiating a resolution of the dispute, then either party may pursue other available remedies. Any dispute will be resolved in accordance with the FAR, and the Contract Disputes Act. The Government Customer expressly acknowledges that as the Prime Contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**13. ADVERTISEMENTS AND ENDORSEMENTS.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited.

**14. FORCE MAJEURE.** In accordance with GSAR 552.212-4(f), Neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party under this Agreement), when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's reasonable control.

The Party asserting a Force Majeure Event shall give the other Party written notice within a reasonable period for any exercise or reliance by such Party on a Force Majeure Event excusing performance and shall use reasonable efforts to mitigate such Force Majeure Event. Unless there is impossibility of acceptance, in no event shall any Force Majeure Event excuse fulfillment or performance by the Client of any obligations under this Agreement.

- 15. RELATIONSHIP OF PARTIES.** The Parties are and will be independent contractors to one another, and nothing herein will be deemed to cause this Agreement to create an agency, partnership, joint venture, or any other relationship between the Parties. No employment, joint venture, partnership, or similar relationship is formed by this Agreement or any Order, and neither Party shall have any authority to act for or bind the other.

This Agreement is not intended to benefit any party except Client and SE. It is the Parties' express intent that this Agreement is not, and shall not be construed as, a third-party beneficiary contract. The Tools and Services are provided solely for Client's use and benefit and are not for any third party's use, benefit, or reliance. SE disclaims any contractual or other responsibility, liability, or duty of care to third parties based upon the Tools or Services.

- 16. ASSIGNMENT.** Neither Party may assign, delegate, or otherwise transfer any of its rights or obligation under this Agreement without the other Party's prior written approval and any assignment or transfer in violation of this provision is null and void. This Agreement will be for the benefit of the permitted successors and assigns, and will be binding on heirs, legal representatives, and permitted assignees.

- 17. NOTICES.** Notices or other communications under this Agreement will be in writing and will be effective when delivered personally or by overnight courier, or mailed, postage prepaid, by certified or registered mail to each Party at the address set forth in the opening paragraph of this Agreement (or to such other address as either Party may from time to time provide the other).

- 18. INTERPRETATION.** The plain usage of the English language will govern any interpretation of or dispute regarding the terms of the Agreement. Section captions are for convenience of reference and do not alter or limit the terms of the Agreement. The Parties hereto have expressly required that the Agreement and its Exhibits be drawn up in the English language.

- 19. SURVIVAL.** In the event of the expiration or termination of this Agreement, provisions which by their nature contain continuing obligations shall survive and continue in full effect.

- 20. ENTIRE AGREEMENT; ORDER OF PRECEDENCE; SEVERABILITY.** This Agreement and any addendum or Order that has been executed by the Parties and references this Agreement represent the entire agreement between the Parties concerning the subject matter hereof, and no amendment or modification of any of the terms or conditions of this Agreement shall be valid unless reduced to writing and executed by both Client and SE pursuant to the terms of this Agreement. This Agreement supersedes all proposals, oral or written, and all negotiations, conversations, or discussions between or among the Parties relating to the subject matter of this Agreement. Fulfillment of Client's purchase order does not constitute acceptance of any of Client's terms and conditions and does not serve to modify or amend this Agreement or SE's Terms of Use.

In the event of conflicting terms, precedence will be given to the respective parts in the following order:

- (i) The applicable Order
- (ii) this Agreement including any amendments or addendums as mutually agreed
- (iii) SE's Terms of Use

In construing the terms of this Agreement, no presumption will operate in either Party's favor as a result of its counsel's role in drafting the terms or provisions hereof. The Parties expressly acknowledge that they are represented by legal counsel and that they have read and understand the terms of this Agreement. If any provision of this Agreement is declared invalid, unenforceable, or void under applicable law, such provision shall be interpreted so as to best accomplish the intent of the Parties within the limits of applicable law; it is the express intention of the Parties that all other provisions not declared invalid, unenforceable, or void shall remain in full force and effect.

21. **EXECUTION.** This Agreement may be signed in counterparts, all of which upon execution and delivery will be considered an original and together will constitute one agreement. If permitted by local law, electronic or digital signatures or scanned copies of this Agreement will legally bind the Parties to the same extent as ink signatures or original documents.

**IN WITNESS WHEREOF**, the Parties hereto, intending to be legally bound have executed this Agreement on the dates set forth below.

**SILICONEXPERT TECHNOLOGIES, INC.**

**CLIENT:** \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_