



DOTs Software End User License Agreement (“DOTs EULA”)

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"**Order Form**" means the order form filled out and submitted by or on behalf of Licensee, and accepted by Licensor, for Licensee's purchase of the license for the Software granted under this Agreement.

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"**Term**" has the meaning set forth in **Section 9**.

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- (k) provide any other Person, including any subcontractor, independent contractor, affiliate or service provider of Licensee, with data, reports, images, screen captures, visual depictions or other similar information obtained from its use of the Software or Documentation;
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(b) During the Term, Licensor may, in Licensor's sole discretion, audit Licensee's use of the Software to ensure Licensee's compliance with this Agreement. The Licensee shall fully cooperate with Licensor's personnel conducting such audits and provide all reasonable access requested by the Licensor to records, systems, equipment, information and personnel, including machine IDs, serial numbers and related information. Licensor shall only examine information directly related to the Licensee's use of the Software. Licensor may conduct audits only during Licensee's normal business hours and in a manner that does not unreasonably interfere with the Licensee's business operations.

(c) If any of the measures taken or implemented under this **Section 5** determines that the Licensee's use of the Software exceeds or exceeded the use permitted by this Agreement then:

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(ii) If the use exceeds or exceeded the use permitted by this Agreement by more than 10%, Licensee shall also pay to Licensor, within 30 days following the date of Licensor's written request therefor, Licensor's reasonable costs incurred in conducting the audit.

(iii) If the use exceeds or exceeded the use permitted by this Agreement by more than 10%, Licensor shall also have the right to terminate this Agreement and the license granted hereunder, effective immediately upon written notice to Licensee.

Licensor's remedies set forth in this **Section 5(c)** are cumulative and are in addition to, and not in lieu of, all other remedies the Licensor may have at law or in equity, whether under this Agreement or otherwise.

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8. Payment. All License Fees and Support Fees are payable in advance in the manner set forth in the Order Form and are non-refundable. Any renewal of the license shall not be effective until the fees for such renewal have been paid in full.

9. Term and Termination.

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(b) Licensee may terminate this Agreement by ceasing to use the Software and Documentation and returning or destroying all Documentation.

(c) Licensor may terminate this Agreement, effective upon written notice to Licensee, if Licensee, breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after Licensor provides written notice thereof.

(d) Licensor may terminate this Agreement, effective immediately, if Licensee files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

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(c) THE LIMITATIONS SET FORTH IN **Section 11(a)** AND **Section 11(b)** SHALL APPLY EVEN IF THE LICENSEE'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

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14. Miscellaneous.

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(b) Licensee acknowledges that disclosure or use of the Software or Documentation in violation of this License could cause irreparable harm for which monetary damages may be either difficult to ascertain or an inadequate remedy. Licensee therefore agrees that Licensor shall be entitled, in addition to any other rights or remedies available, to seek and obtain injunctive relief (temporary, preliminary, or permanent) for any violation or threatened violation of this License without the filing or posting of any bond or surety.

(c) This Agreement is governed by and construed in accordance with the internal laws of the State of Arkansas without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Arkansas. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted in the federal courts of the United States or the courts of the State of Arkansas in each case located in the city of Little Rock and County of Pulaski, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

(d) Licensor will not be responsible or liable to Licensee, or deemed in default or breach hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning or Licensee equipment, loss and destruction of property or any other circumstances or causes beyond Licensor's reasonable control.

(e) All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Order Form (or to such other address as may be designated by a party from time to time in accordance with this **Section 14(e)**).

(f) This Agreement, together with the Order Form, constitutes the sole and entire agreement between Licensee and Licensor with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

(g) Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Licensor's prior written consent, which consent Licensor may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Licensee (regardless of whether Licensee is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under this Agreement for which Licensor's prior written consent is required. No delegation or other transfer will relieve Licensee of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this **Section 14(g)** is void. Licensor may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Licensee's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

(h) This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(i) This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this

Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(j) If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(k) For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections and Exhibits refer to the Sections of, and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Order Form referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

(l) The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.