

## END USER LICENSE AGREEMENT

PLEASE READ CAREFULLY: THE USE OF THE SOFTWARE IS SUBJECT TO THE TERMS AND CONDITIONS THAT FOLLOW IN THIS END USER LICENSE AGREEMENT (“**AGREEMENT**”). BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE SOFTWARE. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE SOFTWARE, AND PROMPTLY RETURN THE SOFTWARE WITH PROOF OF PURCHASE TO THE PARTY FROM WHOM YOU ACQUIRED IT. IF YOU HAVE DOWNLOADED THE SOFTWARE, CONTACT THE PARTY FROM WHOM YOU ACQUIRED IT.

### 1.0 License and Ownership.

- 1.1 Pursuant to the terms and conditions specified in this Agreement, Persistent hereby grants to the Customer, and the Customer hereby accepts from Persistent, a nontransferable, non-sublicensable, nonexclusive right and license to Use (*as defined below*) the software (the “Solution”) identified in the Ordering Document (as defined in Section 3.1) during the Term (as defined in Section 2.1) strictly for the Customer’s own internal business purposes.
- 1.2 The number of the Customer’s employees and/or contractors authorized to Use the Solution shall be set forth in the Ordering Document. “Use” means to install, run, access, store, load, execute, or display the Software in accordance with the Specifications. The Customer’s Use of the Solution is subject to these license terms and to the other restrictions specified by Persistent in any other tangible or electronic documentation delivered or otherwise made available to the Customer with or at the time of purchase of the Solution, including license terms, warranty statements, specifications, or other informational files included in the Solution itself.
- 1.3 The Solution, including any patents, copyrights, trade secrets, procedures, techniques, data and other intellectual property rights and technology therein, and any derivatives thereof, are owned by Persistent, and nothing herein shall be deemed to transfer any ownership interest therein to the Customer. Without the prior written consent of Persistent, the Customer shall refrain from copying, reverse engineering, disassembling, decompiling, translating or modifying the Solution, or granting any other person or entity the right to do so.
- 1.4 Unless otherwise specified or provided in the Ordering Document, the Customer shall be solely responsible for procuring all rights and licenses for any systems to which the Solution will connect, including, without limitation, any proprietary hardware and software systems that may be required to utilize the Solution.

### 2.0 Term and Termination.

- 2.1 The “Term” of the license granted under this Agreement shall be for a period as detailed under the Ordering Document, unless terminated as per the termination provisions set forth below. Such licenses will be auto-renewed unless a party requests non-renewal of such licenses by giving 30 days’ notice prior to expiration of the applicable term of the license (the “License Term”). If no term is specified in the Ordering Document, then the term is one year from the date of the Ordering Document.
- 2.2 Notwithstanding Section 2.1, Persistent may terminate this Agreement for “cause” if the Customer breaches its representations or obligations under this Agreement or the Ordering Document and fails to cure such breach within thirty (30) days after receipt of written notice from Persistent alleging said breach, if such breach is curable; if the breach is not curable, Persistent may terminate the license immediately upon written notice.

- 2.3 Upon termination or expiration of this Agreement or the License Term, whichever first occurs, the Customer shall immediately cease using the Solution, wherein the Customer shall uninstall and delete the Solution (and any copies of the Solution), and Persistent shall cease rendering any services pursuant to the Support Agreement referred to in the Ordering Document (the "Support Agreement"), if the Customer has purchased such maintenance and support). . At Persistent's request, the Customer will certify in writing to Persistent that the Customer has complied with these requirements.

### **3.0 License and Professional Fees.**

- 3.1 Unless otherwise agreed under the applicable Ordering Document, the license fee(s), the license term, the purchase of support pursuant to the Support Agreement, payment terms (the "License Fees"), and certain other terms shall be set forth in the purchase order, quotation, or other written document made by Persistent specifying such terms (the "Ordering Document"), which Ordering Document the Customer will agree to with Persistent for the purchase of any licenses to the Solution
- 3.2 Fees for the delivery and installation of the Solution (the "Professional Fees", if any, and collectively with the License Fees, the "Fees"), shall be set forth in the Ordering Document.
- 3.3 The License Fee is exclusive of all applicable taxes.
- 3.4 The Customer will be responsible for and will promptly pay all taxes (including but not limited to sales, services, export and use taxes) on the Customer's order as set forth in the invoice delivered by Persistent.
- 3.5 Persistent will comply with its legal obligations to collect from the Customer, and remit to the proper tax authority, any required sales or other applicable taxes. If the Customer is exempt for any or all of such taxes, the Customer shall provide to Persistent valid tax exemption documentation at the time of entering into the Ordering Document.

### **4.0 Support.**

- 4.1 If the Customer has purchase support as set forth in the Ordering Document, Persistent will provide support pursuant to Persistent's Support Agreement. If support has been purchased, Persistent will provide support to the Customer by remote access control of the Customer's Application Server. The Customer is responsible for confirming and ensuring that this access is available when making a support request. Persistent shall make corrective action commitments only if and when access to the Application Server is available. The Customer shall notify Persistent in writing of any changes in the information systems environment that may impact the Application Server. The Customer is responsible for its backup of the Application Server pursuant to the Customer's server backup protocol, and Persistent is not responsible for any loss of data or applications. The Customer remains responsible for 1) any data and the content of any database the Customer makes available to Persistent, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally identifiable data), and 3) backup and recovery of any database and any stored data. The Customer will not send or provide Persistent access to any personally identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that Persistent may incur relating to any such information mistakenly provided to Persistent or the loss or disclosure of such information by Persistent, including those arising out of any third-party claims.
- 4.2 If the Customer has purchased support, Persistent uses information about errors and problems to improve its Solution and services, and to assist with its provision of related support offerings.

In its provision of support or other services, Persistent may use Persistent entities and subcontractors (including in one or more countries other than the one in which the Customer is located), and the Customer acknowledges Persistent may do so.

## **5.0 Limited Warranty and Disclaimer.**

5.1 Subject to the terms and conditions of this Agreement, Persistent warrants to the Customer that the Solution shall conform to the Specifications for a period of ninety (90) days after the Acceptance Date.

5.2 **DISCLAIMER.** THE WARRANTY STATED IN THIS SECTION 5 IS THE CUSTOMER'S SOLE AND EXCLUSIVE WARRANTY PERTAINING TO THE SOLUTION AND THE SERVICES RENDERED HEREUNDER, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PERSISTENT AND ITS SUPPLIERS PROVIDE THE SOLUTION "AS IS" AND WITH ALL FAULTS, AND HEREBY DISCLAIM ALL INDEMNITIES, WARRANTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE AND NON-INFRINGEMENT, ANY IMPLIED WARRANTIES, DUTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND LACK OF VIRUSES. PERSISTENT DOES NOT WARRANT THAT THE OPERATION OF SOLUTION WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE SOLUTION WILL MEET THE CUSTOMER'S REQUIREMENTS.

5.3 **OPEN SOURCE SOFTWARE.** SOFTWARE DISTRIBUTED TO THE CUSTOMER MAY INCLUDE OPEN SOURCE SOFTWARE ("**OPEN SOURCE**") AS LISTED IN THE DOCUMENTATION OR AS PROVIDED BY PERSISTENT UPON REQUEST. IF THE CUSTOMER ELECTS TO USE THE OPEN SOURCE ON A STAND-ALONE BASIS, THAT USE IS SUBJECT TO THE APPLICABLE OPEN SOURCE LICENSE AND NOT THIS AGREEMENT, AND THE CUSTOMER MUST PROCURE THE OPEN SOURCE DIRECTLY FROM THE OPEN SOURCE REPOSITORY AND NOT PROVIDER FOR SUCH STAND-ALONE USE.

## **6.0 Indemnification.**

6.1 Solution is not specifically designed, manufactured, or intended for use as parts, components, or assemblies for the planning, construction, maintenance, or operation of a nuclear facility. The Customer is solely liable if Solution is Used for these applications and will indemnify and hold Persistent harmless from all loss, damage, expense, or liability in connection with such Use

6.2 The Customer shall indemnify, defend and hold Persistent harmless from and against any and all Damages arising out of or related to the Customer's breach of any of its representations, warranties, covenants or obligations under this Agreement.

6.3 The indemnified Party shall notify the indemnifying Party promptly and in writing of any Claim for which it is seeking indemnification hereunder. Failure or delay in providing such notice shall not relieve the indemnifying Party of its indemnification obligations, except to the extent the indemnifying Party demonstrates that the defense or settlement of the Claim has been prejudiced thereby. The indemnifying Party shall have the right to control the defense and settlement of any third party Claim or may at any time tender control of the defense or settlement of such Claim to the indemnified Party. The non-controlling party may elect to participate in the defense or settlement of any Claim at its sole cost and expense with counsel of its choice. No compromise or settlement may be committed to without the non-controlling Party's prior written approval (which shall not be unreasonably withheld, conditioned, or delayed).

**7.0 EXCLUSION OF CONSEQUENTIAL DAMAGES AND LIMITATIONS.** IN NO EVENT SHALL PERSISTENT OR ITS AFFILIATES BE LIABLE TO THE CUSTOMER FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST

PROFITS, REVENUES, GOODWILL COSTS OF DELAY, ANY FAILURE OF DELIVERY, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, WHETHER AN ACTION IS IN CONTRACT, IN TORT, UNDER STATUTORY LAW, OR IN EQUITY, AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

IN THE EVENT THAT, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EITHER PARTY, TOTAL LIABILITY ARISING SHALL NOT EXCEED THE FEES PAID FOR SOLUTION AS SPECIFIED IN THE SPECIFIC ORDER DOCUMENT THAT GIVES RISE TO SUCH LIABILITY.

**8.0 Survival.** Notwithstanding any termination of this Agreement, any payment obligations and the provisions of Sections 1.3, 2.3, 5, 6, 7, 8 and 9 shall remain in full force and effect.

**9.0 General Terms.** The Agreement may not be modified or amended except by an instrument in writing signed by duly authorized officers of both Parties. The Customer cannot assign its rights hereunder without Persistent's prior written consent. The change in control of more than fifty percent (50%) of the Customer's voting interests shall be deemed to be an assignment. Unless otherwise specifically provided, all notices required or permitted by this Agreement shall be in writing and may be delivered personally or may be sent by a national overnight courier service (e.g. FEDEX) or certified mail, return receipt requested, to the address set forth on the signature page hereto, or as otherwise designated by each party from time to time. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

This Agreement shall be governed by the laws of the State of California, exclusive of its choice of law rules. Any claim or action brought by one of the Parties in connection herewith shall be brought in the federal or state courts located within Santa Clara in the State of California, and the Parties irrevocably consent to the jurisdiction of such courts. Notwithstanding the foregoing, a Party seeking injunctive relief may do so in any court of competent jurisdiction.

Each party irrevocably agrees that any disputes arising under or related to this Agreement, or the Solution shall be arbitrated in the State of California in accordance with the rules of JAMS (the "Rules"). The arbitration shall be conducted before sole arbitrator appointed in accordance with the Rules (the "Arbitrator"). The parties hereby agree to service of process and to personal and subject matter jurisdiction of JAMS as provided in this Section 9. Notwithstanding the above, Persistent may bring a claim for equitable relief in any court with proper jurisdiction. The Customer and Persistent agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

Upon rendering an award or a decision, the Arbitrator shall set forth in writing findings of fact, conclusions of law and a reasoned opinion explaining the basis of such award or decision and shall make a determination of which Party shall be considered the prevailing Party, which determination shall be consistent with such reasoned opinion.

The Arbitrator shall be empowered to issue injunctive or other equitable relief.

Judgment on the award or any other final or interim decision rendered by the Arbitrator may be entered, registered or filed for enforcement purposes in any court having jurisdiction thereof.

No party will bring a claim against the other under or related to this Agreement or the Solution as a class, or join a class in bringing such a claim. Each party acknowledges that it is waiving such class action rights by this provision.

- 9.1 **Severability.** In the event that any provision hereof is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to the terms. WITHOUT LIMITING THE FOREGOING, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EVERY PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH.
- 9.2 **Entire Agreement.** This Agreement and the related Ordering Document constitute the entire understanding and contract between the Parties and supersedes any and all prior and contemporaneous, oral or written representations, communications, understandings, and agreements between the Parties with respect to the subject matter hereof. To the extent of a conflict between an Ordering Document and this Agreement, the terms and conditions in the Ordering Document shall control. The Parties acknowledge and agree that neither of the Parties is entering into this Agreement on the basis of any representations or promises not expressly contained herein.