HAMMERSPACE END USER LICENSE AGREEMENT

IMPORTANT – READ THIS END USER LICENSE AGREEMENT (THE "AGREEMENT") BEFORE DOWNLOADING, INSTALLING, COPYING, CONFIGURING, ACCESSING, DEPLOYING, USING HAMMERSPACE SUPPORT AND/OR USING THE SOFTWARE. BY DOWNLOADING, INSTALLING, COPYING, CONFIGURING, ACCESSING, DEPLOYING, USING HAMMERSPACE SUPPORT AND/OR OTHERWISE USING ALL OR ANY PART OF THE SOFTWARE OR BY CLICKING ON AN "ACCEPT" BUTTON, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU FURTHER AGREE THAT YOU ARE BOUND BY AND ARE A PARTY TO THIS AGREEMENT, AND, IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS. YOUR USE OF THE SOFTWARE IS EXPRESSLY CONDITIONED ON YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT PURCHASE OR DOWNLOAD/INSTALL THE SOFTWARE.

This End User License Agreement, including the Order Form which by this reference is incorporated herein (this "**Agreement**"), is a binding agreement between Hammerspace, Inc., a Delaware Corporation with offices at 4300 El Camino Real, Suite 105, Los Altos, CA 94022 ("**Hammerspace**") and the person or entity identified on the Order Form as the licensee of the Software ("**Licensee**" or "**You**").

1. **DEFINITIONS.**

"**Authorized Users**" means the individual persons authorized by Licensee to use the Software pursuant to the license granted under this Agreement including without limitation employees and contractors of Licensee.

"**Documentation**" means user manuals, technical manuals and any other materials provided by Hammerspace, in printed, electronic or other form, that describe the installation, operation, use or technical specifications of the Software.

"**Fees**" means the software license and support fees, including all taxes thereon, paid or required to be paid by Licensee for the license granted under this Agreement.

"**Intellectual Property Rights**" means all current and future worldwide common law and statutory rights, whether arising under the laws of the United States of America or any other state, country, jurisdiction, government, or public legal authority, in, to, or associated with (a) patents, patent applications, and invention disclosures; (b) copyrights, copyright registrations and applications therefor and moral rights; (c) the protection of trade or industrial secrets or confidential information; (d) all other intellectual property rights and proprietary rights; (e) trademarks, service marks, and other designations of source or origin; (f) any analogous rights to those set forth above; (g) divisions, continuations, renewals, reissuances, and extensions of the

foregoing (as applicable); and (h) rights to apply for, file for, certify, register, record, or perfect any of the foregoing.

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

"**Person**" means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

"**Software**" means the software programs for which Licensee is purchasing a license, as expressly set forth in the Order Form.

"**Term**" has the meaning set forth in **Section 12**.

"**Third Party**" means any Person other than Licensee or Hammerspace.

"**Third Party Materials**" means materials and information, in any form or medium, that are not proprietary to Hammerspace, including any third-party: (a) documents, data, content or specifications; (b) software, hardware, system, network or other product, facility, equipment or device; and (c) accessories, components, parts or features of any of the foregoing.

"**Update**" has the meaning set forth in **Section 9(b)**

2. **ORDERS; DELIVERY.**

All orders (including without limitation in response to an Order Form and any Purchase Order) shall be subject to acceptance by Hammerspace. Hammerspace may accept or reject orders at its discretion. Customer acknowledges and agrees that payment and delivery terms for each accepted order will be subject to terms and conditions as between Customer and Hammerspace or it's appointed Reseller.

3.

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

4. **LICENCE GRANT AND SCOPE.**

Subject to and conditioned upon Licensee's payment of the License Fees and Licensee's strict compliance with all terms and conditions set forth in this Agreement, Hammerspace hereby grants to Licensee a non-exclusive, non-transferable, non-sub-licensable, limited license during the Term to use, solely by and through its Authorized Users, the Software and Documentation, solely as set forth in this **Section 4** and subject to all conditions and limitations set forth in

Section 5 or elsewhere in this Agreement. This license grants Licensee the right, exercisable solely by and through Licensee's Authorized Users, to:

- Download, copy and install in accordance with the Documentation the Software as set forth on the Order Form. All copies of the Software made by the Licensee: (i) will be the exclusive property of Hammerspace; (ii) will be subject to the terms and conditions of this Agreement; and (iii) must include all trademark, copyright, patent and other Intellectual Property Rights notices contained in the original.
- Use and run the Software as properly installed in accordance with this Agreement and the Documentation, solely as set forth in the Documentation and solely for Licensee's internal business purposes.
- Download or otherwise make one (1) copy of the Documentation per copy of the Software permitted to be downloaded and installed in accordance with this Agreement and use such Documentation, solely in support of its licensed use of the Software in accordance herewith. All copies of the Documentation made by Licensee: (i) will be the exclusive property of Hammerspace; (ii) will be subject to the terms and conditions of this Agreement; and (iii) must include all trademark, copyright, patent and other Intellectual Property Rights notices contained in the original.

5. **USE RESTRICTIONS.**

Licensee shall not, and shall require its Authorized Users not to, directly or indirectly:

- use (including make any copies of) the Software or Documentation beyond the scope of the license granted under **Section 4**;
- modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Software or Documentation or any part thereof;
- combine the Software or any part thereof with, or incorporate the Software or any part thereof, any other programs;
- reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;
- remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices provided on or with the Software or Documentation, including any copy thereof;
- except as expressly set forth in **Section 4(a)** and **Section 4(c)**, copy the Software or Documentation, in whole or in part;
- rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Software, or any features or functionality of the Software, to any Third Party for any reason;
- use the Software or Documentation in, or in association with, the design, construction, maintenance or operation of any hazardous environments or systems, including:
- power generation systems;
- aircraft navigation or communication systems, air traffic control systems or any other transport management systems;
- safety-critical applications, including medical or life-support systems, vehicle operation applications or any police, fire or other safety response systems; and

- military or aerospace applications, weapons systems or environments;
- use the Software or Documentation in violation of any law, regulation or rule; or
- use the Software or Documentation for the purposes of monitoring its availability, performance, or functionality, benchmarking or for other competitive or non-competitive analysis of the Software, the development of a competing software product or service or any other purpose that is to Hammerspace's commercial disadvantage.

6. **RESPONSIBILITY FOR USE OF SOFTWARE.**

Licensee shall be responsible and liable for all uses of the Software and Documentation through access thereto provided by Licensee, directly or indirectly. Specifically, and without limiting the generality of the foregoing, Licensee is responsible and liable for all actions and failures to take required actions with respect to the Software and Documentation by its Authorized Users or by any other Person to whom Licensee or an Authorized User may provide access to or use of the Software and/or Documentation, whether such access or use is permitted by or in violation of this Agreement.

7. **THIRD PARTY SOFTWARE.**

You acknowledge that the Software may contain copyrighted software of third parties which are obtained under a license from such parties ("Third Party Software"). All third party licensors retain all right, title and interest in and to such Third Party Software and all copies thereof, including all copyright and other intellectual property rights. Your use of any Third Party Software shall be subject to, and You shall comply with, the terms and conditions of this Agreement, and the applicable restrictions and other terms and conditions set forth in any Third Party Software documentation or printed materials, including without limitation an end user license agreement.

8. **COMPLIANCE MEASURES.**
   - The Software may contain technological copy protection or other security features designed to prevent unauthorized use of the Software, including features to protect against any use of the Software that is prohibited under **Section 5**. Licensee shall not, and shall not attempt to, remove, disable, circumvent or otherwise create or implement any workaround to, any such copy protection or security features.
   - During the Term, Hammerspace may, in Hammerspace's sole discretion, audit Licensee's use of the Software to ensure Licensee's compliance with this Agreement, provided that (i) any such audit shall be conducted on no less than 30 days' prior notice to Licensee, and (ii) no more than one audit may be conducted in any 12-month period except for good cause shown. Hammerspace also may, in its sole discretion, audit Licensee's systems within six months after the end of the Term to ensure Licensee has ceased use of the Software and removed all copies of the Software from such systems as required hereunder. The Licensee shall fully cooperate with Hammerspace's personnel conducting such audits and provide all reasonable access requested by Hammerspace to records, systems, equipment, information and personnel, including machine IDs, serial numbers and related

information. Hammerspace shall only examine information directly related to the Licensee's use of the Software. Hammerspace may conduct audits only in a manner that does not unreasonably interfere with the Licensee's business operations.

- o If the audit or any of the measures taken or implemented under this **Section 8** determines that the Licensee's use of the Software exceeds or exceeded the use permitted by this Agreement, then:

- o Licensee shall, within 90 days following the date of such determination by Licensee or Hammerspace's written notification thereof, pay to Hammerspace the retroactive License Fees for such excess use and obtain and pay for a valid license to bring Licensee's use into compliance with this Agreement. In determining the Licensee Fee payable pursuant to the foregoing, (x) unless Licensee can demonstrate otherwise by documentary evidence, all excess use of the Software shall be deemed to have commenced on the commencement date of this Agreement or, if later, the completion date of any audit previously conducted by Hammerspace hereunder, and continued uninterrupted thereafter, and (y) the rates for such licenses shall be determined without regard to any discount to which Licensee may have been entitled had such use been properly licensed prior to its commencement (or deemed commencement).

- o Hammerspace's remedies set forth in this Section 4(c) are cumulative and are in addition to, and not in lieu of, all other remedies Hammerspace may have at law or in equity, whether under this Agreement or otherwise.

9. **MAINTENANCE AND SUPPORT.**
    - o Subject to **Section 9(c)**, the license granted hereunder entitles Licensee to the basic software maintenance and support services described on Exhibit A during the Term. Such support services shall be provided on the terms and conditions set forth on **Exhibit A**.

    - o Maintenance and support services will include provision of such updates, upgrades, bug fixes, patches and other error corrections (collectively, "Updates") as Hammerspace makes generally available free of charge to all licensees of the Software then entitled to maintenance and support services. Hammerspace may develop and provide Updates in its sole discretion, and Licensee agrees that Hammerspace has no obligation to develop any Updates at all or for particular issues. Licensee further agrees that all Updates will be deemed Software, and related documentation will be deemed Documentation, all subject to all terms and conditions of this Agreement. Licensee acknowledges that Hammerspace may provide some or all Updates via download from a website designated by Hammerspace and that Licensee's receipt thereof will require an internet connection, which connection is Licensee's sole responsibility. Hammerspace has no obligation to provide Updates via any other media; however, Hammerspace, in its reasonable discretion, may provide Updates via any other media upon Licensee's request. Maintenance and support services do not include any new version or new release of the Software that Hammerspace may issue as a separate or new product, and Hammerspace may determine whether any issuance qualifies as a new version, new release or Update in its sole discretion.

- o Hammerspace reserves the right to condition the provision of maintenance and support services, including all or any Updates, on Licensee's registration of the copy of Software for which support is requested. Hammerspace has no obligation to provide maintenance and support services, including Updates:
- o if Licensee is in breach under this Agreement; or
- o for any Software that has been modified other than by Hammerspace, or that is being used with any hardware, software, configuration or operating system not specified in the Documentation or expressly authorized by Hammerspace in writing.

10. **INFORMATION COLLECTION AND USE.**
- o Licensee acknowledges that Hammerspace may, directly or indirectly through the services of Third Parties, collect and store information regarding use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used, through: (i) the provision of maintenance and support services; and (ii) security measures included in the Software as described in **Section 8**.
- o Licensee agrees that Hammerspace may use such information for any purpose related to any use of the Software by Licensee or on Licensee's equipment, including but not limited to: (i) improving the performance of the Software, diagnosing or correcting errors or developing Updates; (ii) disclose such information in aggregate or other anonymous, de-identified form in connection with its business; and (iii) verifying Licensee's compliance with the terms of this Agreement and enforcing Hammerspace's rights, including all Intellectual Property Rights in and to the Software.

11. **INTELLECTUAL PROPERTY RIGHTS**

Licensee acknowledges and agrees that the Software and Documentation are provided under license, and not sold, to Licensee. Licensee does not acquire any ownership interest in the Software or Documentation under this Agreement, or any other rights thereto other than to use the same in accordance with the license granted, and subject to all terms, conditions and restrictions, under this Agreement. Hammerspace and its Licensors and service providers reserve and shall retain their entire right, title and interest in and to the Software and all Intellectual Property Rights arising out of or relating to the Software, except as expressly granted to the Licensee in this Agreement. Licensee shall safeguard all Software (including all copies thereof) from infringement, misappropriation, theft, misuse or unauthorized access. Licensee shall promptly notify Hammerspace if Licensee becomes aware of any infringement of Hammerspace's Intellectual Property Rights in the Software and fully cooperate with Hammerspace, at Hammerspace's sole expense, in any legal action taken by Hammerspace to enforce its Intellectual Property Rights.

12. **TERM AND TERMINATION.**
- o This Agreement and the license granted hereunder shall remain in effect for the term set forth on the Order Form or until earlier terminated as set forth herein (the "**Term**").
- o Licensee may terminate this Agreement by ceasing to use and destroying all copies of the Software and Documentation.

- o Hammerspace may terminate this Agreement, effective upon written notice to Licensee, if Licensee, materially breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after Hammerspace provides written notice thereof.
- o Hammerspace 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.
- o Upon expiration or earlier termination of this Agreement, the license granted hereunder shall also terminate, and Licensee shall cease using and destroy all copies of the Software and Documentation. No expiration or termination shall affect Licensee's obligation to pay all Licensee Fees that may have become due before such expiration or termination, or entitle Licensee to any refund, in each case except as set forth in **Section 13(c)(ii)**.

13. **LIMITED WARRANTIES, EXCLUSIVE REMEDY AND DISCLAIMER/WARRANTY DISCLAIMER.**
    - o Hammerspace warrants that, for a period of 90 days following the license date set forth on the Order Form: (i) the Software will substantially contain the functionality described in the Documentation, and when properly installed on a computer meeting the specifications set forth in, and operated in accordance with, the Documentation, will substantially perform in accordance therewith.

THE FOREGOING WARRANTIES DO NOT APPLY, AND HAMMERSPACE STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY MATERIALS.

- The warranties set forth in **Section 12(a)(i)** will not apply and will become null and void if Licensee materially breaches any provision of this Agreement, or if Licensee, any Authorized User or any other Person provided access to the Software by Licensee or any Authorized User, whether or not in violation of this Agreement: (i) installs or uses the Software on or in connection with any hardware or software not specified in the Documentation or expressly authorized by Hammerspace in writing; (ii) modifies or damages the Software; or (iii) misuses the Software, including any use of the Software other than as specified in the Documentation or expressly authorized by Hammerspace in writing.
- If, during the period specified in **Section 13(a)**, any Software covered by the warranty set forth in such Section fails to perform substantially in accordance with the Documentation, and such failure is not excluded from warranty pursuant to **Section 13(b)**, Hammerspace will, subject to Licensee's promptly notifying Hammerspace in writing of such failure, at its sole option, either: (i) repair or replace the Software, provided that Licensee provides Hammerspace with all information Hammerspace reasonably requests to resolve the reported failure, including sufficient information to enable Hammerspace to recreate such failure; or (ii) refund the License Fees paid for

such Software, subject to Licensee's ceasing all use of and, if requested by Hammerspace, returning to Hammerspace all copies of the Software.

If Hammerspace repairs or replaces the Software, the warranty will continue to run from the initial date specified on the Order Form, and not from Licensee's receipt of the repair or replacement. The remedies set forth in this **Section 13(c)** are Licensee's sole remedies and Hammerspace's sole liability under the limited warranty set forth in **Section 13(a)**.

- EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN **Section 13(a)**, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO LICENSEE "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, HAMMERSPACE, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, HAMMERSPACE PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE LICENSED SOFTWARE WILL MEET THE LICENSEE'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

14. **LIMITATION OF LIABILITY.**

TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

- IN NO EVENT WILL HAMMERSPACE OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY OR INABILITY TO USE THE SOFTWARE, LOST REVENUES OR PROFITS, DELAYS, INTERRUPTION OR LOSS OF SERVICES, BUSINESS OR GOODWILL, LOSS OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION OR SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION OR BREACHES IN SYSTEM SECURITY, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES,

WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT HAMMERSPACE WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- IN NO EVENT WILL HAMMERSPACE'S AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS' AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO HAMMERSPACE PURSUANT TO THIS AGREEMENT FOR THE SOFTWARE THAT IS THE SUBJECT OF THE CLAIM.
- THE LIMITATIONS SET FORTH IN **Section 14(a) AND Section 14(b)** SHALL APPLY EVEN IF THE LICENSEE'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

15. **EXPORT REGULATION.**

The Software and Documentation may be subject to US export control laws, including the US Export Administration Act and its associated regulations. The Licensee shall not, directly or indirectly, export, re-export or release the Software or Documentation to, or make the Software or Documentation accessible from, any jurisdiction or country to which export, re-export or release is prohibited by law, rule or regulation. The Licensee shall comply with all applicable federal laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing or otherwise making the Software or Documentation available outside the US.

16. **US GOVERNMENT RIGHTS.**

The Software is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if the Licensee is the US Government or any contractor therefor, Licensee shall receive only those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

17.
- o This Agreement is governed by and construed in accordance with the internal laws of the State of California 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 California. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of California in each case located in Santa Clara County, 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.

o   Hammerspace 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 Hammerspace's reasonable control.

o   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 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 17(c))**.

o   This Agreement, together with the Order Form, Schedules and Exhibits attached hereto and all other documents that are incorporated by reference herein, constitutes the sole and entire agreement between Licensee and Hammerspace 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.

o   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 Hammerspace's prior written consent, which consent Hammerspace 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 Hammerspace'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 17(e)** is void. Hammerspace 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.

- 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.
- 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.
- 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.
- 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. The Order Form and all Schedules and Exhibits 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.

EXHIBIT A

Maintenance and Support

This Exhibit A is part of the End User License Agreement between Hammerspace and the person or entity identified on the Order Form as the licensee of the Software ("**Agreement**"). Capitalized terms used, by not defined in this Exhibit A, have the meanings assigned to such terms in the Agreement.

- Services

Subject to the terms and conditions of this Exhibit A and the Agreement, and conditioned on Licensee's and its Representative's compliance therewith, during the Term Hammerspace will provide Hammerspace's standard Licensee support services to Licensee as set forth in this **Section A-1** (the "**Services**"). "**Representatives**" means, with respect to a Party, that Party's employees, officers, directors, consultants, agents, independent contractors, service providers, sub-licensees, subcontractors and legal advisors.

- **SCOPE OF SERVICES.**

During the Term Hammerspace will use commercially reasonable efforts to Resolve any Incidents reported by Licensee by providing, in connection with the identification, diagnosis and correction of Errors, (a) telephone/e-mail/chat assistance; (b) delivery of Services remotely over the internet through the use of Remote Access Software (as defined herein) that Hammerspace installs on Licensee's network, system or computers ("**Remote Services**"); or (c) access to technical information on Hammerspace's website for proper use of the Software. Hammerspace may, in its sole discretion, provide on-site technical support at Licensee's premises to attempt to Resolve Incidents in accordance with this **Section A-1.1**.

- "Resolve" means the provision of: (i) Services that, in Hammerspace's sole discretion, corrects the Error; (ii) information to Licensee that corrects the Error; (iii) information to Licensee on how to obtain a software solution that corrects the Error; (iv) notice to Licensee that the Error is caused by a known, unresolved issue or an incompatibility issue with the Software; (v) information to Licensee that identifies the Error as being corrected by upgrading to a newer release of the Software; or (vi) notice to Licensee that the Error has been identified as arising out of or resulting from a Service Exception.
- "Error" means a reproducible failure of the Software to perform in substantial conformity with the specifications set forth in the Documentation, whose origin can be isolated to a single cause.
- "Incident" means a support request that begins when Licensee contacts Hammerspace to report one specific Error and ends when Hammerspace either: (i) Resolves the Error; or (ii) determines in its sole discretion that the Error cannot be Resolved.
- **"Severity Level One Incident"** means an Error that causes the Software to not operate and has a critical impact on Licensee's business operations.

- **"Severity Level Two Incident"** means an Error that results in a lack of Software functionality and materially degrades significant aspects of Licensee's business operations.
- **"Severity Level Three Incident"** means an Error that impairs the performance of the Software, but does not substantially affect Licensee's business operations.

- **RESPONSE TIME.**

During the Term Hammerspace shall use commercially reasonable efforts to respond to Incidents reported by Licensee within the following timeframes:

- for a Severity Level One Incident, within 2 hours of Hammerspace's receipt of Licensee's notification on a 24/7 basis;
- for a Severity Level Two Incident, within 8 hours of Hammerspace's receipt of Licensee's notification on a 24/7 basis; and
- for a Severity Level Three Incident, within 24 hours of Hammerspace's receipt of Licensee's notification during Normal Business Hours.

- **REMOTE SERVICES.**

Licensee acknowledges and agrees that Hammerspace may provide Remote Services to Licensee to assist in analyzing and Resolving any Incident. Licensee agrees to provide Hammerspace with access to Licensee's network, system and computers to install and use remote access software ("**Remote Access Software**") necessary for Hammerspace to provide the Remote Services to Licensee. The Remote Access Software contains technological measures designed to collect and transmit to Hammerspace certain diagnostic, technical, usage and related information, including information about Licensee's computers, systems, network and any Third-Party Materials, relating to or derived from Licensee's use of Software. Licensee acknowledges and agrees that: (a) Hammerspace may collect, maintain, process and use this information in the course of performing the Services under this Exhibit A, provided that Hammerspace shall only access, control and gather such information that it reasonably believes to be necessary to assist in analyzing and Resolving an Incident; and (b) all or portions of the Remote Access Software may remain on Licensee's network, system or computers after an Incident is Resolved.

- **OUTSIDE SUPPORT SERVICES.**

Hammerspace, in its sole discretion, may provide Optional Support Services to Licensee on Licensee's request, at Hammerspace's standard hourly rates then in effect. The terms and conditions of this Exhibit A govern the provision of any Optional Support Services delivered by Hammerspace to Licensee.

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During the Term, Hammerspace will provide Licensee with all Updates under the terms and conditions set forth in the Agreement. Licensee does not have any right under or in connection

with this Exhibit A to receive any New Versions of the Software that Hammerspace may, in its sole discretion, release from time to time.

- **SERVICES CHANGES.**

Hammerspace may, in its sole discretion, change any aspect of the Services or their performance on 30 days' prior written notice to Licensee, provided that no such change reduces or otherwise has a material adverse effect on: (a) Hammerspace's level of effort in performing the Services; (b) Hammerspace's obligation to provide the Services under this Exhibit A; or (c) Licensee's rights under this Exhibit A.

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Hammerspace may, in its reasonable discretion, perform any of the Services by or through subcontracted third parties or any other personnel.

- Limitations
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Hammerspace has the sole right to determine, in its reasonable discretion: (a) what constitutes an Incident; and (b) when an Incident is deemed to be Resolved.

- **RESPONSE TIME AND RESOLUTION.**

Hammerspace will use commercially reasonable efforts to: (a) respond within the applicable response time provided in **Section A-A-1.2**; and (b) Resolve an Incident, but does not guarantee that it will be able to respond within that specific time period or that any Incident will be Resolved.

- **ON-SITE VISITS.**

Hammerspace will provide on-site technical support only at Licensee's premises during normal business hours, unless otherwise agreed to by Hammerspace in writing.

- **EFFECT OF LICENSEE FAILURE OR DELAY.**

Hammerspace is not responsible or liable for any delay or failure of performance caused in whole or in part by any delay or failure to perform any of Licensee's obligations under the Agreement or this Exhibit A in accordance with the respective terms and conditions of these agreements (each, a "**Licensee Failure**").

- Exceptions

Hammerspace has no obligation to provide Services relating to Errors that, in whole or in part, arise out of or result from any of the following (each a "**Service Exception**"):

- Software, or the media on which it is provided, that is modified or damaged by Licensee or any third party;
- any operation or use of, or other activity relating to, the Software other than as specified in the Documentation, including any incorporation in the Software of, or combination, operation or use of the Software in or with, any technology (including any software, hardware, firmware, system or network) or service not specified for Licensee's use in the Documentation;
- any negligence, abuse, misapplication or misuse of the Software other than by Hammerspace personnel, including any Licensee use of the Software other than as specified in the Documentation;
- any Licensee Failure, including Licensee's failure to promptly install any Maintenance Release that Hammerspace has previously made available to Licensee;
- the operation of, or access to, Licensee's or a third party's system or network;
- any relocation, installation or integration of the Software other than by Hammerspace personnel;
- any open-source components, beta software, software that Hammerspace makes available for testing or demonstration purposes, temporary software modules or software for which Hammerspace does not receive a license fee;
- any breach of or noncompliance with any provision of this Exhibit A or the Agreement by Licensee or any of its Representatives; or
- any Force Majeure Event (including abnormal physical or electrical stress).

- Licensee Obligations
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Licensee shall promptly notify Hammerspace of any Error and provide Hammerspace with reasonable detail of the nature and circumstances of the Error.

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Licensee shall comply with all terms and conditions of Agreement, including this Exhibit A.

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Licensee shall use the Software solely in accordance with the terms and conditions set forth in the Agreement and the Documentation.

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Licensee shall set up, maintain and operate in good repair and in accordance with the Documentation all environmental conditions and components, including all networks, systems and hardware, in or through which: (a) the Software operates; and/or (b) the Licensee accesses or uses any of the Services.

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In connection with the performance of the Services, Licensee shall provide Hammerspace personnel with all such cooperation and assistance as they may reasonably request, or otherwise may reasonably be required, to enable Hammerspace to perform its obligations (including the provision of the Services), and exercise its rights, under and in accordance with the terms and conditions of this Exhibit A, including:

- reasonable, uninterrupted access, both physical and virtual, to the Software and Licensee's premises, systems, networks and facilities;
- a safe working environment;
- reasonable access to the appropriate Licensee personnel, including network, systems, operations and applications personnel; and
- all necessary authorizations and consents, whether from third parties or otherwise, in connection with any of the foregoing.

- **DATA BACK-UP.**

Licensee agrees to back up all data, files and information prior to the performance of any Services and hereby assumes sole responsibility for any lost or altered data, files or information.

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Licensee shall provide Hammerspace with all information reasonably requested by Hammerspace from time to time relating to Licensee's use of the Software, Services or Deliverables, including information on Licensee's hardware, network, systems and any related Third-Party Materials.

- **CURRENT RELEASE.**

Except as otherwise specified in this Exhibit A, Licensee must run only the current release level of the Software that Hammerspace has made available to its customers and licensees. Licensee shall install all Updates within 10 days from the date they are made available by Hammerspace.

- **RESPONSIBILITY FOR REPRESENTATIVES.**

Licensee shall remain responsible and liable for: (a) the supervision, coordination and performance of Licensee's Representatives in connection with this Exhibit A; and (b) all acts and omissions of Licensee's Representatives, each of which shall be ascribed to the Licensee to the same extent as if such acts or omissions were by Licensee itself. Any noncompliance by any Licensee Representative with the provisions of this Exhibit A will constitute Licensee's breach hereof.

- Representations and Warranties
  - **REPRESENTATIONS AND WARRANTIES.**

Hammerspace represents, warrants and covenants to Licensee that during the Term Hammerspace will perform the Services using personnel of required skill, experience and

qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Exhibit A.

- **DISCLAIMER OF WARRANTIES.**

EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH IN THIS **SECTION A-5-2**, THE SERVICES ARE PROVIDED "AS IS." HAMMERSPACE HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER (INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE), AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, HAMMERSPACE MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE, THE SERVICES, THE DELIVERABLES, OR ANY OTHER HAMMERSPACE OR THIRD-PARTY GOODS, SERVICES, TECHNOLOGIES, INFORMATION, MATERIALS OR OTHER MATTER WHATSOEVER (INCLUDING ANY SOFTWARE, HARDWARE, FIRMWARE, SYSTEM OR NETWORK), OR ANY PRODUCTS OR RESULTS OF THE USE OF ANY OF THEM, WILL MEET LICENSEE'S OR OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, SERVICES, TECHNOLOGIES, INFORMATION, MATERIALS OR OTHER MATTER (INCLUDING ANY SOFTWARE, HARDWARE, FIRMWARE, SYSTEM OR NETWORK). THIS EXHIBIT A DOES NOT AMEND, AUGMENT OR OTHERWISE MODIFY HAMMERSPACE'S WARRANTIES UNDER THE AGREEMENT OR ANY CONDITIONS, LIMITATIONS OR RESTRICTIONS THEREOF.

- Limitations of Liability
  - **EXCLUSION OF DAMAGES.**

IN NO EVENT WILL HAMMERSPACE, OR ANY OF ITS LICENSORS, PERSONNEL, SUBCONTRACTORS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS EXHIBIT A OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

- **CAP ON MONETARY LIABILITY.**

IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF HAMMERSPACE AND ITS LICENSORS, PERSONNEL, SUBCONTRACTORS AND SUPPLIERS ARISING OUT OF OR RELATED TO THIS EXHIBIT A UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE),

STRICT LIABILITY AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO HAMMERSPACE PURSUANT TO THE AGREEMENT

- **FAILURE OF REMEDY.**

THE FOREGOING LIMITATIONS IN **SECTIONS A-6.1** AND **A-6.2** SHALL APPLY EVEN IF THE LICENSEE'S REMEDIES UNDER THIS EXHIBIT A FAIL OF THEIR ESSENTIAL PURPOSE.