

DETAILS

Document ID	
Licensor	Nucleus Software Exports Limited ("Nucleus")
Registered Address of Licensor	a Public Limited Company having its Registered Office at 33-35, Thyagraj Nagar Mkt., New Delhi, India and having CIN Number L74899DL1989PLC034594 through its Software Development Centre at A – 39, Sector – 62, Noida – 201 307, Uttar Pradesh, India
Licensee	
Registered Address of Licensee	
Annexures	Order Form
Effective Date	

This License Agreement (“Agreement”) is made between the **Licensee** and the **Licensor**, details whereof are set-forth on the Details page above and shall be effective from the Effective Date till the expiry of or earlier termination of the Tenure.

DEFINITIONS:

“Authorised Users” shall mean such employees of the Licensee and affiliated Entity as are nominated by the Licensee to use the Licensed Product and are accepted by the Licensor.

“Named Users” shall mean number of Authorised Users as set-forth under the applicable Order Form who will have access to the Software.

“Entity” shall mean the company which is Authorised User and is specifically identified under the applicable Order Form.

“Installation Site” shall mean the site where Licensed Product shall be installed as identified in the applicable Order Form.

“Instance” shall have the meaning as defined in the applicable Order Form.

“Licensed Product” shall mean Software and/ or its reports, updates, upgrades, interfaces, modifications, enhancements, improvement, modification, change, adaptation, addition and/ or customizations, , deliverables, designs and architecture as set-forth in the relevant Order Form.

“Charges” or “Fees” shall mean charges, fees, expenses or any amount to be payable by Licensee as mentioned under this Agreement, applicable Order Form or any annexures to the foregoing.

“Confidential Information” means the information made accessible, disclosed by or otherwise learnt from the other Party (“Discloser”) (in case of Nucleus’ being Discloser, any information pertaining to Licensed Product and/or, related services shall be deemed as Confidential Information belonging to Nucleus) including, without limitation, computer programs, technical drawings, algorithms, know-how, processes, designs, reports, specifications, ideas, inventions, schematics, pricing information, and other technical, business, financial, client and product development plans, strategies, or where such information is reasonably understood to be confidential or proprietary based on the circumstances of disclosure or the nature of the information itself is referred to as “Confidential Information” of the Discloser.

“Order Form” shall mean the form which refers to this Agreement and contains details about the Licensee, Scope, access granted under this Agreement with respect to Software, Territory, Entity, Installation Site, Instance, Named Users, Tenure and other applicable terms and conditions. The Order Form may be executed separately between the Licensee and the Accenture however Order Form shall be governed by and form part of this Agreement by reference and shall be annexed as Annexure B to this Agreement.

“Object Code” shall mean the binary machine-readable version of computer programs and software.

“Scope” shall mean scope of license granted including limitations and restrictions set-forth in the applicable Order Form.

“Software” shall mean the Licensor’s product listed in the applicable Order Form which will be delivered only in the Object Code versions and may include any programs, modules, operating system software, computer software languages, utilities and other computer programs (i.e., any set of statements or instructions to be used in a computer to obtain a result), and related documentation and supporting materials, in any form or media, including the tangible media upon which the programs, operating system software, computer software languages, utilities and other computer programs, and documentation and supporting materials are recorded or printed, together with all corrections, improvements, updates and releases.

“Territory” shall mean the territory from where the Licensed Product can be accessed and used and is specifically mentioned in the applicable Order Form.

“Tenure” shall mean the duration for which the license has been granted to the Licensee of the Licensed Product and is specifically mentioned in the applicable Order Form. Unless agreed otherwise in the applicable Order Form, any additional and/or new licenses of modules/LOBs of the Licensed Product procured during the Tenure of first Order Form, shall be valid only till the Tenure of first Order Form. Further renewal of all the procured licenses, whether under the initial or subsequent Order Form, shall be as per mutual agreement and as set-forth in the subsequent or renewed Order Form.

GRANT: Subject to the Licensee’s compliance to the terms of this Agreement, Licensor, on the receipt of non-refundable Charges, agrees to grant Licensee under its intellectual property rights in the Licensed Product, a bundled, non-exclusive, limited use, personal, non-transferable, non-sub licensable, non-assignable, Object Code license of the Licensed Product to use a single production copy of the Licensed Product through the Named Users during the Tenure for the Scope as specified in the applicable Order Form solely for Licensee’s own internal business purposes and for no other purpose.

AUTHORISED USER: Licensed Product shall be used exclusively by the Licensee through its Authorised Users limited to the Scope, Territory, Instances, Entity and number of Named Users permitted in the applicable Order Form. Licensee shall be responsible for ensuring that the Authorised Users' access and use of the Licensed Product is always in compliance with the terms of this Agreement, Order Form and any other appendices or annexures to the foregoing. Licensee shall immediately notify the Licensor in the event of any Authorised User breaches the license terms including restrictions thereof. Licensee acknowledges and agrees to remain liable for the acts and omission of Authorised Users as if such acts and omissions are committed by the Licensee itself. Licensee shall indemnify Licensor from any claims, liabilities, damage or loss caused to or arising from the acts and/or omissions of the Authorised Users.

INSTALLATION SITE: Licensee shall be entitled to use the Licensed Product in a productive mode only at Installation Site specified in Order Form. A physical location previously indicated as an Installation Site may be changed within the Territory only upon the prior written consent of Licensor which consent will not be unreasonably withheld.

USAGE RIGHTS AND LICENSE RESTRICTIONS: The Licensee shall be entitled to use the Licensed Product(s) and related documentation at the Installation Site, within the territorial limits of the Territory for the Scope as specified in Order Form and in the manner listed therein. Licensee shall not use copy, translate, modify, print or display the Licensed Products, in whole or in part, other than as expressly authorized in this Agreement. If the Licensee is different from the Entity and is identified in the Order Form then the Licensee shall be jointly and severally liable for the Entity and shall be liable to ensure that Entity complies with terms and condition of this Agreement. Except as otherwise expressly permitted under this Agreement, or as otherwise required by applicable law:

No other licenses are granted by implication, estoppel or otherwise, to Licensee;

Licensee shall not, and shall not facilitate or assist any third party including its Authorised User to reverse engineer, assemble or recompile any Licensed Product, bespoke Software or portion thereof. Licensee shall ensure that Authorised Users do not indulge in any activities that Licensee otherwise is restricted under this section 5.

Licensee shall not use the Licensed Product and/or bespoke Software for any purpose other than that as set forth in this Agreement;

Licensee shall not remove or alter any copyright, patent or other proprietary notice in the Licensed Product or bespoke Software.

Licensee shall not to use the Licensed Products to provide service bureau, time-sharing, or other computer services to any other third party.

Licensee shall not, directly or indirectly, permit any other person or entity other than Authorised User to have access or use of the Licensed Products, nor shall the license granted in this Agreement be resold, published, distributed, disclosed, sublicensed, assigned or otherwise transferred to any other entity or person including, without limitation, by way of sale of assets, merger, de-merger, acquisition, amalgamation, joint venture, without the prior written consent of Licensor which shall not be unreasonably held.

Licensee agrees that during the Tenure and three years from the expiry of the Tenure, Licensee shall not engage itself or through any third party in the development of any Licensed Product for which licenses are granted under this Agreement.

Licensee hereby agrees to indemnify Licensor for any damages or loss caused due to the breach of its obligations set-forth under this clause. Additionally, in such event Licensor reserves right to revoke the license granted under this Agreement without any liability whatsoever.

AUDIT: Licensor and/or its authorised representative shall reserve its rights to audit, twice a year, by serving a 7 days prior notice to Licensee (such notice shall include the scope of audit, necessary information and records to be inspected) during the Tenure only to ensure that the license granted under this Agreement is being utilized by the Licensee as per the Agreement. The audit may be performed by an authorized representative of Licensor to examine Licensee's compliance to the terms of this Agreement relating to Authorised User and Usage Rights of Licensed Products. In the event, any breach is found on the part of Licensee, Licensor, at its discretion, reserves the right to terminate this Agreement and/or to claim additional Fees, if applicable, for such breach resulting in excess use of licenses granted to the Licensee as per then prevailing Charges for the licenses notified by the Licensor.

INTELLECTUAL PROPERTY RIGHTS OWNERSHIP: "Intellectual Property Rights" under this Agreement shall mean any and all (by whatever name or term known or designated) tangible and intangible rights and now known or hereafter existing including, but not limited to, designs, architecture, copyrights, trademarks, trade names, trade secrets, know-how, patents, (including current and future inventions), any other intellectual and industrial property and proprietary rights, of every kind and nature throughout the universe and however designated, and including all registrations, applications, renewals, enhancement and extensions thereof. Licensee understands and agrees that the Licensed Product including any bespoke software, work product or any other developments shall be the Intellectual Property of the Licensor and the Licensor have exclusive, unconditional and undisputed proprietary ownership including all Intellectual Property Rights to all Licensed Products and bespoke software, any deliverables (if any) and/ or their reports, upgrades, interfaces, modifications, enhancements and/ or customizations, work product (if any), deliverables, designs and architecture and all information related thereto. Notwithstanding anything contrary and to the extent permitted under law, Parties agree and acknowledge that any amount paid to the Licensor in lieu of or associated with any of the deliverables, irrespective of the time it is being paid or the time of the delivery of the foregoing, shall be deemed as fees paid against the grant of license to such deliverables in accordance with Section 2 of this Agreement.

INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT

Subject to the provisions of this Agreement, Licensor shall, at its expense, defend or settle any claim, action or allegation brought by a third party against Licensee that the Software when used by the Licensee in accordance with the terms of this Agreement infringes any patent, copyright, trade secret or other proprietary right of such third party, provided that Licensee gives prompt written notice to Licensor of any such claim, action or allegation of infringement and gives Licensor the authority to proceed as contemplated herein. Licensor will have the exclusive right to defend any such claim, action or allegation and make settlements thereof at its own discretion, and Licensee may not settle or compromise such claim, action or allegation, except with prior written consent of Licensor. Licensee shall give such assistance and information as Licensor may reasonably require to settle or oppose such claims. In the event any such infringement, claim, action or allegation is brought or threatened, Licensor may, at its sole option and expense:

- a. procure for Licensee the right to continue use of the Software or infringing part thereof;
- b. modify or amend the Software or infringing part thereof, or replace the Software or infringing part thereof with other software having substantially the same or better capabilities; or
- c. if neither of the foregoing is commercially practicable, Licensor shall terminate this Agreement with respect to the infringing part of the Software and refund the Charges paid hereunder on pro-rated basis paid by Licensee for part thereof. This shall be the sole and exclusive remedy available to the Licensee and Licensor will then be released from any further obligation whatsoever to Licensee in connection with the infringing part of the Software.

The foregoing obligations shall not apply to the extent the infringement arises as a result of (a) modifications to the Licensed Product at the request of Licensee; or (b) use of the Software outside the scope of the licenses granted under this Agreement, or in combination with other hardware, software or systems, provided that the combination is the cause of the claim of infringement; or (c) Licensor's compliance with Licensee's specific designs, technical specifications or instructions if changes made at the request of Licensee are the cause of such infringement; and (d) Licensor's use of any third party's proprietary and confidential information for which Licensee was responsible for obtaining all permissions, licenses and consents necessary to use such third party proprietary information.

DISCLAIMER: LICENSED PRODUCT PROVIDED BY LICENSOR PURSUANT TO THIS AGREEMENT IS MADE AVAILABLE TO THE LICENSEE ON AN "AS IS" BASIS AND LICENSOR HEREBY DISCLAIMS AND LICENSEE EXPRESSLY WAIVES ANY AND ALL IMPLIED WARRANTIES (STATUTORY OR OTHERWISE), INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

INVOICING AND PAYMENT TERMS: Charges shall be paid by Licensee directly to the Reseller from whom it has purchased the licenses to the Product and Services as per the terms agreed by the Licensee with the Reseller. Licensee agrees that all fees due to Licenser shall not be used to reduce, offset, or make contingent any payments due to Licenser.

All payments made hereunder are non-refundable.

ANNUAL SUPPORT SCHEDULE: Licensor agrees that in consideration of the payment of applicable annual maintenance Charges as per the applicable Order Form, Licensee shall be entitled to receive support on the Software in accordance with Annual Support Schedule annexed as Annexure A to this Agreement.

CONFIDENTIAL INFORMATION:

Discloser shall observe the duty of reasonable care while disclosing any Confidential Information to the recipient. The recipient agrees that it shall a) hold the Confidential Information in confidence and take reasonable precautions to protect such Confidential Information from unauthorized disclosure including all precautions the recipient employs with respect to its own confidential material; b) not divulge any such Confidential Information to any third party without prior approval of discloser; c) not use any such Confidential Information except for the purpose of this Agreement, and d) not copy or reverse engineer any such Confidential Information.

Recipient may permit access of Confidential Information to its and affiliate's employees, consultants, vendors, agents for the purpose of this Agreement on a need to know basis only, and shall ensure that they are bound to maintain confidentiality of such information to the same extent as provided under the Agreement.

Confidentiality obligation herein shall remain in effect during the term and for a period of two (2) years after the expiry of this Agreement. However, confidentiality obligations with respect to IPR, source code(s) and trade secrets shall be perpetual.

Confidential Information shall not include any information that is a) lawfully known by the Recipient at the time of disclosure without any obligation to keep the same confidential; b) or becomes, through no fault of the recipient, known or available to the public; c) independently developed by the recipient without use or reference to such Confidential Information; or d) rightfully disclosed to recipient by a third party without any restrictions on disclosure.

Notwithstanding anything contrary, Licensee hereby agrees and declares that they shall not be sharing any personal information/data to the Licenser and therefore provisions of any data protection laws or regulations shall not apply to the Licenser. Licensee agrees and acknowledges that in the event Licensee is required to share any personal information with

Licensee to enable Licensee efficiently perform Services or to grant licenses under this Agreement Licensee shall be responsible to comply with the obligation pertaining to any personal information of data subjects it shares with Licenser including issuing notice, seeking consent, compliance with the requests from the data subjects (*the term 'data subject' to be substituted and referred with the appropriate term as is used in the applicable data protection laws*), process data or require processing of data only for 'lawful purposes' as are set-forth under the applicable data protection laws. In the event, any personal information/data is shared by Licensee or by any of its affiliates or associates Licensee hereby agrees to defend, hold harmless and indemnify Licenser for any claims, damages, penalty, costs (including lawyer and/or litigation cost incurred), or any loss imposed on Licenser due to any issues arising out of handling of personal information/data by the Licenser.

TERMINATION: Licensor shall have the right, upon a material failure by Licensee to perform its responsibilities and obligations hereunder, to terminate this Agreement consequently revocation of license of the Licensed Product. Failure to pay by Licensee, as per the applicable Order Form, shall be termed as material failure. Any such termination shall become effective 30 days following Licenser's notices, unless Licensee has corrected the failure to Licenser's reasonable satisfaction prior to that time.

EFFECTS OF TERMINATION/EXPIRY: Upon termination or expiry of this Agreement, Licensee's right and license to use the Licensed Product shall be terminated and Licensee shall immediately cease using the Licensed Product; erase the same from the storage in each computer system it has been installed in; maintain in confidence all knowledge of the Licensed Product and its use as provided hereunder; and at the option of Licenser, either return to Licenser or destroy all confidential information, document and physical embodiments of the Licensed Product, and certify to Licenser in writing that such destruction has occurred.

LIMITATION OF LIABILITY: EXCEPT FOR BREACH OF SECTION 2, SECTION 5 OR SECTION 12, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF REVENUE AND/OR OPPORTUNITY, BUSINESS INTERRUPTION, LOSS OF DATA, OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE LICENSED PRODUCT OR SERVICES PERFORMED HEREUNDER INCLUDING THE PROVISION OF SUPPORT PURSUANT TO THE SUPPORT POLICY OR ANY DELAY IN DELIVERY OR FURNISHING THE SOFTWARE OR SAID SUPPORT SERVICES.

EXCEPT FOR BREACH OF SECTION 2, SECTION 5 OR SECTION 12, IN NO EVENT, LICENSOR'S MAXIMUM AGGREGATE LIABILITY (WHETHER IN CONTRACT, INDEMNITY OR UNDER ANY OTHER FORM OR LIABILITY) FOR DAMAGES OR LOSS, HOWSOEVER ARISING OR CAUSED, WHETHER OR NOT ARISING FROM LICENSOR'S NEGLIGENCE, SHALL BE GREATER THAN (A) IN THE EVENT SUCH LOSS OR DAMAGE IS RELATED TO LICENSED PRODUCT, ONE- THIRD (1/3) OF CHARGES OF THE RELEVANT PORTION OF LICENSED PRODUCT AS SPECIFIED IN THE APPLICABLE DOCUMENT (B) IN THE EVENT SUCH LOSS OR DAMAGE IS RELATED TO SUPPORT, THE LAST THREE MONTH OF THE SUPPORT FEES PAID BY LICENSEE, FROM THE DATE OF THE SAID LIABILITY ARISES, FOR THEN CURRENT SUPPORT TERM FOR THE PARTICULAR SOFTWARE PROGRAM WHICH CAUSED THE DAMAGE OR LOSS.

GOVERNING LAW: This Agreement shall be and construed in accordance with the laws of India.

DISPUTE RESOLUTION:

Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this Agreement or the validity or the breach thereof shall be settled amicably by the parties. Failing such settlement within 30 days of submission of such request, the same shall be settled through final and binding arbitration.

Delhi International Arbitration Centre('DIAC') shall administer the arbitration in New Delhi, India under Rules of Arbitration observed by DIAC, such rules are deemed to be incorporated by reference in this section.

There will be one arbitrator that Licensee and Licensor both select. The arbitration will be conducted in the English language. Judgment upon the award rendered may be entered and will be enforceable in any court of competent jurisdiction having jurisdiction over the parties.

Licensee may only resolve disputes with Licensor on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action.

Notwithstanding the foregoing, in the event of Licensee or others' unauthorized access to or use of the Licensed Product or content in violation of these terms Licensee agree that Licensor is entitled to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

MISCELLANEOUS:

Any Scope of Work (SOW) or Software implementation services agreement covering any professional or implementation services to be performed by Licensor, schedules, addendums, annexures or attachments, Order Form entered into between the Licensor and the Licensee referring to this Agreement will form integral part of this Agreement and shall be subject to the terms and conditions of this Agreement. This Agreement constitutes the entire Agreement between the parties and supersedes all legal terms and conditions of any purchase orders (present or future), previous agreements, promises, proposals, representations, understandings and negotiations, whether written or oral, between the parties respecting the subject matter hereof.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. Headings are for reference and shall not affect the meaning of any of the provisions of this Agreement.

The provisions of which by their nature or effect are required or intended to be observed, kept or performed after termination or expiration of this Agreement shall remain in full force and effect following the termination or expiration of this Agreement.

No modification, course of conduct, amendment, supplement to or waiver of this Agreement or any provisions hereof shall be binding upon the parties unless made in writing and duly signed by both parties. At no time shall any failure or delay by either party in enforcing any provision, exercising any option, or requiring performance of any provision, be construed to be a waiver of same. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

The Licensee grants Licenser a limited license to use any Licensee's trade name and trademark for the limited purpose of referring the Licensee's name in Licenser's marketing material and on Licenser's web site provided the same should not be detrimental to the Licensee.

Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Licensee, in whole or in part, whether voluntary or by operation of law, including, without limitation, by way of sale of assets, merger, de-merger, acquisition, amalgamation, joint venture, without the prior written consent of Licensor. The terms and conditions of this Agreement, including commercials and support terms may be revisited and the Licensor reserves the rights to extend the license to the new entity.

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be legally ineffective or unenforceable, such provision shall, to the extent possible, be deemed rewritten to reflect the original intent of the parties, and the validity of the remaining provisions of Agreement shall not be affected.

IN WITNESS WHEREOF, this Agreement has been duly executed by an authorized representative of Licensee shall be deemed to be executed on the Effective Date.

SIGNATURE PAGE

LICENSEE:

ANNEXURE A
Annual Support Schedule