

END USER LICENSE

between

APPLIED TESTING AND TECHNOLOGY, INC.

and

“Corporate licence”

A licence to use “the Products” at any number of sites world wide.

“Licensee”

A Person who has been licensed or sub-licensed by ApTest to use one or more Products.

IT IS AGREED as follows:

2. LICENSE

In consideration of the Licensee paying the Fees and accepting and performing its obligations as set out in this Agreement, ApTest hereby grants the Licensee a non-exclusive, non-transferable license to use the Product or Products upon the following terms and conditions:

- 2.1 The Licensee may use the Products strictly for the purpose of verifying the conformance of its products to specifications defined in the Products’ documentation. For the avoidance of doubt this Agreement does not grant any license to make use of the Products in the course of providing, or offering to provide, a Testing Service to a third party.
- 2.2 The Licensee will not sublicense the Products or assign, transfer, mortgage, charge or otherwise make over to any third party any of the rights or obligations under this Agreement without the previous written consent of ApTest.
- 2.3 The Licensee will not update, alter, modify or tamper with the Products in any way except for its own internal purposes, and then only on the condition that the Products (and any modifications) are kept confidential and are not disclosed to any person or used as the basis of a marketed software product. “Internal business purposes” shall exclude the modification or alteration of the Product to verify conformance to specifications other than those referenced in the Product’s documentation. The licensee acknowledges that ApTest will only recognize the unmodified version as valid for warrantee, support or any other purpose whatsoever.
- 2.4 The Licensee will not copy the Products or any part of them and will ensure that its officers, employees or agents will not do so except as required for operational security and use, PROVIDED that the Licensee shall maintain an up to date register of the numbers and location of all such copies made.
- 2.5 The Licensee acknowledges that the Products are proprietary and confidential to ApTest and will use its best endeavors to prevent their disclosure to, or use by, any third party. The Licensee may, however, disclose the Products to those of its employees who reasonably need to have access to them PROVIDED that the Licensee shall have made such employees aware of the proprietary and confidential nature of the

Products, of ApTest's interest in same, and of the Licensee's obligations in respect of non-disclosure and use of the Products under this Agreement, and that such employees shall have undertaken to the Licensee to abide by such obligations.

- 2.6 The Licensee will not remove and will abide by any copyright statements on any part of the Products (or on the computer screen when the Products are used) and will ensure that such statements appear in their original form on all copies made (if any) in accordance with sub-clause 2.4 above, and will ensure that its officers, employees and agents comply with this clause 2.6.
- 2.7 Title to the Products and recording materials and other materials supplied hereunder shall at all times remain with ApTest. This Agreement is for the grant of a license of copyright in the Products and not for the sale or hire of goods.
- 2.8 A Test Suite End User Licence ("End User Licence") at a corporate rate permits the Licensee to use the Products at any of its locations. An End User License at a single site rate permits the Licensee to use the Products only at the location identified in Appendix A.
- 2.9 Nothing in this Agreement shall oblige ApTest to license future developments or improvements of the Products to the Licensee.

3. FEES

In consideration of the license granted by Clause 2 above the Licensee shall pay the Fee specified in Appendix 1 hereto. Fees are payable within 30 days of execution of this Agreement.

4. DURATION AND TERMINATION

- 4.1 This Agreement and the license granted hereunder shall commence with effect from the Commencement Date and shall continue (unless terminated earlier in accordance with sub-clause 4.2 below) until the Expiration Date or such other date as is agreed between the parties to this Agreement in writing.
- 4.2 ApTest may terminate this Agreement forthwith by notice in writing in the event that:
 - 4.2.1 the Licensee is at any time in breach of its obligations hereunder and in the case of a breach capable of remedy within thirty days has not

remedied such breach within thirty days of being given notice requiring it to do so.

- 4.2.2 if an order is made or a resolution is passed for the winding up of the Licensee (other than voluntarily for the purposes of solvent amalgamation or reconstruction) or an order is made for the appointment of an administrator to manage the Licensee's affairs, business and property or if a receiver (which expression shall include an administrative receiver) is appointed of any of the Licensee's assets or undertaking or if circumstances arise which entitle the court or a creditor to appoint a receiver or manager or which entitle the court to make a winding-up order or if a voluntary arrangement is proposed in respect of the Licensee or if the Licensee takes or suffers any similar or analogous action in consequence of debt.

5. CONSEQUENCES OF TERMINATION

Upon and after termination of this Agreement for any reason:

- 5.1 The license granted hereunder shall forthwith automatically cease.
- 5.2 The Licensee shall destroy and delete or deliver up to ApTest the Products and all copies and related materials in its possession or under its control and within thirty days of the date of termination certify in writing to ApTest that this has been done.
- 5.3 The Licensee shall not, and shall ensure that its officers, employees and agents shall not make any further use or disclosure of the Products or any other confidential information disclosed by ApTest under or in relation to this Agreement. For the avoidance of doubt, this clause does not restrict the right of the Licensee to use the test logs and test results obtained through the use of the Products in accordance with this license.

6. WARRANTY

- 6.1 ApTest warrants it has the right to license use of the Products to Licensee.
- 6.2 Except as provided in Section 6.1, the Products are provided "AS IS" without warranty of any kind.
- 6.3 **LIMITATION OF LIABILITY: THE ABOVE WARRANTIES ARE THE ONLY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. APTEST SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, INTERRUPTION OF BUSINESS, NOR**

FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHETHER UNDER THIS AGREEMENT OR OTHERWISE.

7. INFRINGEMENT

- 7.1 If any third party makes any claim against the Licensee that the Products infringe any copyright, trade secret or other intellectual property rights of such third party, the Licensee shall notify ApTest thereof promptly in writing. ApTest shall use reasonable efforts to secure the Licensee's right to continue using the Products or to make them non-infringing. The Licensee shall co-operate with ApTest by furnishing technical or other information which may be of help in defending against or settling such claim.
- 7.2 If the Products are likely to become, in the opinion of ApTest, the subject of an infringement claim, ApTest may, at its option, either secure the Licensee's right to continue using the Products, or make them non-infringing or discontinue the Products upon one month's written notice and, from and after such date, the Licensee shall not be authorized to make further use of the Products. THIS CLAUSE STATES THE ENTIRE RESPONSIBILITY OF APTEST CONCERNING INFRINGEMENT.

8. GENERAL

- 8.1 If any provision of this Agreement is held to be invalid or inapplicable in some or all circumstances by any court or other authority of competent jurisdiction the remaining provisions shall remain in force and the parties will make such amendments to this Agreement by the addition or deletion of wording as appropriate to remove the invalid or unenforceable part or application of such provision.
- 8.2 Failure or delay by ApTest in exercising or enforcing any right or remedy under this Agreement in whole or in part shall not be deemed a waiver thereof or prevent the subsequent exercise of that or any other right or remedy.
- 8.3 Any notice or other document to be given under this Agreement shall be in writing in the English language and shall be given by hand, courier, pre-paid recorded delivery, or registered post to the address of the receiving party set out at the head of this Agreement unless a different address has been notified to the other in writing for this purpose.
- 8.4 This Agreement shall be deemed to have been made in the State of California, and shall be governed and construed in accordance with the laws of the State of California, notwithstanding the conflict of law

provisions of any state and the parties submit to the non-exclusive jurisdiction of the courts of Santa Clara County, California.

- 8.5 Headings in this Agreement are for convenience only and shall not affect its interpretation.
- 8.6 This Agreement constitutes the entire Agreement between the parties with respect to its subject matter; except as provided herein, all other prior agreements, representations, statements, negotiations and undertakings are terminated and suspended hereby.

APPENDIX 1
to
END USER LICENSE

Description Of the Products licensed

Commencement Date

The license term shall commence on the date of last signature to this Agreement.

Expiration Date

The license shall expire ten years after the commencement date.

Fees

The fee payable upon execution of this Agreement is _____

Type of license

Single Site

Corporate

Customer Contact

Contact Name _____

Contact E-mail _____

Contact Phone # _____

Contact Fax # _____

Site Address

Mailstop _____

AGREED by the parties through their authorized signatories:

FOR AND ON BEHALF OF
APPLIED TESTING AND TECHNOLOGY

FOR AND ON BEHALF OF
THE LICENSEE

.....
Signed

.....
Signed

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Name

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Name

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Title

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Title

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Date

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Date