

# **AOSTA SOFTWARE TECHNOLOGIES INDIA LIMITED**

## **END USER SOFTWARE LICENSE AGREEMENT**

### **RECITALS**

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- B. Aosta desires to grant to Licensee and Licensee desires to obtain from Aosta a non-exclusive license to use the Software and Documentation solely in accordance with the terms and on the conditions set forth in this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

### **1. DEFINITIONS.**

1.1 "License Fee" shall mean the monies that Aosta is to receive for the Software.

1.2 "Software" shall mean the computer programs in machine readable object code form (Refer -Modules and Deliverables as per Aosta's final proposal submitted and Licensee's purchase order) and any subsequent error corrections or updates supplied to Licensee by Aosta pursuant to this Agreement.

### **2. GRANT OF RIGHTS.**

The License granted for Software under this Agreement authorizes Licensee on a nonexclusive basis to use the Software on the number of primary systems. The Software shall be used only on such primary systems if they are operating properly. If any primary system is down, the Software may be used on a backup system for that primary system.

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7.2 Maintenance of Confidential Information. Each party agrees to keep confidential, all confidential information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that neither party shall have any such obligation with respect to use or disclosure to others parties to this Agreement of such confidential information as can be established to: (a) have been known publicly; (b) have been known generally in the industry before communication by the disclosing party to the recipient; (c) have become known publicly, without fault on the part of the recipient, subsequent to disclosure by the disclosing party; (d) have been known otherwise by the recipient before communication by the disclosing party; or (e) have been received by the recipient without any obligation of confidentiality from a source (other than the disclosing party) lawfully having possession of such information.

7.3 Injunctive Relief. Licensee acknowledges that the unauthorized use, transfer or disclosure of the Software or copies thereof will (i) substantially diminish the value to Aosta of the trade secrets and other proprietary interests that are the subject of this Agreement; (ii) render Aosta's remedy at law for such unauthorized use, disclosure or transfer inadequate; and (iii) cause irreparable injury in a short period of time. If Licensee breaches any of its obligations with respect to the use or confidentiality of the Software or Documentation, Aosta shall be entitled to equitable relief to protect its interests therein, including, but not limited to, preliminary and permanent injunctive relief.

7.4 Survival. Licensee's obligations under this Article 8 will survive the termination of this Agreement or of any license granted under this Agreement for whatever reason.

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8.3 Limited Warranty. Aosta represents and warrants to Licensee that the Software, when properly installed by Licensee and used with the Designated Equipment, will perform substantially as described in Aosta's then current Documentation for such Software for a period of 365 days from the date of Go Live.

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8.7 Limitation of Liability. LICENSEE ACKNOWLEDGES AND AGREES THAT THE CONSIDERATION WHICH AOSTA IS CHARGING HEREUNDER DOES NOT INCLUDE ANY CONSIDERATION FOR

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## **9. INDEMNIFICATION**

9.1 Aosta shall indemnify, hold harmless and defend Licensee against any action brought against Licensee to the extent that such action is based on a claim that the unmodified Software, when used in accordance with this Agreement, infringes a United States copyright and Aosta shall pay all costs, settlements and damages finally awarded; provided, that Licensee promptly notifies Institution in writing of any claim, gives Aosta sole control of the defense and settlement thereof and provides all reasonable assistance in connection therewith. If any Software is finally adjudged to so infringe, or in Aosta's opinion is likely to become the subject of such a claim, Aosta shall, at its option, either: (i) procure for Licensee the right to continue using the Software (ii) modify or replace the Software to make it non infringing, or (iii) refund the fee paid, less reasonable depreciation, upon return of the Software. Aosta shall have no liability regarding any claim arising out of: (w) use of other than a current, unaltered release of the Software unless the infringing portion is also in the then current, unaltered release, (x) use of the Software in combination with non-Aosta software, data or equipment if the infringement was caused by such use or combination, (y) any modification or derivation of the Software not specifically authorized in writing by Aosta or (z) use of third party software. THE FOREGOING STATES THE ENTIRE LIABILITY OF AOSTA AND THE EXCLUSIVE REMEDY FOR LICENSEE RELATING TO INFRINGEMENT OR CLAIMS OF INFRINGEMENT OF ANY COPYRIGHT OR OTHER PROPRIETARY RIGHT BY THE SOFTWARE.

9.2 Except for the foregoing infringement claims, Licensee shall indemnify and hold harmless Aosta, their directors, officers, agents and employees from and against any claims, demands, or causes of action whatsoever, including without limitation those arising on account of Licensee's modification or

enhancement of the Software or otherwise caused by, or arising out of, or resulting from, the exercise or practice of the license granted hereunder by Licensee, its sublicenses, if any, its subsidiaries or their officers, employees, agents or representatives.

## **10. INSURANCE.**

10.1 Licensee shall carry and maintain paid up policies for adequate products liability insurance, with Aosta identified as an additional insured, and Licensee shall provide Aosta with proof of all such insurance, copies of all such policies, and any renewals thereof at Aosta's request.

10.2 Aosta is self-insured. Aosta has and will maintain in force during the term of this Agreement adequate insurance to cover its obligations hereunder.

## **11. DEFAULT AND TERMINATION.**

11.1 Events of Default. This Agreement may be terminated by the non defaulting party if any of the following events of default occur: (1) if a party materially fails to perform or comply with this Agreement or any provision hereof; (2) if either party fails to strictly comply with the provisions of Section 8 (Confidentiality); (3) if a party becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (4) if a petition under any foreign, state, or Government of India bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by a party; or (5) if such a petition is filed by any third party, or an application for a receiver is made by anyone and such petition or application is not resolved favorably within ninety (90) days.

11.2 Effective Date of Termination. Termination due to a material breach of Articles 2 (Grant of Rights), 5 (Copies), 7 (Protection of Software), or 8 (Confidentiality) shall be effective on notice. In all other cases, termination shall be effective thirty (30) days after notice of termination to the defaulting party if the defaults have not been cured within such thirty (30) day period.

11.3 Obligations on Termination. Within ten (10) days after termination of this Agreement, Licensee shall cease and desist all use of the Software and Documentation and shall return to Aosta all full or partial copies of the Software and Documentation in Licensee's possession or under its control.

## **12. NOTICES.**

All notices, authorizations, and requests in connection with this Agreement shall be deemed given (i) five days after being deposited via postage prepaid, certified or registered, return receipt requested; or (ii) one day after being sent by overnight courier, charges prepaid, with a confirming fax; and addressed as first set

forth above or to such other address as the party to receive the notice or request so designates by written notice to the other.

### **13. NONASSIGNABILITY.**

Licensee shall not assign this Agreement or its rights hereunder without the prior written consent of Aosta.

### **14. GOVERNING LAW; JURISDICTION AND VENUE.**

The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of Government of India. The Coimbatore Court shall have exclusive jurisdiction and venue over any dispute arising out of this Agreement, and Licensee hereby consents to the jurisdiction of such courts.

### **15. GOVERNMENT CONTRACTS.**

If the Software or Documentation to be furnished hereunder is to be used in the performance of a government contract or subcontract, the software shall be provided on a "restricted rights" basis only and Licensee shall place a legend, in addition to applicable copyright notices, in the form provided under the governmental regulations. Aosta shall not be subject to any flow down provisions required by the governmental customer unless agreed to by Aosta in writing.

### **16. SEVERABILITY.**

If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

### **17. MISCELLANEOUS.**

This Agreement and its exhibits contain the entire understanding and agreement between the parties respecting the subject matter hereof. This Agreement may not be supplemented, modified, amended, released or discharged except by an instrument in writing signed by each party's duly authorized representative. All captions and headings in this Agreement are for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. Any waiver by either party of any default or breach hereunder shall not constitute a waiver of any provision of this Agreement or of any subsequent default or breach of the same or a different kind.