END USER LICENSE AGREEMENT

SILK CENTRAL v19 SILK METER v19 SILK PERFORMER v19 SILK PERFORMANCE MANAGER v19 SILK TEST v19

IMPORTANT: LICENSOR IS PROVIDING THIS LICENSED SOFTWARE TO LICENSEE (THE ORIGINAL PURCHASER EITHER AS AN INDIVIDUAL OR ON BEHALF OF ANOTHER LEGAL ENTITY AS ITS EMPLOYEE OR AUTHORIZED AGENT) FOR ITS USE SUBJECT TO LICENSEE'S AGREEMENT TO THE TERMS AND CONDITIONS SET FORTH BELOW. THESE TERMS AND CONDITIONS MAY BE DIFFERENT FROM THE END USER LICENSE AGREEMENT(S) THAT ACCOMPANIED EARLIER RELEASES OF THE LICENSED SOFTWARE. PLEASE READ THEM CAREFULLY TO ENSURE FULL UNDERSTANDING BEFORE PROCEEDING, AS THEY MAY CONTAIN ADDITIONAL RESTRICTIONS ON YOUR USE OF THE SOFTWARE. PLEASE DIRECT ANY QUESTIONS TO THE MICRO FOCUS LEGAL DEPARTMENT AT LEGALDEPT@MICROFOCUS.COM. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT, YOU WILL NOT BE AUTHORIZED TO USE THE LICENSED SOFTWARE. BY CLICKING THE ACCEPT BUTTON OR SIMILAR ACCEPTANCE MECHANISM DURING INSTALLATION, OR BY COPYING OR USING THE LICENSED SOFTWARE, LICENSEE ACKNOWLEDGES THAT IT HAS READ THIS LICENSE AGREEMENT, UNDERSTOOD IT, AND AGREED TO BE BOUND BY ITS TERMS AND CONDITIONS. THE LICENSED SOFTWARE IS LICENSED NOT SOLD.

For this End User License Agreement ("License Agreement") the following terms shall have the meanings given below:

"Documentation" means the Licensor user documentation that is included with the Licensed Software.

"<u>Licensee</u>" means the single legal entity or person that rightfully acquires the Licensed Software from Licensor or from a distributor or reseller of Licensor.

"License Options" means those license options set forth in Annex 1 to this License Agreement.

"Licensor" means the Micro Focus legal entity authorized to license the Licensed Software in the country in which Licensee acquires the Licensed Software.

"Licensed Software" means the object code version of the Licensor computer program(s) listed above, their Documentation, and other supplemental materials, as provided to Licensee by Licensor, including but not limited to any software security keys relating thereto. The Documentation may be delivered electronically and may only be available in the English language. The Licensed Software will be accompanied by a license key where required for activation and use of the Licensed Software. The Licensed Software shall also include, and this License Agreement shall govern the use of any update to the Licensed Software that Licensee receives pursuant to a separate support and/or maintenance purchase as described in Section 6 below, unless such update contains or comes with a different end user license agreement, in which case such end user license agreement shall supersede this License Agreement and govern the use of such software license without need for a mutually executed amendment to this License Agreement as set forth in Section 17 of this License Agreement. This License Agreement does not grant Licensee the right to any updates to the Licensed Software unless provided by Licensor under Section 6 and/or Section 7 below.

"Product Order" means a document that has been (i) executed by Licensee describing each Licensed Software license to be purchased, and (ii) accepted by Licensor. Licensor will accept the Product Order by either confirming Licensor's acceptance in writing or by delivering the Licensed Software to Licensee, whichever occurs first. A Product Order may also mean a written quote, or if referred to as such, a solution order, issued by Licensee describing each Licensed Software license purchased that is accepted by Licensee within the validity period of the quote either by Licensee executing and returning the quote or a solution order, to Licensor, by Licensee issuing a purchase order or other written confirmation of acceptance to Licensor in conformance with the quote, and/or by Licensee paying to Licensor all fees set forth in the quote. Each Product Order shall constitute a separate agreement and shall incorporate therein this License Agreement. In the event of any conflict between the terms and conditions of this License Agreement and the terms and conditions of any Product Order, the conflicting terms and conditions of the Product Order shall govern. In no event shall any terms and conditions contained in a purchase order or similar document issued by Licensee in connection with this License Agreement or with a Product Order apply and any such document issued shall be only for the administrative purposes of identifying the Licensed Software ordered, the number of licenses, and the price to be paid and shall have no other legal effect. Licensor for purposes of this paragraph shall mean Licensor or, if applicable, one of Licensor's authorized resellers from whom Licensee purchases the Licensed Software, provided however that any conflicting or additional terms in a Product Order accepted by an authorized reseller of Licensor shall have no effect unless such terms have been agreed by Licensor in writing.

"Warranty Period" means a period of ninety (90) days from delivery of the Licensed Software to Licensee.

GRANT OF LICENSE; LICENSE CONDITIONS. For payment of the applicable non-refundable license fees identified on the Product Order and subject to Licensee's compliance with the terms and conditions set forth in this License Agreement, Licensor grants solely to Licensee, as an end user, a personal, perpetual (unless a subscription/term license has been purchased by Licensee), non-transferable, non-sublicensable and non-exclusive license to use the Licensed Software solely for its own internal use and benefit. Licensee's use and operation of the Licensed Software and the license grant provided to the Licensed Software is subject to Licensee being in possession of a valid license key where required for the Licensed Software to run. Licensee agrees that Licensor is not liable or responsible for lost or broken license keys or media or the provision of replacement license keys or media and/or new license keys or media unless Licensee is current on support and maintenance for the applicable license and then only to the extent set forth in the applicable annual support and/or maintenance agreement and only to the extent Licensor then has sufficient rights from any applicable third party suppliers, if necessary, to provide such replacement. If not current on support and maintenance for the applicable license, replacement or new license keys or media may be available for purchase at Licensor's then current list fees for applicable new licenses.

Different License Options are available from Licensor as set forth or referred to in Annex 1. The applicable License Option and license count to be purchased by Licensee for the Licensed Software shall be identified in the Product Order or otherwise identified in writing by Licensor. Licensed Software is also subject to additional terms and conditions as set forth in the "Specific Software Terms" located in Annex 2.

Any conflicting terms and conditions shall be resolved according to the following order of precedence: Annex 2, Annex 1, and the main body of the License Agreement.

- 2 USE RESTRICTIONS. Except as may be otherwise specifically permitted in Annex 1 or Annex 2 to this License Agreement, Licensee agrees not to:
 - 2.1 Copy and/or distribute the Licensed Software, in whole or in part, for internal use without paying Licensor the applicable additional fees required by Licensor, except (i) for making a reasonable number of archival back-up copies; or (ii) as expressly authorized by Licensor in writing; or (iii) for making a reasonable number of copies of the Documentation supplied to Licensee by Licensor in electronic form. Licensee shall reproduce and affix all copyright and other proprietary rights notices appearing in or on the Licensed Software, including notices of all third party suppliers.
 - 2.2 Use the Licensed Software for timesharing, facilities management, outsourcing, hosting, service bureau use, or for providing other application service (ASP) or data processing services to third parties or for like purposes.
 - 2.3 Modify the Licensed Software or provide any person with the means to do the same.
 - 2.4 Create derivative works of the Licensed Software, or translate, disassemble, recompile or reverse engineer the Licensed Software or attempt to do so (except to the extent applicable law specifically permits such activity).
 - 2.5 Alter, destroy, or otherwise remove any proprietary notices or labels on or embedded within the Licensed Software or Documentation.
 - 2.6 Use the Licensed Software in a manner other than as specifically permitted in this License Agreement.
- AUDITS. Licensor or an Auditor (as defined below) has the right to verify Licensee's compliance with this License Agreement (and please see Micro Focus License Compliance Charter http://supportline.microfocus.com/licensing/licVerification.aspx). Licensee agrees to:
 - A. Implement internal safeguards to prevent any unauthorized copying, distribution, installation, or use of, or access to, the Licensed Software and associated support and maintenance, or breach of the terms or conditions of this License Agreement;
 - B. Take all necessary steps to destroy or erase all Licensed Software codes, programs and other proprietary information before disposing of any media containing the Licensed Software;
 - C. Keep records sufficient to certify Licensee's compliance with this License Agreement including serial numbers and license keys of the Licensed Software, hypervisor logs where applicable, and the location, model (including quantity and type of processor) and serial number of all machines on which the Licensed Software is installed or from which the Licensed Software is accessed, and the names (including corporate entity) and number of users that are accessing the Licensed Software, and, upon request of Licensor, provide and certify metrics and/or reports based upon such records and account for, among other things, numbers of copies (by product and version) and network architectures as they may reasonably relate to Licensee's licensing and deployment of the Licensed Software and associated support and maintenance;
 - D. Upon Licensor's request, Licensee shall furnish Licensor or an independent auditor chosen at Licensor's sole discretion ("Auditor"), within seven (7) days of the request, with a completed questionnaire provided by Licensor or the Auditor, and with a written statement, in a format required by Licensor, signed by a director of Licensee, certifying the accuracy of any information provided;
 - E. Allow a Licensor representative or an Auditor to inspect and audit Licensee's computers and records, during Licensee's normal business hours, for compliance with the licensing terms for Licensor's software products and associated maintenance. Upon Licensor's (and Auditor's if applicable) presentation of their signed written confidentiality statement form, Licensee shall fully cooperate with such audit and provide any necessary assistance and access to records and computers; and
 - F. In the event that Licensee has or at any time has had unlicensed installation, use of, or access to the Licensed Software or has otherwise breached the license granted (a "Non-Compliance"), without prejudice to any other rights or remedies Licensor may have, including without limitation injunctive relief, Licensee shall, within thirty (30) days, purchase sufficient licenses and or subscriptions and associated support and maintenance to cure the Non-Compliance, without benefit of any otherwise applicable discount, by paying Licensor's current (as of the date of such additional purchase) list license fees and 12-month support and maintenance fees to Licensor for such additional licenses, plus Licensor's current (as of the date of such additional purchase) list term license and support and maintenance fees and interest (compounded at 1.5% monthly or the maximum rate permitted by applicable law if lower) for such additional licenses for the time period from the commencement of the Non-Compliance until payment of the aforementioned fees. The aforementioned interest shall be payable even if an invoice was not issued at the time the Non-Compliance commenced. If a material license shortfall of 5% or more is found, Licensee shall also reimburse Licensor for the reasonable cost of such audit in addition to other amounts due. The obligations in this Section 3 shall apply to both Licensee's Non-Compliance and any third party's Non-Compliance.
- 4 **DOCUMENTATION**. One (1) electronic copy of Licensor's standard Documentation, describing Licensor's recommended use and application of the Licensed Software, will be furnished or made available on Licensor's website free of additional charge to Licensee by Licensor with the Licensed Software. Printed copies of any Documentation may be available for purchase from Licensor or its authorized distributors. Additional copies of standard Documentation may be available on Licensor's website.
- TERM OF LICENSE. This License Agreement and Licensee's license for the Licensed Software is perpetual, unless a subscription/term license has been purchased by Licensee (in which case the term of the license shall be as set forth in the Product Order, specified in Annex 1 or Annex 2, or as otherwise agreed in writing between the Licensee and Licensor), and is subject to earlier termination as provided in this Section 5. If Licensee has purchased a subscription/term license, Licensee's license to the Licensed Software shall automatically terminate upon expiry of such subscription/term. Licensor may terminate this License Agreement and Licensee's license to the Licensed Software immediately by giving Licensee written notice of termination in the event that either (i) Licensee breaches any term or condition of this License Agreement and Licensee has failed to remedy such breach within ten (10) days of the date of notice from Licensor to Licensee or (ii) Licensee is wound up, has a receiver appointed or has applied for or enters into liquidation or bankruptcy or analogous process or processes. Termination shall be without prejudice to any other rights or remedies Licensor may have. In the event of any termination Licensee will have no right to keep, access, or use the Licensed Software or any copy of the Licensed Software for any purpose and Licensee shall destroy and erase all copies of such Licensed Software in its possession or control, and forward written certification to Licensor that all such copies of Licensed Software have been destroyed or erased. Termination shall not entitle the Licensee to any refund or reimbursement of any kind of previously paid fees. The rights and obligations of the parties contained in Sections 3, 8, 9, 10, 11, 12, and 13, and other sections that by their nature are intended to survive, will survive the termination or expiration of this License Agreement.

- SUPPORT AND MAINTENANCE. Where Licensee purchases support and/or maintenance services, Licensee's initial support and/or maintenance term will begin upon delivery to Licensee of the Licensed Software and continue for one (1) year thereafter (or the length of the term if less than a year for any subscription/term license) unless otherwise specified in the applicable annual support and/or maintenance agreement, Product Order, or other written agreement executed between Licensor and Licensee. Where Licensee purchases support and/or maintenance for any Licensed Software, Licensee hereby agrees that it shall purchase such support and/or maintenance services for all of Licensee's licensed units of such Licensed Software product. Support and/or maintenance services provided by Licensor will be subject to Licensor's then current applicable standard annual support and/or maintenance agreement unless otherwise agreed by the parties in writing.
- LIMITED WARRANTY. Licensor warrants for the Warranty Period (i) that if the Licensed Software is supplied via media, then the media will be free from defects in materials or workmanship under normal use and (ii) that the copy of the Licensed Software delivered to Licensee conforms in all material respects to the Documentation. As the sole and exclusive remedy for not meeting part (i) of the above warranty, Licensor's sole obligation shall be to repair or replace free of charge any defective media on which the Licensed Software is delivered if the media is returned to Licensor by Licensee during the Warranty Period. As the sole and exclusive remedy for not meeting part (ii) of the above warranty, Licensor shall repair or replace the Licensed Software free of charge so that it conforms with the warranty or, if Licensor reasonably determines that such remedy is not economically or technically feasible, Licensee shall be entitled to a full refund of the license fee and any maintenance fee paid by Licensee with respect to that particular Licensed Software. Upon such refund Licensee's license to use such Licensed Software will terminate. The warranty set forth in this Section 7 shall not apply if the defect in the Licensed Software is the result of: (a) the Licensed Software not being used in accordance with the Documentation, this License Agreement or with the platform(s) for which the Licensed Software has been designed and licensed by Licensor; or (b) the Licensed Software having been altered, modified or converted by Licensee or any third party except as may be specified in the Documentation; or (c) the malfunctioning of Licensee's equipment; or (d) accident or abuse; or (e) service by any unauthorized person; or (f) other software used by Licensee which has not been provided by Licensor or for which the Licensed Software is not designed and licensed for operation; or (g) Third Party Software (as defined herein); or (h) any other cause occurring after initial delivery of the media to Licensee unless caused directly by Licensor. The foregoing states the complete and entire remedies that Licensee has under this warranty. Licensor shall have no responsibility for any warranty claims made outside of the Warranty Period. The foregoing warranty shall not apply to any free-of-charge Licensed Software including updates, though issues with such software may be eligible for support under applicable support terms and conditions.
- BISCLAIMER OF WARRANTY. The Licensed Software cannot be tested in every possible operating environment, therefore Licensor does not warrant that the functions contained in the Licensed Software will meet Licensee's requirements, that operation of the Licensed Software will be uninterrupted, or that the Licensed Software is error free. EXCEPT AS SET FORTH HEREIN AND TO THE EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED ON THE PART OF LICENSOR AND ITS THIRD-PARTY SUPPLIERS. Licensee acknowledges that Licensee is responsible for the selection of the Licensed Software to achieve Licensee's intended results and for the installation and/or use of, and results obtained from, the Licenseed Software.
- LIMITATION OF LIABILITY. ANY LIABILITY OF LICENSOR SHALL BE LIMITED IN THE AGGREGATE TO THE AMOUNTS PAID BY LICENSEE FOR THE LICENSED SOFTWARE GIVING RISE TO THE APPLICABLE CLAIM. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SIMILAR DAMAGES NOR FOR ANY LOSS OF PROFITS, CONTRACTS, DATA, OR PROGRAMS, OR THE COST OF RECOVERING SUCH DATA OR PROGRAMS, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. LICENSOR'S LIMITATIONS OF LIABILITY ARE NOT CUMULATIVE. LICENSEE'S REMEDIES IN THIS LICENSE AGREEMENT ARE LICENSEE'S EXCLUSIVE REMEDIES.

NONE OF LICENSOR'S THIRD-PARTY SUPPLIERS SHALL BE LIABLE FOR ANY INJURY, LOSS OR DAMAGE, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL NOR FOR ANY LOSS OF PROFITS, CONTRACTS, DATA, OR PROGRAMS, OR THE COST OF RECOVERING SUCH DATA OR PROGRAMS, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

LICENSEE AGREES THAT, IN ENTERING INTO THIS LICENSE AGREEMENT, EITHER IT DID NOT RELY ON ANY REPRESENTATIONS (WHETHER WRITTEN OR ORAL) OF ANY KIND OTHER THAN THOSE EXPRESSLY SET OUT IN THIS LICENSE AGREEMENT, OR IF IT DID RELY ON ANY REPRESENTATIONS, THAT IT SHALL HAVE NO REMEDY AGAINST LICENSOR IN RESPECT OF SUCH REPRESENTATIONS.

LICENSEE FURTHER ACKNOWLEDGES THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION ARE AN ESSENTIAL ELEMENT OF THIS LICENSE AGREEMENT AND THAT, IN THE ABSENCE OF SUCH LIMITATIONS, THE PRICING AND OTHER TERMS AND CONDITIONS SET FORTH HEREIN WOULD BE SUBSTANTIALLY DIFFERENT.

NEITHER THIS LICENSE AGREEMENT NOR ANYTHING IN THIS SECTION 9 SHALL EXCLUDE OR RESTRICT THE LIABILITY OF LICENSOR OR ITS THIRD-PARTY SUPPLIERS TO ANY EXTENT NOT PERMITTED BY LAW.

- HIGH-RISK USES. The Licensed Software is not fault tolerant, nor designed, manufactured or intended for use in hazardous environments requiring fail-safe performance (including, without limitation, the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems) in which failure of the Licensed Software could lead directly or indirectly to death, personal injury or severe physical or environmental damage. Licensor and its suppliers shall have no liability for any use of the Licensed Software in any high-risk situations.
- 11 **OWNERSHIP**. Licensor (or its affiliates) and where applicable Licensor's third party suppliers have and will retain all ownership rights to the Licensed Software, together with any complete or partial copies thereof. Such ownership rights include without limitation all patent rights, copyrights, trademarks, trade secrets, service marks, related goodwill, and confidential and proprietary information relating thereto. This License Agreement does not convey any proprietary interest to Licensee with respect to the Licensed Software other than the license specified herein.
- 12 **THIRD PARTY SOFTWARE AND COMPONENTS**. The Licensed Software may come with and/or require certain named third party software programs that Licensee shall license directly from the third party subject to such third party's terms and conditions (for example Adobe Acrobat or Microsoft Internet Explorer) ("Third Party Software"). Any Third Party Software is provided by the licensor of the Third Party Software solely under a direct license between such third party and Licensee under such third party's terms and conditions. Therefore

the obligations, duties and rights of Licensor and Licensee under this License Agreement do not apply to such Third Party Software. Additionally, Licensor has embedded in some Licensed Software certain run time or other elements provided by third party suppliers to Licensor ("Third Party Components"). Such Third Party Components may also be loaded on the Licensed Software media. Third Party Components are licensed to Licensee pursuant to this License Agreement. Third Party Components may also include open source software, details of which (where applicable) may be found (i) in a file accompanying the applicable Licensed Software or (ii) in the applicable Documentation. Licensee may only access Third Party Components of the Licensed Software in the course of using the Licensed Software. Licensee may not make or attempt any direct access to any such Third Party Components other than with the Licensed Software. All limitations, restrictions and obligations applicable to the Licensed Software set forth in this License Agreement shall apply to Licensee's use of the Third Party Components. The Third Party Software and Third Party Components are the property of its respective third party supplier to Licensor. Such third party suppliers own all copies of the Third Party Software and Third Party Components, however made. Licensee agrees not to contest the ownership of the Third Party Software and Third Party Components nor use any trademark or service mark belonging to such third party suppliers. Licensee agrees that such third party suppliers are intended third party beneficiaries of all terms and conditions of this License Agreement intended to protect intellectual property rights in the Licensed Software (including the Third Party Components) and limit certain uses thereof. Nothing in this License Agreement shall restrict, limit or otherwise affect any rights or obligations Licensee may have, or conditions to which Licensee may be subject, under any applicable open source licenses to any open source code contained in the Licensed Software.

- NOTICE TO U.S. GOVERNMENT END USERS. The Licensed Software and Documentation are deemed to be "Commercial Items," as defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7207, as applicable. Consistent with such sections, the Licensed Software and Documentation are licensed to U.S. Government end users (i) only as Commercial Items, and (ii) with only those rights as are granted pursuant to this License Agreement. Manufacturer is Micro Focus (US), Inc., 700 King Farm Blvd., Suite 125, Rockville, MD 20850 as or on behalf of Licensor.
- 14 LICENSE FEES AND PAYMENT TERMS. Licensee agrees to pay the applicable end user license fees for the Licensed Software within thirty (30) days of the date of invoice or such other date as agreed in writing by the parties. End user license fees are non-refundable except as provided in Section 7 above, or in the Specific Software Terms below, and shall be paid without deduction, including without limitation, of any withholding tax. End user license fees are exclusive of any applicable transportation charges, value added and other applicable taxes and duties and all such amounts shall be paid or reimbursed by Licensee. Outstanding past-due amounts shall accrue interest at the rate of 1.5% per month compounded or, if lower, the maximum rate allowed by applicable law. Licensee shall be liable for any such interest and all related collection costs, whether or not an action has been filed. Licensor may decline to enter into any additional Product Orders if any such past-due balance, interest and collection costs are not paid.
- 15 **RELATED SERVICES**. Licensee shall be responsible for obtaining and installing all proper hardware and support software (including operating systems) and for proper installation and implementation of and training concerning the Licensed Software. In the event that Licensee retains Licensor to perform any services with respect to the Licensed Software (for example: installation, implementation, maintenance, consulting and/or training services), Licensee and Licensor agree that such services shall be subject to Licensor's then current standard terms, conditions and rates for such services unless otherwise agreed in writing by Licensor.
- PRIVACY. If the Licensed Software contains features that may allow Licensee to collect data from, control and/or monitor computers running the Licensed Software deployed by Licensee without notice to or knowledge by users of the Licensed Software, then: (i) Licensee is solely responsible for, and assumes all liability with respect to, the collection of data with respect to its users of the Licensed Software including, without limitation, notifying such users and complying with all data collection, privacy and other regulations, laws, industry standards and rights of others applicable to any such activity; and (ii) Licensee shall indemnify and hold Licensor harmless from and against any damages, claims, losses, settlements, attorneys' fees, legal fees and court costs and other expenses related to any such activities or any claims in connection therewith. To the extent permitted by law, by entering into this License Agreement, Licensee hereby expressly consents to (i) Licensor sending information to Licensee from time advertising the various products that Licensor provides, whether or not such products are provided under this License Agreement; (ii) the use of Licensee's name in Licensor customer lists, promotional materials and/or press releases; and (iii) the collection and use by Licensor of information about the computer system on which the Licensed Software is installed (e.g. product version, serial number) for internal security and licensing purposes; Licensor does not use this information to identify individuals utilizing such software.
- MISCELLANEOUS. Licensor may assign this License Agreement (in whole or in part) to any member of Licensor's group of companies or to a purchaser of the intellectual property rights in the Licensed Software, but otherwise neither this License Agreement nor any rights hereunder may be assigned (any change of control merger, sale or other transfer of all, or substantially all, of the assets of Licensee shall be included in the meaning of an assignment) nor duties delegated by either party, and any attempt to do so will be void.

If Licensee acquires the Licensed Software in North America, the laws of the state of Maryland govern this License Agreement and the licenses granted hereunder and the parties hereto consent and agree that they shall be subject to the exclusive jurisdiction of the State and/or Federal courts sitting in the State of Maryland in any action based on this License Agreement or concerning the licenses granted, or the products licensed, hereunder. Each party waives any right it may have to object to such venue, including objections based on personal jurisdiction or forum non conveniens (inconvenient forum). The parties agree that the Uniform Computer Information Transaction Act or any version thereof, adopted by any state, in any form ("UCITA"), shall not apply to this License Agreement. To the extent that UCITA is applicable, the parties hereby opt out of the applicability of UCITA pursuant to the opt-out provision(s) contained therein. If Licensee acquires the Licensed Software in France, Germany or Japan, this License Agreement is governed by the laws of the country in which Licensee acquired the Licensed Software. In the rest of the world the laws of England govern this License Agreement. The aforesaid applicable law shall apply without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. Other than for North American transactions, this License Agreement, the licenses granted hereunder, and the parties hereto, shall be subject to the exclusive jurisdiction of the courts of the country determining the applicable law as aforesaid. In the event of a dispute, the prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorneys' fees incurred in enforcing this License Agreement.

This License Agreement is in addition subject to any United States, United Kingdom or European Union laws, regulations and other restrictions regarding export or re-export of computer software and technology. Licensee agrees not to export or re-export any Licensee Software or derivative thereof in contradiction to any such applicable restriction. In particular but without limitation, Licensee acknowledges that Licensor's products and/or technology are subject to the U.S. Export Administration Regulations (the "EAR") and Licensee agrees to comply with the EAR. Licensee will not export or re-export Licensor's products, directly or indirectly, to: (1) any countries that are subject to US or applicable export restrictions; (2) any end user who Licensee knows or has reason to know will utilize Licensor's products in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles,

and sounding rockets, or unmanned air vehicle systems; or (3) any end user who has been prohibited from participating in export transactions by any applicable agency of government. By downloading or using the Licensed Software, Licensee is agreeing to the foregoing and Licensee is representing and warranting that Licensee is not located in, under the control of, or a national or resident of any such country or on any such list.

Licensor may identify Licensee by name and/or logo as a licensee of Licensor for investor relations, analyst relations, and public relations purposes, and in online and printed sales and marketing materials. Any other use of Licensee's name or logo, or a description of Licensee's use of the Licensed Software, shall be subject to Licensee's prior consent. Within eight (8) weeks after installation of the Licensed Software, upon Licensor's written request Licensee will provide Licensor with input to a written description of Licensee's use of the Licensed Software including details of the business challenge, software solution, and results realised from the installation of the Licensed Software including details of the provided by a representative of Licensee (who is knowledgeable of the Licensed Software and its performance after installation) during a meeting with a representative of Licensor (at a reasonable time to be agreed by the parties). The meeting may be conducted by telephone. This input may be used internally within Licensor and in confidential sales situations. Any other use of this input shall be subject to Licensee's prior consent.

Except for the Product Order, this License Agreement is the complete and exclusive statement of agreement between the parties relating to the license for the Licensed Software and supersedes all proposals, communications, purchase orders, and prior agreements, verbal or written, including without limitation prior end user license agreements in relation to the Licensed Software between the parties and end user license agreements embedded in such Licensed Software. No employee, agent, or representative of Licensor has the authority to bind Licensor to any oral representation or warranty concerning the Licensed Software. No representation or statement not expressly contained in this License Agreement nor any supplement, modification, or amendment of this License Agreement will be binding on either party unless executed in writing by a duly authorized representative of Licensor and Licensee (excluding any distributor or reseller of Licensor) to this License Agreement. No waiver of any right under this License Agreement will be effective unless in writing, signed by a duly authorized representative of the party to be bound (excluding any distributor or reseller of Licensor). No waiver of any past or present right arising from any breach or failure to perform will be deemed to be a waiver of any future right arising under this License Agreement. If any provision in this License Agreement is invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this License Agreement will remain unaffected. Each party acknowledges that in entering into this License Agreement it has not relied on any representations, agreements, warranties or other assurances (other than those repeated in this License Agreement and the Product Order) and waives all rights and remedies which but for this section 17 would be available to it. Nothing in this section 17 excludes liability for fraudulent misrepresentation.

If Licensee is situated in Italy, by placing or executing a Product Order, Licensee declares to have read and to have explicitly approved the following clauses of the License Agreement: 5. Term of License, 6. Support and Maintenance, 7. Limited Warranty, 8. Disclaimer of Warranty, 9. Limitation of Liability, 10. High-Risk Uses, 16. Privacy, 17. Miscellaneous, Annex 1, and Annex 2.

ANNEX 1, LICENSE OPTIONS

DEFINITIONS

For this License Agreement, the following additional definitions shall apply:

- "Container" means an isolated user-space instance created using operating-system-level virtualization, also known as containerization. A program running inside a Container can only see the resources and devices assigned to the Container.
- "Platform" means a hardware chipset (e.g., PA-RISC, Itanium, x86, or SPARC) and operating system (e.g., Windows, Linux, Solaris, AIX, or HP-UX) combination.
- "Update" means the definition for such term set forth in Licensor's then current applicable standard annual support and/or maintenance agreement.
- "Upgrade" means any change in the licensed Platform for the Licensed Software or a successor product to the Licensed Software.
- "Virtual Machine" means a software implementation that can run its own operating system and execute programs like a physical machine where the software running inside the virtual machine is limited to the resources and abstractions provided by the virtual machine.

LICENSE OPTIONS

- 1. User License. Regardless of the type of user license, each copy of the Licensed Software contains (i) software that provides services on a computer called a server ("Server Software") and (ii) software that allows a computer or workstation to access or utilize the services provided by the Server Software ("Client Software"). For any type of user license acquired, Licensee may install one copy of the Server Software on a single computer (the computer running the Server Software shall be referred to as the "Server"). The number of Client Software copies that may be installed is determined by the type of license acquired as set forth below.
- (i) <u>Named User</u> A Named User license means Licensee may allow only one (1) designated person within Licensee ("Named User") to use the Licensed Software per Named User license purchased (each, a "Named User Licenses"). The foregoing Named User Licenses shall be for access and use, only by the equivalent number of Named Users licenses purchased. For each Named User, Licensee may install the Client Software on up to five (5) computers provided that the Named User is the only individual permitted to use the Licensed Software. Licensee may change a named end user provided that the change is made either (i) permanently, or (ii) temporarily to accommodate the use of the Licensed Software by a temporary worker while the named end user is absent, but in each case no more than once every 30 days.
- (ii) <u>Concurrent User</u> A Concurrent User Licensee means Licensee may install the Client Software on a reasonable number of computers or machines, provided that the Licensed Software is used only by as many concurrent users at any given moment in time as Licensee has purchased concurrent licenses. The foregoing license shall be for access and use, only by the equivalent number of concurrent users for whom Licensee has paid the applicable license fees. As used in this Section, use or in use means that the Licensed Software is "in use" on a computer or machine when it is loaded into random access memory (RAM) of that computer and "access" means the ability to use, copy or operate the Licensed Software.

(iii) Virtual User (Silk Performer only) A "Virtual User" represents a simulation of a particular individual user executing a transaction or sequence of operations. Virtual Users are further qualified by class, and may be licensed on either a Node-Locked or Concurrent User basis. If a Virtual User is licensed on a Node-Locked basis (as provided below) ("Node-Locked Virtual User License"), that Virtual User may be associated with a Multi-Machine Controller ("MMC") component of the Licensed Software only on the particular system for which the Virtual User is licensed. If a Virtual User is licensed on a Concurrent User basis (as provided below) ("Concurrent Virtual User License"), then that Virtual User may be associated with any licensed instantiation of a MMC at any one time, but during the operation of that instantiation, may not be associated with any other instantiation of a MMC at the same time. By way of example; if 50 Virtual Users are licensed on a Concurrent User basis, Licensee may simultaneously associate all 50 with one MMC instantiation; or simultaneously may associate 20 with one MMC instantiation and 30 with a second MMC instantiation; but could not, for example, simultaneously associate 30 with each of the two MMC instantiations. A "Web Virtual User" is a Virtual User limited to performing actions in basic web-based applications making use of the common web protocols set forth in the accompanying release notes. A "Standard Virtual User" is a Virtual User that has all of the rights of a Web Virtual User, and that may additionally make use of certain client-server, database and other protocols as set forth in the accompanying release notes. A "Premium Virtual User" is a Virtual User that has all of the rights of a Standard Virtual User, and that may additionally make use of certain protocols for packaged third-party applications and complex enterprise technologies as set forth in the accompanying release notes. Node-Locked Virtual User Licenses and Concurrent Virtual User Licenses are available for the MMC and Service Analysis Module ("SAM") component of the Licensed Software. A Node Locked Virtual User License means Licensee may use the Licensed Software in object code form on a production basis on one (1) computer and to permit the Licensed Software to be used and accessed at any one time by no more than the number of users indicated in the applicable Product Order (each a "Node Locked User"). If no number is indicated, the number shall be 1. A Concurrent Virtual User License means the same as the Concurrent User license option above.

2. Site License. If the applicable Product Order states that the Licensed Software is licensed on a site basis, such Licensed Software may be installed and used solely on a single machine or server with any number of internal processors which are capable of executing the Licensed Software at the physical address specified in the applicable Product Order for use by validly licensed users of the applicable Silk product.

ANNEX 2, SPECIFIC SOFTWARE TERMS

Additional Restrictions. Licensee agrees not to:

- 1. Copy and/or distribute the Licensed Software, in whole or in part, to third parties, or use the Licensed Software for the benefit of any third party, or permit use or access by any third party to all or part of the Licensed Software without first paying Licensor any applicable additional fees required by Licensor and entering into a separate distribution license agreement with Licensor. For the avoidance of doubt, third party(ies) include without limitation contractors, outsourcers, Licensee's customers and the public.
- Transfer, ship or use the Licensed Software outside the continent in which it was originally licensed to Licensee without first paying Licensor any applicable additional fees required by Licensor. For purposes of the foregoing, "continent" shall mean North America, South America, Europe, Africa, Asia, Australia, or Antarctica.
- Install, access or use the Licensed Software on a Platform other than the Platform for which the Licensed Software was originally licensed to Licensee. Additional licenses for use of the Licensed Software on a Platform other than the one set forth in the applicable Product Order may be available upon payment of an additional license fee.
- Assign, sell, rent, lease, lend, sublicense, outsource or otherwise transfer the Licensed Software to any third party, or authorize or appoint any third party to do so, or otherwise allow a third party to directly or indirectly use or access the Licensed Software, without Licensee first paying Licensor the applicable additional fees required by Licensor.

SILK METER. Silk products may include, come with, or otherwise utilize a separate component called Silk Meter for monitoring authorized use, including the policy files and license keys required to use the Licensed Software. Notwithstanding any contrary applicable terms and conditions for the Licensed Software, Silk Meter may be installed on a single-specified computer system at the specific site for which Licensee has contracted (the "Designated System"). Silk Meter, or any part thereof, may not be transferred from the Designated System. Regardless of the installation of Silk Meter, Licensee must remain compliant with the terms and conditions in this License Agreement (including without limitation any license restrictions and number of users permitted pursuant to this License Agreement).

<u>SILK CENTRAL, SILK TEST, SILK PERFORMER</u>. The only license type for this Licensed Software that may be used in a Virtual Machine is the concurrent user license type.

SILK PERFORMER. This Licensed Software may be installed on a reasonable number of Licensee computer systems. Licensee may use the Multi-Machine Controller (also referred to as "Workbench") ("MMC") component and related load-test agents on an unlimited number of machines for an unlimited number of users, but solely in connection with the use of Silk Performer in accordance with the number, type and class of licenses purchased. Premium Virtual User Licenses for Silk Performer, when ordered in any quantity, include a single Named User limited license to use Silk Test (the "Additional Product") solely to create an unlimited amount of GUI Virtual User scripts. The Additional Product may be used ONLY in conjunction with the Premium Virtual User Licenses of Silk Performer and may not be used or transferred on a stand-alone basis. Incremental use of any Additional Product beyond the single Named User license, or stand-alone use, must be licensed and paid for separately.

<u>SILK PERFORMER ADD-ONS</u>. Certain add-on products for Silk Performer, such as the Server Analysis Module and Explorers, are licensed on a Concurrent or Node-Locked basis. Concurrent licenses shall be licensed per the Concurrent User license terms for Silk Performer. With respect to a Node-Locked license, the Client Software may only be installed on one machine per license.

<u>SILK PERFORMANCE MANAGER</u>. This product is licensed by execution server. A license must be purchased for each execution server concurrently in use.

<u>SILK CENTRAL.</u> In the case of any plug-ins for this Licensed Software, such plug-ins may not be used without a valid license to use the Licensed Software, and shall be governed by the same terms and conditions as Licensee's license to use the Licensed Software.

<u>SILK CENTRAL SAP INTEGRATION HUB.</u> This product is licensed by Instance. An instance license is required for each Instance of the Licensed Software. "Instance" means the initial copy of the Licensed Software necessary for execution of the Licensed Software and each additional copy (or partial copy) of the Licensed Software stored or loaded in memory or virtual memory.

<u>SILK TEST AGENT</u>. The Silk Test Agent component of Silk Test may be available for separate download as a Container. Licensee may only use such Silk Test Agent component with a valid license for Silk Test subject to the terms of this License Agreement.

<u>Cloud Portal</u>. Certain Silk products may be used in conjunction with related cloud-based services made available by Licensor via Licensor's online portal designated for such services ("Cloud Portal" or "Build Portal"). Such use will be subject to Licensor's standard terms and conditions for such services, and limited to the number of instances, agents, virtual users, or other applicable use metric purchased by Licensee for use with the Cloud Portal.

<u>Multiplexing software</u>. The use of one or more external tools, including multiplexors or replicators, to reduce the number of users directly connected to the Licensed Software shall not exempt Licensee from acquiring licenses for all users. For example, use of multiplexing or connection pooling software or hardware to reduce the number of users directly connected to the Licensed Software, the number of Named Users or Concurrent Users within Licensee using the Licensed Software shall be measured as the number of distinct inputs to the multiplexing or connection pooling front end and Licensee shall purchase the equivalent number of Named User or Concurrent User Licenses. If Licensee uses replicator software, Licensee may not use the Licensed Software or share licenses in any way not explicitly provided for in this License Agreement.

<u>APIs.</u> Any user of any third party application that calls any Licensed Software application programming interfaces ("Product APIs") must have a valid license to connect to the Licensed Software. Licensee shall not, and shall not allow others, to reverse engineer, decompile, or disassemble the Product APIs. Commercial distribution of any products that include Product APIs requires a separate distribution license and such license is not granted by this License Agreement.

<u>Runtime licenses</u>. Runtime licenses may only be installed on one operating system instance per license for use by the licensed users of the corresponding Silk product.

Evaluation License. An evaluation license gives Licensee a term license to use the Licensed Software within Licensee during the evaluation term specified in writing by Licensor, solely for evaluation and testing purposes on a single computer system and not for development, commercial, or production purposes. Licensee may not reproduce or distribute the Licensed Software. Licensee's results of benchmark or other performance tests run on or using the Licensed Software may not be disclosed to any third party without Licensor's prior written consent. At any time during the evaluation term or upon completion thereof, Licensee may, upon written notification to Licensor and payment of the applicable license fee, replace the evaluation license with a license to use the Licensed Software pursuant to one of the other applicable options listed in Annex 1. In the absence of such notification by Licensee, the evaluation license shall automatically terminate at the end of the evaluation term and Licensee shall return, or, if Licensor so directs, delete and destroy all such Licensed Software and provide Licensor with written confirmation of such deletion and destruction being completed. Licensor may, in its sole discretion, grant Licensee an extension to the evaluation term subject to receiving a written request and reasons for such request from Licensee prior to expiration of the evaluation term. Licensor will specify any such agreed extension in writing to Licensee. Licensed Software provided by Licensor free of license fee charge shall be deemed to be an evaluation license unless otherwise agreed in writing. In the absence of any contrary period specified in writing by Licensor, the evaluation term shall be deemed to be thirty (30) days. In relation to any evaluation license, this section shall prevail over any contrary provisions set forth in this License Agreement.

Notice Regarding Collection of Telemetry Data. The Licensed Software will collect statistical data on how the product is used on an anonymous basis for purposes of product improvement. This data will not (i) include any passwords, scripts, or data files, (ii) be associated with Licensee or any particular entity, or (iii) include any personally identifiable information or be used to identify individuals utilizing the Licensed Software. By entering into this License Agreement, Licensee expressly consents to the collection of this data in this manner. The Licensed Software may contain a setting option to allow Licensee to "opt-out" of the foregoing data collection, and if so, no such data will be collected if Licensee has toggled such setting to disable data collection.

All-or-None Support and Maintenance. Where Licensee purchases support and/or maintenance for the Licensed Software, Licensee hereby agrees that it shall purchase such support and/or maintenance services for all of Licensee's licensed units of such Licensed Software including all related development and deployment product licenses.

<u>Updates and Upgrades</u>. Upon delivery to Licensee of any Update and/or Upgrade, the license granted to such prior version and/or release being updated or upgraded shall terminate and must be permanently de-installed and destroyed after a ninety (90) day transition period from such delivery and only the license to such Update or Upgrade shall continue unless (i) Licensee has paid to Licensor the applicable additional fees required by Licensor to use both versions, or (ii) in the case of an Update that is provided to Licensee at no additional charge from Licensor pursuant to support and/or maintenance for which Licensee has separately contracted, Licensee provides written notice to Licensor during the aforementioned transition period of its election not to use the Update but instead remain with the prior version and Licensee's deinstallation and destruction of such Update.

<u>Editions</u>. Any reference to a Licensed Software product in this License Agreement shall also apply to such products various editions or variants except where otherwise specifically stated. For example, the terms and conditions applicable to Silk Test also apply to Silk Test Premium.

Bundles/Suites. If the Licensed Software is licensed as part of a bundle or suite of multiple products, and the applicable Product Order specifies the License Option and license count for the bundle or suite (but not the individual product components of the bundle or suite), then each product in the suite or bundle shall share such license type and count.

<u>Academic Editions/Users</u>. Where Licensed Software is licensed under Licensor's Academic Program, in addition to the above terms and conditions:

- (i) Licensee shall not use the Licensed Software for any purpose other than for non-commercial education or academic research activities.
- (ii) Licensee shall not copy the Licensed Software, nor shall Licensee distribute, transfer or assign the Licensed Software without specific permission from Licensor.

(iii) License management: If Licensee is the academic institution using the Licensed Software for teaching purposes, Licensee will manage all student licenses through a license server provided by Licensor in accordance with guidelines provided by Licensor. Licensee agrees to provide reports describing the number of licenses Licensee has issued in each period upon Licensor's request.

Personal Edition Products.

- (i) Licensee shall not use the Licensed Software for any purpose other than for personal educational and non-commercial activities. The Licensed Software may not be used for training or teaching purposes.
- (ii) Licensee shall not copy the Licensed Software, nor shall Licensee distribute, transfer or assign the Licensed Software without specific permission from Licensor.

Java. The Licensed Software may contain or require Licensee to separately obtain the Java™ Platform, Standard Edition Runtime Environment (JRE), and in such event any use of the JRE shall be governed by the license agreement accessible at http://www.oracle.com/technetwork/java/javase/terms/license/index.html. Use of the Commercial Features for any commercial or production purpose requires a separate license from Oracle. "Commercial Features" means those features identified Table 1-1 (Commercial Features SĖ Product Editions) of the Java SE documentation Java http://www.oracle.com/technetwork/java/javase/documentation/index.html. Licensee may not create, modify, or change the behavior of, classes, interfaces, or subpackages that are in any way identified as "java", "javax", "javax", "sun", "oracle" or similar convention as specified by Oracle in any naming convention designation.

PRE-EXISTING LICENSES. FROM COMMENCEMENT OF THIS LICENSE AGREEMENT, IF THE LICENSED SOFTWARE SUBJECT TO THIS LICENSE AGREEMENT IS THE MOST CURRENT VERSION OF THE LICENSED SOFTWARE LICENSED BY LICENSEE, THE "LICENSED SOFTWARE" SHALL ALSO INCLUDE, AND THIS LICENSE AGREEMENT SHALL APPLY TO, ANY PRE-EXISTING LICENSES FOR ANY EARLIER VERSION OF THE LICENSED SOFTWARE LICENSED BY LICENSEE AND REPLACE ANY PRIOR END USER LICENSE AGREEMENTS APPLICABLE THERETO ("PRIOR EULA(S)"). NOTWITHSTANDING THE FOREGOING, IF THE EARLIER VERSION INCLUDES DIFFERENT COMPONENTS, ANY TERMS SPECIFICALLY APPLICABLE TO THOSE COMPONENTS IN THE APPLICABLE PRIOR EULA SHALL CONTINUE TO APPLY TO SUCH COMPONENTS.

ENDS