

## END USER LICENSE AGREEMENT

### FORM AGREEMENT

### End User License Agreement

SKYFOUNDRY, LLC ("SKYFOUNDRY") HAS DEVELOPED A SOFTWARE APPLICATION FOR MANAGING, MANIPULATING AND ANALYZING DATA COMMERCIALY KNOWN AS "SKYSPARK." SKYFOUNDRY IS WILLING TO PROVIDE A LIMITED LICENSE OF THE SOFTWARE THAT ACCOMPANIES THIS END USER LICENSE AGREEMENT TOGETHER WITH THE PRINTED OR ONLINE DOCUMENTATION FURNISHED BY SKYFOUNDRY IN CONJUNCTION WITH IT TO YOU ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS IN THIS AGREEMENT. PLEASE READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY BEFORE CLICKING ON THE "I ACCEPT" BUTTON.

BY ACCEPTING THE EULA AS PART OF THE INSTALLATION PROCESS YOU ACKNOWLEDGE THAT YOU HAVE READ AND ACCEPTED THIS AGREEMENT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. SUCH ACCEPTANCE IS EITHER ON YOUR OWN BEHALF, OR ON BEHALF OF ANY CORPORATE ENTITY WHICH EMPLOYS YOU OR WHICH YOU REPRESENT ('CORPORATE LICENSEE'). IN THIS LICENSE AGREEMENT, "YOU" INCLUDES ANY CORPORATE LICENSEE. YOU AGREE THAT THIS AGREEMENT IS AS ENFORCEABLE AS ANY WRITTEN NEGOTIATED AGREEMENT MANUALLY SIGNED BY YOU AND THAT BY CLICKING ON THE "I AGREE" BUTTON BELOW OR ANY OTHER BUTTON EXPRESSING YOUR AGREEMENT TO THE TERMS HEREIN, YOU ARE PROVIDING YOUR ELECTRONIC SIGNATURE TO THIS AGREEMENT. CLICK ON THE "DO NOT ACCEPT" BUTTON TO DISCONTINUE THE INSTALLATION PROCESS. THE ACCEPTANCE OF THIS AGREEMENT IS REQUIRED FOR USE OF THE SOFTWARE.

#### 1. LICENSE GRANTS AND RESTRICTIONS.

1.1 The rights, restrictions and obligations shall apply to all purchasers of SKYSPARK software hereunder, regardless of the software product purchased (whether the standard SKYSPARK end user software or the SKYSPARK License authorized for use in SaaS applications (separately or collectively, as applicable, the "Software"), except as may be expressly provided in this Agreement.

1.1.1 Standard SKYSPARK End User License ONLY. If you are purchasing a standard SKYSPARK end user license, then, subject to the terms and conditions contained herein, SKYFOUNDRY hereby grants you a non-exclusive, limited license to install, use and execute a single copy of the Software on a single personal computer or server, which is identified by serial number or other means during the installation process (the "Designated System"), and to use the documentation furnished by SKYFOUNDRY in conjunction with it, solely for your internal business use.

- 1.1.2 SKYSPARK SaaS License ONLY. If you are purchasing the SKYSPARK SaaS Authorized License, then, subject to the terms and conditions contained herein, SKYFOUNDRY hereby grants to you a non-exclusive, limited license to install, use and execute a single copy of the Software on a single personal computer or server for the Designated System, and to use the documentation furnished by SKYFOUNDRY in conjunction with it, for your internal business use and in connection with commercial purposes and uses, including without limitation providing services to your customers, such as hosting the copy of the Software on your server to offer “Software as a Service” services.
- 1.2 Restrictions. You may transfer and use the Software on a backup computer system you own or lease if, and only for so long as, the Designated System is (i) inoperative or (ii) unavailable due to regularly scheduled maintenance, upon issuance by SKYFOUNDRY of a backup license key. For purposes of this Agreement, the “Software” shall be deemed to include the application program interfaces (“APIs”), and related source code, as well as source code for the purposes of creating, editing, producing or making rules, relevant databases or analytic libraries or similar applications for use in connection with the Software (the “Example Code”) and software owned by third parties (“Third Party Software”) that are provided to you along with the SkyFoundry SKYSPARK software. You may create derivative works of the Example Code solely for the purposes set forth in this Section 1.1, and shall have the right to modify, enhance, adapt, or translate the Example Code for such purposes.
- 1.3 No Other Rights Granted. Apart from the license expressly granted herein, no license or other right is granted by SKYFOUNDRY to you under this Agreement, either directly or by implication, estoppel, or otherwise (including, but not limited to, the right to prepare derivative works of the Software). You shall have no right or access to the source code of the Software other than the source code, if any, for certain application program interfaces and Example Code that are included with the Software. All rights not specifically granted to you in this Agreement are reserved by SKYFOUNDRY.
- 1.4 Rights for Purchasers of SKYSPARK SaaS Authorized Licenses Conditioned Upon Maintenance Agreement and Payments. If you are purchasing the SKYSPARK License authorized for SaaS use, then the rights granted to you, and SKYFOUNDRY’s obligations, under this Agreement are conditioned upon (1) the prior execution of a separate maintenance agreement with respect to the Software (“Maintenance Agreement”) by both you and SKYFOUNDRY or its designee; and (2) timely payment of annual maintenance fees (“Annual Maintenance Fees”) under the Maintenance Agreement. For the avoidance of doubt, failure to timely pay the Annual Maintenance Fees under the Maintenance Agreement shall be deemed a material breach of this Agreement, which may result in termination of this Agreement under Section 10.2 herein, regardless of whether such nonpayment is deemed a breach of the Maintenance Agreement.
2. **YOUR RESPONSIBILITIES**. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, YOU SHALL (I) USE ALL COMMERCIALY REASONABLE EFFORTS TO ENSURE THAT YOUR EMPLOYEES COMPLY WITH THE TERMS

OF THIS AGREEMENT; (II) NOT MODIFY, ENHANCE, DECRYPT, EXTRACT, ADAPT, TRANSLATE, ALTER, DELETE, DISASSEMBLE, DECOMPILE OR OTHERWISE REVERSE ENGINEER THE SOFTWARE OR ANY PART THEREOF, OR ANY APPLICATION ENABLER OR GRANT ANY OTHER PERSON OR ENTITY THE RIGHT TO DO SO OR TAKE ANY ACTION THAT WOULD ASSIST ANY OTHER PERSON OR ENTITY IN DOING SO AND WILL PROMPTLY NOTIFY SKYFOUNDRY OF ANY INFORMATION THAT ANY OTHER PERSON OR ENTITY IS OR IS ATTEMPTING TO COPY, REVERSE ENGINEER, DISASSEMBLE, DECOMPILE, TRANSLATE OR MODIFY THE SOFTWARE ; (III) NOT INSERT, DELETE, REPLACE, CHANGE OR OTHERWISE ALTER ANY FILES IN THE SOFTWARE OR APPLICATION ENABLER; (IV) NOT MODIFY, CHANGE, PREPARE DERIVATIVE WORKS OF OR OTHERWISE ALTER ANY BINARY CODE FILES INCLUDED WITH THE SOFTWARE; (V) NOT LOAN, RENT, LEASE, GIVE, SUBLICENSE, TRANSFER, PUBLISH, DISCLOSE, DISPLAY, PROVIDE ACCESS TO, OR OTHERWISE MAKE AVAILABLE THE SOFTWARE, IN WHOLE OR IN PART, TO ANY OTHER THIRD PARTY OR ENTITY, PROVIDED THAT, FOR PURCHASERS OF THE SKYSPARK BASE LICENSE ONLY, YOU MAY PROVIDE ACCESS TO THE OBJECT CODE OF THE SOFTWARE TO YOUR CUSTOMERS (WITH NO RIGHT TO SUBLICENSE), AS LONG AS SUCH PERMITTED USAGE SHALL NOT OTHERWISE VIOLATE THE TERMS OF THIS AGREEMENT AND YOU SHALL BE SOLELY RESPONSIBLE FOR, AND INDEMNIFY, DEFEND AND HOLD SKYFOUNDRY HARMLESS FROM, ANY SUCH USAGE; (VI) NOT MODIFY ANY APPLICATION PROGRAMMING INTERFACE, INCLUDING MODIFYING ANY APPLICATION PROGRAMMING INTERFACE BY CREATING ADDITIONAL CLASSES WITHIN ANY INTERFACE OR OTHERWISE CAUSING THE ADDITION TO OR MODIFICATION OF THE CLASSES IN AN INTERFACE, (VII) NOT INCORPORATE ANY CODE INCLUDED WITH THE SOFTWARE OR ANY DOCUMENTATION IN ANY DEVELOPER PRODUCT, AND (VIII) OBTAIN AND MAINTAIN, AT YOUR OWN EXPENSE, ALL COMPUTER HARDWARE, SOFTWARE, AND OTHER COMMUNICATION EQUIPMENT NECESSARY TO USE THE SOFTWARE.

In addition to the foregoing, if you have purchased a Subscription License (defined below), you agree that you shall maintain at all times an active Internet connection to skyfoundry.com for the Software. Failure to maintain such Internet connection may result in deactivation of the Software or termination of this Agreement by SKYFOUNDRY.

### **3. TECHNICAL SUPPORT, SOFTWARE MAINTENANCE AND TRAINING.**

- 3.1 Neither SKYFOUNDRY nor any of its affiliates, distributors or resellers shall have any obligation to provide technical support, training or software maintenance services to you in connection with the Software, except as may be provided under a separate agreement between any such party and you.
- 3.2 If you are purchasing a standard SKYSPARK end user license, then you may purchase maintenance services for the Software from SKYFOUNDRY or its resellers under a separate Maintenance Agreement.

3.3 Any maintenance services may include providing you with regular updates, software corrections, bug fixes, and new functionality to the Software, which may include service packs to correct defects and add functionality (collectively, "Updates"). Any such Updates provided to you are and shall remain the exclusive property of SKYFOUNDRY. Such Updates shall be considered Software, and subject to the terms and conditions in this Agreement. Notwithstanding the foregoing, if you have purchased a Subscription License, all maintenance costs are incorporated into the Recurring Charges (defined below) paid for the Subscription License.

4. **FEES.** The license fees paid by you to SKYFOUNDRY or its designee are paid in consideration of the rights granted under this Agreement.

4.1 Non-Subscription Payments. Other than payments for a Subscription License (defined below), the payment of license fees shall be in the manner and at the time required by SkyFoundry.

4.2 Subscription License Payments. If you have purchased a subscription license for the Software that is billed on a monthly basis ("Subscription License"), you may be charged an initial set up fee along with a monthly charge ("Recurring Charge") for use of the Software. Recurring Charges are billed on the 15<sup>th</sup> of each month, which charges may be based upon your usage of the Software during the previous month or other factors as SKYFOUNDRY may determine, in its sole discretion, and which are disclosed to you before such charges are incurred. Payment of Recurring Charges shall be due within thirty (30) days of the billing date. If you fail to make any payment when due pursuant to this Agreement, there will be a service charge of one and one-half percent (1 1/2%) per month of the total amount due or the maximum legal interest rate allowed by law, whichever is less. There are no refunds or credits for unintended use of capacity. You are responsible for the payment of any taxes assessed in connection with payments due under this Agreement, except for any tax based solely on the SKYFOUNDRY's net income.

4.2.1 Termination of Recurring Charges. Recurring Charges will cease upon deactivation of the Software and/or termination of this Agreement. You will still be responsible for any Recurring Charges incurred prior to the Software deactivation or termination of this Agreement.

4.2.2 Fee Changes. SKYFOUNDRY may change the initial set up and Recurring Charges for the Subscription License from time to time, and such changes shall be communicated to you. Such fee changes for Subscription Licenses will take effect at the beginning of the next subscription period following the date of the fee change. By continuing to use the Software after such fee(s) change takes effect, you accept and agree to pay the new fee(s).

4.2.3 Deactivation for Non-Payment. Failure to timely pay Recurring Charges may result in deactivation of the Software or termination of this Agreement by SKYFOUNDRY, in SKYFOUNDRY's sole discretion. In the event of deactivation for non-payment, you will be required to obtain a new license account to re-activate the Subscription License after deactivation.

5. **OWNERSHIP AND CONFIDENTIALITY.**

- 5.1 Ownership by SKYFOUNDRY. SKYFOUNDRY retains all right, title and interest in and to the Software (and any portions thereof), other than Third Party Software. You acknowledge that the Software uses trademarks, copyrights, trade secrets and other proprietary material the rights to which are owned or licensed by SKYFOUNDRY, its affiliates, third party licensors or suppliers, and that such proprietary rights are protected by law, including U.S. copyright laws, patent laws and international treaty provisions. You shall not have or obtain any right, title, or interest to the Software except as provided in this Agreement, and further shall secure and protect the Software consistent with the maintenance of SKYFOUNDRY's proprietary rights therein. You agree that you shall not contest or challenge, or take any action inconsistent with or that may damage or impair SKYFOUNDRY's ownership or rights in and to the Software, and further that you shall not contest or challenge, or take any action inconsistent with, or that may damage or impair the ownership or intellectual property rights of, SKYFOUNDRY in the Software, or of SKYFOUNDRY's licensors with respect to the Third Party Software. You shall not use the Software except as is expressly authorized in this Agreement.
- 5.2 Confidentiality. You acknowledge that the Software contains valuable trade secrets of SKYFOUNDRY and you agree to use your best efforts to maintain the confidentiality of the Software using at least the same degree of care that you use with your own confidential information, but no less than reasonable care. Notwithstanding any provision of this Agreement to the contrary, this Section 5.2 shall not supercede any separate confidentiality or nondisclosure agreement you may have entered into with SKYFOUNDRY related to the Software.
- 5.3 Third-Party Code. Additional copyright notices and license terms applicable to portions of the Software are set forth in the readmeLicenses.txt file provided with the Software. In addition to any terms and conditions of any third-party open source/freeware license identified in the readmeLicenses.txt file, the disclaimer of warranty and limitation of liability provisions contained below in paragraph 6 of this Agreement shall apply to all third party code or software contained in the Software.

## **6. WARRANTIES AND LIMITATIONS.**

- 6.1 Disclaimer of Software Warranty. THE SOFTWARE IS LICENSED "AS IS" AND YOU RECEIVE NO ADDITIONAL EXPRESS OR IMPLIED WARRANTIES. SKYFOUNDRY AND ITS SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL OTHER WARRANTIES OF ANY KIND OR NATURE CONCERNING THE SOFTWARE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF TITLE, MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INFRINGEMENT OR THE RESULTS TO BE OBTAINED FROM USE, TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW. SKYFOUNDRY EXPRESSLY DISCLAIMS ANY WARRANTIES THAT MAY BE IMPLIED FROM USAGE OF TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE. FURTHER, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SKYFOUNDRY MAKES NO WARRANTIES OR REPRESENTATIONS AS TO PERFORMANCE OF THE SOFTWARE, AND

SPECIFICALLY DISCLAIMS ANY WARRANTY THAT (1) THE SOFTWARE WILL OPERATE IN COMBINATION WITH OTHER ITEMS, EQUIPMENT, SOFTWARE, SYSTEMS OR DATA EXCEPT, (2) THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, OR (3) ERRORS IN THE SOFTWARE, IF ANY, WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SKYFOUNDRY, OR ITS AGENTS OR EMPLOYEES SHALL CREATE OR FORM THE BASIS OF ANY WARRANTY OF ANY KIND. THE SOFTWARE IS PROVIDED WITH ALL FAULTS AND THE ENTIRE RISK OF SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH YOU.

- 6.2 Limitation of Liability. IN NO EVENT SHALL SKYFOUNDRY, ITS AFFILIATES, SUPPLIERS OR THIRD PARTY LICENSORS, OR THEIR RESPECTIVE MEMBERS, OFFICERS, DIRECTORS, SHAREHOLDERS, AGENT, EMPLOYEES, REPRESENTATIVES, SUCCESSORS AND ASSIGNS BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR PENALTIES (INCLUDING DAMAGES FOR LOST PROFITS, LOST BUSINESS, LOST DATA, BUSINESS INTERRUPTION, AND THE LIKE), HOWEVER IT ARISES, INCLUDING, BUT NOT LIMITED TO, THE USE BY YOU OF THE SOFTWARE, WHETHER FOR BREACH OF CONTRACT OR IN TORT, EVEN IF SKYFOUNDRY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 6.3 Limitation of Remedies. NOTWITHSTANDING ANY TERM OR PROVISION TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL SKYFOUNDRY'S MONETARY LIABILITY IN CONNECTION WITH THIS AGREEMENT OR THE SOFTWARE, TO YOU EXCEED \$100.00.
7. **ASSURANCES BY YOU.** There can be no assurances whatsoever that control systems such as the Software will protect any individual or his or her property from harm. Appropriate safety precautions must always be taken when reacting to information generated by software in connection with the operation or maintenance of equipment connected to the Software. SKYFOUNDRY ASSUMES NO RESPONSIBILITY OR LIABILITY FOR ANY INJURY OR DAMAGE TO ANY PERSONS OR PROPERTY RESULTING FROM THE USE BY YOU OF THE SOFTWARE. Further, you represent and warrant that you will take appropriate precautions, establish appropriate procedures and post appropriate notices to ensure that persons and property are not harmed in the event of an error, malfunction or unexpected operation of the Software.
8. **HIGH RISK APPLICATIONS.** You will make reasonable business efforts to ensure that the Software is not used in any application in which the failure of the Software could lead to death, personal injury or severe physical or property damage, including, without limitation, environmental damage, (collectively, "High-Risk Applications"), including but not limited to the operation of nuclear facilities, mass transit systems, aircraft navigation or aircraft communication systems, air traffic control, weapon systems and direct life support machines, unless otherwise permitted by SKYFOUNDRY in writing. Without limiting any disclaimer of any express or implied warranty under this Agreement, SKYFOUNDRY expressly disclaims any express or implied warranty or condition of fitness of the Software for High-Risk Applications.

**9. INDEMNIFICATION.** You shall indemnify and hold harmless SKYFOUNDRY, its affiliates, suppliers or third party licensors, or their respective members, officers, directors, shareholders, agent, employees, representatives, successors and assigns, from and against all losses, claims, damages or other causes of any nature or kind whatsoever (including reasonable attorney's fees) arising directly or indirectly out of third party claims concerning (i) a breach of any of your obligations, covenants, representations or warranties contained herein (including, without limitation if you are purchasing the SKYSPARK SaaS Base License, any breaches caused by your customers); (ii) your selection of, transactions and/or agreements with any party that is a SKYFOUNDRY reseller or distributor, systems integrator or trainer, or any other third party; (iii) any derivative work or product developed by you that is based on the APIs or Example Code, as permitted under this Agreement; (iv) any combination of the Software, or any component of it, with any product, equipment, device, software, hardware, system, data or other technology not supplied by SKYFOUNDRY, (v) the negligence or intentional misconduct of you or your officers, employees, agents, contractors or customers, or (vi) any property or economic damages or personal injury or death arising from or related to the use of the Software. You agree not to interpose any cross-claim, third party claim or similar claim against SKYFOUNDRY based on a claim, suit, action or proceeding threatened or commenced against you related to the Software and arising out of any matter other than a matter, if any, for which SKYFOUNDRY has agreed to indemnify you under a separate agreement signed by SKYFOUNDRY.

## **10. TERM AND TERMINATION.**

10.1 Term. This Agreement is effective upon your clicking the "I Agree" button, or other button expressing your agreement to the terms herein, and shall continue until terminated.

10.2 Termination. You may terminate this Agreement at any time by deactivating the Software or by providing written notice of termination to SKYFOUNDRY and returning the Software and all copies and extracts to SKYFOUNDRY. SKYFOUNDRY may terminate this Agreement upon a material or continuing breach of this Agreement by you by the giving of 30 days prior written notice of termination, stating the cause therefore, with termination becoming effective at the close of said 30-day term if the breach is not then cured to the satisfaction of SKYFOUNDRY. Notwithstanding the foregoing, if you have purchased a Subscription Agreement, SKYFOUNDRY may terminate this Agreement immediately, in its sole discretion, without notice to you if you fail to timely pay any Recurring Charges.

10.3 No Refunds. Notwithstanding the reason for termination of this Agreement by you or SKYFOUNDRY, under no circumstances will SKYFOUNDRY be obligated to provide any refunds of any portion of any amounts paid by you in connection with this Agreement or the Software.

10.4 Survival. All provisions of this Agreement that by their nature are intended to survive the termination of this Agreement shall so survive.

## **11. TRADEMARKS AND PROPRIETARY NOTICES.**

- 11.1 For Purchasers of the Standard SKYSPARK End User License. If you are purchasing a standard SKYSPARK end user license, then under no circumstances may you use any trademark or service mark of SKYFOUNDRY to identify, or otherwise in connection with, goods or services provided by you except as expressly agreed to by SKYFOUNDRY in writing.
- 11.2 For Purchasers of the SKYSPARK SaaS Base License. If you are purchasing the SKYSPARK SaaS Base License, then SKYFOUNDRY hereby grants to you a non-exclusive, nontransferable right to use the registered or unregistered trademarks, service marks, trade names, logos, or other similar items of SKYFOUNDRY (the "SKYFOUNDRY Trademarks") that SKYFOUNDRY may communicate to you from time to time solely in connection with the marketing, advertising, and promotion of the Software as it may be used in the services provided to customers by you during the term of this Agreement. You agree to use the SKYFOUNDRY Trademarks only in the form and manner as prescribed from time to time by SKYFOUNDRY (including without limitation in any trademark usage and quality control guidelines), and will not use any other trademark or service mark in combination with the SKYFOUNDRY Trademarks without the prior consent of SKYFOUNDRY. You agree and acknowledges that the services provided under the SKYFOUNDRY Trademarks shall be of a quality that is consistent with the quality of such services as provided by SKYFOUNDRY and that SKYFOUNDRY has the right to monitor and control the quality of such services provided by you. You agree that SKYFOUNDRY is the sole and exclusive owner of the SKYFOUNDRY Trademarks and you shall not use any SKYFOUNDRY Trademarks in any business, corporate or trade name and shall not directly or indirectly attempt to adopt, use or register any mark that is confusingly similar to the SKYFOUNDRY Trademarks, or contest or deny the validity or enforceability of the SKYFOUNDRY Trademarks, or otherwise take any action that could be detrimental to the goodwill associated with the SKYFOUNDRY Trademarks. Any and all goodwill arising from your use of the SKYFOUNDRY Trademarks shall inure solely to the benefit of SKYFOUNDRY.
- 11.2.1 Promotion of the Software. You shall not produce or disseminate any marketing materials that state that you are the manufacturer of the Software or that you have any ownership rights in the Software. In addition, in any written materials supporting any advertising, mailing, or other promotions undertaken by you, you shall prominently display a notice of SKYFOUNDRY's ownership of the SKYFOUNDRY Trademarks.
- 11.2.2 Marketing Materials. You shall be solely responsible for developing marketing materials, subject to SKYFOUNDRY's prior written approval, and for bearing all of its own costs of advertising and promoting the Software. Prior to the first distribution of any marketing materials, you shall provide to SKYFOUNDRY, and obtain SKYFOUNDRY's approval of, copies of all proposed marketing materials, including but not limited to, all print material and web site content. SKYFOUNDRY shall not unreasonably withhold such approval and shall grant or deny approval of such marketing materials within five (5) Business Days after receipt of such marketing materials from you. Failure by SKYFOUNDRY to respond to you within five (5) Business Days after receipt of such marketing materials from you for approval shall constitute approval of such marketing materials.



- 11.2.3 Your Trademarks. Subject to SKYFOUNDRY's right of approval of marketing materials using the SKYFOUNDRY Trademarks, you may place your trademarks on such marketing materials. you shall obtain such approval prior to the first sale of any Software and thereafter when proposing to make any material changes to the marketing materials previously approved under this Section 11.2.
- 11.2.4 Actions upon Termination. Upon Termination of this Agreement for any reason, you shall immediately cease all use of the SKYFOUNDRY Trademarks and shall destroy or return to SKYFOUNDRY any and all marketing materials bearing the SKYFOUNDRY Trademarks.
- 11.3 Proprietary Notices. You acknowledge that the Software may contain certain proprietary notices (included but not limited to trademark and copyright notices), trademarks, service marks, and logos of SKYFOUNDRY, its affiliates, suppliers, third party licensors and other third parties, and you agree not to remove, modify (including adding to), minimize, obscure or block such notices, trademarks, service marks or logos.

## **12. GENERAL TERMS.**

- 12.1 Assignment. You may assign this Agreement or your rights and obligations under this Agreement to a purchaser of the hardware on which the Software is installed, provided (i) you provide such purchaser with a copy of this Agreement and (ii) the purchaser agrees in writing to comply with all of the terms and conditions of this Agreement. SKYFOUNDRY may assign this Agreement without your consent.
- 12.2 Export. Software, including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. You agree to comply strictly with all such regulations and acknowledge that you have the responsibility to obtain such licenses to export, re-export, or import the Software. The Software may not be used, sold, resold, sublicensed, diverted, transferred, reshipped, or otherwise exported or re-exported: (i) in, into or through any country designated as a terrorist supporting country by the U.S. government or any of its agencies; (ii) in, into or through any country for which the U.S. has an embargo or with which the U.S. or any of its agencies maintains comprehensive trade controls; (iii) to or by a national or resident of the countries described in (i) or (ii); or (iv) to or by any party included in the United States Department of Commerce's Denied Persons List, Entity List or Unverified List; or the United States Department of the Treasury's Specially Designated Nationals, Specially Designated Global Terrorists, Specially Designated Narcotics Traffickers, Specially Designated Narcotic Traffickers, or Specially Designated Terrorists List; or the United States Department of State's Designated Foreign Terrorist Organizations or Debarred Persons List; or is otherwise designated by the U.S. government or any of its agencies as a party with which it is unlawful to do business.

- 12.3 Equitable Relief. You acknowledge that any breach of your obligations hereunder with respect to the Software or the confidential information of SKYFOUNDRY, including, without limitation, Section 5.1 and 5.2 above, will cause SKYFOUNDRY irreparable injury for which it has no adequate remedy at law. You further agree that SKYFOUNDRY will be entitled to seek and obtain equitable relief, including preliminary injunctions and temporary restraining orders, to prevent any unauthorized use of the Software and confidential information, without posting of bond or other security, in addition to all other remedies available to it under this Agreement or other applicable law.
- 12.4 Entire Agreement. Except with respect to any separate confidentiality agreements that you may have signed with SKYFOUNDRY relating to the Software, this Agreement comprises the entire agreement between the parties relating to its subject matter and this Agreement supersedes all prior agreements and understandings, written or oral, express or implied. This Agreement can be amended or modified only by a writing executed in advance by duly authorized representatives of each of the parties hereto. In the event any foreign ministry or other governmental entity or agency makes any changes, deletions or modifications to this Agreement, holds any provision herein unenforceable or imposes any conditions or restrictions on either party to this Agreement which affects its ability to fully perform, SKYFOUNDRY shall have the right to immediately terminate this Agreement. You represent and warrant that all consents, approval or authorizations of third parties, foreign ministries or any governmental entities or agencies, required as a condition or otherwise necessary for you to enter into and perform its obligations under this Agreement have been duly obtained.
- 12.5 Notices. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be delivered by hand, by registered prepaid first class mail, by facsimile or by electronic mail to the persons or addresses specified on the signature page of this Agreement (or as otherwise may have been communicated in writing). A notice or other communication shall be deemed to have been served and received (a) on the date delivered, if delivered by hand or sent by registered prepaid first class mail, or (b) upon acknowledgement of receipt, if sent by facsimile or electronic mail.
- 12.6 Waiver. A waiver of any breach of default of this Agreement shall not create a waiver of the term or of any subsequent breach of default.
- 12.7 Governing Law; Choice of Venue. The validity of this Agreement and the rights, obligations and relations of the parties hereunder shall be construed and determined under and in accordance with the substantive laws of the Commonwealth of Virginia with respect to claims governed by state law and the laws of the United States with respect to claims arising under the laws of the United States, without regard to conflicts of laws principles and excluding the Convention on Contracts for the International Sale of Goods. Any action arising from or relating to this Agreement or the conduct of the parties pursuant hereto shall be commenced and heard solely within a federal or state court of competent jurisdiction found within the boundaries of the United States District Court for the Eastern District of Virginia, Richmond Division, and SKYFOUNDRY and you each consent to personal jurisdiction and venue in any such court.

- 12.8 Severability. Should any term or provision of this Agreement be finally determined by a court of competent jurisdiction to be void, invalid, unenforceable or contrary to law or equity, the offending term shall be modified and limited (or if strictly necessary, deleted) only to the extent required to conform to the requirements of law and the remainder of this Agreement (or, as the case may be, the application of such provisions to other circumstances) shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.
- 12.9 Government Use. The Software is provided with restricted rights. With respect to any acquisition of the Software by or for any unit or agency of the U.S. Government ("Government"), the Software shall be classified as "Commercial Computer Software," as that term is defined in the applicable provisions of the Federal Acquisition Regulation ("FAR") and supplements thereto, including the Department of Defense ("DoD") FAR Supplement ("DFARS"). If the Software is supplied for use by DoD, the Software is delivered subject to the terms of this Agreement and either (i) in accordance with DFARS 252.227-7202-1(a) and 227.7202-3(a), or (ii) with restricted rights in accordance with DFARS 252.227 7013(c), as applicable. If the Software is supplied for use by a federal agency other than DoD, the Software is restricted computer software delivered subject to the terms of this Agreement and (i) FAR 12.212(a); (ii) FAR 52.227-19; or (iii) FAR 52.227-14 (ALT III), as applicable.
- 12.10 Binding on Successors. This Agreement shall be binding upon you, your successors and assignees.