

**ENEPRO21 WORLD EDITION  
SOFTWARE LICENSE AGREEMENT  
TERMS AND CONDITIONS**  
(Software Key)

1. **DEFINITIONS.** As used in this Agreement, the following capitalized terms shall have the meanings ascribed to them below.
- 1.1 **“Charges”** has the meaning described in Section 7.3.
- 1.2 **“Claim”** has the meaning described in Section 12.
- 1.3 **“Confidential Information”** has the meaning described in Section 9.1.
- 1.4 **“Customer”** has the meaning described in the signature page of this Agreement.
- 1.5 **“Defaulting Party”** has the meaning described in Section 10.2.
- 1.6 **“Documentation”** means the user documentation that is provided to Customer by EIE for the Licensed Software including any documentation in the Utilization Data, the License Key and the License Pack.
- 1.7 **“Effective Date”** has the meaning described in the signature page of this Agreement.
- 1.8 **“EIE”** has the meaning described in the signature page of this Agreement.
- 1.9 **“Error”** has the meaning described in Section 11.1.
- 1.10 **“Initial License Fee”** has the meaning described in Section 7.1.
- 1.11 **“Intellectual Property Rights”** means all intellectual property rights throughout the world, including all trademarks and service marks and registrations and registration applications therefor; trade names, domain names and logos; inventions (whether or not patentable), patents and patent applications; copyrights and registrations and registration applications therefor; trade secrets, know-how, right to use designs, data and confidential and proprietary information.
- 1.12 **“License”** has the meaning described in Section 2.1.
- 1.13 **“License Fees”** means the Initial License Fee and the Renewal License Fee.
- 1.14 **“License Key”** means the software key to conduct license certification of the Licensed Software to be used by connecting to the computer server which provides license certification of the Licensed Software.
- 1.15 **“License Pack”** means the information pack including (i) the License Key, (ii) URL regarding installation program, Licensed Software and instruction manual thereof, (iii) URL and log-in information regarding the Utilization Data and (iv) the document which states the License Term.
- 1.16 **“Licensed Software”** means the energy simulation software, “Enepro21World Edition”, including the energy simulation program and thermoelectric load program,

and other programs included in the License Key and the Documentation.

- 1.17 “License Term”** means the limited period of time set forth in Section 8.1 during which Customer may exercise the License to such Licensed Software.
- 1.18 “Non-Defaulting Party”** has the meaning described in Section 10.2.
- 1.19 “Operation Environment”** means the operation environment of the Licensed Software to be separately designated by EIE wherein the Licensed Software will be appropriately installed to and operate on the applicable computer. EIE may change the Operation Environment under its sole discretion upon the update to or the version upgrade of the Licensed Software.
- 1.20 “Parties” or “Party”** has the meaning described in the signature page of this Agreement.
- 1.21 “Renewal License Fee”** has the meaning described in Section 7.1.
- 1.22 “Support Service”** means the support and maintenance service provided by EIE to Customer for Customer to utilize the Licensed Software as provided in Exhibit (Support Content).
- 1.23 “Terms and Conditions”** means this terms and conditions of this Agreement.
- 1.24 “Utilization Data”** means the equipment performance data and operation training video of the Licensed Software to be provided by EIE to Customer as a Support Service.

## **2. LICENSE GRANT**

- 2.1 Licensed Software.** Subject to the terms and conditions of this Agreement, EIE hereby grants to Customer a non-exclusive, non-transferable and non-assignable, fee-bearing license (without the right to sublicense, the “**License**”), during the applicable License Term, to:
- (a) install the Licensed Software on the applicable computer; and
  - (b) use, reproduce, perform, and display the Licensed Software solely to the extent necessary to operate such Licensed Software in accordance with the Documentation for Customer’s internal operations, in a manner consistent with the Terms and Conditions.
- 2.2 Documentation.** Subject to the terms and conditions of this Agreement, EIE hereby grants to Customer the right to use the Documentation for the sole purpose of operating the Licensed Software as permitted under Section 2.1.
- 2.3 Restrictions.** Customer agrees and acknowledges that the Licensed Software and its structure, organization, the source code and the Utilization Data constitute valuable trade secrets of EIE. Accordingly, Customer agrees, without obtaining prior written consent of EIE, not to (a) modify, adapt, alter, translate, or create derivative works of the Licensed Software and the Utilization Data; (b) merge the Licensed Software or any part thereof with other software or separate the component parts of the Licensed Software and misappropriate such parts into other software; (c) sublicense, lease, rent, loan, sell, assign, grant, deliver, pledge or otherwise transfer the Licensed Software to

any third party; (d) reverse-engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Licensed Software; or (e) otherwise use or copy the Licensed Software and the Utilization Data except as expressly permitted under Section 2.1.

- 2.4 Customer shall not remove or modify any Intellectual Property Rights or proprietary notices contained within the Licensed Software or the Documentation, and shall reproduce such notices in all copies that it makes.
- 2.5 Customer shall not develop or cause a third party to develop any energy simulation software with a similar function or purpose to the Licensed Software or with a similar utilization method to the Utilization Data.
- 2.6 Customer shall not cause damage to or overburden the online service related to the Licensed Software or make such online service unusable, or attempt to cause unauthorized access to such online service.
- 2.7 **No Implied Licenses.** There are no implied licenses granted under this Agreement, and all rights not expressly granted in this Section 2 are reserved to EIE.

### 3. OWNERSHIP

The Licensed Software is licensed and is not sold to Customer under this Agreement. All copies of the Licensed Software and Documentation shall remain the property of EIE, and such copies shall be deemed to be on loan to Customer during the applicable License Term. As between EIE and Customer, EIE retains exclusive ownership of the Licensed Software, the Documentation, the License Key, the License Pack, the Utilization Data, all patches, updates, upgrades, bug-fixes, derivative works (including data and not limited to programs) and modifications created thereto, including all Intellectual Property Rights related thereto. To the extent that Customer has or acquires any ownership rights in any of the foregoing, Customer hereby assigns to EIE all such rights.

### 4. APPLICATION, ACCEPTANCE AND DELIVERY

- 4.1 **Application and Acceptance.** Customer shall apply for the License under this Agreement by sending the application form provided on EIE's website to EIE. Upon acceptance of such application, EIE shall send the form of this Agreement and invoice of the Initial License Fee to Customer. EIE and Customer shall execute this Agreement by e-signature and Customer shall pay the Initial License Fee in accordance with Section 7.
- 4.2 **Delivery.** Upon the receipt of the Initial License Fee, EIE shall promptly issue the License Key and deliver to Customer (i) the License Key and (ii) other data and documents included in the License Pack by email. Customer shall check whether the Licensed Software is properly installed and operates under the Operation Environment within seven (7) days from the receipt of the License Pack. In case Customer finds any failure in installation or operation of the Licensed Software, Customer shall notify EIE in writing within seven (7) days from the receipt of the License Pack in accordance with Section 11.2.

### 5. CUSTOMER'S DUTIES AND RESPONSIBILITIES

- 5.1 Customer shall be solely responsible, at its own cost and expense, for (a) procuring, installing and operating compatible computers and operating systems to run the

Licensed Software in accordance with the terms and conditions under this Agreement and the Documentation; (b) providing a proper Operation Environment and proper utilities for the computer on which the Licensed Software is operating, including an uninterrupted power supply and network connection; (c) procuring, installing, and maintaining all equipment and other hardware necessary to operate the Licensed Software; and (d) establishing adequate operational, database and other back-up provisions in the event a defect, malfunction, Error or other circumstance renders the Licensed Software or the computer systems on which it runs non-operational.

- 5.2 Customer shall keep the log-in information of the online service related to the Licensed Software confidential and shall be responsible for any use of the log-in information in order to use the Licensed Software that it authorizes. In case Customer finds any unauthorized use of the log-in information, Customer shall immediately notify EIE, and EIE shall change the log-in information accordingly.
- 5.3 Customer shall notify EIE promptly if there is any change in either of the items written in the application form referred to in Section 4.1 (including the company name and address of Customer, department name, title, name, telephone number, fax number and email address of the person in charge) during the term of this Agreement. In case Customer fails to make such notice, EIE shall bare no responsibility for such failure or the result thereof.

## 6. SUPPORT SERVICE

The Support Service provided by EIE to Customer for the Licensed Software shall be subject to the terms and conditions provided in the Exhibit (Support Content). EIE has the right to change the content and other conditions of the Support Service any time under its sole discretion. This Agreement contains no obligation for EIE to provide such Support Service.

## 7. FEES AND PAYMENTS

- 7.1 **License Fees.** Customer shall pay to EIE for the initial License Term, (i) the initial installation fee and (ii) the annual license fee (collectively, the “**Initial License Fee**”) to be invoiced by EIE. Upon extension of the License Term, Customer shall pay EIE the annual license fee to be invoiced by EIE each year (the “**Renewal License Fee**”). The amount of the License Fees invoiced by EIE does not include taxes. Customer shall bear the bank transfer fee regarding the License Fee.
- 7.2 **Payment Terms.** All payments by Customer to EIE under this Agreement shall be non-cancellable and nonrefundable, and shall be made in Japanese Yen and by wire transfer to the bank account designated by EIE. Customer acknowledges that the License Fees paid by Customer shall not be refunded even in case the Agreement is terminated or in case Customer ceases the use of the Licensed Software during the License Term. Customer shall, following the receipt of the invoice from EIE, pay the Initial License Fee within ten (10) days from the date of the invoice. Customer shall pay the Renewal License Fee seven (7) days prior to the expiration date of the License Term preceding its extension.
- 7.3 **Taxes.** Customer is solely responsible for all duties, levies, fees, taxes, and other governmental charges (collectively, “**Charges**”) arising from or related to (a) any payments due to EIE under this Agreement; (b) the delivery, license, or provision of the Licensed Software or Support Service to Customer; or (c) Customer’s possession, receipt, or use of the Licensed Software or Support Service. EIE reserves the right to

have Customer pay for such Charges as they fall due to EIE for remittance to the proper authority. Customer agrees to indemnify and hold EIE harmless from all claims and liability arising from the failure to report or pay any such Charges. Without limiting the foregoing, Customer shall make all payments to EIE free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments to EIE shall be Customer's sole responsibility, and Customer shall provide EIE with official receipts issued by the appropriate taxing authority, or such other documentary evidence that EIE may reasonably request to establish that such withholding taxes have been paid.

## 8. LICENSE TERM

**8.1 Initial License.** The term of the License (the "**License Term**") shall commence from the day the License Pack was received by Customer and shall continue for one (1) year. The License Pack shall be deemed to be received by Customer on the day EIE sends the License Pack to Customer by email.

**8.2 Extension.** If Customer does not prefer to extend the License Term, Customer shall notify EIE two (2) months prior to the expiration of the License Term. In case Customer fails to make such notice, the License Term shall be extended for an additional one (1) year on the same terms and conditions and Customer shall pay the Renewal License Fee in accordance with Section 7.2. In case Customer does not make payment of the Renewal License Fee by the expiration of the License Term, the License Term shall not be extended and shall be terminated, provided however, this shall not apply in case EIE agrees otherwise.

## 9. CONFIDENTIALITY

**9.1 Definition of Confidential Information.** For purposes of this Agreement, "**Confidential Information**" means (a) the Licensed Software and Documentation; and (b) all other non-public or proprietary information disclosed by EIE to Customer in the course of activity pursuant to this Agreement, including such information disclosed in contemplation of this Agreement prior to the Effective Date, whether disclosed in oral, written, graphic, machine recognizable model or sample form, or any derivation thereof, except as otherwise provided in Section 9.3. Confidential Information may include data, know-how, algorithms, computer programs, data bases, processes, improvements, designs, devices, systems, test results, sketches, photographs, plans, drawings, product concepts, specifications, reports, laboratory notebooks, business and financial plans, strategies, budgets, vendor, customer and distributor names, pricing information, production or manufacturing information, product sales information or forecasts, inventions and ideas.

**9.2 Protection of Confidential Information.** Customer shall not use any Confidential Information for any purpose not expressly permitted by this Agreement, and shall disclose such Confidential Information only to Customer's employees and consultants (i) who have a need to know such Confidential Information for purposes of Customer exercising its rights under this Agreement and (ii) who are under a duty of confidentiality no less restrictive than Customer's duty hereunder. Customer shall protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Customer protects its own confidential or proprietary information of a similar nature and with no less than reasonable care. Customer shall inform each such employee and consultant of its confidentiality obligations under this Agreement, and shall be liable for any breach of confidentiality by any such employee or consultant.

- 9.3 Exceptions.** Customer's obligations under Section 9 with respect to any Confidential Information shall not apply if such information: (a) was already known to Customer at the time of disclosure by EIE, without any duty of confidentiality to EIE; (b) is disclosed to Customer by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Customer has become, generally available to the public; or (d) is independently developed by Customer without access to, or use of, the Confidential Information. In addition, Customer shall be allowed to use or disclose the Confidential Information to the extent that such use or disclosure is (i) approved in writing by EIE, or (ii) required by law or by the order of a court or similar judicial or administrative body, provided that Customer notifies EIE of such required disclosure promptly and in writing and cooperates with EIE in any lawful action to contest or limit the scope of such required disclosure.
- 9.4 Return of Confidential Information.** Promptly upon termination or expiration of this Agreement, Customer shall immediately uninstall and delete the Licensed Software. With respect to other Confidential Information, Customer shall either (a) return to EIE all Confidential Information in Customer's possession or control; or (b) destroy and permanently erase all such Confidential Information, and certify to EIE in a written certificate by the person in charge that it has complied with its obligations under this section.
- 9.5 Confidentiality of this Agreement.** The terms and conditions of this Agreement are confidential and may not be disclosed by either Party without the prior written consent of the other Party. Notwithstanding the foregoing, EIE may disclose the existence of this Agreement and the arrangement between the Parties contemplated herein, and may identify Customer as a customer of EIE in its marketing materials.
- 9.6 Survival.** The confidentiality obligation of Customer under this Section 9 shall survive the expiration or termination of this Agreement for seven (7) years from the date of expiration or termination of this Agreement.

## **10. TERM AND TERMINATION**

- 10.1 Term.** This Agreement will enter into effect upon the Effective Date and continue in full force and effect until (i) terminated by either Party as expressly permitted by this Agreement or (ii) the License Term expires or is terminated.
- 10.2 Termination.** The other Party (the "**Non-Defaulting Party**") shall have the right to terminate this Agreement immediately upon written notice to the Party falling under any of the items below (the "**Defaulting Party**"):
- (a) the Defaulting Party makes a material breach of its obligations under this Agreement and fails to cure such breach within two (2) weeks after written notice of breach by the Non-Defaulting Party;
  - (b) the Defaulting Party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them, or a moratorium is declared in respect of any of its indebtedness or any creditor action, in any relevant jurisdiction;
  - (c) the Defaulting Party is unable to pay its debts as they are due, is deemed under any applicable law of any relevant jurisdiction to be insolvent;

- (d) a liquidator or a provisional liquidator is appointed to the Defaulting Party, or a receiver, receiver and manager, trustee, administrative receiver or similar official is appointed over any of the assets or undertakings of the Defaulting Party, or any event analogous with any such event occurs in any relevant jurisdiction;
- (e) an application for the winding-up of the Defaulting Party is made by the Defaulting Party or order for the winding-up of the Defaulting Party is made by a court of competent jurisdiction; or
- (f) a resolution is passed for the winding-up of the Defaulting Party.

**10.3 Effect of Termination.** Upon any termination or expiration of this Agreement, the License granted to Customer hereunder shall immediately terminate, and Customer shall immediately cease its use of the Licensed Software and Documentation, and delete or return all the Confidential Information in accordance with Section 9.4. Sections 1, 3, 7, 9, 10.3, 11, 12, 13 and 14, and all payment obligations incurred prior to termination or expiration of this Agreement shall survive such termination or expiration.

## **11. LIMITED WARRANTY**

**11.1 Notice of Error.** Upon receipt of the License Pack, Customer shall check the Licensed Software's operation and in the event that the Licensed Software fails to operate in conformity with its instruction manual even when used in accordance with this Agreement and the Documentation, Customer shall notify EIE in writing of such nonconformity (an "**Error**") within seven (7) days from the receipt of the License Pack, including a sufficient level of detail, and shall reasonably cooperate with EIE in reproducing such Error. If EIE confirms that the Error is attributable to EIE, subject to the foregoing, as Customer's sole and exclusive remedy for (and EIE's entire liability in connection with) any breach of the foregoing warranty, EIE shall (a) use reasonable diligence to correct any reproducible Error in the Licensed Software within a reasonable period; or (b) issue a refund of the License Fees paid by Customer with respect to such Licensed Software, in which case Customer shall promptly return the affected Licensed Software and accompanying Documentation; or (c) replace the affected Licensed Software with another Licensed Software, in which case Customer shall promptly return the affected Licensed Software and License Key and accompanying Documentation.

**11.2** In case any Error is found in the Licensed Software after seven (7) days have passed from the receipt of the License Pack by Customer, and if EIE determines there is a necessity to correct such Error, EIE shall use reasonable diligence to correct such Error in the Licensed Software within a reasonable period determined by EIE under its sole discretion.

**11.3 Exclusions.** Notwithstanding anything to the contrary herein, EIE shall not be responsible for any Error that is (a) not reported by Customer in accordance with Section 11.1; (b) attributable in whole or in part to any modifications to the Licensed Software made by any party other than EIE; (c) attributable in whole or in part to any misuse, abuse, or use of the Licensed Software outside the scope of the License; (d) attributable in whole or in part to any combination, operation, or use of the Licensed Software with any software, hardware, data, equipment, or other materials other than those specified in the Documentation; or (e) otherwise not attributable to EIE. In the event EIE establishes that no Error exists or that the Error was the result of modification, misuse or damage by Customer or anyone other than EIE, Customer

shall reimburse EIE for its services in regard to such Error.

#### **11.4 Disclaimer of Other Warranties.**

EXCEPT TO THE EXTENT EXPRESSLY SET FORTH IN THIS SECTION 11, THE LICENSED SOFTWARE, DOCUMENTATION, AND SUPPORT SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND EIE EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WITH RESPECT THERETO, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND ACCURACY. EIE DOES NOT WARRANT THAT THE LICENSED SOFTWARE WILL OPERATE IN AN UNINTERRUPTED FASHION OR BE FREE OF ERRORS IN ALL CIRCUMSTANCES.

ESPECIALLY, CUSTOMER ACKNOWLEDGES THAT THE LICENSED SOFTWARE IS A SIMULATION TOOL FOR THE CENTRALIZED THERMOELECTRIC FACILITY AND IS NOT A SUBSTITUTE FOR ANY DETERMINATION OR KNOWLEDGE AS A SPECIALIST. IT IS CUSTOMER'S SOLE RESPONSIBILITY TO DECIDE WHETHER THE USE OF THE LICENSED SOFTWARE IS SUITABLE FOR THE PARTICULAR PURPOSE OF CUSTOMER AND HOW TO USE THE SIMULATION RESULTS AND OTHER OUTPUTS GAINED FROM THE USE OF THE LICENSED SOFTWARE.

#### **12. INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY.**

EIE shall defend Customer from any third-party claim, suit, or proceeding alleging that the Licensed Software, unmodified and as originally delivered, when used as permitted under this Agreement or the Documentation, infringes or misappropriates any third party's Intellectual Property Rights that arises under the laws of the United States (a "Claim"). EIE shall have no obligations under this section with respect to any Claims that arise from or relate to: (x) any modifications to the Licensed Software created by any person other than EIE; or (y) any combination, operation, or use of the Licensed Software with any hardware, software, data, equipment, or other materials other than those specified in the Documentation. In order for EIE to indemnify Customer under this Section 12, Customer must: (i) promptly notify EIE in writing of any Claim; (ii) tender control of the defense and settlement of such Claim to EIE, provided that EIE may not enter into any settlement adversely affecting Customer's interests without Customer's prior written consent; and (iii) reasonably cooperate with EIE in such defense. THE FOREGOING INDEMNITY STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND EIE'S ENTIRE LIABILITY, FOR INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS ARISING FROM OR RELATED TO THIS AGREEMENT.

#### **13. LIMITATION OF LIABILITY**

**13.1** IN NO EVENT SHALL EIE BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY DAMAGES FOR LOST DATA OR LOST PROFITS, ARISING FROM OR RELATED TO THIS AGREEMENT, EVEN IF EIE KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

**13.2** IN ADDITION TO THE ABOVE, IN NO EVENT SHALL EIE BE LIABLE FOR ANY DAMAGES, FEES OR COSTS OF CUSTOMER ARISING IN CONNECTION



WITH (A) DEFAULT OR DEFECTS IN CUSTOMER'S EQUIPMENT OR OPERATING ENVIRONMENT FOR THE USE OF THE LICENSED SOFTWARE OR THE SUPPORT SERVICE; (B) COMPUTER VIRUS ENTRY OR UNAUTHORIZED ACCESS TO THE SITE FOR ONLINE SERVICES RELATED TO EQUIPMENT OF SUPPORT SERVICE OR LICENSED SOFTWARE WHICH IS UNAVOIDABLE EVEN WHEN EIE EXERCISES ITS DUTY OF CARE AS A GOOD MANAGER; (C) SYSTEM INTERRUPTION, DELAY OR DATA LOSS DUE TO COMMUNICATION FAILURE AT THE SITE FOR ONLINE SERVICES RELATED TO EQUIPMENT OF SUPPORT SERVICE OR LICENSED SOFTWARE; (D) CUSTOMER'S USE OF THE LICENSED SOFTWARE OR THE SUPPORT SERVICE NOT IN CONFORMITY WITH THIS AGREEMENT OR THE DOCUMENTATION; (E) TEMPORARY SERVICE OUTAGE OF ONLINE SERVICE RELATED TO THE LICENSED SOFTWARE OR THE UTILIZATION DATA DUE TO FAILURES IN TELECOMMUNICATIONS INFRASTRUCTURE OR PLANNED MAINTENANCE ETC; OR (F) CUSTOMER'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT.

**13.3** EIE'S CUMULATIVE LIABILITY TO CUSTOMER ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, SHALL NOT EXCEED THE SUM OF LICENSE FEES PAID BY CUSTOMER TO EIE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO EIE'S LIABILITY. THIS LIMITATION IS CUMULATIVE AND SHALL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM. THE PARTIES ACKNOWLEDGE THAT THE TERMS OF THIS SECTION 13 REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT, AND THAT EIE WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS OF LIABILITY. THESE LIMITATIONS SHALL APPLY EVEN IF ANY EXCLUSIVE REMEDY IS FOUND TO FAIL OF ITS ESSENTIAL PURPOSE.

#### **14. GENERAL**

**14.1 Indemnification.** Customer shall indemnify and hold harmless EIE and its officers, directors, employees and agents from and against any and all claims, liabilities, losses and expenses (including reasonable attorney's fees) which EIE and its officers, directors, employees and agents may incur or sustain as a result of any breach by Customer of its obligations hereunder.

**14.2 Independent Contractors.** This Agreement is not intended to establish any partnership, joint venture, employment, or other relationship between the Parties except that of independent contractors.

**14.3 Governing Law and Dispute Resolution.** This Agreement, and any and all actions arising from or in any manner affecting the interpretation of this Agreement, shall be governed by, and construed solely in accordance with, the laws of Japan. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. All disputes, controversies or differences arising out of or in connection with this Agreement shall be finally settled by arbitration in accordance with the Commercial Arbitration Rules of The Japan Commercial Arbitration Association. The place of the arbitration shall be Osaka, Japan.

**14.4 Assignment.** Customer may not assign this Agreement or any of the rights or

obligations hereunder, or delegate its performance under this Agreement, to any third party without obtaining EIE's prior written consent. EIE may assign this Agreement and the rights or obligations hereunder upon written notice to Customer. Any purported transfer, assignment, or delegation not in accordance with this Section 14.4 shall be null and void when attempted and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the successors and permitted assigns of EIE and Customer.

**14.5 Utilization Purpose of Personal Information.** EIE shall use the personal information of Customer, its officers, directors or employees obtained in relation to this Agreement within the scope of the purpose of use related to the License and any transaction contemplated herein.

**14.6 Modifications; Waivers.** This Agreement may not be modified except by a writing signed by authorized representatives of both Parties. A waiver by either Party of its rights hereunder shall not be binding unless contained in a writing signed by an authorized representative of the Party waiving its rights. The non-enforcement or waiver of any provision on one occasion shall not constitute a waiver of such provision on any other occasions unless expressly so agreed in writing.

**14.7 Severability.** If any provision of this Agreement is found or held to be invalid or unenforceable by any tribunal of competent jurisdiction, then the meaning of such provision shall be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of this Agreement, which shall remain in full force and effect.

**14.8 Compliance with U.S. Export Laws.** Customer acknowledges that the laws and regulations of the United States restrict the export and re-export of certain commodities and technical data of United States origin, which may include the Licensed Software, Documentation and related materials. Customer agrees that Customer shall not export or re-export the Licensed Software, Documentation and related materials in any form without the appropriate United States and foreign government licenses.

**14.9 Force Majeure.** The inability of EIE to perform any of its obligations under this Agreement shall not be deemed a breach or create any liability if the same shall arise from any cause or causes beyond the reasonable control of EIE, including, but not limited to, acts of God, fire, flood, earthquake, war, labor strikes, temporary service outage of online service related to the Licensed Software or the Utilization Data due to failures in telecommunications infrastructure or planned maintenance etc., or failure or delays in transportation.

**14.10 Order of Precedence.** In the event of any contradiction or inconsistency between (a) the Terms and Conditions; and (b) Support Content, the Terms and Conditions shall prevail.