

RELIASOFT CORPORATION END-USER LICENSE AGREEMENT

This ReliaSoft Corporation End-User License Agreement is a legal agreement between You and ReliaSoft Corporation for ReliaSoft Corporation's software products, which includes computer software and associated media and printed materials as well as online or electronic documentation and any software updates or upgrades, henceforth collectively called the "Application."

By installing, copying or otherwise using the Application, You agree to be bound by the terms of this End-User License Agreement and represent and warrant that You are authorized to do so. If You do not agree to the terms of this End-User License Agreement, do not install or use the Application and promptly return the Application to the vendor from which you obtained it within fourteen (14) calendar days from the date of purchase for a full refund.

This Agreement is effective from the earlier of the date that You open the sealed software package, if applicable, or install the Application, or fourteen (14) calendar days from the date the Application was purchased or otherwise obtained from ReliaSoft Corporation, and continues until expressly terminated by ReliaSoft Corporation.

This Application is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. **This Application is licensed, not sold.**

1 DEFINITIONS

- 1.1 **Access.** Means connected to or using the Application in any manner, either directly or indirectly through any middle tier application or system.
- 1.2 **Activate.** Means the act of enabling the Application to operate on a specific computer by registering the Application license with the ReliaSoft License Server and activating the Application for operation.
- 1.3 **Location.** Means the postal address of the site where the Application shall be installed. Location shall mean a single physical location.
- 1.4 **Named User(s).** Means the individual(s) permitted to Access the Application, and it refers to specific individuals.
- 1.5 **ReliaSoft License Server.** Means the ReliaSoft server(s) that provides license activation, registered end-user management, license management and license compliance enforcement services for the Application.
- 1.6 **You.** Means the licensee or the individual acquiring the license of this Application and, in either case, the affiliates, employees, contractors and agents of said licensee or individual.

2 LICENSE GRANT

- 2.1 **Grant.** Subject to the license types defined in Section 3 hereof, You are granted a personal, non-exclusive and limited license to install, Activate and Access the Application under the license type and in the quantities for which You have obtained a license. You may install and Activate the Application onto designated equipment at the specified Location(s), solely as necessary to use the Application in accordance with this Agreement. You may not distribute, sublicense, copy (except as expressly permitted in this Agreement), transfer (except as expressly permitted in this Agreement), nor give the Application to any third party.
- 2.2 **Ownership.** The Application and the information it contains, including any updates, upgrades, modifications and derivative works, and all copies of them, are the property of ReliaSoft Corporation (or its licensors), and title remains with ReliaSoft Corporation (or ReliaSoft Corporation's licensors). All applicable rights in patents, copyrights and trade secrets in the Application are and will remain with ReliaSoft Corporation (or ReliaSoft Corporation's licensors). No title to, or ownership of, the Application or the information contained therein is transferred to You. ReliaSoft Corporation reserves all rights not explicitly granted in this Agreement.
- 2.3 **Rights to Developments.** This Agreement also governs your use of any enhancements, data, or information provided by ReliaSoft Corporation while performing any technical, training or consulting services. Any ideas, know-how, techniques and software developed by ReliaSoft Corporation, including any enhancements or modifications made to the Application by any person, are the property of ReliaSoft Corporation.

3 INSTALLATION AND USE

ReliaSoft Corporation licenses any Application under this Agreement on a per user basis. In other words, ReliaSoft Corporation licenses an Application to each user and not to a particular computer. This Agreement grants You the following rights, depending on the license You have obtained from ReliaSoft Corporation:

- 3.1 Named User License.** The Named User License is licensed to one individual Named User. This is a perpetual license. Each software package includes the installation media and one copy of the Application documentation per license, either in physical/hard copy format and/or electronic format. Each Named User licensed may install, Activate and Access the Application on a single computer at any time, provided that the Named User is the only person who uses this Application. In the event that the Application is required on a new computer for the Named User, the Named User will be required to deactivate the active installation before being allowed to install and Activate the Application on the new computer. There is a limit of 2 activations allowed per year.
- Use of the Application on any computers by any user other than the Named User who has licensed the Application is strictly prohibited. Such other users must obtain a separate license of the Application from ReliaSoft before any use.
- 3.2 Floating License.** The Floating License is licensed to an organization with multiple regular and occasional Named Users on a single network of computers at one or more specified Locations, depending on the type of Floating License obtained (LAN, Country, Regional, Global). This is a perpetual license. The software package includes the installation media and one copy of the Application documentation per license, either in physical/hard copy format and/or electronic format. There is no restriction on how many Named Users can install and Activate the Application; however, the number of Floating Licenses under license indicates the maximum number of computers that can concurrently Access the Application at any given time.
- As an example, for a Floating License with ten (10) seats, the Application can be installed and activated by as many Named Users and on as many computers as You deem necessary, with only ten (10) of those computers being able to Access the Application at the same time. If a user attempts to Access the Application from an eleventh (11th) computer, the user must wait until one of the other ten users ends their session and releases a seat. The Floating License allows for installation on multi-user capable environments such as Windows, Terminal or Citrix servers.
- A Floating License with a *LAN* option only allows installation and Activation by Named Users on the same Local Area Network (i.e., same Location). A Floating License with a *Country* option only allows installation and Activation by Named Users in the same country. A Floating License with a *Regional* option only allows installation and Activation by Named Users in the same geographical region (e.g., Americas, EMEA, APAC). A Floating License with a *Global* option allows installation and Activation by Named Users worldwide.
- Under this license, Named Users are allowed to check out a Floating License from the ReliaSoft License Server for a specified period of time, effectively being guaranteed Access to the Application while simultaneously reducing the number of available Floating Licenses for the rest of the user pool until the Floating License is checked back into the ReliaSoft License Server or otherwise released.
- This type of license requires that you provide/allow internet access from the Application to the ReliaSoft License Server at <https://Validate.Reliasoft.org>. Concurrency authorization and control is managed and provided by this server. You may need to modify and adjust your internet and/or firewall settings and/or set the aforementioned server as a trusted location in order to use the Application.
- 3.3 Asset-based License (only applies to Orion eAPI software).** The Asset-based License is licensed to all direct employees of a corporate entity within one or more specified Sites, depending on the license obtained. This license excludes subcontractors, suppliers or temporary employees, unless they are using the Application inside an eligible Site on a computer owned by that Site. This is a perpetual license.
- Under this license, an unlimited number of Named Users from the licensing Site or Sites is allowed to Access the Application; however, the license restricts the number of physical assets (commonly referred to as Asset TAGs) that can be configured and managed within the Application. For this license, a Site is defined as a distinct physical address/site of a corporate entity, where the physical assets being managed reside (e.g., a refinery or a mine or a power station). The license specifically excludes broader geographical areas, such as cities or states/provinces (where multiple Sites might exist).
- 3.4 Subscription License.** Subscription licenses are available for the Named User and Floating Licenses. The license terms are the same as the corresponding license type being subscribed to except that the license expires according to the term purchased. The subscription fee will not be prorated or refunded if license subscription is cancelled or not used in full. A standard non-expiring license may be obtained at any time at the current Application list price.
- 3.5 Evaluation, Demo, No Save Demo, Beta, or Otherwise Expiring or Non-Expiring Licenses of any Type Provided for Evaluation Purposes or Free of Charge.** These are Evaluation/Not for Sale licenses and, notwithstanding any other section of this Agreement, You may not use the Application for commercial purposes, nor sell or otherwise transfer it for value. "Commercial purposes" include the use

of the Application in creation of publicly distributed computer software. You are acquiring only the limited right to use a single copy of the Application solely for evaluation purposes and for a limited time. ReliaSoft Corporation can terminate this Agreement at any time. You have no rights under any sections of this Agreement other than those specifically allowed for within this section (Section 3.5). THE APPLICATION IS LICENSED AS IS with no representations or warranties of any kind. Note: As the section title implies, users of any license provided by ReliaSoft Corporation for evaluation purposes or free of charge (even if it is, for example, a Named User or Floating License), shall abide by the rules set forth in this section.

Regardless of the license type You have obtained from ReliaSoft Corporation, You may access shared data storage files or databases relating to the Application across a wide area network (WAN) or a virtual private network (VPN), instead of a local area network (LAN), as long as such access is permitted by your policies and authorized by You via appropriate Application and network configuration settings. Although such access is not prohibited by ReliaSoft Corporation, you acknowledge that WAN and VPN data transfer rates vary widely and could lead to decreased and unpredictable performance (as compared to a LAN) and therefore disclaim any expectation of Application performance should you choose to: a) configure any part of the Application; b) use the Application; or c) access shared data storage files in a distributed environment over a WAN or VPN. Such disclaimer does not apply to any Application designated and licensed as a native Web-based Application by ReliaSoft Corporation.

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SOFTWARE TRANSFERS

4.1 Named User License. You may **permanently** transfer all of your rights related to a Named User License under this Agreement, provided that You retain no copies, You transfer all of the Application (including all component parts, media, printed or electronic materials, any upgrades and this Agreement) and the transferee agrees to the terms of this Agreement. If the Application is an upgrade, any transfer must include all prior versions of the Application. Named User License transfers are only allowed between Named Users of the same organization (i.e., transfers are not allowed across different organizations). The Named User transferring the Application must deactivate any and all active installations of the Application before the transferee can Activate the Application. A Named User License may not be transferred more than two times in a year.

This section also applies to Named User License Subscriptions.

4.2 Floating Licenses or Asset-based Licenses. Floating or Asset-based Licenses are NOT transferable across organizations, and licensing rights CANNOT be split or transferred between multiple organizations in cases of corporate acquisitions or divestitures, except as allowed in items (a) and (b) of this section (Section 4.2), and with ReliaSoft Corporation's written consent.

In cases of corporate acquisitions or divestitures: (a) Floating Licenses remain with the organization that originally obtained the licenses, (e.g., if the organization that holds the license is acquired by another entity, the licensing rights will be transferred to the acquiring entity); (b) Asset-based Licenses remain with the original licensing site and therefore pass on to the owner of the specific licensing site as long as the site continues to exist;

This section also applies to Floating License Subscriptions.

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DESCRIPTION OF OTHER RIGHTS, LIMITATIONS AND MISCELLANEOUS ITEMS

5.1 Limitations on Reverse Engineering, Decompilation and Disassembly. You may not reverse engineer, decompile or disassemble the Application. You shall not provide, disclose or otherwise make available the Application, in any form, to any person other than your employees and under your direction and control for purposes specifically related to your permitted use of the Application. You will not: (a) alter, modify or prepare derivative works of the Application; (b) transmit the Application electronically by any means; or (c) cause or permit the translation, reverse engineering, disassembly, or decompilation of the Application to determine any design structure, source code, concepts and methodology behind the Application, whether to incorporate it within any product of your own creation, create a derivative work, create any product that is competitive with the Application or other ReliaSoft Corporation products, or for any other purpose.

5.2 Copyright. All title and copyrights to the Application are owned by ReliaSoft Corporation (or its suppliers or licensors). The Application is protected by copyright laws and international treaty provisions. Therefore, You must treat the Application like any other copyrighted material except that You may make one copy of the media solely for backup or archival purposes.

5.3 Proprietary Notices. All title, trademarks, copyrights and intellectual property rights in and pertaining to the Application (including but not limited to any copies thereof, software structure and organization, source code, images and new releases) are valuable property of ReliaSoft Corporation and are owned or licensed by ReliaSoft Corporation. You may not intentionally remove, alter or destroy any form of copyright and trademark notices, proprietary markings or confidential legends placed upon or contained

within the Application, including but not limited to any such notices contained in physical and/or electronic media or documentation, in the Application interface boxes, or in any of the runtime resources, code or other embodiments originally contained in or dynamically or otherwise created by the Application.

- 5.4 Use of ReliaSoft Corporation's Marks.** You may not use the name, logos, trade names or trademarks of ReliaSoft Corporation or any of its affiliates in any manner including, without limitation, in your advertising, promotional literature or any other material, whether in written, electronic, or other form distributed to any third party, except in the form provided by ReliaSoft Corporation and then solely for the purposes of identifying your use of the ReliaSoft Corporation Application.
- 5.5 Verification.** You will provide, on ReliaSoft Corporation's reasonable written request, written verification that the Application is being used according to the terms of this Agreement. Upon thirty days prior written notice, if ReliaSoft Corporation has reasonable grounds to believe that this Agreement has been breached, ReliaSoft may audit your use of the Application provided such audit is: (a) limited to records relating solely to the Application necessary to verify compliance with the terms of this Agreement; (b) performed by a reputable independent third party auditor acceptable to You (acting reasonably); (c) the third party auditor shall comply with your standard security policies; (d) the third party auditor shall execute your standard protective non-disclosure agreement; and (d) the cost of any requested audit will be solely borne by ReliaSoft Corporation if no breach is found as a result of the audit or will be solely borne by You if a breach is found. Such audit shall occur no more than once every twelve months and shall not unreasonably interfere with your normal business operations.
- 5.6 Modification.** ReliaSoft Corporation reserves the right to modify or enhance the Application without obligation to notify You of such changes or to furnish them to You, unless otherwise agreed upon with a separate agreement (such as an annual maintenance agreement).
- 5.7 Copying.** You may not, under any circumstances, copy the Application, in whole or in part, except as expressly provided under the Copyright section above.
- 5.8 Separation of Components.** The Application is licensed as a single product. Its component parts may not be separated for use on more than one computer.
- 5.9 Rental or Other Exploitation.** You may not publish, sub-license, re-license, assign, sell, distribute, license, transfer, rent, lease or lend the Application to any party, except transfer the Application as expressly provided under the Transfer section above. If you received any revenues from the unlawful distribution of the Application, such revenues will be forfeited to ReliaSoft Corporation.
- 5.10 Fees.** You will pay ReliaSoft Corporation all fees or other amounts due under this Agreement, plus any and all applicable taxes, within the payment term due date specified on the respective invoice. In the event that the respective invoice is not paid on time, or at all, ReliaSoft Corporation reserves the right to terminate this Agreement and revoke the corresponding licenses issued to You within the scope of this Agreement.
- 5.11 Termination.** Without prejudice to any other rights, ReliaSoft Corporation may terminate this Agreement if You fail to comply with the terms and conditions of this Agreement and such breach is not cured within thirty days of notice of such breach. In such event, You must destroy all copies of the Application and all of its component parts. Additionally, You may be held liable for any damage or loss of profit caused to ReliaSoft Corporation arising from unauthorized use or duplication of this Application.
- 5.12 Supplemental Licenses.** If, after the effective date of this Agreement, You subsequently purchase additional licenses of the Application, these supplemental licenses will be included under this Agreement.
- 5.13 Press Releases.** As part of this Agreement, You acknowledge that ReliaSoft Corporation may make reference to You as a customer of ReliaSoft Corporation in press releases, advertising and promotional materials, and You consent to any such reference. ReliaSoft Corporation will NOT disclose any further details beyond referring to You as a customer without prior written consent, not to be unreasonably withheld.
- 5.14 Relationship.** You and ReliaSoft Corporation are independent contractors and neither is an agent, joint venture partner, partner or employee of the other, and ReliaSoft Corporation will not be obligated by any agreements or representations made by You to any person, nor with respect to any other action by You, nor will ReliaSoft Corporation be obligated for any damages to any person, whether caused by your actions, failure to act, negligence or willful conduct.
- 5.15 Upgrades.** If the Application is an upgrade from another product, whether from ReliaSoft Corporation or another supplier, You may use or transfer the Application only in conjunction with that upgraded product, unless You destroy the upgraded product. If the Application is an upgrade of a ReliaSoft Corporation product, You may use the upgraded product only in accordance with this Agreement. If the Application is an upgrade of a component of a package of software programs that You licensed as a single product, the

Application may be used and transferred only as part of that single product package and may not be separated for use on more than one computer.

- 5.16 U.S. Government Restricted Rights.** The Application was developed at private expense. No portion of the Application was developed with government funds and the Application is a trade secret of ReliaSoft Corporation for all purposes of the Freedom of Information Act. The Application and documentation are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (or its successor) or subparagraphs (c)(1) and (2) of the Commercial Computer Software Restricted Rights at 48 CFR 52.227-19 (or its successor), as applicable. Manufacturer is ReliaSoft Corporation, 1450 S. Eastside Loop, Tucson, Arizona 85710, USA.
- 5.17 Limited Warranty.** ReliaSoft Corporation warrants that: (a) the Application will perform substantially in accordance with the accompanying written materials, and on machines meeting the published minimum requirements, for a period of sixty (60) days from the date of receipt; and (b) any media on which the Application is furnished will be free from defects for a period of sixty (60) days from the date of receipt. Some states and jurisdictions do not allow limitations on duration of an implied warranty, so the above limitation may not apply to You; in such states and jurisdictions the liability of ReliaSoft Corporation shall be limited to the minimum extent permitted by law. To the extent allowed by applicable law, implied warranties on the Application and media, if any, are limited to sixty (60) days; and (c) at the time of installation, the Application will be free from any mechanism, feature or any other codes or instructions that: (i) cause the Application to remotely transmit information to ReliaSoft or any third party, except to communicate with one of ReliaSoft's servers to facilitate specific functions of the Application (such as to communicate with the ReliaSoft License Server, access the online help files, etc.); or (ii) may be used to permit Access to, or use of, the Application or computer system on which the Application is loaded, or to which the Application is linked, by ReliaSoft or any third party.
- 5.18 Customer Remedies.** ReliaSoft Corporation's and its suppliers' or licensors' entire liability and Your exclusive remedy shall be, at ReliaSoft Corporation's option, either (a) return of the fee paid for the Application, or (b) repair or replacement of the Application or media that does not meet ReliaSoft Corporation's Limited Warranty and which is returned to ReliaSoft Corporation with a copy of your receipt or invoice. Any replacement Application or media will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. None of these remedies nor any product support services offered by ReliaSoft Corporation are available without a valid License Certificate issued by ReliaSoft Corporation.
- 5.19 Warranty Exclusions.** The Limited Warranty is void if the damage or defect has resulted from accident, abuse or misapplication. Any modification of the Application by any person other than ReliaSoft Corporation shall void this warranty. Any manipulation of the Application's data storage infrastructure or direct storage of data into the Application's data storage from outside the Application by any person other than ReliaSoft Corporation or ReliaSoft Corporation's authorized representative shall void this warranty. The warranties in this section extend only to You and are contingent upon proper use of the Application. The warranties will not apply to any failure caused by (a) accident, (b) unusual physical, electrical or electro-magnetic stress, (c) negligence, (d) misuse, (e) failure of electrical power, air conditioning or humidity control, (f) use of the Application with any equipment or software not reflected in ReliaSoft Corporation's specifications, (g) installation, alteration or repair of the Application by anyone other than ReliaSoft Corporation or ReliaSoft Corporation's authorized representative, or (h) or installation on equipment on which the original identification marks have been removed or altered.
- 5.20 No Other Warranties.** No oral or written information or advice given by ReliaSoft Corporation, its suppliers, dealers, distributors or agents shall create a warranty or in any way increase the scope of the Limited Warranty, and You may not rely on any such information or advice as a warranty.
- 5.21 Use of Results Provided By the Application Disclaimer.** You understand that the results provided by the Application cannot replace judgment required for important decisions. Use of the results provided is done completely at your own risk. ReliaSoft Corporation does not warrant that the functions of this Application will meet your requirements or be error free. You assume all risk of the use, quality and performance of the Application, and You are advised to use your own discretion and judgment regarding the use of the Application.
- 5.22 RELIASOFT CORPORATION, ON BEHALF OF ITSELF AND ITS LICENSORS, DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE APPLICATION. IN NO EVENT SHALL RELIASOFT CORPORATION OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR**

LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE APPLICATION, EVEN IF RELIASOFT CORPORATION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. USE OF THIS APPLICATION IS DONE COMPLETELY AT YOUR OWN RISK, INCLUDING THE USE OF RESULTS PROVIDED BY THIS APPLICATION. RELIASOFT CORPORATION'S LIABILITY HEREUNDER SHALL BE LIMITED TO PHYSICAL DAMAGE DIRECTLY CAUSED BY THE SOLE NEGLIGENCE OF RELIASOFT CORPORATION AND SHALL NOT EXCEED THE PRICE PAID FOR THE SOFTWARE PRODUCT. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE FOREGOING DISCLAIMER AND LIMITATION OF LIABILITY SHALL NOT APPLY TO RELIASOFT CORPORATION'S OBLIGATIONS UNDER ANY CLAIM OF INFRINGEMENT AS DESCRIBED IN SECTION 5.28 OF THIS AGREEMENT.

- 5.23 Venue.** Venue for any proceedings arising out of or relating to this Agreement shall be in Tucson, Pima County, Arizona. The parties disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods. This Agreement is governed by the laws of the State of Arizona, USA, without reference to conflict to law principles. Each party to this Agreement submits to the exclusive jurisdiction of the state and federal courts in the State of Arizona for the purpose of resolving any disputes arising under or relating to this Agreement. Each party waives any jurisdictional, venue or inconvenient forum objections to such courts.
- 5.24 Legal Expenses.** If legal action is taken by either party to enforce this Agreement, all costs and expenses (including reasonable attorney fees) incurred by the prevailing party in exercising any of its rights or remedies or in enforcing any of the terms, conditions, or provisions of this Agreement will be paid by the other party.
- 5.25 Force Majeure.** ReliaSoft Corporation will not be responsible for delays or failures in its performance due, in whole or in part, to any cause beyond its reasonable control.
- 5.26 Export Control.** Regardless of any disclosure made by You to ReliaSoft Corporation of an ultimate destination of the Application, You will not export, either directly or indirectly any Application without first obtaining all licenses required, from the U.S. Department of Commerce or any other agency or department of the United States Government, and complying with the applicable laws. Neither the Application nor any direct product thereof may be exported, directly or indirectly, in violation of applicable export laws, or may be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical or biological weapons proliferation. ReliaSoft Corporation will provide You with all reasonable information requested by You in connection to exporting the Application, including providing You with the U.S. Export Controls Classification Number (ECCN) for the Application.
- 5.27 Waiver.** The waiver by either party of any breach of this Agreement shall be in writing and shall not constitute a waiver of any other or subsequent breach. No waiver of any of the provisions of this Agreement will be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. The failure by a party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.
- 5.28 Indemnification.** You will indemnify and hold ReliaSoft Corporation harmless against any and all claims, damages, losses, costs or other expenses (including reasonable attorney fees) that arise directly or indirectly from your breach of this Agreement. ReliaSoft Corporation shall defend, indemnify and hold harmless, at its own expense, You and your assigns, successors, directors, officers and employees (each an "Indemnified Party") against any and all claims incurred by or made against an Indemnified Party by a third party in connection with a claim, suit or action which is based on an allegation that the Application when used by You as authorized under this Agreement, misappropriates or infringes any third party patent, copyright, trade secret or other intellectual property right (each, a "Claim") provided that ReliaSoft Corporation shall have received from the Indemnified Party: (i) notice of such Claim as soon as possible after You receive notice of the Claim; given that a failure to provide notice shall only relieve ReliaSoft Corporation of its indemnity obligation to the extent ReliaSoft Corporation was prejudiced by such failure; (ii) the exclusive right to control and direct the investigation, defense or settlement of such claim; and (iii) all reasonable necessary cooperation by You. If your use of any of the Application is, or in ReliaSoft Corporation's opinion is likely to be, enjoined due to a Claim, ReliaSoft Corporation may, at its sole discretion: (a) modify the Application so that it becomes non-infringing, provided such modifications result in software with substantially similar functionality and performance; (b) procure for You the right to continue using the Application under substantially the same terms and conditions as provided for hereunder; or (c) if (a) and (b) are commercially impracticable, terminate the Agreement and refund to You the license fee paid by You for the Application which is the subject of the Claim as reduced to reflect a three-year straight-line depreciation from the applicable license purchase date. The foregoing indemnification obligation of ReliaSoft Corporation shall not apply: (1) if the Application is modified by

any party other than ReliaSoft Corporation and such modification was not authorized in writing by ReliaSoft Corporation, but solely to the extent the alleged infringement is caused by such modification; or (2) to any release of the Application other than the most current release, provided that: (I) the most current release was either made available at no cost to You and (II) You had a commercially reasonable period of time (not to exceed 60 days) after availability of the current release to implement the current release so as to avoid the infringement claim. This section (Section 5.28) sets forth ReliaSoft Corporation's sole liability and your sole and exclusive remedy with respect to any claim of infringement.

- 5.29 Equitable Relief.** You acknowledge and agree that, due to the unique nature of the Application, there can be no adequate remedy at law for any breach of your obligations under this Agreement, that any such breach may allow You or third parties to unfairly compete with ReliaSoft Corporation resulting in irreparable harm and therefore that, upon any such breach or threat thereof, ReliaSoft Corporation shall be entitled to injunctive and other appropriate equitable relief in addition to whatever remedies it may have at law.
- 5.30 Entire Agreement; Amendments.** This Agreement is the complete and exclusive statement of the agreement between the parties and supersedes all prior agreements and communications with respect to the subject matter, and there are no oral representations, understandings or agreements that are not fully expressed herein. Any terms appearing on any order or other form used by You which modify or conflict with the terms and conditions set forth herein are expressly rejected. Except for the purpose of negating implied warranties, no course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Agreement. No ReliaSoft Corporation employee other than an officer of ReliaSoft Corporation (Vice President and above) shall have any actual or apparent authority to modify the terms of this Agreement in any way. All amendments shall be in writing and signed by the authorized representative of ReliaSoft Corporation.
- 5.31 Severability.** If any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, any such provision shall be severable from this Agreement, in which event this Agreement shall be construed as if such provision had never been contained herein.
- 5.32 Electronic Signatures.** ReliaSoft Corporation and You agree that this Agreement may be executed electronically and that electronic copies of this Agreement shall be binding upon the parties to the same extent as manually-executed copies.