



Software Maintenance and Update Agreement

THIS AGREEMENT, is entered into as of this March 25, 2022 between GAUSSIAN, INC., having its principal place of business at 340 Quinnipiac Street, Building 40, Wallingford, CT 06492 (“GAUSSIAN”) and

VŠB – Technical University of Ostrava
 (“LICENSEE”)

having a Company Registration No.: 61989100,
having a Tax Identification No.: CZ61989100,
and having a place of business at

17. listopadu 2172/15
708 00 Ostrava, CZECH REPUBLIC

WHEREAS, GAUSSIAN and LICENSEE have entered into a License to Use Agreement dated February 24, 2020 (the “LICENSE”) pursuant to which GAUSSIAN has granted to LICENSEE a non-exclusive, nontransferable license to install, use and modify certain software as defined in the LICENSE; and

WHEREAS, LICENSEE wishes to have GAUSSIAN perform software maintenance services on the licensed software and to provide updates to the licensed software on the terms and conditions set forth in this Agreement;

Now, therefore, in consideration of the foregoing, the parties agree as follows:

Section 1 – Definitions

For the purposes of this Agreement, the following definitions shall apply to the respective capitalized terms:

Section 1.1 **“Licensed Program.”** The Gaussian SOFTWARE defined in the LICENSE, including any extracts from such SOFTWARE, or collective works including such SOFTWARE, and subsequent Releases, whether released under the name Gaussian 16 or another name, to the extent offered LICENSEE under this Agreement or the LICENSE. All of the terms and conditions of the LICENSE shall apply to any software obtained by a LICENSEE under this Agreement; provided that in the event of any conflict between the provisions of the LICENSE and the provisions of this Agreement, the provisions of this Agreement shall supersede the provisions of the LICENSE.

Section 1.2 **“Agreement Term.”** An initial period of one (1) year, commencing as of **April 1, 2022**. Thereafter, successive Agreement Terms shall automatically renew for successive periods of one (1) year unless and until terminated pursuant to Section 7 hereof. In the event that the Agreement Term extends beyond the prescribed term of the LICENSE, the term of the LICENSE shall be extended so as to remain in effect for the duration of the Agreement Term.

Section 1.3 **“Error.”** Any failure of the Licensed Program to conform in all material respects to the functional specifications for the Licensed Program published from time to time by GAUSSIAN. However, any nonconformity resulting from LICENSEE’S misuse or improper use of the Licensed Program or combining or merging the Licensed Program with any software not supplied by GAUSSIAN, or not authorized to be so combined or merged by GAUSSIAN, shall not be considered an Error.

Section 1.4 **“Error Correction.”** A programming modification or additions that, when made or added to the Licensed Program, establishes material conformity of the Licensed Program to the functional specifications, or a procedure or routine that, when observed in the regular operation of the Licensed Program, eliminates the practical adverse effect on LICENSEE of such nonconformity.

Section 1.5 **“Enhancement.”** Any modification or addition that, when made or added to the Licensed Program, materially changes its utility, efficiency, functional capability, or application, but that does not solely constitute an Error Correction.

Section 1.6 **“Normal Working Hours.”** The hours between 9:00 A.M. and 5:00 P.M. (EST) on the days Monday through Friday, excluding regularly scheduled holidays of GAUSSIAN.

Section 1.7 **“Releases.”** New versions of the Licensed Program, designated by GAUSSIAN as Releases, which new versions may include both Error Corrections and Enhancements. GAUSSIAN at its sole discretion shall determine whether any particular version of the Licensed Program will be designated a Release.

Section 2 – Scope of Services

Section 2.1 Prior to Termination as set out in Section 7, GAUSSIAN shall render the following services in support of the Licensed Program, during Normal Working Hours, subject to LICENSEE’S compliance with all of its obligations hereunder, including, without limitation, its prompt payment of the Service Fee then in effect in accordance with the provisions of Section 5:

- a. GAUSSIAN shall exert reasonable efforts to assist LICENSEE to remedy Errors and to provide Error Corrections after LICENSEE has identified and notified GAUSSIAN of any such Errors in accordance with GAUSSIAN'S reporting procedures. GAUSSIAN shall provide an initial response to LICENSEE within two (2) business days after GAUSSIAN has been notified of an identified Error.
- b. GAUSSIAN may, from time to time, issue new Releases of the Licensed Program to its customers generally, containing Error Corrections and Enhancements. GAUSSIAN shall provide LICENSEE with one copy of each new Release first offered by GAUSSIAN during any Agreement Term, without additional charge.
- c. GAUSSIAN shall not be responsible for correcting Errors in any version of the Licensed Program other than the most recent Release of the Licensed Program.
- d. GAUSSIAN shall not be required to designate more than one trained individual familiar with the Licensed Program to provide the services required by this Section.
- e. GAUSSIAN may require LICENSEE to designate no more than two individuals to communicate with GAUSSIAN regarding Errors and Error Corrections. Once such individuals are designated, GAUSSIAN will only communicate with such individuals in providing the services of this Section.
- f. GAUSSIAN shall have no obligation under this Section to travel to LICENSEE'S site of operation.

Section 2.2 In the event that LICENSEE provides GAUSSIAN with any Licensee Confidential Information, GAUSSIAN will: (i) use the Licensee Confidential Information solely in connection with providing services to LICENSEE pursuant to this Agreement; and (ii) use the same efforts to prevent unauthorized disclosure of such Licensee Confidential Information as it uses to protect its own similar confidential information. For purposes of this Agreement, Licensee Confidential Information shall be confidential and proprietary processes of LICENSEE but shall not include any information which: (a) is in the public domain at the time of disclosure to GAUSSIAN or later enters the public domain other than by breach of this Agreement by GAUSSIAN; (b) was in GAUSSIAN's possession at the time of receipt from LICENSEE; (c) is independently developed by GAUSSIAN without use of the Licensee Confidential Information; (d) is received by GAUSSIAN from a third party without any obligation of confidentiality; or (e) is required to be disclosed pursuant to court order or applicable regulations. In order to be protected pursuant to this Section, (i) all Licensee Confidential Information which is disclosed in writing must be labeled as confidential; and (ii) all Licensee Confidential Information which is disclosed orally must be identified by LICENSEE as confidential at the time of disclosure and must be followed up with a written disclosure of such orally disclosed information which is labeled confidential within thirty (30) days or the oral disclosure.

Section 3 – LICENSEE Support

Section 3.1 LICENSEE shall provide GAUSSIAN with data in machine-readable form as requested by GAUSSIAN to assist LICENSEE in the remedy of Errors, including input and output data for the Licensed Program associated with any Error.

Section 4 – Licensed Program Provisions

Section 4.1 Prior to Termination of this Agreement as set out in Section 7 and subject to the restrictions set forth in the LICENSE, LICENSEE may provide to third parties who are not directly or indirectly engaged in competition with GAUSSIAN and whose confidentiality obligations to LICENSEE include the Licensed Program, access to the binary code of the Licensed Program solely at LICENSEE's installation address(es) specified in the LICENSE and on computers referenced in Paragraph 1 of the LICENSE and owned, operated by, and under the supervision of LICENSEE at such address(es). LICENSEE may not provide or knowingly allow access to third parties in exchange for services, fees, royalties, payments, or any other consideration to LICENSEE, and any such access will be governed by a separate Agreement between GAUSSIAN and LICENSEE. LICENSEE will not permit third parties to use the Licensed Program as modified by LICENSEE. Further, under no circumstances will LICENSEE quote any performance data to third parties except with respect to the Licensed Program as delivered to LICENSEE.

Section 5 – Service Fees

Section 5.1 In consideration of the services to be rendered hereunder by GAUSSIAN during the first Agreement Term, LICENSEE shall pay GAUSSIAN a service fee equal to the sum of \$12,000.00 prior to the commencement of the initial term.

Section 5.2 GAUSSIAN shall notify LICENSEE at least sixty (60) days prior to the close of each Agreement Term of the amount of Service Fee payable to GAUSSIAN in respect of the immediately succeeding Agreement Term.

Section 5.3 As to each Agreement Term, the full amount of the Service Fee described in Sections 5.1 or 5.2 above will be deemed to have been earned as of the start of the Agreement Term, to be paid on or before the first day of the Agreement Term and without setoff or abatement of any type.

Section 5.4 Interest on Late Payments. If any installment of the Service Fee is not paid within ten (10) days after its respective due date, such installment shall bear interest from the date such installment is due until fully paid (the "default period") at the per annum rate equal to four percent (4%) above the "prime rate" in effect from time to time during the default period at People's United Bank, Bridgeport, CT.

Section 6 – Disclaimer of Warranty, Indemnification, and Limitation of Liability

Section 6.1 The LICENSED PROGRAM is provided on an "as is" basis. GAUSSIAN represents and warrants that it has the right to grant the license granted herein. OTHERWISE, GAUSSIAN MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESS

OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF FITNESS OR PURPOSE OR OF MERCHANTABILITY, OR OF RESULTS OBTAINED FROM LICENSEE'S USE OF THE LICENSED PROGRAM.

Section 6.2 LICENSEE hereby agrees to indemnify and hold harmless GAUSSIAN from and against all damages, liabilities, attorney fees, and costs incurred by GAUSSIAN:

- a. in defending against third party claims or threats of claims against GAUSSIAN arising out of LICENSEE'S use of the Licensed Program, either as delivered to LICENSEE or as modified by LICENSEE, excluding, however, any third party claims or threats of claims against GAUSSIAN arising out of any alleged copyright, trade secret or trademark infringement by the Licensed Program caused by GAUSSIAN, or
- b. as a result of the breach of any of LICENSEE'S obligations, covenants or representations under this Agreement.

Section 6.3 GAUSSIAN'S AGGREGATE TOTAL LIABILITY, IN ANY EVENT, FOR ANY COST, LOSS OR DAMAGE, OR OTHER POTENTIAL OR ACTUAL EXPENSE WHICH IS IN ANY WAY RELATED TO THE EXECUTION, PERFORMANCE, OR SUBJECT MATTER OF THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF THE SERVICE FEE PAID BY LICENSEE TO GAUSSIAN HEREUNDER, REGARDLESS OF THE FORM OF THE ACTION EMPLOYED. IN NO EVENT, SHALL GAUSSIAN BE LIABLE TO LICENSEE FOR INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES, SUCH AS LOSS OF PROFITS, INABILITY TO USE THE LICENSED PROGRAM, OR LOSS OF DATA.

Section 7 - Termination

Section 7.1 This Agreement may be terminated as follows:

- a. This Agreement shall immediately terminate upon termination of the LICENSE.
- b. This Agreement may be terminated by either party upon the expiration of the then-current Agreement Term, provided that at least thirty (30) days prior written notice is given to the other party; or
- c. This Agreement may be terminated by either party upon thirty (30) days prior written notice that the other party has materially breached the provisions of this Agreement and has not cured such breach within such notice period, it being expressly acknowledged and agreed that such termination shall be in addition to and not in limitation of any other legal or equitable remedies available to the non-defaulting party as a consequence of such breach.

Section 7.2 Following termination of this Agreement LICENSEE shall immediately pay the outstanding balance of all accrued Service Fees payable hereunder to GAUSSIAN. Subject to LICENSEE'S strict and prompt compliance with all of its obligations hereunder, LICENSEE may continue to use the Licensed Program supplied to LICENSEE by GAUSSIAN for the remaining term of the LICENSE.

Section 8 – Miscellaneous

Section 8.1 Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. LICENSEE represents and warrants that: (a) this Agreement constitutes a legally binding agreement of LICENSEE, fully enforceable in accordance with all of its terms and conditions; (b) LICENSEE possesses the requisite power and authority to execute and deliver this Agreement and to perform and comply with all of the obligations and restrictions imposed on LICENSEE herein; and (c) the individual signing this Agreement on behalf of LICENSEE has been duly authorized, empowered and directed to sign this Agreement on behalf of LICENSEE.

Section 8.2 This Agreement constitutes the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other prior or contemporaneous communications between the parties relating to the subject matter of this Agreement. Only the terms and conditions of this Agreement shall apply to the subject matter hereof. All terms and conditions of any purchase order or other document issued by LICENSEE in connection with the subject matter hereof, or any that might be issued in the future, shall not apply. This Agreement may be modified only by a written amendment executed by duly authorized officers or representatives of both parties.

Section 8.3 This Agreement shall be governed, construed, and enforced in accordance with the internal substantive laws of the Commonwealth of Pennsylvania, without regard to its conflicts of laws provisions and, to the extent applicable, the copyright laws of the United States of America and all other applicable federal laws and regulations. The parties specifically agree that the provisions of the U.N. Convention on the International Sale of Goods shall not apply.

Section 8.4 In the event that any provision of this Agreement is held invalid, illegal, or unenforceable, the remaining provisions shall be enforced to the maximum extent permitted by applicable law.

Section 8.5 LICENSEE will not assign or transfer this Agreement, or any rights and obligations hereunder, without obtaining the prior written consent of GAUSSIAN, which consent may be withheld by GAUSSIAN in its sole discretion for any reason whatsoever.

Section 8.6 The waiver by either party of any term or condition of this Agreement shall not be deemed to constitute a continuing waiver thereof nor of any further or additional right that such party may hold under this Agreement.

Section 8.7 Any notice required or permitted to be made or given by either party under this Agreement shall be made in writing and delivered by certified mail, postage prepaid, or by Federal Express or any other comparable courier service, addressed as first set forth above or to such other address as a party shall designate by written notice given to the other party.

Section 8.8 LICENSEE acknowledges that the Licensed Program is licensed to LICENSEE for use at LICENSEE's installation address(es) specified in the LICENSE. The export or re-export of the Licensed Program is subject to the requirements of the United States including the Department of Commerce and the Office of Foreign Assets Control of the United States Treasury Department. Any export or re-export of the Licensed Program by LICENSEE in violation of the laws of the United States is strictly prohibited.

The Licensed Program will not be used in or sold for use in nuclear, chemical/biological, missile technology products/applications, or military intelligence end uses, nor will it be sold to, nor for use by, any U.S. sanctioned country, company or military intelligence end user, as defined in the Export Administration Regulations.

For the purpose of clarification, under U.S. export law, "use" and "export or re-export" also refers to providing access to the Licensed Program to users of the Licensed Program. Notwithstanding anything contained herein to the contrary, if LICENSEE provides access to the Licensed Program such access must also be in accordance with the laws of the United States and restrictions stated above. Transfer of the Licensed Program to another site is forbidden without the express written consent of GAUSSIAN. Any user of the Licensed Program, as a condition of that use, agrees to comply with all of the provisions hereof.

VŠB – Technical University of Ostrava



Signature

Vít Vondrák

Type or Print Name

Managing Director

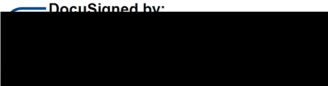

Title

March 30, 2022

Date

MAINT (12/20/21)
9098-GP

GAUSSIAN, INC.


By: 
Operations Manager

March 30, 2022

Date