

## Master Agreement for Licensing and Services

**This master agreement for licensing and services (the "Agreement") is entered into by and between:**

**Name of Client:** Vyšoká škola technická a ekonomická v Českých Budějovicích

registered address: Okružní 517/10

37001 České Budějovice - České Budějovice 4

Jihocesky kraj Czech Republic

(the "**Client**")

**And**

**ESI local entity: ESI Eastern Europe s.r.o**

Registered address: Brojova 2113/16,

326 00 Plzen

Czech Republic

(the "**ESI**")

### **Article 1. Purpose**

The purpose of this Agreement is to set forth the general terms and conditions under which (i) ESI Group (company registered in France) grants a non-exclusive and non-transferable license to the Client, either directly or throughout ESI acting on behalf of ESI Group, to use the software products as defined in the quotations accepted from time to time by the Client (the "**Software Product**") and (ii) Support and Maintenance Services (defined in article 14) are provided to the Client.

Such quotations (each of them the "**Quotation**") will individually designate the Software Product(s), the duration, territory, financial terms and specific conditions of use (including the kind of license as described in Article 3, and the level of Services as described in Article 14).

Following the signature of the Agreement, the Client procures that all subsidiaries of the Client (controlled by the Client) shall be bound by the terms and conditions of the Agreement for all purchase orders and Quotations signed by such subsidiary.

Any affiliate of the Client (controlling the Client or under the same control as the Client) shall be bound by the terms and conditions of the Agreement provided the purchase orders and Quotations refer to this Agreement and to the relevant affiliates. By "control" is meant the legal definition of the law applicable to the present contract.





## **Article 2. Hierarchy of documents**

All Quotations issued for that purpose by ESI and all purchase orders sent in return by the Client will be subject to the terms and conditions of this Agreement.

In case of contradiction between the Agreement and the Quotation, the latter shall prevail.

For the duration of this Agreement and for all future orders of Client regarding the Software Products, purchase orders don't prevail over the Agreement and Quotation. In addition, it is hereby agreed that even if the purchase order sent to ESI in return of the Quotation refers to the Client's terms and conditions, those Client's terms and conditions don't apply to the Agreement (even if signed by ESI).

## **PART I – LICENSING**

### **Article 3. Classification of license**

The Quotation will describe the type of license granted by ESI to the Client as well as its duration:

#### **3.1 Type of license**

##### **i. Commercial license**

The license granted by ESI to the Client is a contractual authorization to use the Software Product, in object/machine readable form only, for commercial purposes, in accordance with the terms of the Quotation.

The Client shall restrict the use of the Software Product to its own personnel or to externs working on behalf of Client, for the Client's own projects or the one of clients of Client (if relevant).

##### **ii. Trial license**

The license granted by ESI to the Client is a contractual authorization to use the Software Product, in object/machine readable form only, for the purpose of evaluating the Software Product only, in accordance with the terms of the Quotation.

The Client shall restrict the use of the Software Product to its employees with no right to use it for operational purposes.

Trial licenses shall in no case exceed a three-month duration (without possibility of renewal).

No trial license shall be granted for controlled products (export control).

##### **iii. Non-commercial license**

Non-commercial licenses shall be reserved to internal needs and not used to the benefit of third parties, in accordance with the terms of the Quotation.

The Client shall restrict the use of the Software Product to its own personnel and, if the Client is an academic entity, to its students.

For both licenses set forth in Article 3.1(ii) (trial license) and 3.1(iii) (non-commercial license), the Client shall have no right to perform computing services (simulation services) for third parties (such a use implying the grant of a commercial license).



All types of licenses shall expressly exclude any demonstration of the Software Product to competitors or resellers of competitors.

### 3.2 Duration of license and financial conditions

#### i. Yearly license

The Client will be granted a license for one year only. The payment will occur upfront for the total of the license fees which includes Maintenance fees.

#### ii. Multi-year license

The Client will be granted a license for a period of one year at a time, for several years (number of years as agreed in the Quotation). The payment will occur upfront for the total of the license fees which includes Maintenance fees or on a yearly basis on each date of anniversary of the license.

#### iii. Paid up License

The Client will be granted a license for a limited number of years as defined in the Quotation (up to 10 years). The payment will occur upfront for the total of the license fees and for the 1<sup>st</sup> year of Maintenance fees and then on each date of anniversary of the license for the yearly Maintenance fees, unless specified otherwise in the Quotation.

### Article 4. Delivery of license key and Installation

A license is deemed valid as of the date set out in the Quotation (the “**Start Date**”). If no date is specified in the Quotation, the license is deemed valid as of the date of electronic transmission of the Client’s license key or the date the license file becomes active, whichever is later. Said date will be used for calculating the duration and possible date of renewal of the license.

Installation of the Software Product (and its Updates) is the Client’s responsibility and shall be accomplished in accordance with the installation guidelines supplied by ESI. Support for installation may nevertheless be provided under the terms of Part II below.

A temporary license key may be provided subject to the Start Date in accordance with the Quotation. In such case, a new license key will be provided once the payment has been received. If payment is not received within the time provided in the Quotation (upfront or for multiyear and paid up licenses, at the anniversary date), the Client shall not be entitled to the definitive license key and ESI shall be authorised to suspend the provision of the license key until payment.

### Article 5. Results and reproduction of graphic user interface

Subject to the restrictions stated in Article 3, the Client shall be free to use the outputs of the treatment of data by the Software Product (the “**Results**”). ESI transfers exclusively to the Client all intellectual property rights on the Results for the entire duration of the intellectual property and for the entire world.



The Client shall also be free to make hard copies of the graphic user interface of the Software Product to show or publish the Results. Any publication or representation of the screen will have to bear a visible mention of ESI Group in the following form: “(software published by ESI Group, reproduction of screen made with its authorization)”.

### Article 6. Back-up copy and copy of manual





The Client may make and store a backup copy (or copies, within the limit given by the local regulation) of the Software Product for security purpose, provided it remains in the Client's possession and control and otherwise does not breach any other provision herein.

For Software Product's user manual provided in electronic form, permission to print one copy per end-user of the Client is hereby granted.

## **Article 7 Interoperability**

The Client shall first inform ESI of its intent for interoperability. The following provisions shall apply depending on the territory where the Client uses the Software Product.

### **7.1. Interoperability within the European Union or the UK**

Should the Client use the Software Product within the European Union or the UK:

- a) ESI may decide to either communicate the required interface information to the Client or make a commercial proposal to pursue any development to achieve interoperability either by modifying the Software Product or by writing of an intermediate program.
- b) Should the Client reject ESI's commercial proposal, ESI will provide the Client with the required interface information under the strict conditions of a non-disclosure agreement to be signed prior to any communication, for the sole purpose of achieving the desired interoperability.
- c) Pursuant to paragraph (b), should ESI perform subsequent modifications to the Software Product to allow it to interoperate with the concerned third-party product, ESI will provide the Client (if then a current licensee) with the new version of the Software Product, which the Client will be obligated to use to facilitate Maintenance.

### **7.2. Interoperability outside the European Union or UK**

Should the Client wish to have the Software Product interoperate with a third-party product outside the European Union or the UK:

- a) ESI will then make a commercial proposal for the development of any required modification or addition to the Software Product to achieve interoperability.
- b) The preparation of such a proposal may require a fee, depending on the scope of the project and provided that the Client has been previously informed of estimated costs.

## **Article 8. Prohibitions and exclusions**

Under the Agreement, the Client has NO right:

- a) to sublicense or redistribute the Software Product, with or without charge;
- b) to extract data, by any means, from any Software Product database for a purpose incompatible with the intended use of the Software Product;
- c) to correct errors, as only ESI has the right to correct errors;
- d) unless permitted by law, to reproduce, translate, reverse engineer, decompile, modify or communicate all or part of the Software Product (including the source code), including the content of the user manual, for any use whatsoever, or create derivative works based on the Software Product or documentation or any part thereof, or to engage or assist any third party to do so, without the written consent of ESI in a separate agreement;
- e) to publish or communicate to third parties (outside the Client's group or organization, if



- relevant) benchmark results without ESI's prior written authorization;
- f) to directly or indirectly repackage or incorporate any portion of the Software Product into another product;
  - g) to get access to the source code, may it be throughout an escrow agreement or otherwise.
- Those prohibitions and exclusions are without prejudice to specific provisions for interoperability in Article 7 and for the granted right to reproduce screen copies in Article 5.

## **Article 9 – Hosting Configuration**

### **9.1. Principle of no rehosting to a different Hosting Configuration**


The Software Product is to be installed on any determined hosting system (hardware or server) ("**Hosting Configuration**") and the Client is not authorized to rehost the license to a new Hosting Configuration ("**Rehosting**").

### **9.2. Exceptions for Rehosting**

For Clients entitled to Support and Maintenance in accordance with the terms of the Quotation and in adequacy with Part II, ESI may authorize, at its own discretion, the Rehosting subject to:

- (i) the payment of a specific fee (corresponding to ESI's administrative and technical costs); and
- (ii) export control regulations.

The following procedure shall apply :

- a) The Client sends to ESI a request for a possible Rehosting, with description  so that ESI can verify that a version of the Software Product is compatible with the new foreseen Hosting Configuration.
- b) ESI verifies compatibility and full performance of the Software Product on said Hosting Configuration.
- c) If the compatibility and performance tests have never been conducted by ESI on the proposed Hosting Configuration, then:
  - if the Client has already acquired the new Hosting Configuration, the Client will conduct the compatibility and performance tests by itself at his own risk and costs, on the strict condition that (1) ESI provides the Client with a free and temporary trial license to conduct such tests and (2) the Client will provide a copy of all results of said tests to ESI.
  - if the Client has not yet acquired the new Hosting Configuration, the Parties will discuss and make their best efforts together to find an equivalent configuration that corresponds to the Client's needs.

### **9.3. Obligations of Client consecutive to an authorized Rehosting**

If any Rehosting is made – as provided above or due to an exceptional authorization given in writing by ESI – the Client shall inform ESI which will then send the Client a form to be completed and returned. Failing to return the form, no Rehosting shall be authorized.

In case of Rehosting as provided in Article 9.1. or 9.2. above, the Client is required to ensure the full deletion or destruction of any Software Product installed on the preceding Hosting Configuration.

## Article 10. Security - Audit

10.1 ESI reserves the right to:

- a) Embed security mechanisms within the Software Product to monitor, store and transmit information concerning the sole usage of the Software Product, WITH STRICTLY NO POSSIBILITY FOR ESI TO HAVE ACCESS TO DATA TREATED BY THE SOFTWARE PRODUCT, in order to verify compliance with the license (such security mechanism only reacting in case of the use of an illegal copy).
- b) Use a hardware lock device, license administration software, file encryption, or a license authorization key to control access to the Software Product.
- c) Request the Client to fill a "know your customer" form for security purposes.

The Client may not take any steps to avoid, bypass or defeat the purpose of any such security measures, nor to engage or assist any other parties to do so. Use of the Software Product without the required lock device or without the authorization key provided by ESI is prohibited.

10.2 During the term of the Software Product's license, ESI may, at any time and at its own expense, conduct audits to verify the conditions of Software Product use by the Client. The audit may be conducted electronically or directly on the Client's premises.

ESI shall inform the Client of the occurrence of the audit at least fifteen (15) calendar days in advance, including the identity of the auditor, the dates and scope of the audit.

The Client will facilitate the auditor's access to its information system or its premises and, if applicable, to any document, information, tool, or other element useful to the proper conduct of the audit. The audit will be limited to the verification of the compliant use of the Software Product with this Agreement and the Quotation(s).

ESI and, if applicable, the selected external auditor will treat the information they have gathered with the strictest confidentiality.

The audit will be conducted, during working hours, in such a way as not to interfere with the normal operation of any other service provided by the Client.

If ESI determines that Client's use of the Software Product is not in conformity with this Agreement and the corresponding Quotation(s), ESI will inform Client without undue delay of its findings. In case of use exceeding the agreed upon scope in the Quotation, Client will pay to obtain valid license(s) to bring Client's use into compliance with this Agreement and other applicable terms and will bear the reasonable costs of the audit in such specific case.

## Article 11 – Intellectual Property

### 11.1. User license

ESI hereby declares that it is the owner of all intellectual property rights in the Software Product or that it is authorized by the owner of said rights to commercialize the Software Product and certifies that there is no infringement on the intellectual property rights of any third party.

The terms and conditions of license of the Software Product are specified in article 1 of the Agreement and in the concerned Quotation.

### 11.2. Warranty of non-infringement



The Client shall immediately notify ESI, if Client is sued for infringement based on the Client's use of the Software Product.

Subject to the Client's written notice of the alleged infringement, ESI shall assume, on its own behalf and at its own cost, the defence and settlement of the dispute. The Client shall be obliged to cooperate fully with ESI at ESI's expense, provided that ESI preserves the interests of both Parties.

ESI shall have no obligation with respect to any claim of infringement to the extent that such infringement is the result of a Client's modification of the Software Product (which is prohibited) or its combination, operation, or use with programs or equipment not specified by ESI.

In the event of a prohibition on the use of the Software Products supplied by ESI, the latter will endeavour, at its own discretion and expense:

- either to obtain the right for the Client to continue using the infringing element ;
- replace it with an element that is not the subject of an infringement action; or
- modify the infringing element in such a way as to avoid said infringement.


The foregoing provisions set the limits of the Service Provider's liability for infringement.

### **11.3. Open-source**

In the event that ESI integrates software components subject to so-called "free" (or "open-source") software licenses in their Software Products, of which it is not the author and/or publisher, any rights granted to the Client in respect of said software shall be governed by the provisions specific to said software. Those components do not restrict the rights of use granted to the Client. The original licensors of said open source software components provide them on an "as is" basis and without any liability whatsoever from ESI to Client.

## **Article 12 – Warranty**

### **12.1. Good functioning of the Software Product**

ESI shall guarantee the conformity of the Software Product with the specifications mentioned in the  manual and the good functioning of the Software Product, according to said specifications, on a platform set up to match the required Hosting Configuration as defined in the user manual.

### **12.2. Exclusions of warranty**

Warranties set out in Articles 12.1 and 12.2 are the sole ones given by ESI.

ESI does NOT guarantee:

- that the functions contained in the Software Product will meet the Client's requirements;
- that said functions will enable the Software Product to achieve the objectives set by the Client;
- that said functions will operate in the combination selected by the Client if different from the specifications indicated in the user manual;
- that the operation of the Software Product will be uninterrupted or free of errors, without prejudice to the full application of Article 14 below whenever not excluded in a Quotation for non-commercial license;
- the adequacy of the Software Product with any other configuration.



The Client shall have exclusive responsibility for:

- taking adequate measures to properly test, operate and use the Software Product,
- all Results obtained therefrom and ESI cannot be liable in any way for direct or indirect consequences of the use of the Results, and
- selection, use and results of any other computer program, database or programming equipment or services used in connection with the Software Product.

Any warranty or responsibility given by ESI shall cease immediately upon the Client's use of the Software Product in a non-appropriate configuration (as described in Article 8), or in case of modification of the Software Product made by Client.

### **Article 13 – Liability**

NOTWITHSTANDING ANY DAMAGES THAT THE CLIENT MIGHT INCUR FOR ANY REASON WHATSOEVER, INCLUDING WITHOUT LIMITATION, ALL DAMAGES REFERENCED HEREIN AND ALL DIRECT OR GENERAL DAMAGES IN THE AGREEMENT OR ANYTHING ELSE, THE ENTIRE LIABILITY OF ESI UNDER ANY PROVISION OF THIS AGREEMENT AND THE CLIENT'S EXCLUSIVE REMEDY HEREUNDER SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY THE CLIENT FOR THE SPECIFIC SOFTWARE PRODUCT CAUSING THE DAMAGE WITHIN 12 MONTHS PRIOR TO THE DAMAGING EVENT.

NOTWITHSTANDING THIS LIMITATION, ESI MAY, AT ITS SOLE OPTION, CORRECT THE DEFECT OF THE SOFTWARE PRODUCT OR REPLACE SUCH SOFTWARE. THE FOREGOING LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ESI BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF REVENUE, RECOVERY COSTS, LOSS OF SALES, COVER COSTS, LOSS OF CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, FOR LOSS OF GOODWILL, FOR DAMAGE TO REPUTATION, OR FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE PRODUCT.

## **PART II - SERVICES**




ESI or ESI distributor ("**ESI Local Representation**") will provide the Support and Maintenance Services for the Software Product to the Client in accordance with the Quotation.

### **Article 14. Scope of Services**



## 14.1 Level of Services

The Client will choose the level of Services provided, in the Quotation, in accordance with the following specifications:

| STANDARD   | PREMIUM  | BUSINESS   |
|--|--|--|
| <ul style="list-style-type: none"> <li>✓ Access to knowledge base </li> <li>✓ 8x5* email support</li> <li>✓ Support for incidents.<br/>First Response Time in 48 hours</li> <li>✓ <b>English</b> support</li> </ul> | <ul style="list-style-type: none"> <li>✓ Access to knowledge base </li> <li>✓ 8x5* email support</li> <li>✓ <b>Top Priority</b> support for incidents.<br/>First Response Time in 8 hours</li> <li>✓ <b>Local language</b> support (if possible**)</li> <li>✓ <b>Unlimited access</b> to live support (by phone)</li> <li>✓ <b>Standard</b> Global Ticket Report</li> </ul> | <ul style="list-style-type: none"> <li>✓ Access to knowledge base </li> <li>✓ 8x5* email support</li> <li>✓ <b>Top Priority</b> support for incidents.<br/>First Response Time in 8 hours</li> <li>✓ <b>Local language</b> support** with a reference support team</li> <li>✓ <b>Unlimited access</b> to live support (by phone)</li> <li>✓ <b>Personalized</b> Global Ticket Report</li> <li>✓ <b>Monitoring Tool</b></li> <li><input type="checkbox"/> <b>Access to Embedded Support Expert Service***</b></li> </ul> |


\* 8x5: in a week the support is open 8 hours during the 5 working days / Local representative  
 \*\* Local language: need approval by Support Manager  
 \*\*\* Upon additional cost, only available under conditions

## 14.2 Inclusions and exclusions

The services (the "**Services**") include:

- Maintenance:** modification of a Software Product to correct an Incident (as defined below), adding the incident correction to the list of the Software Product development, to adjust or to correct performance or other attributes.
- Support:** answers to Client's questions, provision of a basic understanding of how to use the Software Product, support on general installation, when experiencing Problems (as defined below) or Incidents.

The following services are expressly EXCLUDED from the scope of this Agreement (unless provided otherwise in the Quotation):

- Training or assistance to the Client on any business process customization or customization of the Software Product;
- Assistance to the Client related to:
  - computing services including and not limited to model creation or modification, interpretation  results of the analysis;
  - its own user subroutines after determining the Incident source;
  - its independent use of 3<sup>rd</sup> party products, including operating systems;
  - license management services;
  - installation on high performance computer and related to network configurations;
  - when the Problem is not classified as an Incident. In case of incorrect use, an indication of possible causes, if possible, may be indicated to Client to continue debugging.
- Answering questions related solely to the operating systems, hardware or any other programs operating on the Client's hardware.

The Client may benefit from training services ("**Training**") provided by ESI or a ESI Local Representation, provided that this is included and detailed in the Quotation.

### 14.3 Service Management

#### - Software Product Maintenance, Support and Training

ESI or ESI Local Representation, as the case may be, will only deliver to the Client Maintenance, Support, and Training for the Software Product current release and not for the Software Product previous releases.

#### - Updates

For as long as the license is valid, ESI will make available updates for the relevant Software Product to the Client, as follows:

- The Client will be provided access to all updates (and associated documentation) in compliance with local regulations without charge as soon as the release is available on the market.
- Updates will only be provided for the agreed Hosting Configuration.

#### - New Version

Each year, ESI shall deliver, where possible, a new version of the Software Product called a "**New Version**". This New Version (also called upgrades in a technical way) is identifiable by its version number bearing the name of the current year. This New Version is included in the Maintenance price.

For new innovative features in this New Version, ESI shall provide an additional quotation subject to the Client's approval.

### Article 15. Process

#### 15.1. Point of Contact and contact

ESI's or ESI Local Representation's email address to contact (the "**Point of Contact**"), shall be included in the Quotation.

The Point of Contact will coordinate Problem Resolution and inform the Client about the progress and steps taken to solve any Problem until final Resolution.

#### 15.2 Means

All level of Services shall include the following:

- Have access to knowledge base: During the license period, the Client can have access to ESI Group's web-based Client portal: <https://myesi.esi-group.com/>.
- Contact support by Email in English: Monitored during workdays from 9:00 A.M. to 5:00 P.M. Monday – Friday (local time of ESI or ESI Local Representation, as the case may be).
- The mails received outside office hours will be collected. However, no action can be guaranteed, and resolution may only start on the next working day.
- All needed information should be shared in order to start to investigate the Incident.
- ESI makes no representation and accepts no liability concerning the continuity of service or uninterrupted functioning of internet networks or electric/email/ticketing management system providers.




In addition to the above Standard Services, the Client shall have access to the following level of Services depending on the level of Services chosen in the Quotation:

- Premium Support:
  - i. Contact support by Email in local language if feasible
  - ii. Have access to unlimited live support by phone
  - iii. Receive a standard global ticket report
- Business Support:
  - i. Contact support by Email in local language if feasible
  - ii. Have access to unlimited live support by phone
  - iii. Receive a personalized global ticket report
  - iv. Have access to the dedicated support expert service (upon additional cost)

### 15.3 Reporting of Problems

The procedure for reporting, tracking, diagnosing and responding to problems raised by the Client reporting of a specific issue (the "**Problem**") is as follows:

- The language used to communicate between Client and ESI is English. If feasible and if the Customer subscribes Premium or Business Support, ESI will support communication in the local language, but this cannot be guaranteed.
- The Client should contact the Point of Contact to explain the Problem as precisely as possible with the appropriate data (for instance: Software version, OS version, hardware, log, screen capture, case, used license file...)
- Upon receipt of the Problem, the Point of Contact shall:
  - o Confirm receipt of the Problem.
  - o Provide a ticket number referenced in all communication related to the reg  Problem.
  - o Check the ticket and actual existence of the Problem and whether it lies within the scope of the Agreement.
- Upon acceptance of the ticket, the Point of Contact shall:
  - o Classify the Problem as an Incident or not and, to which Severity Level scale (as defined in Article 15.4). A Problem will be considered as an "**Incident**" in case of unplanned interruption, malfunction or reduction in the quality of the Software Product's regular functioning, which originates solely in the Software Product. Misuse, lack of knowledge in the use or a problem caused by a particular configuration or other external cause) shall not be considered as an Incident. Substantial non-compliance of the Software Product with the functions described in the user manual may also be considered as an Incident.
  - o Collect and consider the Client's opinions, including estimated Severity Level.
  - o Determine the Incident's final Severity Level.
  - o Provide Client with any Resolution like a patch or "**Workaround**" (being a technique or information that reduces adverse effects of Incidents on the operation of the Software Product) within the timeframes provided in Article 15.4.

The ticket and related Incident will be considered as resolved (the "**Resolution**") in the following cases:

- A resolution has been communicated by ESI or ESI Local Representation to the Client which solved the Incident.
- The Client does not answer the questions of the Point of Contact within 30 days.
- The Client refuses to implement the steps suggested to troubleshoot or overcome the Incident.

## 15.4 Classification



ESI will define the severity levels based on the following table (the “**Severity Level**”), with provision of indicative resolution time based on following colour codes (as presented in article 14) :

- Standard: black
- *Premium and Business: green (and italic)*

All Client submissions are considered Problems until classified as an Incident and consequently attributed a final Severity Level that triggers the countdown on the below time schedules.





| Severity Level       | Classification    | First Response Time                   | Problem Resolution Time               |
|----------------------|--|---------------------------------------|---------------------------------------|
| 1<br><b>Minor</b>    | An Incident having no impact on (a) Software Product usage, (b) or the performance or functionality of Client's system or Client's Software Product related business operations   | 3 working days<br><br>8 working hours | ASAP                                  |
| 2<br><b>Moderate</b> | An Incident (a) where a Workaround exists or (b) loss of few functionalities the majority of Software Product functions are still useable and (c) where the situation has a low impact on Client's business operations.  | 3 working days<br><br>8 working hours | ASAP                                  |
| 3<br><b>Major</b>    | An Incident (a) where no Workaround exists and (b) partial failure or limited usage of the Software Product or (c) where the situation is highly impacting a part of Client's business operations.   | 2 working days<br><br>8 working hours | 10 working days<br><br>2 working days |
| 4<br><b>Fatal</b>    | An Incident (a) where no Workaround exists and (b) demonstrating total failure of the Software Product (impossible to install or access the Software Product or impossible to access one or more key functionalities), or (c) where the situation halts Client's Software Product related business operations. | 2 working days<br><br>8 working hours | 5 working days<br><br>2 working days  |

\* For times indicated in days, Client will be informed should one additional day be necessary due to difference in time zones between the Client and the ESL entity solving the Incident.

- ❖ **First Response Time** is the time taken by the Point of Contact to (a) confirm that the Problem was accepted as an Incident and (b) to determine its first Severity Level, provided that Client has given all information needed to analyze the Problem. The Point of Contact will answer in the time frame corresponding to the results of its own qualification of the Severity Level. If more time is required, Client will be informed immediately.
- ❖ **Problem Resolution Time** is an indicative time frame determined by the Point of Contact from the First Response Time to confirm the origin of the Problem, record at least for Severity Level 3 - Major or 4 - Fatal the appropriate corrective action for a future Software Maintenance or Release in collaboration with ESL or provide, if

applicable, a Workaround or a patch. The Problem Resolution Time is considered an obligation of means, not an obligation of results.

If the Client is not available to engage in the effort to solve the Problem or Incident, the Point of Contact may lengthen above delays.

#### **Article 16. Client's obligations**

Where the Client has been granted several licenses of the same Software Product, Services are subject to payment of the related fees for all licenses.

The Client's obligations include:

- Transmitting a list to ESI or ESI Local Representation of all designated key user(s) (before or at the latest upon delivery of the license keys and subsequent updates, when applicable, as soon as any change occurs.
- Assuring reasonable availability of the above-mentioned key user(s) when resolving a Problem.
- Reporting all Incidents found in and impacting the effective use of the Software Product to the Point of Contact.

### **PART III – COMMON PROVISIONS**

#### **Article 17. Data Privacy**

17.1. The Parties undertake to comply with the regulations in force applicable to the processing of personal data, and, in particular, if applicable, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Each Party guarantees the other Party of compliance with its legal and regulatory obligations under the protection of personal data, without prejudice to the obligations they may have towards each other and their responsibility towards the persons concerned.

17.2 In the context of this contract, ESI may collect personal data for the proper performance of the Agreement. In this case, ESI acts as a processor and the Client acts as a controller within the meaning of the aforementioned regulations.

17.3 The terms set out at <https://www.esi-group.com/data-privacy-terms-for-clients> are incorporated herein by reference and shall apply to the Agreement and all related Quotation or purchase order.

#### **Article 18. Export control**

ESI has an export compliance program to comply with all trade regulations in all countries in which it operates.

- The Client acknowledges that some Software Products provided by ESI may be subject to export control laws and regulations (*see below list of concerned products*)
- The Client agrees to comply with all applicable export control laws, regulations, and restrictions.
- The Client warrants that they will not engage in any activity that violates these laws, regulations, or restrictions, including but not limited to the export, re-export, transfer, or provision of ESI's products to any prohibited destination, entity, or individual, or for any prohibited end use.
- The Client warrants that they are not located in, under the control of, or a national or resident of any country embargoed or sanctioned by the applicable authorities.



- The Client agrees to obtain any necessary licenses or authorizations required under applicable export control laws and regulations before engaging in any export or transfer of ESI's concerned listed products below.
- ESI may provide a reasonable assistance to help Client in obtaining the necessary export compliance licenses: This may include product descriptions, technical specifications, and any other relevant information may facilitate the Client application for export compliance licenses or authorizations. But ESI cannot guarantee the success or approval of any export compliance license or authorization application. The issuance of such licenses or authorizations is solely determined by the relevant government authorities. ESI has no control over their decision.
- ESI reserves the right to suspend or terminate the Client's access to its Software Products and/or Services to comply with applicable export control laws or if the Client has violated trade export compliance (including local/ EU decision requiring stopping activities with specific country or organization).
- ESI shall not be liable for any direct or indirect damages, losses, penalties, or legal actions arising from the Client's failure to comply with export control laws and regulations.

**Concerned Product Software :**

- CAFÉ Module is classified **9D001** and subject to US EAR and EU Dual Use Regulations.
- VAONE and PROCAST solutions are not controlled but designated **EAR99**.

### **Article 19. Confidentiality**

Should a Party communicate proprietary information for the purpose of this Agreement, the other Party hereby agrees that any data communicated and expressly mentioned in writing as being confidential, shall be considered strictly confidential and treated with the same degree of care, as such Party would do with its own confidential information.

Each Party shall only communicate those data to employees within its group that have a real and strict need to know, the group meaning the holding company, its affiliates and, for ESI in the case of information communicated for Support and Maintenance purpose, distributors and third party developers working on behalf of the group and developers and/or technicians required to fix computing Problems and/or Incidents.

The confidentiality obligation is subscribed for five (5) years counting from the communication of said data, with the following exceptions:

- Data and/or information that is or becomes freely available through no fault of the receiving Party;
- Data and/or information for which the receiving Party can document as having already been known and/or communicated with no prior confidentiality obligation.

### **Article 20. Client's feedback on the Software Product**

Subject to the Client's prior written authorization, ESI will have the right to make any commercial or informative reference to the Client's use of the Software Product, without compromising any existing confidentiality obligations.

ESI is free to use without restrictions any feedback about the Software Product that is communicated by the Client to ESI or to ESI Local Representation and irrespective of the communication format, and the Client shall not be entitled to any rights in any such changes or compensation for same. The Client shall and hereby does waive, release, and assign any and all rights, if any, in such ideas, suggestions of changes, or feedback to ESI.



Feedback shall mean the Client's communication of any ideas, suggestions, guidance or other information, including but not limited to the Client test results or suggested improvements of the Software Product.

## **Article 21. Duration**

The Agreement takes effect on the date of its signature by the Parties for a duration of five years and replaces previous general terms for licenses of ESI's Software Products (e.g. ESI EULA) between ESI and Client.

Notwithstanding the above, should the term of a license extend beyond this five year period, the Agreement will continue to apply till the term of the said license, unless the Parties agree in writing to modify it or replace it with a new master agreement.

Upon the expiry of the initial term, the Agreement shall be renewed automatically for successive one-year periods unless otherwise terminated by either Party at least 90 days in advance by registered mail.

## **Article 22. Termination of the Agreement and of a license**

### **22.1 Termination of the Agreement for breach**


Should the Client be in breach to its rights to use the license granted of the Agreement or is in the situation described in article 18 – Export Control, ESI shall have the right to terminate immediately the Agreement and therefore the granted license upon formal notice by registered letter with acknowledgement of receipt, and no refund shall be provided.

In the event of a material breach of its contractual obligations by either Party, the Agreement may be terminated ipso jure by the aggrieved Party, if the defaulting Party fails to remedy its breach within thirty (30) calendar days of receipt of formal notice from the other Party, by registered letter with acknowledgement of receipt, without prejudice to any damages that the aggrieved Party may claim.

Upon receipt of the termination letter, the Client shall remove or erase the Software Product including all backup copies from any Hosting Configuration and to return or destroy all copies of the user manual without delay.

The Client shall send thereupon and without delay written confirmation to ESI that this obligation has been met.

### **22.2 Termination of a specific licence**

Should the Client be in breach  the payment provisions (annual payment or payment of the Maintenance fees), ESI shall have the right to terminate immediately the granted license upon formal notice by registered letter with acknowledgement of receipt, and no refund shall be provided. Such termination shall only apply to the licence concerned by such payment.

For the avoidance of doubt, no new license key will be delivered to the Client in accordance with Article 4 of the Agreement.

## **Article 23. Miscellaneous**

### **23.1. No-waiver**

Nothing in the behaviour or actions of ESI or ESI Local Representation (e.g. delay, inaction, any failure to perform or execute) shall be construed neither as a waiver of any rights, in whole or in part, granted by law or in virtue of this Agreement, nor as an authorization or tolerance



of any kind, which would permit the Client's continuation of any misconduct or breach of the Agreement.

### **23.2. Severability**


If one or more provisions of the Agreement should be deemed invalid, all other provisions shall remain in force except where a legal ruling states that the nullity of a provision invalidates all other provisions.

Moreover, the Parties shall then make all reasonable efforts to replace said provision by a provision complying with the applicable regulation and respecting as closely as possible the intent of the invalid original provision.

### **23.3. Subcontracting**

ESI shall be entitled to subcontract part or all the Services (including training if any) to a distributor or a third party. In the event of subcontracting, ESI remains liable to the Client for the Services performed.

### **23.4 Electronic signature**

The Parties agree that, as a matter of  force agreement, this Agreement might be signed electronically in accordance with applicable laws (if applicable, including the European and French regulations in force, in particular Regulation (EU) No. 910/2014 of the European Parliament and of the Council dated 23 July 2014 and articles 1367 et seq. of the French Civil Code).

For this purpose, the Parties agree to use the online platform DocuSign ([www.docusign.com](http://www.docusign.com)). Each of the Parties decides that the technical means implemented in the context of this signature confer a definite date to this Agreement. Each of the Parties acknowledges and accepts that the signature process used by the Parties to electronically sign this Agreement enables each of them to have a copy of this Agreement on a durable medium or to have access to it.

Electronic signature should be the preferred option but signature by hand is also accepted.

### **23.5. Jurisdiction**

For any litigation concerning the interpretation or execution relating to the Agreement, the venue shall be the court of the district in which the Software Product is used. The Client's local law (i.e., the law where the Software Product is used), shall govern the Agreement both for its interpretation and its enforcement.

For any litigation concerning the execution of several licenses used in different countries, the venue shall be the court of the district in which the Client has its registered address.

### **23.6. Language**

In case of bilingual version of this Agreement, should there be a discrepancy between the two versions, the English version shall prevail.

In witness whereof, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives.

For Client

For ESI

Signature by an  
authorized representative:

Signature by an  
authorized representative:

Name and title:

Name and title: Anshul Gupta  
Head of SMB Sales – Global

Date: 14 -03- 2024

Date: 4-Mar-24

