



# APPEON SOFTWARE LICENSE AGREEMENT

(Last Updated June 8, 2020)

General (applies to all countries, except those for which a specific country version is posted)

**IMPORTANT NOTICE: READ THIS SOFTWARE LICENSE AGREEMENT CAREFULLY BEFORE USING THE ENCLOSED PROGRAM. YOU MAY USE THE PROGRAM ACQUIRED ONLY IN THE COUNTRY IN WHICH THIS LICENSE WAS ACCEPTED, AND ONLY IN ACCORDANCE WITH THE FOLLOWING TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, YOU MAY NOT USE THE PROGRAM. BY DOWNLOADING, INSTALLING, OR USING THE PROGRAM IN ANY WAY, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND AND AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THESE TERMS, PRESENT YOUR RECEIPT OR OTHER PROOF OF PURCHASE, TOGETHER WITH THE PROGRAM, DOCUMENTATION AND PACKAGING (IF ANY) TO THE ENTITY FROM WHICH YOU OBTAINED THIS PRODUCT WITHIN THIRTY (30) DAYS TO REQUEST A REFUND. THIS IS A LICENSE AND NOT A SALE.**

If You have signed a written software license agreement with Appeon, such signed license agreement shall supersede and replace this Agreement and any other license agreement with Appeon that is embedded in or accompanying this Program.

AS USED HEREIN, "APPEON" IS THE COMPANY WITH WHOM YOU ARE PURCHASING THE SOFTWARE LICENSES OR RELATED SERVICES, EITHER DIRECTLY OR INDIRECTLY THROUGH AN AUTHORIZED APPEON PARTNER ("RESELLER"). FOR THE PURPOSE OF CLARIFICATION, IN CASE OF OEM DISTRIBUTION, THE RELEVANT APPEON COMPANY IS THE ONE FROM WHOM YOU ARE PURCHASING THE SOFTWARE INDIRECTLY THROUGH A RESELLER.

Use by Employee, Contractor, Agent or other Third Party: if you are downloading or installing the Program (including Updates) on behalf of another person or entity, you hereby represent and warrant that you have the authority to bind the party or entity for which you are performing the download or installation to the terms and conditions of this Agreement. If you do not have such authority, you may not download or install the Program or Updates.

1. ABBREVIATIONS AND DEFINITIONS. Abbreviations and definitions appear at the end of this Agreement.
2. LICENSE.



2.1 Subject to the terms and conditions set forth in this Agreement, Appeon grants to You a non-exclusive, non-transferable license to Use each licensed Program within the country specified on the Order or Reseller's order. Each Program shall be subject to the usage limitations based on quantity and type of license purchased, as indicated on the Order or Reseller's order. You may Use the Program (and accompanying Redistributables) solely for Your internal business purposes by Your employees, agents and contractors (including third parties performing services for You), unless otherwise permitted by the type of license purchased. If you purchased a subscription-based (non-perpetual) license, You may Use the Program only during the applicable Subscription Term. If the license type is not indicated in the Order or Reseller's order, the license type shall be a Seat License to be Used on a non-perpetual basis with a Subscription Term of one (1) year. The Program, license, Redistributables, and Documentation may not be transferred, sold, assigned, sublicensed or otherwise conveyed (whether by operation of law or otherwise) to another party without Appeon's prior written consent and payment of any applicable fees in accordance with Appeon's then-current policies.

2.2 You may not modify, reverse engineer, decompile or disassemble the Program (except as specifically permitted by law without the possibility of contractual waiver, as expressly permitted for certain Redistributables in this Section 2.2, or as expressly permitted in the Documentation). For a period of 3 years from the date of shipment, You may request from Appeon the full source code of the Redistributables for iOS, and you may modify said Redistributables for Your own internal business purposes only. Transfer of the Program outside the country in which it was originally delivered to You is not permitted without Appeon's prior written consent and is subject to compliance with all applicable export regulations and restrictions. You may not allow direct or indirect (including over the Internet) access or Use of the Program by any third party (except agents and contractors as expressly permitted in Sections 2.1), without Appeon's prior written consent and subject to any applicable fees. You may contract with a third party to host or operate the Program ("Outsourcer") on Your behalf solely for Your benefit; however, You shall remain subject to all of the provisions of this Agreement and shall be liable for Outsourcer's compliance with the provisions of this Agreement. Redistributables shall be Used solely for the purpose of running Your Business Application, which shall be developed Using licensed copies of the Program. You shall not remove any copyright notices or other proprietary notices from the Program, and shall reproduce such notices on all copies of the Program. Results of benchmark or other performance tests run on the Program may not be disclosed to any third party without Appeon's prior written consent.

2.3 Appeon shall make the Program (and any Updates available at the time) available to You, via ESD, and if applicable, an activation code or other means permitting You to install and activate each license specified on the Order or Reseller's order. Risk of loss passes at the time of such electronic delivery. You, at Your own expense, shall be responsible for properly installing and configuring the Program (and all Updates).

2.4 Third party components (including open source components) that are accompanied by a separate license agreement from a third party are provided subject to such third-party license terms. By downloading, installing, or using the program in any way, you acknowledge that you have read, understand and agree to the licenses of the third party components of the program posted to the Appeon website (<https://www.appeon.com/thirdpartylicenses.html>). The terms of this Agreement shall not apply to such third-party components, except that, as between You and Appeon, the provisions of this Section 2.4, Section 3, Section 7.4 and Section 9.8 shall apply. **WITHOUT LIMITING THE FOREGOING, APPEON PROVIDES SUCH THIRD-PARTY COMPONENTS "AS IS" WITHOUT ANY INDEMNITIES OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR**



STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NONINFRINGEMENT, ACCURACY OF INFORMATIONAL CONTENT, CONDITIONS OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. Appeon shall not be obligated to provide any Support or error correction services for such third-party components, but such services may be available from a third party. Third party components not accompanied by a license agreement from a third party shall be subject to the terms of this Agreement.

2.5 No more often than once in any 12-month period, Appeon may, at its expense, upon written notice and during business hours, audit the number of copies of the Program in Use and Your compliance with the applicable usage limitations set forth by this Agreement. The auditors shall protect the confidentiality of Your information. If the Use of the Program is found to be greater than that for which You are licensed, You shall pay any additional amounts due based upon the list prices set forth in the Price List in effect upon the date of notice of the audit. Your refusal to permit an audit within a period of thirty (30) calendar days following receipt of notice shall be a material breach of this Agreement.

### 3. PAYMENT AND TAXES.

3.1 Unless otherwise agreed to in writing by Appeon or Reseller, payment for all perpetual licenses must be received in full prior to the delivery of Your Order and payment for all subscription fees (e.g. fees for non-perpetual licenses and Support) shall be paid annually in advance. If You have purchased a subscription-based (non-perpetual) license to the Program and wish to continue Using the Program beyond the Subscription Term, You must place a renewal Order prior to the expiration of such Subscription Term; once Your Subscription Term has expired Your access to and Use of the Programs will cease. If You have purchased a perpetual license to the Program and wish to continue receiving Updates or Support beyond the Subscription Term, You must place a renewal Order prior to the expiration of such Subscription Term; if Your Subscription Term has expired for a period greater than six (6) months You will not be eligible to reinstate Support for the applicable licenses, and should You wish to receive Updates for the applicable licenses You will be required to purchase new licenses.

3.2 Unless otherwise agreed to in writing by Appeon or Reseller, You shall pay all invoices issued by Appeon or Reseller, in United States currency, within thirty (30) days of Your Order. You will reimburse Appeon or Reseller for all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts.

3.3 You shall be responsible for and agree to pay all applicable sales or use, goods and services, value added, consumption or other similar fees, duties or taxes imposed by any government (other than Appeon's income and corporate franchise taxes). If You are required to pay any withholding tax, charge, or levy from any payments due to Appeon hereunder, You agree to gross up payments actually made to Appeon such that Appeon receives the amount due hereunder in full and free of any deduction for any such withholding tax, charge, or levy. Where applicable law requires You to self-assess or reverse-charge any taxes, You shall be responsible for complying with such law.

### 4. TECHNICAL SUPPORT.

Subject to the terms and conditions of this Agreement, including, without limitation, Your on-time payment of applicable fees, Appeon and its Affiliates will provide You the level of Support (including



Updates) in accordance with Appeon's then-current support policies posted to the Appeon Website (<https://www.appeon.com/appeon-standard-support-plan.html>). Support shall solely be provided to Your authorized support contacts for the "Supported Program" listed on such Order or Reseller's order.

"Supported Program" shall mean the then-current Major Version or LTS Version of a listed Program running in a "Compatible Configuration" and, for a period of twelve (12) months after the introduction of a new Major Version of such Program or for a period of eighteen (18) months after the introduction of a new LTS Version, the immediately preceding Major Version or LTS Version of the Program.

"Compatible Configuration" shall mean (i) the Programs are installed to the correct software and hardware (if applicable) system as specified in the Documentation, (ii) all software and hardware has been configured properly in accordance with the Documentation or appropriate third-party vendor's documentation (as applicable), and (iii) the Programs are used properly in accordance with the Documentation. Appeon will use commercially reasonable efforts to correct or circumvent defects in the Supported Program that can be reproduced at an Appeon support facility. Appeon shall have no obligation to provide Support with respect to: (a) defects that have been corrected in a newer generally-available Update; (b) misconfiguration or improper Use of the Program; (c) Use of the Program on any unsupported computer hardware or software environment; or (d) Use of any version of the Program modified by You in breach of this Agreement. Appeon has no obligation to modify any version of the Program to run with new versions of the Operating System Software. Appeon reserves the right to make corrections only to the most current generally-available Major Version of the Program.

## 5. CONFIDENTIALITY.

"Confidential Information" shall include the Program (including methods or concepts utilized therein) and all information identified by Appeon as proprietary or confidential. Confidential Information shall remain the sole property of Appeon and its Affiliates, and shall not be disclosed to any third party without the express written consent of Appeon; except that You may disclose Confidential Information to a third party performing services for Your benefit, provided that such third party is bound by a written non-disclosure agreement with You that protects such Confidential Information in a manner consistent with this Agreement.

You acknowledge and agree that the Program may make Internet connections in order to:

- Validate Your license for the Programs;
- Provide Program usage statistics;
- Check for Updates; and
- Provide other services to You.

For more details, please review Appeon's privacy policy posted to <https://www.appeon.com/privacy-statement.html>.

Except with respect to the Program, items will not be deemed Confidential Information if (a) available to the public other than by a breach of an agreement with Appeon; (b) rightfully received from a third party not in breach of any obligation of confidentiality; (c) independently developed by You without access to the Confidential Information; or (d) proven to have been known to You at the time of disclosure. You shall immediately inform Appeon if You are required to produce Confidential Information by operation of law, and if so requested by Appeon, shall provide reasonable assistance to



Appeon in seeking to limit such production. A copyright notice on a Program does not, by itself, constitute evidence of publication or public disclosure.

## 6. OWNERSHIP AND PROPRIETARY RIGHTS.

Each Program is licensed, not sold. All copyright and other intellectual property rights in the Program, Documentation, and all copies thereof, are owned by Appeon or its Affiliates and its respective licensors, and are protected by copyright and/or trade secret laws and international treaty provisions. Appeon or its Affiliates and its respective licensors reserve and retain ownership in and to (i) all rights, title and interest to the Program, Documentation, and all copies thereof, (ii) all rights, title and interest to all copyright and other intellectual property rights in each Program and each copy of the Program, and (iii) all other rights not expressly granted herein. You acquire only the non-exclusive non-transferable right to Use the Program subject to the conditions set forth in this Agreement, and do not acquire any ownership or distribution rights whatsoever in the Program. When You have ceased Using the Program, You shall return or destroy the Program, Documentation, and all copies thereof. A license to Use a Program does not include any right, implied or otherwise, to implement patents or other intellectual property of Appeon or its Affiliates and its respective licensors.

## 7. LIMITED WARRANTY AND LIMITATIONS ON LIABILITY.

7.1 Unless otherwise specified in the Documentation, for a period of ninety (90) days from the date of shipment (or date on which an ESD of the Program is made available) to You, Appeon warrants that the Program, when Used in accordance with the Documentation, will operate substantially with such Documentation. **THE PROGRAM IS ONLY COMPATIBLE WITH CERTAIN COMPUTER HARDWARE AND OPERATING SYSTEM SOFTWARE**, and no warranty is provided with respect to use of the Program within an unsupported computer hardware or software environment. In the event of a non-conforming Program, Your sole remedy shall be, at Appeon's option, replacement of the defective Program or a refund equal to the amount of license fees paid for the affected Programs within the twelve-month period immediately preceding the warranty claim. This limited warranty gives You specific legal rights. You may have other rights that vary from jurisdiction to jurisdiction. Appeon warranties extend solely to You, the original licensee.

7.2 **APPEON AND ITS AFFILIATES DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NONINFRINGEMENT, ACCURACY OF INFORMATIONAL CONTENT, FITNESS FOR A PARTICULAR PURPOSE, AND CONDITIONS OF MERCHANTABILITY, WHETHER ARISING BY STATUTE OR IN LAW OR AS A RESULT OF A COURSE OF DEALING OR USAGE OF TRADE, WITH RESPECT TO THE PROGRAM, DOCUMENTATION, SUPPORT OR OTHER SERVICES RELATED TO THE PROGRAM.** Some jurisdictions do not allow limitations on implied warranties so the above limitations may not apply to You. **NO WARRANTY IS MADE REGARDING THE RESULTS TO BE OBTAINED FROM ANY PROGRAM OR SERVICES, THAT THE PROGRAM WILL BE ERROR FREE, THAT ALL ERRORS IN THE PROGRAM WILL BE CORRECTED, OR THAT THE PROGRAM'S FUNCTIONALITY WILL MEET YOUR REQUIREMENTS. YOU ACKNOWLEDGE YOUR RESPONSIBILITY TO (A) REGULARLY BACK UP DATA, AND (B) ADEQUATELY TEST THE PROGRAM.**

7.3 The Program is not fault-tolerant and is not designed, manufactured or intended for use in applications in which the failure could lead directly or indirectly to death, personal injury, or severe physical or environmental damage, including, without limitation, the on-line control of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems. APPEON, ITS AFFILIATES, AND ITS LICENSORS SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.

7.4 LIMITATIONS ON LIABILITY. NEITHER APPEON, NOR ITS AFFILIATES, NOR ANY OF ITS LICENSORS SHALL BE LIABLE FOR ANY LOSS OR INACCURACY OF DATA, LOSS OF PROFITS OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF APPEON AND ITS AFFILIATES, IF ANY, ARISING OUT OF THIS AGREEMENT OR YOUR USE OF THE PROGRAM OR RELATED SERVICES SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LICENSE OR SERVICE FEES PAID FOR THE PROGRAM OR SERVICES GIVING RISE TO THE CLAIM. LICENSORS OF SOFTWARE COMPONENTS INCLUDED IN APPEON PRODUCTS SHALL NOT BE LIABLE FOR DIRECT DAMAGES. Some jurisdictions do not allow the exclusion or limitation of certain damages, so the above limitations and exclusions may not apply to You.

## 8. TERMINATION.

8.1 This Agreement becomes effective on the date You legally acquired the Program. If You have acquired a subscription-based (non-perpetual) license to the Program, this Agreement will continue in effect until the end of the Subscription Term unless earlier terminated as set forth below; the Subscription Term may be extended by placing a renewal Order prior to the expiration of such Subscription Term. If You have acquired a perpetual license to the Program, this Agreement will continue in effect unless earlier terminated as set forth below.

8.2 This Agreement shall terminate automatically and immediately without notice upon any transfer or attempted transfer of the Program in violation of this Agreement. Either party may terminate this Agreement upon any other material breach of this Agreement by the other party which has not been corrected within thirty (30) calendar days after written notice.

8.3 Your rights to Use the Redistributables shall survive expiration of this Agreement, provided that i) no further modification is made to Your Business Application (either source or object code) after said expiration, and ii) Your continued Use of the Redistributables is in accordance with the terms of this Agreement, including but not limited to restrictions of Use as set forth in Section 2.2 and compliance with U.S. laws. In the event Appeon terminates this Agreement due to Your breach of this Agreement, all rights granted to You in the Redistributables shall immediately terminate.

8.4 Except for Your right to Use the Redistributables as expressly provided in Section 8.3, upon any expiration or termination of this Agreement, all licenses granted hereunder shall terminate and You shall cease Using the Program and Documentation (whether or not modified or merged into other materials). Termination shall not relieve You from paying all fees accruing prior to termination and shall not limit



either party from pursuing any other available remedies. Sections 1, 3, 5, 6, 7, 8, 9, 10, and 11, shall survive termination of this Agreement.

## 9. GENERAL.

9.1 Neither this Agreement, nor any rights or obligations arising hereunder, nor any license granted herein may be assigned by You (whether by operation of law or otherwise) without Appeon's prior written consent. Any such purported assignment shall be void. The terms and conditions of the licenses granted hereunder shall be binding upon any permitted assignees or transferees, if any.

9.2 This Agreement is the entire agreement of the parties and supersedes all previous and contemporaneous communications, representations, or agreements regarding the subject matter hereof. This Agreement may be amended or modified only by a written agreement signed by both You and a corporate officer of Appeon. **NO LICENSOR, DISTRIBUTOR, DEALER, RESELLER, OR SALES PERSON IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY REPRESENTATION OR PROMISE THAT IS DIFFERENT FROM, OR IN ADDITION TO, THE TERMS OF THIS AGREEMENT.** Any terms preprinted on or attached to any Purchase Order shall be void even if Appeon has acknowledged such Purchase Order. In the event of any conflict between the terms of this Agreement and a Purchase Order, the terms of this Agreement shall prevail over the Purchase Order.

9.3 You shall not transfer, directly or indirectly, any restricted Program or technical data received from Appeon, or the direct product of such data, to any destination or entity subject to export restrictions under U.S. law, unless prior written authorization is obtained from the appropriate U.S. agency.

9.4 Appeon shall not be liable by reason of any failure or delay in the performance of its obligations hereunder on account of: acts by You, acts of God or the public enemy, war, terrorism, riots, strike, embargo, acts of civil or military authority, unavailability of communications facilities or energy sources, or any other cause that is beyond the reasonable control of Appeon.

9.5 The Program is restricted commercial computer software. If this license is acquired under a U.S. Government contract, Use, duplication or disclosure by the U.S. Government is subject to restrictions set forth in this Agreement or in a written license agreement that incorporates applicable FAR provisions, for example FAR 52.22719. Appeon reserves all unpublished rights under the United States copyright laws.

9.6 All notices relating to this Agreement shall be in writing and shall be effective upon receipt and, if to You, sent to the email or physical address indicated in Your Order, and if to Appeon, by overnight delivery service or prepaid mail with return receipt requested sent to Appeon's headquarters at the physical address listed on Appeon's website at [www.appeon.com](http://www.appeon.com).

9.7 If any provision of this Agreement is held to be unenforceable, the parties shall substitute an enforceable provision for the affected provision that approximates the intent and economic effect of the affected provision, and the remaining provisions of this Agreement shall remain in full force and effect. The failure or delay by either party to enforce any term of this Agreement shall not be deemed a waiver of such term.

9.8. This Agreement and any claims arising out of or relating to this Agreement, regardless of the nature of such claims, and its subject matter shall be governed by and construed under the laws of the State of California, U.S.A. without reference to its conflicts of law principles. Any action at law relating to this Agreement may only be brought before the courts of competent jurisdiction in San Francisco County, California, U.S.A. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Uniform Computer Information Transactions Act as enacted shall not apply. Licensee must initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within one (1) year from the date when Licensee knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

9.9 The parties have agreed that this Agreement and all documents contemplated hereby be drawn up in English, and any proceedings arising hereunder will take place in English. IF APPEON OR RESELLER HAS PROVIDED YOU WITH A TRANSLATION OF THE ENGLISH LANGUAGE VERSION OF THIS AGREEMENT, THE ENGLISH LANGUAGE VERSION OF THIS AGREEMENT WILL BE THE VERSION USED WHEN INTERPRETING OR CONSTRUING THESE TERMS.

10. COUNTRY UNIQUE TERMS. If you purchased the Program in any territory specified below (the "Local Territory"), this section sets forth specific provisions as well as exceptions to the above terms and condition. To the extent any provision applicable to the Local Territory (the "Local Provision") set forth below is in conflict with any other term or condition in this agreement, the Local Provision will supersede such other term or condition with respect to any licenses purchased in the Local Territory.

Australia

a) Limited Warranty and Limitations on Liability (Section 7.2): The following replaces the terms of Section 7.2 in its entirety:

7.2 Subject to Sections 7.5 and 7.6 below, APPEON DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, ACCURACY OF INFORMATIONAL CONTENT, FITNESS FOR A PARTICULAR PURPOSE, AND CONDITIONS OF MERCHANTABILITY QUALITY, WHETHER ARISING BY STATUTE OR IN LAW OR AS A RESULT OF A COURSE OF DEALING OR USAGE OF TRADE, WITH RESPECT TO THE PROGRAM, DOCUMENTATION, SUPPORT OR OTHER SERVICES RELATED TO THE PROGRAM. Some jurisdictions do not allow limitations on implied warranties so the above limitations may not apply to You. NO WARRANTY IS MADE REGARDING THE RESULTS TO BE OBTAINED FROM ANY PROGRAM OR SERVICES, THAT THE PROGRAM WILL BE ERROR FREE, THAT ALL ERRORS IN THE PROGRAM WILL BE CORRECTED, OR THAT THE PROGRAM'S FUNCTIONALITY WILL MEET YOUR REQUIREMENTS. YOU ACKNOWLEDGE YOUR RESPONSIBILITY TO (a) REGULARLY BACK UP DATA, AND (b) ADEQUATELY TEST PROGRAM PRIOR TO DEPLOYMENT.

b) Limitations on Liability (Section 7.4): The following replaces the terms of Section 7.4 in its entirety and adds Sections 7.5 and 7.6:



7.4 To the full extent permitted by law, NEITHER APPEON, NOR ITS AFFILIATES, NOR ANY OF ITS LICENSORS SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OR INACCURACY OF DATA, LOSS OF PROFITS OR EXPECTED SAVINGS, LOSS OF OR DAMAGE TO GOODWILL OR ANY OTHER FORM OF EXPECTATION BENEFIT, OR LOSS OR DAMAGE ARISING FROM ANY LIABILITY TO ANY THIRD PARTY, WHETHER BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF APPEON AND ITS AFFILIATES, IF ANY, ARISING OUT OF THIS AGREEMENT OR YOUR USE OF THE PROGRAM OR RELATED SERVICES SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LICENSE OR SERVICE FEES PAID FOR THE PROGRAM OR SERVICES GIVING RISE TO THE CLAIM. LICENSORS OF SOFTWARE COMPONENTS INCLUDED IN APPEON PRODUCTS SHALL NOT BE LIABLE FOR DIRECT DAMAGES.

7.5 In the event that any Program license or services supplied under this Agreement is deemed to constitute a supply of goods or services to a consumer as defined in the Trade Practices Act 1974 (Cth) as amended or other legislation ("the Acts") nothing contained in this Agreement excludes, restricts or modifies any condition, warranty or other obligation herein, where to do so is unlawful. To the full extent permitted by law, where the benefit of any such condition, warranty or other obligation is conferred upon You pursuant to any of the Acts, Appeon's sole liability for breach of any such condition, warranty or other obligation shall be limited to: (a) in relation to goods: (i) replacement or repair, or (ii) refund of the fees paid for such goods; and (b) in relation to services: (i) the supplying of the services again, or (ii) refund of the fees paid for such services; as in each case Appeon may elect.

7.6 Appeon's goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. These rights may be lawfully limited in respect of goods or services not ordinarily acquired for personal, domestic or household use or consumption. To request a replacement or a refund, please send your written request to Appeon's headquarters at the physical address listed on Appeon's website at [www.appeon.com](http://www.appeon.com).

#### Belgium and Denmark

a) Limitations on Liability (Section 7.4): The following replaces the terms of Section 7.4 in its entirety:

7.4 NEITHER APPEON, NOR ITS AFFILIATES, NOR ANY OF ITS LICENSORS SHALL BE LIABLE FOR ANY LOSS OR INACCURACY OF DATA, LOSS OF PROFITS OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT IN CASES OF FRAUD, WILFUL MISCONDUCT OR BREACH OF A MATERIAL OBLIGATION (WHERE THE ABSENCE OF COMPLIANCE WITH THAT OBLIGATION WOULD VOID THE CONTRACT FROM ITS SUBSTANCE), THE TOTAL LIABILITY OF APPEON AND ITS AFFILIATES, IF ANY,



ARISING OUT OF THIS AGREEMENT OR YOUR USE OF THE PROGRAM OR RELATED SERVICES SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LICENSE OR SERVICE FEES PAID FOR THE PROGRAM OR SERVICES GIVING RISE TO THE CLAIM. LICENSORS OF SOFTWARE COMPONENTS INCLUDED IN APPEON PRODUCTS SHALL NOT BE LIABLE FOR DIRECT DAMAGES.

#### Germany

a) Limitations on Liability (Section 7.4): the following replaces the terms of Section 7.4 in its entirety:

7.4.1 Except in cases of willful misconduct or gross negligence neither Appeon, nor its Affiliates, nor any of its licensors shall be liable for: a) any loss or inaccuracy of data, loss of profits, loss resulting from business disruption, loss of contracts, loss of revenue, loss of anticipated savings, loss of goodwill, lost or wasted management time or time of other employees or contractors, and/or b) any indirect, special, incidental or consequential damages, whether based on contract, tort or other legal theory, even if such party has been advised of the possibility of such damages.

7.4.2 Except in cases of willful misconduct or gross negligence and in cases under the product liability act, the total liability of Appeon and its Affiliates, if any, arising out of this Agreement whether based on contract, tort or other legal theory, or Customer's use of the Program or related services shall not exceed an amount equal to the license or service fees paid for the Program or service giving rise to the claim.

7.4.3 Licensors of software components included in the Appeon products shall not be liable for direct damages.

7.4.4 Neither Appeon, nor its Affiliates, nor any of its licensors shall be liable for damages caused by a negligent breach of a non-material contractual obligation or for damages considered atypical or unforeseeable in the scope of this Agreement.

#### Japan

a) PAYMENT AND TAXES (Section 3.1): the terms of Section 3.1 are deleted in its entirety.

b) PAYMENT AND TAXES (Section 3.2): the following replaces the terms of Section 3.2 in its entirety:

3.2 Unless otherwise agreed to in writing by Reseller, You shall pay all invoices issued by Reseller, in Japanese currency, no later than the due date specified on such invoices. You will reimburse Appeon or Reseller for all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts.

#### New Zealand

a) Limitations on Liability (Section 7.4): the following replaces the terms of Section 7.4 in its entirety and adds section 7.5:

7.4 NEITHER APPEON, NOR ITS AFFILIATES, NOR ANY OF ITS LICENSORS SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OR INACCURACY OF DATA, LOSS OF PROFITS OR EXPECTED SAVINGS, LOSS OF OR DAMAGE TO GOODWILL OR ANY OTHER FORM OF EXPECTATION BENEFIT, OR LOSS OR DAMAGE ARISING FROM ANY LIABILITY TO ANY THIRD PARTY, WHETHER BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF APPEON AND ITS AFFILIATES, IF ANY, ARISING OUT OF THIS AGREEMENT OR YOUR USE OF THE PROGRAM OR RELATED SERVICES SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LICENSE OR SERVICE FEES PAID FOR THE PROGRAM OR SERVICES GIVING RISE TO THE CLAIM. LICENSORS OF SOFTWARE COMPONENTS INCLUDED IN APPEON PRODUCTS SHALL NOT BE LIABLE FOR DIRECT DAMAGES.

7.5 In the event that any Program license or services supplied under this Agreement is deemed to constitute a supply of goods or services to a consumer as defined in the Consumer Guarantees Act 1993 as amended or other legislation ("the Acts") nothing contained in this Agreement excludes, restricts or modifies any condition, warranty or other obligation herein, where to do so is unlawful. To the full extent permitted by law, where the benefit of any such condition, warranty or other obligation is conferred upon You pursuant to any of the Acts, Appeon's sole liability for breach of any such condition, warranty or other obligation shall be limited to: (a) in relation to goods: (i) replacement or repair, or (ii) refund of the fees paid for such goods; and (b) in relation to services: (i) the supplying of the services again, or (ii) refund of the fees paid for such services; as in each case Appeon may elect.

#### South Africa

a) Limitations on Liability (Section 7.4): The following replaces the terms of Section 7.4 in its entirety:

7.4 UNDER NO CIRCUMSTANCES SHALL APPEON, NOR ITS AFFILIATES, NOR ANY OF ITS LICENSORS BE LIABLE TO THE CUSTOMER FOR ANY OF THE FOLLOWING TYPES OF LOSS OR DAMAGE ARISING UNDER OR IN RELATION TO THIS AGREEMENT (WHETHER ARISING OUT OF ANY INDEMNITY IN THIS AGREEMENT, BREACH OF CONTRACT, DELICT (INCLUDING, BUT NOT LIMITED TO NEGLIGENCE AND GROSS NEGLIGENCE), MISREPRESENTATION (WHETHER UNDER THE LAW OF DELICT OR STATUTORY), BREACH OF STATUTORY DUTY, BREACH OF WARRANTY, CLAIMS BY THIRD PARTIES FROM ANY REPUDIATORY, MATERIAL OR OTHER BREACH (HOWEVER MINOR) OF THIS AGREEMENT (WHETHER OR NOT INTENTIONAL), FROM WILFUL MISCONDUCT OR OTHERWISE):

(a) (i) ANY LOSS OR INACCURACY OF DATA, (ii) LOSS OF PROFITS, (iii) LOSS OF BUSINESS, (iv) LOSS RESULTING FROM BUSINESS DISRUPTION, (v) LOSS OF CONTRACTS, (vi) LOSS OF REVENUE, (vii) LOSS OF ANTICIPATED SAVINGS, (viii) LOSS OF GOODWILL, (ix) LOSS OF REPUTATION, (x) PAYMENTS MADE TO A THIRD PARTY, (xi) LOST OR WASTED MANAGEMENT TIME OR TIME OF OTHER EMPLOYEES OR CONTRACTORS, (xii)

CHARGES LEVIED BY ANY THIRD PARTY, (xiii) ANY ADDITIONAL BANK BORROWINGS OR CHARGES RELATING TO BANK BORROWINGS, (xiv) COSTS OF RECOVERING DEBT (REGARDLESS OF WHETHER DUE) OR (xv) ANY ADMINISTRATIVE COSTS (REGARDLESS OF WHETHER THESE TYPES OF LOSS OR DAMAGE LISTED IN THIS SUB-PARAGRAPH (a) ARE DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL); OR (b) ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. UNDER NO CIRCUMSTANCES SHALL THE TOTAL AGGREGATE LIABILITY OF APPEON (OR ITS AFFILIATES) TO THE CUSTOMER (HOWEVER ARISING) UNDER OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING (BUT NOT LIMITED TO) LIABILITY UNDER ANY INDEMNITY IN THIS AGREEMENT, FOR BREACH OF CONTRACT, DELICT (INCLUDING, BUT NOT LIMITED TO NEGLIGENCE AND GROSS NEGLIGENCE), MISREPRESENTATION (WHETHER UNDER THE LAW OF DELICT OR STATUTORY), BREACH OF STATUTORY DUTY, BREACH OF WARRANTY, CLAIMS BY ANY THIRD PARTIES FROM ANY REPUDIATORY, MATERIAL OR OTHER BREACH (HOWEVER MINOR) OF THIS AGREEMENT (WHETHER OR NOT INTENTIONAL), FROM WILFUL MISCONDUCT OR OTHERWISE, EXCEED AN AMOUNT EQUAL TO THE LICENSE OR SUPPORT FEES PAID FOR THE PROGRAM OR SERVICES GIVING RISE TO THE CLAIM. LICENSORS OF SOFTWARE COMPONENTS INCLUDED IN APPEON PRODUCTS SHALL NOT BE LIABLE FOR DIRECT DAMAGES. NOTWITHSTANDING ANY OTHER CLAUSE IN THIS AGREEMENT, APPEON DOES NOT EXCLUDE OR LIMIT ITS LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR FOR ANY LIABILITY WHICH CAN NOT BE EXCLUDED BY LAW.

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a) Limitations on Liability (Section 7.4): The following replaces the terms of Section 7.4 in its entirety:

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OF WHETHER THESE TYPES OF LOSS OR DAMAGE LISTED IN THIS SUB-PARAGRAPH (a) ARE DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL); or (b) ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.

7.4.2 SUBJECT TO SECTION 7.4.4, UNDER NO CIRCUMSTANCES SHALL THE TOTAL AGGREGATE LIABILITY OF APPEON (OR ITS AFFILIATES) TO YOU (HOWEVER ARISING) UNDER OR IN RELATION TO THIS AGREEMENT OR IN CONNECTION WITH YOUR USE OF THE PROGRAM OR RELATED SERVICES, INCLUDING (BUT NOT LIMITED TO) LIABILITY FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), UNDER ANY INDEMNITY IN THIS AGREEMENT, MISREPRESENTATION (WHETHER TORTIOUS OR STATUTORY), BREACH OF STATUTORY DUTY, BREACH OF WARRANTY, CLAIMS BY THIRD PARTIES FROM ANY REPUDIATORY, MATERIAL OR OTHER BREACH (HOWEVER MINOR) OF THIS AGREEMENT (WHETHER OR NOT INTENTIONAL), FROM WILFUL MISCONDUCT OR OTHERWISE, EXCEED AN AMOUNT EQUAL TO THE LICENSE OR SERVICE FEES PAID FOR THE PROGRAM OR SERVICES GIVING RISE TO THE CLAIM.

7.4.3 FOR THE AVOIDANCE OF DOUBT, LICENSORS OF SOFTWARE COMPONENTS INCLUDED IN APPEON PRODUCTS SHALL NOT BE LIABLE TO YOU IN ANY CIRCUMSTANCES FOR DAMAGES (WHETHER DIRECT OR INDIRECT).

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## 11. ABBREVIATIONS AND DEFINITIONS.

"Affiliate" of a party – means (i) any legal entity that, directly or indirectly, owns more than fifty percent (50%) of the outstanding voting securities of that party, and (ii) any legal entity that, directly or indirectly, is Controlled by that party. "Control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity, whether through ownership, by contract or otherwise."

"Agreement" – means this software license agreement, together with each Order Form and/or Purchase Order, any applicable supplements, amendments, addenda, and product-specific license terms.

"Appeon" – means Appeon Inc., a California corporation with corporate registration number C4021400.

"Business Application" – means the compiled or generated output from the Program that shall be Used by You for Your internal business purposes only.

"Development and Test License" or "DT" – means the limited right to Use the Program for development and testing purposes only on the number of Servers as specified on the Order or Reseller's order. You are not authorized to alter, remove, or circumvent watermarks or other mechanisms in the Program that limits Use to development and testing.

"Documentation" – means the installation instructions and user manuals supplied with the Program.

"Downgrade" – means migration from one edition of the Program to another edition with decreased functionality.

"ESD" – means electronic software download.

"Fair Usage Policy" – means Appeon's then-current policy, posted to the Appeon Website (<https://www.appeon.com/appeon-fair-usage-policy.html>), permitting reasonable usage of the server-side



application runtime libraries (if applicable) of the Programs.

"Machine" – means a computer hardware system running a copy of the Operating System Software. For the avoidance of doubt, a single instance of a virtualized Machine is considered a Machine.

"Maintenance Release" or "MR" – means a minor release of the Program containing error corrections for defects of the Program or Documentation.

"Major Version" – means a major release of the Program containing new features and functions.

"Mobile Device" – means a computer hardware system running a copy of the iOS or Android operating system.

"Operating System Software" – means the operating system software on which the Program (or component thereof) is designed to be Used, as specified in the Documentation.

"Order" – means an Order Form or Purchase Order signed by customer and accepted by Appeon, as confirmed by an Appeon invoice.

"Order Form" – means a standard form purchase authorization document made available by Appeon, in a printed or electronic format, containing order information for each customer order.

"OT" – denotes "other", and is designated for products or services included on an Order or Reseller's order, which are not otherwise defined.

"Price List" – means Appeon's then-current price list for the country in which the Programs are installed.

"Program" – means the object code version of the software product(s) listed in the Order or Reseller's order, as well as any and all of its Updates and Redistributables. Although the Program media may contain other software products, customer is licensed to Use only the designated Program.

"Purchase Order" – means a purchase order or other purchase-authorizing document issued by customer that has been accepted by Appeon, as confirmed by an Appeon invoice.

"Redistributables" – means the client and/or server runtime libraries of the Program (as applicable), including but not limited to the dynamic-link library pbvm####.dll, the NuGet package DWNet.Data, and the NuGet package PowerScript.Bridge. The server runtime libraries of the Program marketed under the trademark PowerServer are excluded from this definition.

"Reseller" – means a partner of Appeon authorized to resell the Program and Support.

"Seat" – means a specific, identifiable, person who has the right to access and use the Program on a Machine.

"Seat License" or "ST" – means the right to Use the Program by the number of Seats equal to the quantity of such licenses purchased, and if applicable, the limited right to Use the server-side application runtime libraries of the Program for internal usage by the customer's organization on a maximum number of Servers as set forth in the Fair Usage Policy unless specified otherwise on the Order or Reseller's order.

"Server" – means a Machine containing software, which permits it to await and fulfill services to other computers and in case of a cluster or grid computing environment, each node or host Machine is considered an individual Server.

"Server License" or "SL" – means the limited right to Use the Program on the number of Servers as specified on the Order or Reseller's order, but only if such Servers reside at a single physical location or hosting site. For the avoidance of doubt, each additional physical location or hosting site will require the purchase of a separate Server License.

"Subscription Term" – means the period of time, as set forth in the Order or Reseller's order, that You are permitted to Use a non-perpetual license to the Program and/or entitled to receive USP for the Program, which commences on the date the Program is first made available to You or shipped, as applicable.

"Support" – means technical support (including Updates) provided by Appeon for the Program in accordance with Appeon's then-current support policies posted to the Appeon Website (<https://www.appeon.com/appeon-standard-support-plan.html>).

"Updates" – means error corrections, Maintenance Releases and Major Versions of the Program made available to Appeon customers under certain Appeon Support plans.

"Upgrade" – means migration from one edition of the Program to another edition with increased



functionality.

"Use" or "Using" – means to install, load, view, print, update, access, utilize, or store the Program.

"User Session" – means a specific, identifiable, unique Mobile Device with the Redistributables installed, or a specific, identifiable, unique personal computer actively using a single instance of the Redistributables. See "User Session License".

"User Session License" or "UL" – means the limited right for a maximum number of User Sessions equal to the quantity of such licenses purchased, as indicated in the applicable Order or Reseller's order, to directly or indirectly Use the Program through licensed Server or Servers, in a network.

"USP" or "Update Subscription Plan" – means error corrections, Maintenance Releases, Major Releases, and other Updates of the Program made available under certain subscription plans.

"You" or "Your" – means the person Using the Program, or, if the Program is being Used on behalf of an organization, such as an employer, "You" or "Your" means such organization.