

HIGH PERFORMANCE COMPUTING SERVICES AGREEMENT

This HPC Services Agreement (“Agreement”) is made as of _____, 200_ (the “Effective Date”) by and between MACH1 COMPUTING, a California corporation with a principal place of business at 2 Parma Irvine California 92602 (“Mach1”) and _____, a _____ corporation located at _____ (“Client”).

Mach1 and Client have signed this High Performance Computing Services Agreement, pursuant to which MACH1 has agreed to provide certain Deliverables, Services and Support to Client on the terms and conditions set forth herein. This High Performance Computing Services Agreement and the Schedule(s) attached hereto shall collectively be considered the Agreement.

1. Definitions. The following terms have the meanings set forth below:

1.1 “Deliverables” means the specific Software, Services and/or Support listed in the statement of work attached as a Schedule.

1.2 “Services” shall mean the installation and/or integration services MACH1 agrees to perform and which are attached as a Schedule.

1.3 “Software” shall mean software being provided by MACH1 to Client as part of a Deliverable.

1.4 “Support” shall mean the ongoing support services to be provided by MACH1, if any, as described in an attached Schedule.

2. Description of Work; Deliverables.

2.1 Deliverables. The specific Software, Services and/or Support to be provided by MACH1 under this Agreement are listed in the statement of work incorporated into the proposal attached to this Agreement labeled “Schedule A”.

2.2 Delivery Schedule; Adjustments. MACH1 will deliver to Client the Deliverables listed in Schedule A, on the dates specified therein. Prior to delivery of any Deliverables, Client will prepare the installation site and will continue to maintain the installation site according to the environmental specifications set out in the manufacturer’s or MACH1’s documentation. Timely completion of the work and delivery of the items listed in the Schedule may depend on Client’s provision of certain items or assistance (collectively “Dependencies”). Any delay or omission on Client’s part with respect to the Dependencies may delay completion of the work or delivery of the Deliverables. Client’s request for new or additional work or this Section 5. The Agreement may be extended only upon the mutual, written agreement of the parties. Either party may terminate this Agreement: (i) immediately, by written notice, upon material breach by the other party, if such breach cannot be remedied; and (ii) by written notice, if the other party fails to cure any material remediable breach of this Agreement within thirty (30) days after receipt of written notice of such breach. Additionally, MACH1 may, without prejudice to other remedies, cancel or suspend the

Deliverables may require a corresponding adjustment in the Deliverables timeline and fees due to MACH1. Any such requests shall be made in writing on the Amendment document provided in Schedule A and shall not be binding until signed by an authorized representative of each party.

2.3 Services and Support. MACH1 will provide, and Client shall pay for, the Services and Support described in Schedule A. The delivery of Services and Support is conditioned upon Client’s fulfillment of all applicable Client obligations and Dependencies specified under this Agreement, including any attached Schedule(s), and Client’s provision of access to applicable Client facilities and assistance as MACH1 may reasonably require to provide the Services and Support.

3. Acceptance. Unless agreed to by the parties in writing, the Deliverables shall be deemed accepted when delivered and installed at the designated Client facility. Specific acceptance procedures may be set forth in Schedule A.

4. Price and Payment. In consideration for the Deliverables to be provided by MACH1 under this Agreement, Client agrees to pay MACH1 the amounts set forth in Schedule A. Unless otherwise agreed to in writing by both parties, payments are due net thirty (30) days from the date of invoice. Prices do not include any taxes, freight, handling, shipping or similar charges, all of which shall be the sole responsibility of Client. A late fee of one and one-half percent (2.0%) per month, or the maximum rate permitted by law, whichever is less, will be charged by MACH1 on all outstanding amounts that have not been paid by the due date.

5. Term and Termination. This Agreement will begin on the Effective Date and shall continue in full force and effect for the period specified in Schedule A, under “Support,” unless sooner terminated pursuant to the terms of

Agreement or any order placed under it, for default by Client, if Client fails to make any payment (including charges for Services or Support) identified as delinquent or past due within fifteen (15) days of written notice. The Agreement may also be terminated by either party if the other party becomes insolvent, makes any assignment for the benefit of creditors, goes into liquidation or has a receiver or a trustee appointed for the benefit of creditors, whether voluntary or otherwise, or seeks the protection of or has a

proceeding instituted against it, under the bankruptcy code, or any similar statute.

6. Licenses; Proprietary Data.

6.1 Software Licenses. MACH1 shall deliver to Client all licenses necessary to use the software included as a Deliverable, including third-party software and open source software. Client's use of such software will be subject to the terms of its corresponding license.

6.2 Preexisting Works. The work proposed herein may require the use of MACH1 technical data (specifications, formulae, processes and/or computer software) developed at private expense and protected by copyright or other intellectual property right or considered a trade secret by MACH1 or third parties ("Preexisting Works"). Such use or reference shall not constitute or imply a grant of a license, a transfer of any title or right or any other right to use such proprietary data or software. Any provisions of this Agreement granting to Client any rights whatsoever in Preexisting Works shall apply only to data or software specifically listed as a Deliverable and shall not apply to Preexisting Works used to develop Deliverables or items referenced in such Deliverables.

7. Confidentiality. The parties agree that certain proprietary or confidential information, designs, specifications, processes, diagrams, computer programs, technical reports, product plans and documentation, whether tangible, intangible, written, machine readable or in other form (hereinafter called "Confidential Information") which may be furnished by either party (the "Disclosing Party") in contemplation of or performance of its obligations hereunder shall remain the property of Disclosing Party. In the event Recipient receives any such information identified as proprietary or confidential at the time of disclosure, it shall not be disclosed to any third party without the Disclosing Party's prior written approval. This section shall impose no obligation upon the Recipient with respect to any information: (i) not marked or identified by the Disclosing Party as proprietary and/or confidential at the time of disclosure to the Recipient; (ii) in the public domain other than through breach of the Recipient's obligations hereunder; (iii) known to the Recipient without an obligation of confidentiality prior to receipt from the Disclosing Party; (iv) received by the Recipient from a third party without restrictions if such third party has the right to make such disclosure; (v) independently developed by the Recipient as evidenced by its books and records; or (vi) disclosed by the Recipient pursuant to an order of a court or government authority of competent jurisdiction provided that prior to such disclosure the Recipient shall immediately notify the Disclosing Party of such ordered disclosure, shall cooperate with the Disclosing Party in its attempt to obtain a protective order for any information at risk of such disclosure, and disclose only the minimum amount of Confidential Information necessary to comply with such order.

8. Representations and Warranties.

8.1 Qualified Personnel. MACH1 warrants that the Services and Support provided under this Agreement will be performed in a professional and workman-like manner by qualified personnel.

8.2 Rights Granted. MACH1 warrants that it has all rights and authority necessary to perform the Services and Support, and further warrants that it has the right to grant the licenses, if any, delivered to Client hereunder.

8.3 Third Party Software Warranty. MACH1 shall pass through to Client any warranty provided by the developer of any third party software provided hereunder, and will provide reasonable assistance to Client in submitting any warranty claims.

8.4 Disclaimer. THE FOREGOING WARRANTIES STATE MACH1'S SOLE AND EXCLUSIVE WARRANTY TO CLIENT AND ANY THIRD PARTY CONCERNING THE DELIVERABLES PROVIDED BY MACH1 HEREUNDER. EXCEPT AS EXPRESSLY PROVIDED HEREIN, MACH1 MAKES NO WARRANTIES, EXPRESS, IMPLIED, ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, OF ANY KIND WHATSOEVER INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT WITH RESPECT TO ANY SOFTWARE, SERVICES OR SUPPORT PROVIDED HEREUNDER. MACH1 DOES NOT WARRANT THAT CLIENT'S USE OF THE DELIVERABLES WILL BE UNINTERRUPTED OR ERROR FREE. WITH RESPECT TO THIRD-PARTY SOFTWARE PRODUCTS, CLIENT SHALL LOOK EXCLUSIVELY TO THE MANUFACTURER OF THE SOFTWARE(S) FOR THE EXISTENCE OF WARRANTIES, IF ANY, AND THEIR FULFILLMENT BY THE MANUFACTURER.

9. Indemnity.

9.1 MACH1 shall indemnify and defend Client from and against any and all claims made against Client that the Software and/or Services provided by MACH1 under this Agreement, not including open source software or third party software covered by the terms of a separate license agreement, infringes upon a valid United States copyright or patent of a third party in effect or issued as of the Effective Date. The foregoing obligations shall not apply to any alleged infringement based upon the use of Deliverables or Services in combination with a product not provided by MACH1, modifications made by Client or at Client's direction, or use of the Deliverables in a manner for which they were not intended.

9.2 Client agrees to indemnify, defend and hold MACH1 harmless from and against any and all claims, demands, causes of action, expenses and damages (including reasonable attorneys' fees), arising from or related to personal injury or death to persons, or damage to property, arising out of, resulting from, or in connection with results Client has obtained through the negligent use or misuse of the products and/or services provided by MACH1, except for claims or causes of action resulting from MACH1's gross negligence or willful misconduct.

9.3 The indemnities provided by either party are conditioned on the party seeking the indemnity: (i) giving the other party (the "Indemnifying Party") prompt written notice of such claim; (ii) giving the Indemnifying Party full authority and control to defend or settle the claim; (iii) not at any time admitting liability with respect to the whole or any part of the claim, or agreeing to settle or dispose of the claim; and (iv) providing all reasonable assistance to the Indemnifying Party in defending or settling the claim. This section states the entire liability of the Indemnifying Party and the Indemnified Party's sole and exclusive remedy for the covered claims.

10. Limitation of Liability. UNDER NO CIRCUMSTANCES SHALL MACH1 BE LIABLE TO CLIENT OR ANY OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION, LOST PROFITS OR DAMAGES RESULTING FROM LOSS OF USE OR LOSS OF DATA), REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF MACH1 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLIENT'S RECOVERY AGAINST MACH1 FOR ANY CLAIM SHALL NOT EXCEED THE AMOUNT PAID BY CLIENT TO MACH1 FOR THE PRODUCTS, SERVICES OR SUPPORT PROVIDED UNDER THIS AGREEMENT.

11. General.

11.1 Independent Contractor. MACH1 shall render all Services hereunder as an independent contractor and this Agreement does not create an employer-employee relationship between Client and MACH1. Neither party shall in any way represent itself to be a partner, or any type of agent or joint venturer of the other party.

11.2 Survival. The terms and conditions of Sections 1, 4, 6.2 and 7-11, as well as any other provisions that by their nature should survive, shall survive the expiration or termination of this Agreement.

11.3 Assignment. Neither this Agreement nor any rights or obligations of either party hereunder may be

assigned, in whole or in part, without the prior written consent of the other party. Notwithstanding the foregoing, MACH1 may delegate certain of its obligations hereunder to an agent or subcontractor, provided that MACH1 shall remain solely responsible for the performance of such obligations.

11.4 Purchase Orders. This Agreement cannot be altered or modified by Client's purchase order or the terms printed thereon. MACH1 shall not be bound by any standard or printed terms on Client's purchase order or other form.

11.5 Notices. All communications and notices from one party to the other shall be in writing and shall be given by addressing the same to the other at the address or facsimile number set forth in this Agreement, or at such other address or facsimile number as either party may specify in writing to the other. Communications and notices to MACH1 shall be marked "**Attention: Legal Department.**" All notices shall be deemed given on the date of delivery if hand delivered. Notices mailed shall be deemed given on the third business day following the date mailed. Notices sent by express courier shall be deemed given upon receipt.

11.6 Amendment. No amendment or modification of this Agreement shall have any force or effect unless it is in writing and agreed to by an authorized representative of each party.

11.7 Waiver. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege hereunder. Any waiver of any right or obligation hereunder must be in writing signed by the party against whom enforcement is sought.

11.8 Severability. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and all other provisions shall remain in full force and effect. If any of the provisions of this Agreement are held to be excessively broad, it shall be reformed and construed by limiting and reducing it so as to be enforceable to the maximum extent permitted by law.

11.9 Governing Law; Venue. This Agreement shall be governed and construed in accordance with the laws of the State of California, without reference to its conflict of laws principles. The parties agree that any dispute, claim, cause of action, or other controversy arising under this Agreement, as well as any defenses raised thereto, shall only

be commenced and adjudicated by the federal and state courts in Orange County, California.

11.10 Force Majeure. Except for the payment of monies due, neither party shall be in default of its obligations under this Agreement to the extent that its performance is delayed or prevented by causes beyond its reasonable control, including but not limited to, government actions, war, acts of terrorism, acts of God, strikes, riots earthquakes, fires, floods or other disaster.

11.11 Construction. Ambiguities, inconsistencies, or conflicts in this Agreement will not be strictly construed against the drafter of this Agreement; rather, they shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the parties at the time of contracting.

11.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. A facsimile or photocopy of this Agreement shall have the same effect as the original.

11.13 Entire Agreement. This Agreement constitutes the entire agreement of the parties with regard to its subject matter, and supersedes all previous written or oral representations, proposals, negotiations, discussions, agreements and understandings between MACH1 and Client concerning such subject matter.

11.14 Nuclear, Aviation, Life Support Applications. Deliverables provided hereunder are not intended, manufactured, or designed for use in (i) the planning, design, construction, operation or maintenance of any nuclear facility; (ii) the maintenance, operation, or on-line control of any aircraft, aircraft traffic, aircraft communications, aircraft navigation, aircraft ground support system, or (iii) the maintenance and/or operation of any life support system (collectively "Non-Intended Uses"). Other manufacturer restrictions on product use may apply. Client agrees to indemnify MACH1 for any and all claims, losses, or damages arising from any such Non-Intended Use or from uses otherwise restricted by the manufacturer.

11.15 Export. Client agrees to comply with all United States export control laws and regulations, and further agrees not to export or re-export any products or services provided under this Agreement without MACH1's prior written approval.

11.16 Limitation on Actions. No action, claim or proceeding, regardless of form, arising out of any transaction under this Agreement may be brought by either party more than one (1) year after the injured party has, or by the exercise of reasonable diligence should have had, knowledge of the occurrence which gives rise to such action.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

MACH1 COMPUTING, LLC

Signature: _____
Name: _____
Title: _____
Date: _____

CLIENT

Signature: _____
Name: _____
Title: _____
Date: _____