



## **End User Licence Agreement (EULA)**

**PEF074v7.0**

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## 1. SOFTWARE LICENCE AGREEMENT

**This is a legal AGREEMENT** effective as of the Delivery Date as defined below. By downloading, installing, using, and/or clicking "Accept" Customer (as defined hereinbelow) binds itself to the terms and conditions set forth herein. **IF CUSTOMER DOES NOT AGREE TO THESE TERMS AND CONDITIONS, CUSTOMER SHALL NOT DOWNLOAD, INSTALL, USE AND/OR CLICK "ACCEPT."**

This Agreement is made by and between:

**(1)**

- a. in the event the Customer is an entity organized under laws of any of the United States or has its principal place of business in the United States, **APPLIED MATERIALS, INC.**

OR

- b. in the event in the event the Customer is an entity organized outside of the United States and/or has its principal place of business outside of the United States, **APPLIED MATERIALS SOUTH EAST ASIA PTE. LTD.**

AND

**ITS AFFILIATES, EXPRESSLY INCLUDING PERCEPTIVE ENGINEERING LIMITED** (an Applied Materials Company), which has an office at Vanguard House, Sci-Tech Daresbury, Keckwick Lane, Daresbury, WA4 4AB ("**PEL**"); and

**(2)**

**THE COMPANY, CORPORATION, INDIVIDUAL OR PARTNERSHIP** ("Customer") installing and using the Software.

### TERMS AGREED

#### 1. Definitions and Interpretation

- 1.1 In this Agreement the following terms have the following meanings:

**"Additional Fees"**

the fees due in respect of any extension of the Licence (including, without limitation, the addition of extra Copies or Hardware or the provision of Major Updates);

**"Affiliates"**

the Customer or a Customer group company, including (i) any person under common control by the Customer or under common control by a person under the direct or indirect control of the Customer, or (ii) any person under the direct or indirect control of a person that has the direct or indirect control of the Customer (if any);

**"Copies"**

separate copies of the Software installed on the Hardware;

**"Delivery Date"**

the date of delivery of the Software to the Customer;

**"Fees"**

the initial Software Fee and Annual Software Fees;

**"Hardware"**

the computer equipment on which the Software may be used as detailed in the Schedule;

**"Intellectual Property Rights"**

any and all patents, copyrights, rights in designs, trademarks and all other intellectual property rights and similar rights in the world, whether or not registered or capable of registration;

**"Licence"**

the licence granted in clause 2.1 of this Agreement;

**"Licence Fee"**

the Initial Software Fee and Annual Software Fees detailed in the Schedule or in the Proposal submitted to Customer;

**"Major Updates"**

such updates to the Software as PEL may from time to time offer to its customers in consideration of additional fees; typically, wholly new product modules added to the core software platform;

**"Minor Updates"**

such general updates to the Software as PEL may from time to time offer to its customers free of charge; typically, existing feature enhancements, bug fixes, interfaces, updates to maintain software functionality to cater for changes in third party software;

**"Schedule"**

the schedule to this Agreement or the Proposal from PEL to Customer associated with this Agreement, whichever is applicable;

**"Software"**

the computer programs detailed in the Schedule;

**"Specification"**

PEL's specification for the Software;

**"Support"**

the support detailed in the Schedule;

**"Updates"**

Major Updates and Minor Updates;

**"Year"**

a period of twelve (12) months from and including the Delivery Date or an anniversary thereof.

**1.2** In this Agreement:

- 1.2.1 the singular shall include the plural and vice versa;
- 1.2.2 reference to one gender shall include all genders;
- 1.2.3 reference to persons shall include individuals, companies, partnerships corporations and any other legal persons;
- 1.2.4 headings are included for convenience only and shall not affect the construction or interpretation of this Agreement; and
- 1.2.5 an obligation on a party not to do something shall include an obligation to prevent others from doing that thing.

**2. Grant of Licence**

- 2.1 PEL grants Customer a non-assignable, non-transferable, non-exclusive worldwide licence to use the Software on the Hardware solely for Customer's own internal business purposes in

accordance with this Agreement (the "Licence"). The Licence is perpetual, unless and until it expires or is terminated in accordance with this Agreement.

- 2.2 Unless otherwise agreed, Customer may permit its Affiliates to use the Software solely for their own internal business purposes but may not otherwise loan, rent, lease, sub-licence, sell or otherwise transfer the Software to any third party or use the same to provide bureau or other services to third parties. Customer shall at all times remain fully responsible for its' Affiliates' use of the Software (if any).
- 2.3 Customer may make such copies of the Software as are necessary solely for archive disaster recovery and back-up purposes. In making copies Customer will ensure that all copyright and proprietary notices contained on the original version of the Software also appear on all copies made. Customer will keep a written record of the whereabouts of copies made and will allow PEL once every year to verify the same.
- 2.4 Save as permitted by law and by this Agreement Customer shall have no right to merge, decompile, dis-assemble, reverse engineer, copy, adapt or modify the Software or ascertain or list the source code of the Software.
- 2.5 The Licence is strictly limited to use of the number of Copies detailed in the Schedule on the Hardware. Should Customer require additional Copies and/or Hardware to be added, Customer may extend the Licence, such extension being conditional upon Customer's payment of any applicable Additional Fees.
- 2.6 The Intellectual Property Rights in the Software shall (as between PEL and Customer) at all times remain with PEL and, save as expressly provided herein, Customer shall acquire no right in or to the same.

### **3 Additional Services and Products**

- 3.1 From time to time PEL may provide or make services such as development services, additional support and other professional services available to Customer. All services provided by PEL to Customer (except the Support) shall be subject to supplementary charges and will be provided subject to entering into a separate agreement.
- 3.2 PEL may offer new products for purchase by Customer from time to time. Such products will be provided at the agreed prices and subject to entering into separate agreement.

### **4 Use, Updates and Support**

- 4.1 In consideration of the payment of the initial Software Fees and ongoing Annual Software Fees, Customer shall be entitled:
  - 4.1.1 to use the Software under the Licence;
  - 4.1.2 to receive the Support as set out in the Schedule; and
  - 4.1.3 to receive Major and Minor Updates as set out in the Schedule.
- 4.2 The Licence will commence upon the Delivery Date and will (unless and until terminated earlier in accordance with clause 5.3 or 8) continue for an initial fixed period of One (1) Year and may be extended thereafter for further consecutive fixed periods of One (1) Year by payment of the Annual Software Fee (where applicable).
- 4.3 The Licence may be set to expire automatically at the end of the then current Year in the event that the Annual Software Fee in respect of the next Year has not been paid. In all cases, while the Software is in use by them, the Software Fees shall be payable by the Customer.
- 4.4 PEL may, from time to time, offer Major Updates to Customer. Customer shall not be obliged to accept any Major Update but, if it does, shall pay any applicable Additional Fees in accordance with clause 5.

- 4.5 PEL may, from time to time, cease the provision of the Support in respect of certain elements of the Software that are rendered obsolete by virtue of its Updates. PEL shall provide Customer with no less than 12 months' written notice of any such cessation of support and will, if the relevant part of the Software has been rendered obsolete by a Major Update that the Customer has not subscribed to, continue to provide the Support in respect of that part until the end of the notice period. The Software Fee for future years will be adjusted to take into account such variation to the Support.
- 4.6 All Updates shall, for the purpose of this clause 4, be deemed to be a part of the Software and shall be subject to the Licence and this Agreement.
- 4.7 If the Customer makes changes to either the configuration or intended use of the Software without the knowledge and/or approval of Perceptive, then Perceptive reserves the right to withdraw support and to regard the terms of this agreement as being violated. This includes any changes to the underlying operating system, interfaces, configuration or use of the as-commissioned system. Such changes are made solely at the Customer's risk.

## **5 Price and Payment**

- 5.1 All payments shall be due and payable net thirty (30) days from date of invoice.
- 5.2 Any charges to Customer under this Agreement shall be subject to value added tax however exclusive of any other applicable duty, charge or tax.
- 5.3 Where, for any reason, payment of the Fees or any part thereof is not made in full by the due date and the invoice is not in good faith disputed PEL may, without prejudice to the other rights or remedies under this Agreement:
- 5.3.1 terminate or suspend Customer's rights to use the Software; and/or
- 5.3.2 charge interest on all outstanding sums from the date payable at a rate of 1.5% per month.
- 5.4 PEL may, not more than once in any Year of this Agreement and with no more than 5% per Year, increase the Annual Software Fee in respect of the following Year. Any such increase will be notified to the Customer on the invoice for the Annual Software Fee for the following Year issued under clause 5.1.

## **6 Warranty**

- 6.1 Subject to clause 6.2, PEL warrants that the Software will, for ninety (90) days after the Delivery Date, possess the material functionality described in applicable User Guides. Customer will give notice to PEL as soon as it is reasonably able upon becoming aware of a breach of this warranty. PEL's sole liability and obligations in relation to any breach of warranty under this clause 6.1 shall be to remedy any defect in the Software.
- 6.2 Customer acknowledges that PEL does not warrant or represent the suitability or adequacy of the Software for the Customer's requirements or that the operation of the Software will be uninterrupted or error free. In particular, but without limitation, PEL does not warrant or represent that the Software or any Update will be compatible with Customer's subroutines and/or data files unless otherwise set out in a proposal or other documents provided to the Customer.
- 6.3 PEL also warrants that the Updates and Support will be provided with reasonable skill and care using good industry practice.
- 6.4 The warranties in clauses 6.1 and 6.3 are the only warranties given under this Agreement. Any other warranties, conditions, obligations or implied terms which are implied into this Agreement by statute, custom or at law (including, without limit, any conditions of fitness for purpose or relating to satisfactory quality) are excluded to the fullest extent permitted by law.

- 6.5 Where the configuration, interfacing, or intended use of the software has been changed by the Customer without Perceptive's knowledge or consent, then this warranty is invalidated.
- 6.6 The Software may include software components licensed by third-party provider(s), which are expressly intended for use by or within the Software, for example Java™. In addition, the Software may enable the Customer to run multiple instances of third-party software and/or application programs. Such third-party software is provided "As Is". No warranty of any kind is offered or provided for the use of such third-party software and Perceptive will not accept liability for its use, which is entirely at the Customer's risk.
- 6.7 The use of non-warranted third-party software is subject to the terms and conditions of that software, which are wholly separate to this Agreement.

## **7 Indemnity**

- 7.1 In the event that a claim filed against the Customer alleges that Customer's use of the Software infringes any copyright or trademark (an "IP Claim") PEL will, at its sole discretion, either (i) refund the Software Fees corresponding to the Software that is the subject of the IP Claim, less a prorated deduction to reflect past beneficial use calculated on a straight-line basis assuming a useful life of five (5) years; (ii) (a) obtain the right for Customer to continue use of the Software, (b) repair or modify Software so that it is both non-infringing and functionally and operationally equivalent to the Software, or (c) provide functionally equivalent replacement products; or (iii) indemnify, defend and hold harmless the Customer against such IP claim. In order for PEL to consider option (iii) indemnification, Customer must:

- 7.1.1 notify PEL of such IP Claim no later than 21 days from receipt of notice such claim;
- 7.1.2 provide PEL with all information reasonably available to Customer and any assistance in relation to the claim that PEL reasonably requires;
- 7.1.3 if requested to do so by PEL at PEL's sole discretion, Customer gives PEL sole control of the defence of such claim and all related settlement negotiations; and
- 7.1.4 Customer makes no admission or in any other way prejudices PEL's defence of any claim and provides PEL with sole control of the defence of the claim and all related settlement negotiations.

Whichever of the foregoing options PEL elects shall constitute Customer's sole and exclusive remedy for such IP Claim.

- 7.2 Notwithstanding the foregoing, PEL shall have no obligation to provide a refund, or indemnify an IP claim to the extent that such IP Claim is based on or arises from:
- 7.2.1 use of an outdated release of any Software if such infringement would have been avoided by the use of a Major Update or a Minor Update which had been made available to Customer;
- 7.2.2 combination or use of the Software with hardware or software not approved in writing by PEL;
- 7.2.3 use of Software that has been modified or altered other than by PEL or with PEL's prior written permission;
- 7.2.4 use of third-party software that is not expressly intended for use by or within PEL's software; or
- 7.2.5 use of the Software in any manner not prescribed by PEL.

## **8 Termination and Post Termination Provisions**

- 8.1 Neither Party shall be entitled to terminate the Agreement for convenience.
- 8.2 This Agreement may be terminated by either party by notice in writing with immediate effect:

- 8.2.1 if the other commits a material breach of any term of this Agreement which (in the case of a breach capable of being remedied within thirty (30) days) has not been remedied within thirty (30) days of a written request to remedy the breach (and for these purposes it is agreed that lateness is a remediable breach); and/or
  - 8.2.2 if the other becomes bankrupt or insolvent, proposes a voluntary arrangement, is unable to pay its debts, becomes bankrupt or suffers an insolvency event or any similar or analogous event occurs in relation to the other party in this or any other jurisdiction.
- 8.3 Upon expiration or termination of this Agreement for any reason the Licence granted hereunder shall terminate and Customer shall immediately cease use of the Software. Customer shall immediately on such termination or expiration return to PEL all copies of the Software (including Updates) and associated documentation, delete all stored copies of the same and shall also certify to PEL that no copies have been retained.
- 8.4 Any termination or expiration of this Agreement is without prejudice to any other rights or remedies a party may be entitled to under this Agreement or at law. It does not affect any accrued rights or liabilities of either party or any provision which is expressly or by implication intended to come into force on, or continue in force after, termination or expiration.

## **9 Liability**

- 9.1 Save as provided in clause 9.3, PEL's total aggregate liability under or in connection with this Agreement whether in contract, tort (including, but not limited to, negligence) or otherwise will not exceed the total Fees paid by the Customer in the 12 months preceding the event from which any such liability arises. Customer acknowledges that the Fees have been agreed by PEL in light of this limitation upon liability and that, given all the circumstances, this limit is reasonable.
- 9.2 PEL shall not be liable to Customer for any claim to the extent that the claim relates to loss of profits, goodwill, anticipated savings, business opportunity, data or use of data, injury to reputation, third party losses or indirect, consequential or special loss or damage regardless of the form of action, whether in contract, strict liability or tort (including negligence) and regardless of whether PEL knew or had reason to know of the possibility of the loss, injury or damage in question.
- 9.3 Notwithstanding anything to the contrary in this Agreement, PEL's liability to Customer
- 9.3.1 for death or personal injury caused by gross negligence wilful misconduct,
  - 9.3.2 for breach of confidentiality obligations,
  - 9.3.3 for loss resulting from gross negligence, wilful misconduct or fraud (including without limit, fraudulent misrepresentation), or
  - 9.3.4 for any other liability the exclusion or limitation of which is not permitted by law
- shall not be limited (but nothing in this clause confers any right or remedy upon Customer to which it would not otherwise be entitled).
- 9.4 This clause 9 has continuing effect after termination or expiration of this Agreement.
- 9.5 No liability is accepted for the use of third-party software that is not expressly intended to be used by or within the Software.

## **10 Confidentiality**

- 10.1 PEL and Customer now undertake to each other:
- 10.1.1 to keep confidential the Software (and any Updates), all associated information and documentation, all information concerning the business and affairs of the other that it has obtained or received as a result of the discussions leading up to or the entering



into, or obtains or receives in performance of, this Agreement, as well as this Agreement itself (the "Information");

- 10.1.2 not to disclose the Information in whole or in part to any other person without the other's written consent, save those of its employees, agents and sub-contractors involved in the implementation and/or support of the Software and who have a need to know the same; and
  - 10.1.3 to use the Information solely in connection with the implementation and/or support of the Software and not for its own benefit or the benefit of any third party.
- 10.2 The provisions of clause 10.1 do not apply to the whole or any part of the Information which is already in the public domain, lawfully obtained after today free of any duty of confidentiality otherwise than directly or indirectly from the other party to this Agreement, is required to be disclosed by law (but then only to the extent of required disclosure, and only after providing notice of such required disclosure where permissible under applicable law and assisting with any effort to limit the extent of the required disclosure) or can be shown to be already in the other's possession other than as a result of a breach of this clause 10.
- 10.3 This clause 10 has continuing effect after termination of this Agreement. For the avoidance of doubt, nothing in this clause 10 shall prevent PEL from referring to Customer as its customer.

## **11 Force Majeure**

- 11.1 Save for payment obligations, neither party will be liable for any breach of its obligations resulting from an event beyond that party's reasonable control. The party affected by such an event agrees to give written notice to the other upon becoming aware of the event, that notice containing details of the circumstances giving rise to the event.

## **12 General**

- 12.1 The rights and remedies available to the parties under this Agreement are without prejudice to any other rights or remedies available to the parties under this Agreement or at law.
- 12.2 The failure or delay by either party to exercise or enforce any of its rights or to enforce any obligation which the other party is in breach of under this Agreement is not a waiver of that right and nor will it bar enforcement of that obligation (or any similar or other obligation) at that time or at any subsequent time.
- 12.3 Any notice or other document to be served under this Agreement must be in writing, sent to the receiving party at its address stated in this Agreement (or notified to the other party from time to time in accordance with this clause 12.3) and a notice or other document will be effectively served if served in the following ways (and shall be deemed to have been served at the times stated):
  - 12.3.1 by pre-paid special delivery post - on the second day after posting;
  - 12.3.2 by fax - upon receipt of an error-free reception code (provided that a copy is sent by pre-paid first-class post on the date the fax is sent);
  - 12.3.3 by e-mail - on sending (provided that a copy is sent by pre-paid first-class post on the date the e-mail is sent); and
  - 12.3.4 by personal delivery - upon actual delivery or upon refusal to accept delivery.
- 12.4 If any part of this Agreement, or of any document made in connection with this Agreement, is determined by any court, tribunal or administrative body of a competent jurisdiction to be wholly or partly unenforceable for any reason, that unenforceability shall not affect the rest of this Agreement or that document, the unenforceable part being deemed severed and deleted and the remainder continuing in full force and effect.

- 12.5 This Agreement (including the Schedule once completed) forms the entire agreement between the parties in relation to its subject matter and supersedes all previous contracts, arrangements, representations (save that it shall not apply to avoid liability for fraudulent misrepresentations) or understandings between PEL and Customer, in each case, whether written, arising from custom or oral. In the event of any conflict between the terms of this Agreement and the Schedule, the terms in the body of this Agreement shall take precedence.
- 12.6 This Agreement may not be varied otherwise than in writing and signed by duly authorised representatives of both parties.
- 12.7 The parties may, upon notice and with the consent of the other party (which shall not be unreasonably withheld), assign its rights and obligations under the Agreement to a third party in case of sale, transfer, merger or similar event involving all or parts of the party's business. Further, the Parties are entitled to assign their rights and obligations under the Agreement to any member of their group of companies respectively. Any other assignment of a party's rights and obligations under the Agreement to any other party shall be subject to the other party's prior written approval which shall not be unreasonably delayed or withheld.
- 12.8
- 12.8.1 In the event that (a) Customer is an entity organized under laws of any of the United States or has its principal place of business in the United States, this Contract shall be governed by and is to be construed in accordance with the laws of the State of California without giving effect to any conflicts of laws principles that would require the application of the laws of a different jurisdiction. Any arbitration under 12.8.3 shall take place in San Francisco, California, and in the event either Party seeks interim relief as provided for in 12.8.3, both Parties consent to the jurisdiction of the courts located in Santa Clara County, California.
- 12.8.2 In the event that Customer is an entity organized outside of the United States and/or has its principal place of business outside of the United States, and this Contract shall be governed by and is to be construed in accordance with the laws of the Republic of Singapore without giving effect to any conflicts of laws principles that would require the application of the laws of a different jurisdiction. Any arbitration under 12.8.3 shall take place in the Republic of Singapore, and in the event either Party seeks interim relief as provided for in 12.8.3, both Parties consent to the jurisdiction of the courts of the Republic of Singapore.
- 12.8.3 If any dispute arising out of or related to the Agreement or breach thereof, is not resolved amicably by the Parties, such dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("ICC") in effect as of the Effective Date, before a tribunal of three (3) arbitrators, with the first appointed by Customer, the second by Applied and the third by the first two (2) arbitrators (or, if such two (2) arbitrators fail to agree within sixty (60) days, by the ICC). The language of the arbitration will be English. The Parties agree to apply the International Bar Association Rules on Taking Evidence to any arbitration under this Section. In any event of arbitration, the arbitrators shall have the discretion to award reasonable costs to the prevailing Party. Such costs will not include the Parties' costs, expenses, or legal fees, but may include the costs of the arbitrators and the administrative fees, and any other fees assessed by the arbitrators. The award rendered by the arbitrators may be entered in any court having jurisdiction over the Party or Parties to the dispute against which enforcement is sought, or a court in any other competent jurisdiction where the assets of said disputing Party or Parties are located. The written award of the arbitrators will be final and binding. The language of the arbitration will be English. Nothing in this Section prevents any Party from seeking interim relief in a court of competent jurisdiction.
- 12.8.4 The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

## 2. SCHEDULE TO THE SOFTWARE LICENCE AGREEMENT

### Specifications:

Customer, Client or End-User (Company Name)	
Project or Intended Use of Software	
PE Software to be supplied	
Number of copies to be provided	
PE Software may be installed on this Hardware	
Initial Software Fee(s) (from quotation)	
Annual Software Fee(s) (from quotation)	
Total Fee(s) (from quotation)	

### Signed on behalf of Customer:

<b>Printed Name</b>		<b>Signature</b>	
<b>Position / Title</b>		<b>Date</b>	

### Operating System and Hardware:

Please contact Perceptive Engineering for up-to-date approved specifications for both hardware and software that should be specified for running the PerceptiveAPC Software Suite.

### Annual Software Fee

Whilst the software platform is actively in use, an annual software fee remains payable by the client. This fee includes:

- upgrades to include customer-generated features and functionality;
- upgrades to ensure compatibility with third-party operating systems and interfaces; and
- telephone, email and remote support for software-related issues.

<b>Annual Fee Commences</b>	<b>Renewal of Fee Due</b>
Activation Date	1 year from Activation Date

Please note: any break in the payment of the annual software fee will prevent on-going support of the installed system and will invalidate any future software upgrade path

### Software Service Agreement

Any support queries received via our Portal will be acknowledged during the same or next business day. The speed of resolution depends on the complexity of the query; if the issue is complex and will require additional time or resources, the client will be kept fully informed and will be able to track progress via the Zendesk Portal.

Once the issue is resolved, a written report will be submitted for discussion and reference.

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