

End-User License Agreement (“EULA”)

OBSERVE IT Ltd., a corporation with offices located at Raul Walenberg 6 St. Tel Aviv, Israel and its subsidiaries and affiliates (“OBSERVEIT”), and _____ (“End-User”), a _____ corporation having a place of business at _____ (fax: _____), agree that this End-User License Agreement (“EULA”) shall govern any Equipment, Software and services listed on an Order accepted by OBSERVEIT after the date of last signature below (the “Effective Date”).

RECITALS:

WHEREAS, OBSERVEIT represents that it has sufficient right, title, and interest in the Software to execute and perform this EULA;

WHEREAS, End-User desires to obtain from OBSERVEIT the non-exclusive, non-transferable license to use the Software in conjunction with the Equipment.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto agree as follows:

1. DEFINITIONS:

A. “Equipment” means the hardware identified on End User purchase Order accepted by OBSERVEIT in conjunction with which the Software is to be used.

B. “Order” means a document (typically End-User’s purchase order form or OBSERVEIT’s standard End-User order form), which is signed by End-User and specifies the Software and incidental related services (meaning services which are not provided under a separate, signed agreement) which End-User seeks to obtain from OBSERVEIT and the related pricing and sufficient other information to complete the transaction.

C. “Software” means the software programs licensed or distributed by OBSERVEIT and identified on an Order accepted by OBSERVEIT, and (iii) all related OBSERVEIT documentation.

D. “Software Provider” means a provider of software (other than OBSERVEIT) which is included in the Software and which is identified as the provider of such third party software.

E. “Software Release(s)” means any new version or upgrade of Software that is made generally available by OBSERVEIT at no separate or additional charge during the period in which the Software is covered by the applicable warranty.

F. “Trademarks” means all names, marks, logos, designs, trade dress and other brand designations used by OBSERVEIT or its Software Suppliers in connection with the Software.

2. ORDERING, PRICING AND PAYMENT: All Orders shall reference this EULA and are subject to acceptance by OBSERVEIT. Orders by foreign affiliates or for export must be identified and are governed by the local OBSERVEIT

quote and are subject to applicable export regulations. End-User guarantees its affiliate’s compliance herewith. End-User shall pay OBSERVEIT the price stated on an accepted Order and will also pay or reimburse OBSERVEIT for all related taxes or withholdings, except for those based on OBSERVEIT’s net income. If End-User is exempt from any taxes, End-User shall provide OBSERVEIT with the necessary documentation required by the taxing authority to sustain such an exemption. Subject to OBSERVEIT’s credit approval, all amounts are due in United States currency and in full within thirty (30) days after the date of OBSERVEIT’s invoice, with interest equal to the lesser of 1.5% per month and the maximum rate of interest permitted by law on the delinquent amount from the date due until the date actually paid. In addition in an event of delay in payments, OBSERVEIT may suspend performance under this or any other related agreement between OBSERVEIT and End-User. Any upgrades to the Software will be provided for an additional 20% of the price specified in OBSERVEIT’s quote.

3. DELIVERY AND ACCEPTANCE: Software may be provided by electronic means. Acceptance of Software (“Acceptance”) upon successful completion of OBSERVEIT’s standard installation procedures which demonstrate conformance to the applicable OBSERVEIT published specifications.

4. WARRANTY:

A. Software: OBSERVEIT warrants that during the twelve (12) months following Acceptance by the End-User the Software (excluding upgrades) will perform in accordance with the published user documentation of OBSERVEIT in all material respects. In the event the Software fails to conform to such warranty, as End-User’s sole and exclusive remedy for such failure, OBSERVEIT will, at its option and without charge to End-User, repair or replace the Software or refund to End-User the fee paid for such Software, provided notice of the nonconforming item is given to OBSERVEIT within the three (3) month warranty period.

B. Additional Warranty Terms: Locations outside the OBSERVEIT Service Area are subject to a travel surcharge in accordance with OBSERVEIT’s standard rates, and on-site response times vary accordingly. Warranty response times are based on the use of commercially reasonable best efforts. Telephone response times are measured from time of contact

by End-User. On-site response times are measured from the time that OBSERVEIT determines that an on-site visit is necessary. OBSERVEIT has no obligation whatsoever for Software altered without OBSERVEIT's prior written consent or whose original identification marks have been removed, or for Software installed on hardware other than the Equipment, device(s), network(s) or related central processing unit or items for which it was licensed.

C. Limitations and Exclusions: EXCEPT AS EXPRESSLY STATED IN THIS WARRANTY SECTION, OBSERVEIT PROVIDES SOFTWARE AND SERVICES "AS IS" AND MAKES NO OTHER WARRANTIES, WRITTEN OR ORAL, AND ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

5. SOFTWARE:

A. Licenses: Subject to the terms of this EULA, OBSERVEIT grants End-User a license to use the object code version of the Software during the term of this EULA, for the consideration set out in the Order, only on the Equipment. Subject to the terms of this EULA, OBSERVEIT grants End-User a license to use the object code version of the Software during the term of this EULA, up to the permitted limits on the specific Equipment as permitted and measured by the scope of the applicable license for which End-User has paid the license fee(s), on delivery to End-User. End-User must notify OBSERVEIT and pay the applicable additional license fee(s) before exceeding the permitted limits. The foregoing licenses shall be non-exclusive, non-transferable, and non-sublicensable and subject to the restriction that the Software be used solely on or in connection with the Equipment for which it was licensed. End-User shall not, without OBSERVEIT's prior written consent, copy, provide, disclose or otherwise make available Software in any form to anyone other than End-User's employees, consultants or independent contractors ("**Personnel**"), who shall use Software End-User in a manner consistent with this EULA. End-User acknowledges that the Equipment is not designed or intended for use in the operation or maintenance of any nuclear facility. End-User shall be fully responsible to OBSERVEIT for the compliance of End-User's Personnel herewith. Software Releases provided by OBSERVEIT are governed by Sections 4, 5, 6, 7, 8, and 9 unless such is separately identified on an Order.

B. Ownership: Software is licensed only. No title to, or ownership of, the Software or any intellectual property incorporated into or embedded in the Software is transferred to End-User. End-User shall reproduce and include copyright and other proprietary notices on and in any copies, including but not limited to partial, physical or electronic copies, of the

Software, and shall not delete or in any manner alter the copyright, trademark, and other proprietary rights notices of OBSERVEIT and its licensors, if any, appearing on the Software as delivered to End-User. Neither End-User nor its Personnel shall modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, reverse compile or otherwise reduce to human readable form the Software without OBSERVEIT's prior written consent. Any programs that are accompanied by a "break-the-seal" hard-copy license agreement or is obtained after indicating acceptance of the separate license agreement by electronic means, shall be governed solely by such license.

C. Proprietary Rights, Confidentiality: The logo, product names, Software, copies of Software, manuals, documentation, support materials and Trademarks are patented, copyrighted, trademarked, or owned by OBSERVEIT or the Software Providers or Hardware Vendors as trade secrets and/or proprietary information. OBSERVEIT retains exclusive ownership of the Software and its copies, the intellectual property in any of the Software and its copies, and of the printed materials. All rights not expressly granted to the End-User hereunder are reserved by OBSERVEIT, the Software Providers and their affiliates. The Software is confidential and proprietary to OBSERVEIT and, if appropriate, the Software Providers and their respective affiliates. End-User shall hold the Software in strict confidence. End-User shall not sell, publish, disclose, display, reverse-engineer or other wise make available in whole or in part, the Software, or any modifications or enhancements thereof or copies thereof to others without OBSERVEIT's prior written consent. End-User will limit access to the Software to only those of its employees who need access to the Software in order to operate the Software or to use the product thereof for End-User's business, and, if, requested by OBSERVEIT it will require it's employees to execute OBSERVEIT's standard nondisclosure agreement. End-User will not use any information, in tangible or intangible form, which has been or may be disclosed to it or its employees by OBSERVEIT under or in connection with this EULA for the purpose of creating or duplicating or attempting to create or duplicate the Software, except as expressly permitted in this EULA. End-User agrees to secure and protect the Software in a manner consistent with the maintenance of OBSERVEIT's rights therein, including, but not limited to, taking appropriate action through instructions or agreements with its employees, agents, or consultants who have any access to the Software in order to satisfy End-User's obligations hereunder.

D. Trademarks: End-User may not remove or alter any Trademarks. End-User agrees that any use of Trademarks by End-User will inure to the sole benefit of OBSERVEIT or its Software Suppliers. End-User agrees not to incorporate any Trademarks into End-Users' trademarks, service marks, company names, internet addresses, domain names, or any other similar designations without OBSERVEIT's prior written consent.

E. Verification and Audit Rights: Upon request of OBSERVEIT, and no more than once per year, End-User shall promptly provide OBSERVEIT with a written statement certifying the extent of End-User's usage of Software identified by OBSERVEIT and/or allow OBSERVEIT to conduct a reasonable on site or remote audit of the applicable End-User facilities, products, and records to determine whether or not End-User's usage of such Software is in conformance with its paid for license usage. End-User shall reasonably cooperate with and assist OBSERVEIT in any such audit, which shall be conducted during End-User's normal business hours and shall not unreasonably interfere with End-User's business activities. Should such audit statement indicate usage in excess of that for which End-User is licensed, in addition to any other rights OBSERVEIT may have for breach of the license, End-User shall promptly reconcile its account with OBSERVEIT and pay the OBSERVEIT invoice, if any, that results from such reconciliation.

6. INDEMNITY: Subject to the limitations set out below in this Section and in Section 7 below, OBSERVEIT shall defend End-User against any third party claim that the Software developed by OBSERVEIT infringes a US patent or copyright, and pay the resulting costs and damages awarded against End-User by a court of competent jurisdiction, provided End-User (i) notifies OBSERVEIT promptly in writing of such claim, (ii) grants OBSERVEIT sole control over the defense and settlement thereof, and (iii) reasonably cooperates in response to a OBSERVEIT request for assistance. Should any Software become, or in OBSERVEIT's opinion be likely to become, the subject of such a claim, OBSERVEIT shall, at its option and expense, (a) procure for End-User the right to make continued use thereof, (b) replace or modify such so that it becomes non-infringing, or (c) request return and upon receipt thereof refund the price paid by End-User, less straight-line depreciation based on a three (3) year useful life. OBSERVEIT shall have no liability if the alleged infringement is based on (1) combination with non-OBSERVEIT products, (2) use for a purpose or in a manner for which the Software was not designed, (3) use of any older version of the Software when use of a newer OBSERVEIT revision would have avoided the infringement, (4) any modification not made with OBSERVEIT's written approval, (5) any modifications made by OBSERVEIT pursuant to End-User's specific instructions, or (6) any intellectual property right owned or licensed by End-User. THIS SECTION STATES END-USER'S SOLE AND EXCLUSIVE REMEDY AND OBSERVEIT'S ENTIRE LIABILITY FOR CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS.

7. LIMITATIONS OF LIABILITY: THE WARRANTY OBLIGATIONS OF OBSERVEIT ARE EXPRESSLY

LIMITED TO THE FOREGOING PROVISIONS. THESE PROVISIONS CONTAIN THE FULL AND EXCLUSIVE WARRANTIES AND REMEDIES IN FAVOR OF END-USER AND ANY THIRD PARTY, AND ARE IN LIEU OF ALL OTHER REMEDIES AND WARRANTIES - EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR USE. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES; NOR FOR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS. IN NO EVENT WILL OBSERVEIT TOTAL LIABILITY FOR ANY DAMAGES IN ANY ACTION (BASED ON CONTRACT OR TORT OR OTHERWISE) ARISING FROM THE DELIVERY, INSTALLATION, USE AND PERFORMANCE OF ANY OF THE SOFTWARE MODULES EXCEED THE TOTAL AMOUNT PAID TO OBSERVEIT PURSUANT TO THIS AGREEMENT.

THE PARTIES AGREE THAT THE LIMITATIONS AND EXCLUSIONS SPECIFIED IN THIS SECTION 7 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS EULA IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

8. [RESERVED]

9. TERMINATION:

9.1 Right to Terminate: OBSERVEIT may terminate (including the license granted hereunder) this EULA with no liability by written notice to End-User if End-User fails to comply with the terms and conditions of this EULA or any other related contract or agreement between OBSERVEIT and End-User and fails to cure such breach within thirty (30) days of receipt of notice from OBSERVEIT.

9.2 Effect of Termination: Immediately after termination of this EULA, End-User shall return to OBSERVEIT the Software and all copies thereof in the form provided by OBSERVEIT or as modified, or, upon request by OBSERVEIT, destroy the Software and all copies, and certify in writing that they have been destroyed. End-User shall de-register the License as per OBSERVEIT's instruction and to OBSERVEIT's satisfaction. Termination under this paragraph shall not relieve End-User of its obligations regarding confidentiality or payment and Sections 5(C), 6, 7 and 10 will survive termination of this EULA, however arising.

10. MISCELLANEOUS:

10.1 Export Law: End-User shall comply with and obtain all authorizations required by U.S. and local export control laws and all related regulations and may be subject to export or import regulations of other countries. Without limiting the above said, if End-User is acquiring or accompanying documentation on behalf of the U.S Government, it shall be

subject to “Restricted Rights”, as that term is defined in the Federal Acquisition Regulations

10.2: Reference: OBSERVEIT may identify End-User for reference purposes.

10.3 EULA Assignment: This EULA will bind and inure to the benefit of each party's successors and assigns, provided that End-User shall not assign this EULA or any right or delegate any performance without OBSERVEIT’s prior written consent. It is hereby agreed that OBSERVEIT may perform its obligations under this EULA by itself or through third parties authorized by OBSERVEIT for this purpose.

10.4 Dispute Resolution: The parties will use reasonable efforts to resolve any dispute arising of this EULA through a meeting of appropriate account managers from each party. If the parties are unable to resolve the dispute, either party may escalate the dispute to its executives. If an executive level meeting fails to resolve the dispute within thirty (30) days after escalation, either party may seek any available legal relief. This provision will not affect either party’s right to seek injunctive or other provisional relief at any time.

10.5 Governing Law: This EULA will be governed by and construed in accordance with the laws of the State of New York without giving effect to principles of conflict of law. Choice of law rules of any jurisdiction and the United Nations Convention on Contracts for the International Sale of Goods will not apply. The sole venue for litigation will be the federal or state courts located in New York City, New York, USA and each party hereto irrevocably consents to the jurisdiction of the federal or state courts located in New York City, New York, USA.

10.6 Waiver: No waiver shall be deemed a waiver of any prior or subsequent default hereunder.

10.7 Severability: This EULA shall control in case of an inconsistent or conflicting term set forth on the applicable Order. If any part of this EULA is held unenforceable, the validity of the remaining provisions shall not be affected.

10.8 Complete Agreement: Each party acknowledges that it has read and understand this EULA and agrees to bound by its terms. The parties further agree that this EULA, including the applicable Order approved by OBSERVEIT, is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral or written, between the parties or between End-User and any third party relating to this EULA. This EULA may not be modified or altered except by written instrument duly executed by both parties; and applies to services provided in the absence of a separate, signed agreement.

10.9 Notices: All notices required or permitted under this EULA shall be in writing and shall be deemed delivered when delivered in person, transmitted by facsimile, or deposited in the mail service, postage prepaid, registered or certified mail, return receipt requested, addressed to OBSERVEIT or to End-User at their place of business as appears on the face of this EULA.

10.10 Purchase Orders: Purchase orders or similar documents relating to the Software sold by OBSERVEIT will have no effect on the terms of this Agreement unless specifically approved in writing by OBSERVEIT.

10.11 Force Majeure: Neither party shall be liable for any act, omission, or failure to fulfill its obligations under this EULA (except with respect of payment obligations) if such act, omission or failure arises from any cause reasonably beyond its control. The party unable to fulfill its obligations shall immediately notify in writing of the reasons for its failure to fulfill its obligations and the effect of such failure.

OBSERVEIT LTD.

By: _____

Name (Print): _____

Title: _____

Date: _____

_____ [Name of End-User]

By: _____

Name (Print): _____

Title: _____

Date: _____