

SDS/2
PRE-RELEASE PRODUCTS TESTING AGREEMENT

READ CAREFULLY: DESIGN DATA CORPORATION DBA SDS/2 (“SDS/2”) LICENSES THIS PRE-RELEASE PRODUCT TO YOU ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS PRE-RELEASE PRODUCTS TESTING AGREEMENT (“AGREEMENT”).

THIS IS THE ONLY AGREEMENT BETWEEN YOU AND SDS/2 GOVERNING YOUR USE OF THIS PRE-RELEASE PRODUCT, AND THIS AGREEMENT SHALL SUPERSEDE ANY OTHER LICENSE AGREEMENT(S) (INCLUDING STANDARD LICENSE AND SERVICES AGREEMENT) THAT MAY APPEAR DURING THE INSTALLATION OR UPLOADING OF SUCH PRE-RELEASE PRODUCT.

By selecting the “I accept” button or other button or mechanism designed to acknowledge agreement to the terms of an electronic copy of this Agreement, or by installing, downloading, accessing, or otherwise copying or using all or any portion of the Pre-Release Product, (i) you accept this Agreement on behalf of the entity for which you are authorized to act (e.g., an employer) and acknowledge that such entity is legally bound by this Agreement (and you agree to act in a manner consistent with this Agreement) or, if there is no such entity for which you are authorized to act, you accept this Agreement on behalf of yourself as an individual and acknowledge that you are legally bound by this Agreement, and (ii) you represent and warrant that you have the right, power and authority to act on behalf of and bind such entity (if any) or yourself. You may not accept this Agreement on behalf of another entity unless you are an employee or other agent of such other entity with the right, power and authority to act on behalf of such other entity.

If you are unwilling to accept this Agreement, or you do not have the right, power and authority to act on behalf of and bind such entity or yourself as an individual (if there is no such entity), (a) DO NOT SELECT THE “I ACCEPT” BUTTON OR OTHERWISE CLICK ON ANY BUTTON OR OTHER MECHANISM DESIGNED TO ACKNOWLEDGE AGREEMENT, AND DO NOT INSTALL, DOWNLOAD, ACCESS, OR OTHERWISE COPY OR USE ALL OR ANY PORTION OF THE PRE-RELEASE PRODUCT, AND (b) IF BUTTONS FOR ACCEPTING OR REJECTING THE PRE-RELEASE PRODUCT APPEAR, SELECT THE “CANCEL” BUTTON AND CANCEL THE LOADING OF THE PRE-RELEASE PRODUCT.

INSTALLATION, UPLOADING, ACCESSING, COPYING OR OTHER USE OF THIS PRE-RELEASE PRODUCT OR ANY ACCOMPANYING DOCUMENTATION EXCEPT AS PERMITTED BY THIS AGREEMENT IS UNAUTHORIZED AND CONSTITUTES A MATERIAL BREACH OF THIS AGREEMENT AND AN INFRINGEMENT OF THE COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS IN SUCH PRE-RELEASE PRODUCT AND DOCUMENTATION. IF YOU INSTALL, UPLOAD, ACCESS, COPY OR USE ALL OR ANY PORTION OF THIS PRE-RELEASE PRODUCT OR ITS USER DOCUMENTATION WITHOUT ENTERING INTO THIS AGREEMENT OR OTHERWISE OBTAINING WRITTEN PERMISSION OF SDS/2 OR FAIL TO COMPLY WITH THIS AGREEMENT, YOU ARE VIOLATING COPYRIGHT AND OTHER INTELLECTUAL PROPERTY LAW. YOU MAY BE LIABLE TO SDS/2 AND ITS LICENSORS FOR DAMAGES, AND YOU MAY BE SUBJECT TO CRIMINAL PENALTIES.

WHEREAS, SDS/2 is willing to supply to you (“Tester” as defined below) solely for testing and evaluation purposes, within the protection of a confidential relationship, certain Pre-Release Products (as defined below) on the terms and conditions contained in this Agreement;

WHEREAS, Tester desires to have access to the Pre-Release Products solely for the testing and evaluation and is aware of the experimental and untested nature of the Pre-Release Products, and is willing to enter into a confidential relationship to use and test the Pre-Release Products and to provide Feedback (as defined below) to SDS/2 with respect to the Pre-Release Products;

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1. DEFINITIONS

In addition to the terms defined elsewhere in this Agreement, the following terms, when used herein, shall have the following meanings:

1.1. “Data” means Tester's own raw data and information uploaded or submitted by Tester in connection with a Pre-Release Product (other than Feedback) and the Tester-specific file or output generated from the Pre-Release Product, if any, based upon Tester's own raw data and information.”

1.2. “Feedback” shall mean all suggestions, comments, input, ideas, reports, information or know-how (whether in oral, electronic or written form) provided by Tester to SDS/2 in connection with Tester’s evaluation and use of the Pre-Release Products and Confidential Information provided by SDS/2. Feedback does not include any artwork, sample content or output created by Tester using the Pre-Release Products, unless submitted or communicated by Tester to SDS/2 or SDS/2’s website as part of Feedback.

1.3. “Pre-Release Products” shall mean the pre-release versions of the SDS/2 products, services and/or technology identified as a part of the application process, including without limitation the specifications therefor and all versions thereof, whether labeled alpha, beta, pre-release, preview or otherwise. Pre-Release Products also include any documentation, features, functionalities, updates, upgrades, bug fixes or enhancements to such technology, services, software products, software code and/or pre-release hardware devices which SDS/2, in its sole discretion, may choose to provide to Tester, and all marketing and business plans and other information and documents related thereto, no matter how obtained by Tester. Pre-Release Products are SDS/2 Confidential Information, as defined below.

1.4. “Tester” shall mean you personally (*i.e.*, the individual who reads and is prompted to accept this Agreement) if you obtain the Pre-Release Products for yourself or the company or other legal entity for whom you acquire the Pre-Release Products.

2. LICENSE TO TESTER

2.1. Grant of License. Subject to the terms of this Agreement, SDS/2 hereby grants Tester, under all of SDS/2's intellectual property and proprietary rights, a non-exclusive, personal, limited, non-assignable, non-sublicensable, royalty-free license to access and use a single copy of the Pre-Release Products at Tester's principal office in a secure location, solely in connection with and for the purpose of internal testing, evaluating and providing Feedback to SDS/2 regarding the Pre-Release Products.

2.2. License Restrictions. Except as expressly authorized in this Agreement or by SDS/2, Tester will not, and will not permit any third party to: (a) reproduce, publicly perform or display, translate, modify, adapt, arrange or create derivative works based on the Pre-Release Products for any purpose; (b) distribute, sell, outsource, rent, lease, loan, sublicense or otherwise transfer or provide all or portion of the Pre-Release Products or any rights granted hereunder to any other person or legal entity; (c) use the Pre-Release Products for competitive analysis, or any commercial, professional, or other for-profit purposes, (d) use the Pre-Release Products for third-party training, performance testing, web hosting, commercial time-sharing, service bureau, software as a service, cloud or other technology use, (e) remove, alter, obscure, cover or change any proprietary notices, labels or markings from or on the Pre-Release Products, its components, or any copies of the same, (f) reverse engineer, decompile or disassemble the Pre-Release Products or determine or attempt to determine any source code, algorithms, methods or techniques used or embodied in the Pre-Release Products; (g) utilize any equipment, device, software, or other means designed to circumvent or remove any form of technical protection used by SDS/2 in connection with the Pre-Release Products, or use or access the Pre-Release Products together with any product code, authorization code, serial number, or other copy protection device not supplied by SDS/2; (h) interfere with or disrupt servers or networks connected to any website through which the Pre-Release Products are provided; or (i) use the Pre-Release Products to collect or store personal data about any person or entity.

3. CONFIDENTIALITY

3.1. SDS/2 Confidential Information. "Confidential Information" of SDS/2 means non-public information that SDS/2 designates as being confidential to Tester, or which, under the circumstances surrounding disclosure ought to be treated as confidential by Tester. "Confidential Information" includes, without limitation, the Pre-Release Products and any information in tangible or intangible form, whether in oral or written form, relating to and/or including released or unreleased SDS/2 software or hardware products, product names, code names, specifications, development plans and results, research activities and results, improvements, functionality, defects, errors, techniques, inventions, whether patentable or not, code, documentation, algorithms, formulas, data structures, scripts, protocols, application programming interfaces and other technical information, the marketing or promotion of any SDS/2 product, product pricing, product costs, business opportunities and financial information, strategies, timetables, forecasts, SDS/2's business policies or practices, processes, ideas, know-how and expertise of employees or consultants, and information received from third parties that SDS/2 is obligated to treat as confidential.

3.2. Restrictions. By disclosing SDS/2's Confidential Information to Tester, SDS/2 does not grant any express or implied right to Tester under any patents, copyrights, trademarks, or trade secret rights, except as provided herein. Tester shall (a) use SDS/2's Confidential Information solely for the purpose of testing and evaluating the Pre-Release Products and providing Feedback thereon; (b) refrain from disclosing any of SDS/2's Confidential Information to third parties except as expressly provided in Sections 3.3 and 3.4 of this Agreement for a period of five (5) years after the date that SDS/2 first discloses such Confidential Information to Tester; and (c) take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, but no less than reasonable care, to keep confidential the Confidential Information. Tester shall notify SDS/2 immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by Tester, its employees or consultants, and will cooperate with SDS/2 in every reasonable way to help SDS/2 regain possession of the Confidential Information and prevent its further unauthorized use or disclosure.

3.3. Judicial Exception. Tester may disclose Confidential Information in accordance with a judicial or other governmental order, provided that Tester gives SDS/2 immediate written notice (in any event no less than five (5) days) prior to such disclosure to allow SDS/2 a reasonable opportunity to seek a protective order or equivalent and provides full cooperation in limiting the scope of such disclosure to the extent possible.

3.4. Need-to-know Basis. Tester may disclose Confidential Information only to Tester's employees and consultants on a need-to-know basis. Tester will have executed or shall execute appropriate written agreements with its employees and consultants sufficient to enable it to comply with all the provisions of this Agreement. Tester hereby guarantees the performance of this provision by each employee or consultant obtaining disclosure of SDS/2 Confidential Information from Tester.

3.5. Tester's Confidential Information. To the extent that Tester provides SDS/2 with information that is not Feedback but is "Confidential Information" of Tester, SDS/2 agrees not to use or disclose such information to any unaffiliated third party without Tester's prior written consent. For purposes of this Agreement, "Confidential Information" of Tester means non-public information about Tester's business or technology not related, directly or indirectly to the Pre-Release Products that Tester designates and marks as being confidential. Feedback shall not create any confidentiality obligation for or upon SDS/2.

3.6. Exclusions from Confidential Information. As to each party, "Confidential Information" shall not include any information, however designated, as evidenced by written records, that: (i) is or subsequently becomes publicly available without a breach of any obligation of confidentiality hereunder; (ii) became known to the other party prior to disclosure of such information to such party pursuant to the terms of this Agreement without an obligation of confidentiality; (iii) became known from a third party other than by the breach of

an obligation or confidentiality owed to a party hereto; or (iv) is independently developed by a party without use or access to Confidential Information of the other party.

4. OWNERSHIP

Except as expressly licensed to Tester in Section 2.1, SDS/2 retains all right, title and interest in and to the Pre-Release Products and SDS/2 Confidential Information, including all related patents, trademarks, copyrights, know-how, trade secrets and other intellectual property rights. Tester acknowledges and agrees that the Pre-Release Products are licensed, not sold, and that rights to use the Pre-Release Products are acquired only under the license from SDS/2.

5. DATA

Tester hereby grants SDS/2 a perpetual, irrevocable, non-exclusive, royalty-free, paid-up, worldwide, sublicensable license to, store, display, reproduce, modify, use and transmit the Data solely for the purpose of providing and improving the Pre-Release Products, and further waives "moral" rights or other rights with respect to attribution of authorship or integrity of such Data that Tester may have under any applicable law and under any legal theory. SDS/2 (or its sublicensees) may exercise such license for purposes of providing, maintaining, repairing, administering and improving the Pre-Release Products or in developing new products or services, including rights to extract, compile, aggregate, synthesize, use, and otherwise analyze all or any portion of the Data, and to disclose such Data and information and the results of any such analysis in aggregated form or any other form that does not specifically identify the Tester or the source of such Data or information. The Tester represents, warrants and agrees that the Data and other materials it provides or makes available to SDS/2 will include only information relevant to the Pre-Release Products and the use thereof and will not include any personally identifiable information.

Tester acknowledges and agrees that the Tester is solely responsible for all Data it creates, uploads or submits using the Pre-Release Products (including, without limitation, any comments, information, questions, data, plans, ideas, descriptions of processes, or other information created, submitted, posted, reproduced, published, distributed, or otherwise transmitted by the Tester through the Pre-Release Products) and for the Tester's conduct while using the Pre-Release Products. Tester acknowledges and agrees that: (a) the Tester will evaluate and bear all risks associated with the use of any Data, including any reliance by the Tester or other users on the accuracy, completeness, or usefulness of the Data; (b) the Tester is responsible for protecting and backing up the Data; (c) the Tester (and not SDS/2) is responsible for protecting the confidentiality of any Data; and (d) under no circumstances will SDS/2 be liable in any way for any Data, including, but not limited to, any errors or omissions in any Data, or any loss or damages or any kind incurred as a result of the Tester's use, deletion, modification, or correction of any Data. SDS/2 has no responsibility to store, protect, remove or delete any Data for Tester and shall have no liability for the deletion of or failure to store any Data.

Tester agrees that its Data and conduct in using the Pre-Release Products will comply with all applicable laws, rules and regulations, and the SDS/2 Rules of Conduct which are hereby incorporated into this Agreement by reference. SDS/2 may remove any Data or information Tester submits through the Pre-Release Products and/or terminate Tester's ability to access the Pre-Release Products without notice to Tester if SDS/2 believes that the Data or Tester's conduct violates this statement.

6. FEEDBACK

Tester hereby grants SDS/2, under all of Tester's intellectual property and proprietary rights, the following worldwide, exclusive, transferable, perpetual, irrevocable, royalty-free, fully paid-up rights: (1) to make, have made, use, copy, modify, and create derivative works of the Feedback as part of or in connection with any SDS/2 product, technology, service, content, material, specification or documentation (including, without limitation, in connection with the marketing or sale thereof); (2) to publicly perform or display, import, broadcast, transmit, distribute, license, offer to sell and sell, rent, lease or lend copies of the Feedback (and derivative works thereof and improvements thereon); and (3) to sublicense to third parties the foregoing rights, including the right to sublicense to further third parties.

7. PRODUCT MARKING; CIP

7.1. Product Marking. SDS/2 reserves the right to individually sign (or electronically watermark) each download of the Pre-Release Products, and the files created from such Pre-Release Products, allowing SDS/2 to track its Pre-Release Products and the files created with it, to the person or entity originally downloading the Pre-Release Products.

7.2. Privacy Policy. Tester hereby consents to SDS/2 maintaining, using, storing and disclosing information and data (including, without limitation, personal information, if any) obtained by SDS/2 in conformity with SDS/2's policies on privacy and data protection, including without limitation SDS/2's Privacy Policy, as currently located at SDS2.com/privacy. Tester acknowledges and agrees that such policies may be updated from time to time by SDS/2 and that, effective upon posting on SDS/2's website or other written notice from SDS/2, Tester will be subject to such changes.

8. WARRANTIES

Tester warrants that the Feedback and Data do not infringe any copyright or trade secret of any third party, and that Tester has no knowledge of, and has not been put on notice of, any patent of any third party that may be infringed by the Feedback and Data (including any implementation thereof recommended by Tester). Tester warrants that Tester's Feedback is not subject to any license terms that would purport to require SDS/2 to comply with any additional obligations with respect to any SDS/2 pre-release products that incorporate any Feedback. **Tester warrants that it is not a competitor of SDS/2.**

THE PRE-RELEASE PRODUCTS, CONFIDENTIAL INFORMATION AND ANY HARDWARE AND OTHER MATERIALS FURNISHED HEREUNDER ARE FURNISHED ON AN "AS IS" BASIS, AND SDS/2 AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, OR OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE. SDS/2 SPECIFICALLY DOES NOT WARRANT THAT THE PRE-RELEASE PRODUCTS OR OTHER MATERIALS PROVIDED BY SDS/2 WILL MEET TESTER'S REQUIREMENTS; WILL OPERATE IN ALL THE COMBINATIONS WHICH MAY BE SELECTED FOR USE BY TESTER; THAT THE OPERATION OR OUTPUT OF THE PRE-RELEASE PRODUCTS WILL BE ERROR-FRE, ACCURATE, RELIABLE, COMPLETE OR UNINTERRUPTED; OR THAT ALL ERRORS OR DEFECTS IN THE PRE-RELEASE PRODUCTS WILL BE CORRECTED. NEITHER SDS/2 NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY DAMAGES WHATSOEVER ARISING FROM OR RELATING TO TESTER'S USE OR INABILITY TO USE PRE-RELEASE PRODUCTS, HARDWARE OR OTHER MATERIALS.

TESTER EXPRESSLY ACKNOWLEDGES THAT THE PRE-RELEASE PRODUCTS HAVE NOT BEEN FULLY TESTED AND MAY CONTAIN DEFECTS OR DEFICIENCIES WHICH MAY NOT OR WILL NOT BE CORRECTED BY SDS/2, THAT THE PRE-RELEASE PRODUCTS MAY UNDERGO SIGNIFICANT CHANGES PRIOR TO RELEASE OF THE CORRESPONDING GENERALLY AVAILABLE FINAL VERSION AND THAT THE GENERALLY AVAILABLE FINAL VERSION MAY NOT CONTAIN CERTAIN FEATURES OR FUNCTIONALITY THAT ARE CONTAINED IN THE VERSION OF THE PRE-RELEASE PRODUCTS LICENSED TO TESTER. NOTWITHSTANDING THE FOREGOING, SDS/2 SHALL HAVE NO OBLIGATION TO RELEASE ANY PRODUCT OR MAKE AVAILABLE ANY SERVICE BASED ON THE PRE-RELEASE PRODUCTS OR CONFIDENTIAL INFORMATION PROVIDED HEREUNDER.

9. INDEMNITY; LIMITATION OF LIABILITY

Tester agrees to indemnify and hold SDS/2 harmless against any and all losses, liabilities, proceedings, claims, or damages, arising out of or in connection with this Agreement or Tester's use, performance, possession, and misuse, or removal, return or repossession by SDS/2 of the Pre-Release Products, Confidential Information or other materials furnished hereunder. Such indemnity shall survive termination of this Agreement and shall apply regardless of the form of legal action, whether in contract or in tort, including negligence.

IN NO EVENT SHALL SDS/2 OR ITS SUPPLIERS BE LIABLE HEREUNDER FOR ANY INCIDENTAL, SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE OR ANY OTHER DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, NOR SHALL SDS/2 BE LIABLE FOR ANY DAMAGES WHATSOEVER RESULTING FROM A FORCE MAJEURE OR AN ACT OF A THIRD-PARTY OR OF NO FAULT ON ITS BEHALF. TESTER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM UNDER THIS AGREEMENT, WHETHER IN CONTRACT OR IN TORT, OR OTHERWISE, IS TO CEASE USE OF AND TO RETURN THE PRE-RELEASE PRODUCTS TO SDS/2.

10. TERM & TERMINATION

10.1. Term. This Agreement shall be effective from the earlier of (a) the date it is accepted by Tester and (b) the date on which Tester first installed or accessed a copy of the Pre-Release Products and shall continue until terminated pursuant to Section 10.2.

10.2. Termination. This Agreement may be terminated at any time by either party, with or without cause, effective upon notice of termination. This Agreement will terminate automatically upon the end of the pre-release test project, (as notified by SDS/2 by electronic or other means) or upon commercial release (if any) of the Pre-Release Products with respect to such pre-release test project.

10.3. Cease Use; Return. Upon termination of this Agreement for any reason, Tester shall immediately (i) cease all use of the Pre-Release Products and other tangible materials and devices and uninstall all copies of the Pre-Release Products; and (ii) destroy all Pre-Release Products and other tangible materials or, upon request by SDS/2, return to SDS/2 all Pre-Release Products, other tangible materials and devices provided to Tester under this Agreement and any other Confidential Information provided to Tester hereunder, that are in Tester's possession or under its control. If requested by SDS/2, Tester shall provide a declaration signed by an officer of Tester attesting that all copies of the Pre-Release Products and Confidential Information have been returned to SDS/2. SDS/2 reserves the right to require Tester to show satisfactory proof that all copies of the Pre-Release Products, other tangible materials and devices have been uninstalled and all Pre-Release Products have been destroyed.

10.4. Survival. Sections 1 (Definitions), 3 (Confidentiality), 4 (Ownership), 5 (Data), 6 (Feedback), 8(Warranties), 9 (Indemnity; Limitation of Liability), 10.3 (Cease Use; Return) and 11 (General) shall survive termination of this Agreement for any reason.

11. GENERAL

11.1. No Reliance. SDS/2 Pre-Release Products and Confidential Information may concern planned or future development efforts for existing or new SDS/2 products, technology and/or services. Pre-Release Products and Confidential Information are not intended to be a promise or guarantee of future delivery of products, technology, services or features but merely reflect our current plans, which may change. Accordingly, Pre-Release Products and Confidential Information may not be relied on for purchasing decisions or for any other purpose.

11.2. Notices. All notices and requests in connection with this Agreement shall be deemed given as of the day they are received either by messenger, delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed as follows:

To Tester:
At the address provided on the registration information of Tester provided to SDS/2.

To SDS/2:
3401 Village Drive, Suite 110
Lincoln, NE 68516
Attn: VP Operations
Fax: (402) 441-4045

or to such other address as the party to receive the notice or request so designates by written notice to the other.

NOTICE IS NOT DEEMED GIVEN UNLESS NOTICE TO SDS/2'S GENERAL COUNSEL HAS BEEN GIVEN.

11.3. Governing Law/Jurisdiction/Attorneys' Fees. This Agreement shall be construed and controlled by the laws of the State of California (and, to the extent controlling, the federal laws of the United States), without reference to the conflicts-of-laws rules thereof. The UN Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act shall not apply to (and are excluded from the laws governing) this Agreement. In addition, each party agrees that any claim, action or dispute arising under or relating to this Agreement will be brought exclusively in (and the parties will be subject to the exclusive jurisdiction of) the Superior Court of the State of California, County of Marin, or the United States District Court for the Northern District of California in San Francisco in the federal courts sitting in San Francisco, California. Tester waives all defenses of lack of personal jurisdiction and forum non-conveniens. Process may be served on either party in the manner authorized by applicable law or court rule. In any action to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs and other expenses. Tester acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that SDS/2 shall be entitled, without waiving any other rights or remedies, to obtain injunctive or equitable relief against the threatened breach of this Agreement or the continuation of any such breach by Tester, without the necessity of proving actual damages as may be deemed proper by a court of competent jurisdiction.

11.4. Severability. If and to the extent any provision of this Agreement is held illegal, invalid, or unenforceable in whole or in part under applicable law, such provision or such portion thereof will be ineffective as to the jurisdiction in which it is illegal, invalid, or unenforceable to the extent of its illegality, invalidity, or unenforceability and will be deemed modified to the extent necessary to conform to applicable law so as to give the maximum effect to the intent of the parties. The illegality, invalidity, or unenforceability of such provision in that jurisdiction will not in any way affect the legality, validity, or enforceability of such provision or any other provision of this Agreement in any other jurisdiction.

11.5. Export Restrictions. Tester acknowledges that the SDS/2 Pre-Release Products and Confidential Information are subject to the export control laws and regulations of the United States. Tester agrees to comply with all applicable international and national laws that apply to Pre-Release Products. Under U.S. export control laws and regulations, the Pre-Release Products may not be downloaded or otherwise exported, re-exported, or transferred to restricted countries, to restricted end users or for restricted end uses. Tester represents, warrants and covenants that neither Tester nor its personnel (a) are located in, or a resident or a national of, a restricted country; (b) are on any of the U.S. government lists of restricted end users; and (c) will, unless otherwise authorized under U.S. export control regulations, use Pre-Release Products in any restricted end use, including, without limitation, design, analysis, simulation, estimation, testing, or other activities related to nuclear, chemical/biological weapons, rocket systems or unmanned air vehicles applications. Tester understands that the requirements and restrictions of U.S. law as applicable to Tester may vary depending on the Pre-Release Products downloaded and may change over time, and that, to determine the precise controls applicable to the Pre-Release Products, it is necessary to refer to the U.S. Export Administration Regulations and the U.S. Department of Treasury, Office of Foreign Assets Control Regulations.

11.6. Headings. The Section headings used in this Agreement are for convenience only and shall not be given any substantive effect.

11.7. Waiver. No term or provision of this Agreement will be considered waived, and no breach excused, unless such waiver is in writing signed on behalf of the party against which the waiver is asserted. No waiver (whether express or implied) will constitute consent to, waiver of, or excuse of any other, different, or subsequent breach.

11.8. Assignment. Neither this Agreement nor any of the rights, interest or obligations of Tester hereunder shall be assigned or delegated. Any unauthorized assignment shall be null and void. In the event of (i) any sale, lease, exchange or other transfer of all or substantially all of the assets of Tester, (ii) the sale or other disposition by a party of all or substantially all of its business; or (iii) the acquisition of more than 50% ownership of Tester (hereafter, a "Change in Control"), consummated in one transaction or a series of transactions, then SDS/2 shall have the right to terminate this Agreement upon notice.

11.9. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, discussions or communications. It shall not be modified except by a written agreement dated subsequent to the date Tester selects the "I Accept" button or copies, installs, uploads, accesses or uses all or any portion of the Pre-Release Products and signed on behalf of Tester and SDS/2 by their respective duly authorized representatives.

TESTER SHOULD PRINT AND KEEP A COPY OF THIS AGREEMENT FOR RECORDS.