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PF-D-Tool is currently in development and this is indicated by a primary version number of 1 (ONE) If the version starts with 1. the following applies:

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**"License Fees"** means the license fees, including all taxes thereon, paid or required to be paid by Licensee for the license granted under this Agreement.

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**"Order Form"** means the order form, agreement, or other written or electronic record filled out and/or submitted by or on behalf of Licensee, and accepted by Licensor, for Licensee's purchase of the license for the Software granted under this Agreement.

**"Person"** means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

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**"Third Party"** means any Person other than Licensee or Licensor.

**"Update"** has the meaning set forth in Section 7(b).

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(ii) will be subject to the terms and conditions of this Agreement; and

(iii) must include all trademark, copyright, patent, and other Intellectual Property

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(d) combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs;

(e) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;

(f) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the Software or Documentation, including any copy thereof;

(g) except as expressly set forth in Section 2(a) and Section 2(c), copy the Software or Documentation, in whole or in part;

(h) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software, or any features or functionality of the Software, to any Third Party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud, or other technology or service;

(i) use the Software or Documentation in, or in association with, the design, construction, maintenance, or operation of any hazardous environments or systems, including:

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(iv) military or aerospace applications, weapons systems, or environments;

(j) use the Software or Documentation in violation of any law, regulation, or rule; or

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## 6. Compliance Measures.

(a) The Software may contain technological copy protection or other security features designed to prevent unauthorized use of the Software, including features to protect against any use of the Software that is prohibited under Section 4. Licensee shall not, and shall not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to, any such copy protection or security features.

(b) On an annual basis, and otherwise on Licensor's written request, Licensee shall conduct a review of its and its Authorized Users use the Software and certify to Licensor in a written instrument signed by an officer of Licensee that it is in full compliance with this Agreement or, if Licensee discovers any noncompliance:

(i) Licensee shall immediately remedy such noncompliance and provide Licensor with written notice thereof. Licensee shall provide Licensor with all access and assistance as

Licensor requests to further evaluate and remedy such noncompliance.

(ii) If Licensee's use of the Software exceeds the number of copies or Authorized Users permitted under the license, Licensor shall have the remedies set forth in Section 6(d).

(c) During the Term, Licensor may, in Licensor's sole discretion, audit Licensee's use of the Software to ensure Licensee's compliance with this Agreement, provided that (i) any such audit shall be conducted on not less than 30 days' prior notice to Licensee, and (ii) no more than 1 audit may be conducted in any 6 month period except for good cause shown. Licensor also may, in its sole discretion, audit Licensee's systems within 2 months after the end of the Term to ensure Licensee has ceased use of the Software and removed the all copies of the Software from such systems as required hereunder. The Licensee shall fully cooperate with Licensor's personnel conducting such audits and provide all access requested by the Licensor to records, systems, equipment, information, and personnel, including machine IDs, serial numbers, and related information.

(d) If the audit/any of the measures taken or implemented under this Section 6 determines that the Licensee's use of the Software exceeds or exceeded the use permitted by this Agreement then:

(i) Licensee shall, within 30 days following the date of such determination by Licensee or Licensor's written notification thereof, pay to Licensor the retroactive License Fees for such excess use and, unless Licensor terminates this Agreement pursuant to Section 6.1(d)(iii), obtain and pay for a valid license to bring Licensee's use into compliance with this Agreement. In determining the Licensee Fee payable pursuant to the foregoing, (x) unless Licensee can demonstrate otherwise by documentary evidence, all excess use of the Software shall be deemed to have commenced on the commencement date of this Agreement or, if later, the completion date of any audit previously conducted by Licensor hereunder, and continued uninterrupted thereafter, and (y) the rates for such licenses shall be determined without regard to any discount to which Licensee may have been entitled had such use been properly licensed prior to its commencement (or deemed commencement).

(ii) If the use exceeds or exceeded the use permitted by this Agreement by more than 25%, Licensee shall also pay to Licensor, within 30 days following the date of Licensor's written request therefor, Licensor's reasonable costs incurred in conducting the audit.

(iii) If the use exceeds or exceeded the use permitted by this Agreement by more than 25%, Licensor shall also have the right to terminate this Agreement and the license granted hereunder, effective immediately upon written notice to Licensee. Licensor's remedies set forth in this Section 6(d) are cumulative and are in addition to, and not in lieu of, all other remedies the Licensor may have at law or in equity, whether under this Agreement or otherwise.

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(a) Subject to Section 7(c), the license granted hereunder entitles Licensee to the basic software maintenance and support services described from time to time on Licensor's website located at [DieselLaptops.com](https://diesellaptops.com). Such support services shall be provided on the terms and conditions set forth at the following URL: <https://diesellaptops.com/main.sc>.

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10. **PAYMENT.** All License Fees are payable in the manner set forth in the Order Form and are non-refundable. Any renewal or upgrade of the license shall not be effective until the fees for such renewal have been paid in full.

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(b) Licensee may terminate this Agreement by ceasing to use and destroying all copies of the Software and Documentation.

(c) Licensor may terminate this Agreement, effective upon written notice to Licensee, if Licensee breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after Licensor provides written notice thereof.

(d) Licensor may terminate this Agreement, effective immediately, if Licensee files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property.

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(d) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 12(a), THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO LICENSEE "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, LICENSOR, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE,

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## 16. Miscellaneous.

(a) All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of South Carolina without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be instituted in the federal courts of the United States of America or the courts of the State of South Carolina in each case located in the County of Lexington, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such legal suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

(b) Licensor will not be responsible or liable to Licensee, or deemed in default or breach hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning, or Licensee equipment, loss and destruction of property, or any other circumstances or causes beyond Licensor's reasonable control.

(c) All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Order Form (or to such other address as may be designated by a party from time to time in accordance with this Section 16(c)).

(d) This Agreement, together with the Order Form, all annexes, schedules, and exhibits attached hereto and all other documents that are incorporated by reference herein, constitutes the sole and entire agreement between Licensee and Licensor with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

(e) Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Licensor's prior written consent, which consent Licensor may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving Licensee (regardless of whether Licensee is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which Licensor's prior written consent is required. No delegation or other transfer will relieve Licensee of any of its obligations or performance under this Agreement. Any

purported assignment, delegation, or transfer in violation of this Section 16(e) is void. Licensor may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Licensee's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

(f) This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

(g) This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(h) If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(i) For purposes of this Agreement, (a) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Annexes, Schedules, and Exhibits refer to the Sections of, and Annexes, Schedules, and Exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Order Form and all Annexes, Schedules, and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

(j) The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.