

RELEASE ENGINEERING INC. **ReleasePro™ End User License Agreement**

1. Introduction

This is a license agreement ("Agreement") between Release Engineering Inc ("Release Engineering "), a Massachusetts corporation located at 265 Davis Road, Bedford, MA and _____ ("Customer") in which Release Engineering grants Customer certain rights to use the software program: ReleasePro™ Software, Documentation, and materials ("Program").

2. Grants of License

- A. In consideration of Customer's one-time payment of the license fees as specified in Attachment D, and subject to the terms and conditions of this Agreement, Release Engineering grants to the Customer a world-wide, non-exclusive license to install and use the Program for Customer's own direct internal business use.
- B. The license granted in paragraph 2(A) above shall expire 60 days from the Date of Program Purchase if Release Engineering has not received payment of the license fee.
- C. Customer may make any additional copies of the Program to the extent necessary for use of the Program. In addition, Customer may copy the Program for archival or backup purposes. Customer shall reproduce and include copyright or other proprietary notices on any copies in substantially the same form as appears in or on the original copies provided to Customer.
- D. The Program is authorized by Release Engineering to support the number of users specified in Attachment A. The Customer understands that the Program enforces this limitation, and that any failure of the Program to perform in conformance with the Documentation in response to users in excess of the number specified in Attachment A is not a defect in the Program.
- E. Release Engineering hereby reserves all rights in and to the Program that are not specifically granted by this Agreement.

3. Program Delivery

- A. Release Engineering shall furnish Customer with one copy of the Program, as it is described in Attachment A. Program will be made available either via hard media form (CD-ROM) or from a web download page. The Program may be delivered to the Customer as compiled code.
- B. Either before or on the Date of Program Purchase, Release Engineering shall furnish Customer with a temporary Program license file valid for 60 days beyond the Date of Program Purchase.
- C. Upon receipt of Program license fee payment, Release Engineering shall furnish to Customer a Program license file which will enable the Program to operate in the configuration specified in Attachment A.

4. Limited Warranty and Limitation of Remedies

- A. Release Engineering warrants that Release Engineering has the legal right to grant Customer the license as set out in this Agreement.
- B. Release Engineering warrants that there are no pending or threatened lawsuits concerning any aspect of Program.
- C. Release Engineering warrants that Program is in substantial compliance with the Program specifications and descriptions referred to in Attachment B and the Documentation; provided, however, that Release Engineering shall not be liable under this warranty if Customer has failed to incorporate all upgrades provided to Customer by Release Engineering.
- D. Release Engineering's liability under the warranties set forth in clauses A, B, and C of this Section 4 is limited to the License and Program Support Fees paid to Release Engineering by Customer under this Agreement.
- E. **DISCLAIMER OF WARRANTIES.** WITH THE EXCEPTION OF THE WARRANTIES SET FORTH ABOVE, RELEASE ENGINEERING PROVIDES NO WARRANTY WHATSOEVER ON ANY PROGRAM HEREUNDER, EXPRESS, IMPLIED OR OTHERWISE. EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, RELEASE ENGINEERING DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO THE PROGRAM,

INFRINGEMENT, AND ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE ACCEPTS RESPONSIBILITY FOR ITS USE OF THE PROGRAM AND THE RESULTS OBTAINED THEREFROM.

- F. **NO CONSEQUENTIAL DAMAGES.** EXCEPT AS SET FORTH IN PARAGRAPHS 12(F) BELOW, NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS AND LOSS OF PROFITS), EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES..
- G. **EXCLUSIVE REMEDY.** THE PROVISIONS OF THIS SECTION 4 STATE THE EXCLUSIVE LIABILITY OF RELEASE ENGINEERING, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY CLAIM OF PATENT, COPYRIGHT, OR TRADE SECRET INFRINGEMENT.

5. Intellectual Property

- A. Customer acknowledges and agrees that it obtains no ownership rights in the Program under the terms of this Agreement, and that Release Engineering has and retains all right, title, interest and ownership in and to the Program, and in any copies or updates of the Program whether made by Customer or Release Engineering.
- B. The Program constitutes proprietary information and trade secrets of Release Engineering, whether or not any portion of the Program is or may be the subject of a valid copyright or patent.
- C. Customer may not alter any proprietary markings on the Program, including copyright, trademark, trade secret, and patent legends.
- D. Any authorized copies of the Program made by Customer shall contain a reproduction or equivalent of the copyright notice or other proprietary markings appearing on the Program and Documentation delivered by Release Engineering.
- E. Customer may not reverse engineer, decompile, disassemble, translate or otherwise modify, alter, or make a derivative of the Program or the algorithms, methods, or know-how found in or contained in the Program.
- F. Release Engineering shall retain all right, title, and interest in and to trademarks, trade secrets, patents and copyrights to all enhancements or modifications to Program.

6. Program Support

- A. Release Engineering will provide Maintenance and Support of the Program as described in Attachment C, Terms and Conditions of Support, attached hereto and made a part hereof. If a non-zero dollar amount is paid as a license fee, Maintenance and Support is provided for a one year period commencing with the Date of Program Purchase ("Initial Program Support Period"), and Customer may subsequently purchase Program support annually. If a zero dollar amount is paid as a license fee, Customer may purchase Program support annually upon written agreement by both parties.
- B. For an annual fee specified in Attachment D, which fee is subject to change as described in Section D8 and D9, Release Engineering will supply, or make available, any new releases of the Program. The Program support fee entitles the Customer to all updates and upgrades to the Program, but does not entitle Customer to receive any new software, documentation, or materials from Release Engineering which Release Engineering does not deem in its discretion to be part of the Program. By way of example only, should Release Engineering release another software package with related but different functionality under a different product name, Customer would not be entitled to such software, documentation, or materials as an update or upgrade to the Program.

7. License Fees

- A. The total License Fee shall be in accordance with the pricing schedule set forth in Attachment D.

8. Confidentiality

- A. Both parties shall maintain as confidential and shall not disclose, copy, nor use for purposes other than the performance of this Agreement, any information which relates to the other party's business affairs, trade secrets, technology, research and development, pricing, or the terms of this Agreement ("Confidential Information") and each agrees to protect that Confidential Information with the same degree of care it exercises to protect its own

confidential information and to prevent the unauthorized, negligent, or inadvertent use, disclosure, or publication thereof. Upon expiration or termination of this Agreement, both parties agree to return respective to each other all such Confidential Information. Breach of confidentiality may cause irreparable damage and therefore, the injured party shall have the right to equitable and injunctive relief, and to recover the amount of damages (including reasonable attorneys' fees and expenses) incurred in connection with such unauthorized use.

9. Term and Termination

- A.** The Initial Term, one (1) year from Date of Program Purchase, and each subsequent renewal term of a subsequent one (1) year term of the Agreement shall be renewed automatically for subsequent one-year terms ("Renewal Terms") unless either party notifies the other in writing, at least thirty (30) days prior to the expiration of the current Initial or Renewal Term, of its intent to cancel the renewal.
- B.** Either party shall have the right to terminate this Agreement in the event that the other party commits a material breach of its obligations. Intent to terminate shall be made by a written notice setting forth the details of the breach. Termination shall become effective thirty (30) days from the date that the notification of intent to terminate was given, unless the breaching party has corrected the breach prior to the end of that thirty (30) day period.
- C.** Notwithstanding clause B above, either party shall have the right to terminate this Agreement effective immediately if a petition of bankruptcy is filed by or against the other party, the other party makes an assignment for the benefit of creditors, or the other party admits to being unable to meet its obligations as they come due. Intent to terminate shall be made by a written notice.
- D. Survival Provisions.** The parties' rights and obligations under Sections 4, 5, 8, 10, 11, and 12 of this Agreement survive any termination or expiration of this Agreement. The parties' rights and obligations under Section 2 of this Agreement survive any termination or expiration of this Agreement, except termination due to a material breach by Customer of its obligations under this Agreement. Upon any termination or expiration of Agreement, all rights granted by Release Engineering to Customer, except those mentioned in this paragraph, shall revert to Release Engineering.
- E.** If this Agreement is terminated due to a material breach by Customer of its obligations under this Agreement, Release Engineering may, at its sole discretion, revoke the license granted under Paragraph 2(A) of this Agreement. If Release Engineering notifies Customer in writing that its License has been revoked, Customer shall, within fifteen (15) days of such notice, (i) discontinue all use of the Program; (ii) remove all copies of the Program contained in any computer memory or data storage device under the control of Customer; and (iii) certify to Release Engineering in writing that it has complied with the requirements of this Paragraph 9(E).

10. Arbitration and Mediation

- A.** With the exception of Section 12(F) below, if any dispute arises under the terms of this Agreement, the parties agree to select a mutually agreeable neutral third party to help them mediate it. If the mediation is unsuccessful, the parties agree that the dispute shall be decided by binding arbitration under the rules issued by the American Arbitration Association. The decision of the arbitrator shall be final. Costs and fees (other than attorneys fees) associated with the mediation or arbitration shall be shared equally by the parties. Each party shall be responsible for its attorneys' fees associated with arbitration.

11. Assignment and Delegation

- A.** Neither party may sell, transfer, assign, delegate, or subcontract any rights or obligations under this Agreement without the prior written consent of the other party. Consent shall not be unreasonably withheld.
- B.** Notwithstanding clause A above, if a party sells or transfers to a single entity all or substantially all of its business to which this Agreement relates, that party may, without the other party's consent, assign or delegate its rights or obligations under this Agreement to that entity.
- C.** When an assignment or delegation is made pursuant to clause B above, Release Engineering will provide a Program license to the transferee upon receipt of copies of properly executed documents which effect such assignment or delegation.

12. General

- A. Applicable Law.** This Agreement shall be construed pursuant to substantive law of the Commonwealth of Massachusetts, excluding any choice of law rules.
- B. Taxes.** Release Engineering shall be entitled to collect from Customer, in addition to the other amounts payable under this Agreement, all local, state and federal excise, sales, use, personal property, gross receipts and similar taxes (excluding taxes imposed on or measured by Release Engineering's net income) levied or imposed by reason of the transactions under this Agreement. Customer shall, upon receipt of invoice, reimburse Release Engineering an amount equal to any such taxes) actually paid or required to be collected or paid by Release Engineering.
- C. Public Reference.** Without the prior written request of Customer to the contrary, which shall not be unreasonably applied, Release Engineering may in a reasonable manner disclose, advertise or publish the fact that Release Engineering has furnished or contracted to furnish Customer the products and/or services described in this Agreement.
- D. Modification.** This Agreement may not be modified or amended except by written notice which is signed by authorized representatives of each of the parties.
- E. No Waiver.** The failure of either party to exercise any right or the waiver by either party of any breach shall not prevent a subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same or any other term of the Agreement.
- F. Equitable Remedies.** The parties recognize that money damages may not be an adequate remedy for any breach of any obligation hereunder by Customer involving intellectual property, confidentiality or use of the Program beyond the scope of the license granted by this Agreement. The parties therefore agree that in addition to any other remedies available hereunder, by law or otherwise, Release Engineering and any third party from which Release Engineering has licensed software or technology may be entitled to seek injunctive relief against any such continued breach by Customer of such obligations.
- G. Exclusive Jurisdiction and Venue.** Any cause or action arising out of or related to this Agreement, including an action to confirm or challenge an arbitration award, may only be brought in the state or federal courts of applicable jurisdiction in Massachusetts, and the parties hereby submit to the jurisdiction and venue of such courts.
- H. Written Notice.** Any written notice from one party to the other required by this Agreement shall be deemed made on the date of mailing if sent by certified mail or overnight courier and addressed to the address specified below. Written notice sent by any other means shall be deemed made on the date it is received by the party to whom it is directed. Notice sent by facsimile or by electronic mail shall not be deemed "written notice" as contemplated by this Agreement.
- I. Entire Agreement.** This Agreement, including its Attachments, constitutes the sole and entire agreement of the parties with respect to the subject matter hereof and supersedes any prior oral or written promises or agreements. There are no promises, covenants or undertakings other than those expressly set forth in this Agreement.
- J. No Election of Remedies.** The pursuit by either party of any remedy to which it is entitled at any time shall not be deemed an election of remedies or a waiver of the right to pursue any other remedies to which it may be entitled.
- K. Independent Contractor.** Nothing in this Agreement shall be deemed or construed by the parties or by any other entity to create an agency, partnership, or joint venture between the Customer and Release Engineering.
- L. Severability.** If any provision of this Agreement or any Attachment hereto is held invalid or otherwise unenforceable, the enforceability of the remaining provisions of this Agreement and the Attachments will not be impaired thereby.
- M. Performance Delays.** No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by: flood, earthquake, elements of nature or acts of God, riots, civil disorders, rebellions or revolutions in any country; or any other cause beyond the reasonable control of such party, *provided* the non-performing party is without fault in failing to prevent or causing such default or delay, and such default or delay could not have been prevented or circumvented by the non-performing party through reasonable use of alternate sources, workaround plans or other reasonable precautions (a "Force Majeure Event"). Where a Force Majeure Event has occurred, the non-performing party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use reasonable commercial efforts to recommence performance or observance as soon as possible and to whatever extent possible without delay. The

non-confirming party shall immediately notify the party to whom performance is due and describe at a reasonable level of detail the circumstances causing such fault or delay.

- N. Attachments.** Attachments A, B, C, and D hereto are incorporated into and made part of this Agreement.
- O. Source Escrow.** Release Engineering shall keep and maintain, at no additional cost to Customer, a copy of the source code for the Program in escrow. Customer is authorized to receive a release of the source code if Release Engineering ceases to do business, or upon Release Engineering's cessation of providing the contracted for level of support for the Program.
- P. Date of Program Purchase.** The Customer signature date specified below is the "Date of Program Purchase".
- Q. Mailing Address.** Any written notice from one party to the other required by this Agreement shall be deemed made on the date of mailing if sent by certified mail or overnight courier and addressed to:

Customer's address:

Release Engineering's address:

Release Engineering Inc., 265 Davis Road, Bedford, MA 01730

13. Signatures

Release Engineering and Customer have read this Agreement and agree to be bound by its terms, in witness whereof the authorized representatives of each party have affixed their signatures below.

Customer:

Release Engineering Inc:

Signature

Signature

Name (Print or Type)

Name (Print or Type)

Title

Title

Date ("Date of Program Purchase")

Date

ReleasePro™ is a trademark of Release Engineering, Inc., 265 Davis Road, Bedford, MA, USA, 01730.

Attachment A
Release Engineering Inc.
Licensed Platform Configuration

The Licensed Configuration for _____ (Customer), detailing the specific Flexlm Host ID for which the Program will be supplied and to which this Agreement applies, is as follows:

Flexlm Host ID	Flexlm Hostname	# of ReleasePro™ Licenses	Type of License	Company URL

The Licensing scheme is a floating per user instance license scheme (such that one user concurrently invoking the Program multiple times requires multiple licenses). Licenses are not tied to specific computer user accounts.

Site Licenses are also available and require the additional specification of internet subnet addresses accessible solely from the Customer's private computer network ("Intranet").

Attachment B **Release Engineering Inc.** **Program Description**

The Program to be delivered as per this agreement, ReleasePro™, is a release engineering workflow tool which automates and characterizes the flow of software product from a Source Control Management (SCM) tool environment (an Operating System file directory structure within SCM version control) to a release area (a production ready Operating System file directory structure). ReleasePro™ creates this release area in a fully characterized manner, generates various control files, and supports the diffing, querying, and inspection of both the generated release area and generated control files.

The Program functions as described in the ReleasePro™ documentation which includes: example.rdf, example.cdf, and any other documentation files that are available.

ReleasePro™ is a sophisticated file movement application customized to the release engineering workflow. The Program version of ReleasePro™ comprises the principal program, **rt**, the principle Graphical User Interface **releasepro**, plus various supporting utilities. The **rt** command-line utility will create physical release areas. It also generates the various control files that describe and fully characterize the generated release area (including the generation of Bill-Of-Material - BOM - information). **bomdiff** is a command line utility that will smartly diff two sets of control files that describe different release areas. **bomverify** will smartly verify a release area against a set of generated control files. **bomcreate** will create a set of control files for an existing directory tree structure. **Bomcopy** will create a replica of a release area given a release area and the set of control files that characterize it.

rt interfaces to both SCM environments and software distribution, installation, and patching tools. As such, **rt** queries the SCM environment and performs various SCM tool commands, not limited to SCM file checkout/checkins. **rt** also generates file signature information and stores all such generated information in ASCII database files.

ReleasePro™ is normally stored within the SCM environment (SCM tool) and is employed within Parallel Software Development environments as well as multi-site (physically distributed) development environments.

Attachment C

Release Engineering Inc.

Terms and Conditions of Support

1. Maintenance and Support Responsibilities

1.1 Maintenance and Support

Maintenance shall consist of corrections of Errors and implementations of enhancement requests and their prompt incorporation into Customer's system. An "Error" shall mean a failure of Program to conform to a material description provided in Attachment B. Subject to Release Engineering's confirmation of the existence of an Error, Release Engineering will use reasonable commercial efforts to correct such Errors to bring the Program in conformance with the material descriptions of Attachment "B". An enhancement request is a condition which is limiting the Program from providing more value to the target application due to performance, platform, or ease-of-use issues. An enhancement request expands the existing scope, description, or usage of the Program.

Support shall consist of answering questions concerning technical aspects of the Program.

Upgrades shall consist of making available new releases of the Program.

Release Engineering's Maintenance and Support program includes Maintenance, Support, and Upgrades.

Release Engineering's Maintenance and Support responsibilities shall be limited to the operation of the Program when used in accordance with Program specifications and requirements, as specified in Attachment B, and within a verifiable operational computer environment. Specifically, Release Engineering shall not be responsible for providing maintenance and support for faults caused by any computer hardware or third party software, including native Perl source code. Release Engineering assumes no responsibility or liability for any faults caused by host systems (hardware, operating systems or application software including but not limited to the Perl language distribution) that impede their normal operation.

Release Engineering's Maintenance and Support responsibilities shall be limited to only the two (2) most recent major Program releases that are generally available (a GA release) or two (2) years, which ever is greater. However, it is at the sole discretion of Release Engineering that any repair or service, other than those addressing Severity Level 1 Errors, be made available in other than the latest GA release.

General Training or Consulting in the Program and its usage is not included in Release Engineering's Maintenance and Support responsibilities.

When requesting correction of Errors, the Customer shall stipulate the Severity Level it has associated with the Error using the following Severity Level guidelines. Release Engineering reserves the right of final Severity Level determination, which is not to be unreasonably applied.

When requesting an enhancement, the Customer shall stipulate the Enhancement Request Level associated with the enhancement using the following Enhancement Request Level guidelines. Release Engineering reserves the right of final Enhancement Request Level determination, which is not to be unreasonably applied.

1.2 Upgrade Only Support

Upgrade Only Support is also available as an alternative and separate support program. Release Engineering's responsibilities for Upgrade only Support shall be limited to Upgrades only. Upgrade Only Support includes no Maintenance or Support as defined in section 1.1 above and does not include any commitments described in sections 5 and 6 below. Release Engineering may offer support under the Upgrade Only Support option on an "as resources are available" basis.

1.3 Consulting Support

If a Customer has purchased either type of support, the Customer may choose to purchase Consulting Support on an hourly basis. The scope and specifics of the engagement will be agreed to at the time of Consulting Support purchase. Release Engineering is under no obligation to accept a specific Consulting Support request.

2. Error Severity Definitions

2.1 Severity Level 1 - Critical Downtime or Severely Impacted

The Program cannot be used by Customer to perform any useful work for which the Program was intended without resulting in system crashes, severe data corruption, or complete none function of the creation of a release area. Or, a major and primary aspect of the Program, nominally the creation of a release area in a repeatable manner, is not functioning and there is no work around.

2.2 Severity Level 2 - Moderately Impacted

The Program cannot be used by Customer to perform all functions, but some useful work can be performed. No major or primary aspect of the Program is causing system crashes or severe data corruption and a release area can be created. The major or primary aspect of the Program that is malfunctioning has an effective but possibly problematic temporary workaround. The problem does not have an effective and acceptable long-term workaround.

2.3 Severity Level 3 – Lightly Impacted, with Acceptable Workaround

The Program cannot be used by Customer to perform all functions, but most functionality is being provided. A major or primary aspect of the Program that is malfunctioning has an effective and acceptable workaround. A minor or secondary aspect of the Program that is malfunctioning has no effective and acceptable workaround.

3. Enhancement Request Definitions

3.1 Enhancement Request Level 1 - Critical Enhancement

The condition is limiting the Program from providing more value to the target application due to performance, platform, or ease-of-use issues. The condition is one where Release Engineering acknowledges that the delivery of the increased functionality is of highest severity and is most likely useful to a majority of Release Engineering customers.

3.2 Enhancement Request Level 2 - Important Enhancement

The condition is limiting the Program from providing more value to the target application but not in a critical manner. The condition is one where Release Engineering acknowledges that the delivery of the increased functionality is of medium severity and would probably be of interest in some but not all customer applications.

3.3 Enhancement Request Level 3 - Requested Enhancement

The condition is limiting the Program from providing more value to the target application in a minor manner. The condition is one where Release Engineering acknowledges that the delivery of the increased functionality is of lowest severity and would probably be of interest in few customer applications.

4. GA and Beta Release Definitions

A release of the Program is defined to be GA (Generally Available) when it is distributed without a "Beta" description contained in the name of the release. GA releases are available to any Customer who has purchased the Program and has a paid up and current support contract. Release Engineering may make available Beta releases of the Program, which are considered trial releases. At the discretion of Release Engineering, a Beta release of the Program will not be covered by Attachment C, Terms and Conditions for Support. In all cases a Beta release will be covered by all other sections of the End User License Agreement. Customer is under no obligation to install a "Beta" release.

5. Corrective Action Response Times

Release Engineering will use best commercial efforts to provide the Customer with corrections of Errors after Release Engineering has received a detailed notice describing the Errors, and Release Engineering has verified and reproduced (if necessary) Errors in the Program, within the time periods defined below:

Error Severity Level 1	2 business days
Error Severity Level 2	In next GA release (until release freeze date)
Error Severity Level 3	At Licensor's sole discretion
Enhancement Level 1	At Licensor's sole discretion
Enhancement Level 2	At Licensor's sole discretion
Enhancement Level 3	At Licensor's sole discretion

6. Error Reporting Mechanism

Release Engineering shall make available one or more mechanisms for reporting problems during normal business hours (9am-5pm, EST, excluding US legal holidays). Notice of Errors shall not be construed as reported to or received by Release Engineering until specific notice from Release Engineering's support staff.

Release Engineering, upon request (such request not to be unreasonably denied) may offer assistance in identifying and resolving faults outside of its Program at a charge, and at Release Engineering's sole discretion. Charges for such services shall not exceed Release Engineering's then-current standard published rates, plus reasonable expenses.

7. Unsupported Modifications to Configuration Files

The Program is typically supplied with several configuration files. It is possible to modify these files in ways not supported or recommended by Release Engineering. The Support and Maintenance Agreement does not cover any such modifications and their resulting consequences. Additionally, Release Engineering is not responsible for any consequences of such modifications.

8. Lapses in Support Services

8.1 Lapses in Maintenance and Support Service

If Maintenance and Support services are discontinued by the Customer, then the Customer will not be entitled to Maintenance, Support, or Upgrades from the date when Maintenance and Support is discontinued (to be known as "Date of Maintenance and Support Lapse"). If Maintenance and Support are discontinued but Upgrade Only Support is initiated in its place, then the Customer will be entitled to the support services provided by Upgrade Only Support. However, the Date of Maintenance and Support Lapse shall remain in effect.

If the Customer subsequently desires to reinstate Maintenance and Support services, then the support services must be reinstated from "Date of Maintenance and Support Lapse" to the then current date in addition to the normal annual support (billing) period. The billing of this total period will reflect the sum of the Maintenance and Support fees during each of those periods during Maintenance and Support lapse.

In addition to the Maintenance and Support reinstatement fees described above, there will be a 20% license surcharge for reinstated Maintenance and Support. This surcharge will be 20% of the price of the total number of licenses being covered by the reinstated support. Any Upgrade Only Support fees paid during the period of Maintenance and Support Lapse will be credited towards this 20% license surcharge. Upon receipt of payment by Release Engineering, Maintenance and Support services will be reinstated.

8.2 Lapses in Upgrade Only Support Service

If Upgrade Only Support services are discontinued by the Customer, then the Customer will not be entitled to Upgrades from the date when Upgrade Only Support is discontinued (to be known as “Date of Upgrade Only Support Lapse”).

If the Customer subsequently desires to reinitiate Upgrade Only Support services, then the support services must be reinitiated from “Date of Upgrade Only Support Lapse” to the then current date in addition to the normal annual support (billing) period. The billing of this total period will reflect the sum of the Upgrade Only Support fees during each of those periods during the Upgrade Only Support Lapse.

In addition to the Upgrade Only Support reinstatement fees described above, there will be a 20% license surcharge for reinstated Upgrade Only Support. This surcharge will be 20% of the price of the total number of licenses being covered by the reinstated support. Upon receipt of payment by Release Engineering, Upgrade Only Support services will be reinstated.

If Upgrade Only Support is replaced by Maintenance and Support, then the Customer will be entitled to the support service provided by Maintenance and Support as specified in section 8.1 and there will no Date of Upgrade Only Support Lapse.

8.3 Limits to Renewing Support after a Lapse

Notwithstanding anything to the contrary herein, if Maintenance and Supports lapses for more than two years, Release Engineering reserves the right to deny a request to renew Maintenance and Support.

9. Support Renewal Requirements

Support is considered renewed when Release Engineering receives Customer payment.

10. Term of Support

The term of Support is annual, and Support must be purchased on an annual basis. The Initial Program Support Period commences on the “Date of Program Purchase” and continues for one (1) year.

Attachment D Release Engineering Inc. Pricing Schedule

1. License Fees

The Program license fees are based on the total number of users that the Program is authorized to support at any one time. For the purposes of calculations, the License price includes a 20% Maintenance and Support fee.

1.1 Per User License Fees

For user licenses, the Program is licensed on a Per User License Fee basis. It is the intention of the parties that the license fees are paid on a "per use basis" and not on a per human basis. The parties acknowledge that it is possible for one human to use more than one license at one time.

The license fee due from Customer to Release Engineering for Per User Licenses is set forth below. Fees are based on a total number of Users as described in Attachment A.

Total License Purchase Price: _____ . If not applicable, please specify NA.

Total Support Fees due one year after the Date of Program Purchase should Customer desire to renew Program Support and Maintenance for the above specified Licenses: _____ . If not applicable, please specify NA.

Total Support Fees due one year after the Date of Program Purchase should Customer desire to renew Program Upgrade Only Support for the above specified Licenses: _____ . If not applicable, please specify NA.

1.2 Per Site License Fees

For site licenses, the Program is licensed on a Per Site License Fee basis. It is the intention of the parties that the license fees are paid on a "per site" basis where a site is defined to be a list of specified internet subnet addresses within the Customer's private computer network ("Intranet").

The license fee due from Customer to Release Engineering for Site Licenses is set forth below. Fees are negotiated between Customer and Release Engineering.

Total License Purchase Price: _____ . If not applicable, please specify NA.

Total Support Fees due one year after the Date of Program Purchase should Customer desire to renew Program Support and Maintenance for the above specified Licenses: _____ . If not applicable, please specify NA.

Total Support Fees due one year after the Date of Program Purchase should Customer desire to renew Program Upgrade Only Support for the above specified Licenses: _____ . If not applicable, please specify NA.

2. License Price Guarantee

The license fee schedule in this attachment, Section 1 will remain the maximum fee schedule for all additional licenses of the Program to the Customer for the period of one (1) year after Date of Program Purchase. Subsequently, aggregate number of Users will be determined based on individual purchase orders.

3. Additional Licenses

Licenses purchased during an active support period will be prorated such that support renewal for all purchased licenses occur at the same time. For the purpose of calculations, the License price includes a 20% Maintenance and Support fee.

4. License Fee Refunds

Except as specifically provided for in the Agreement, Release Engineering will not refund any license fees for the Program.

5. Support Fees

Customers who purchase licenses under the Per User or Site License Fee schedule may choose to renew support as described in Attachment C, Terms and Conditions for Support. For the purposes of calculations, the Maintenance and Support fee is equal to 20% of total license purchase price and the Upgrade Only Support fee is equal to 10% of the total license purchase price. Release Engineering will commence offering support services upon receipt of payment. The pricing of support may be prorated such that all support purchased by the Customer will renew at the same time.

6. Consulting Support Hourly Rate

If applicable, the Consulting Support Hourly Rate at the time of initial license purchase is: _____. If not applicable, please specify NA.

7. Training Services Rate

The Training Services Rate at the time of initial license purchase is: _____, 1 day minimum (maximum of 16 students). If not applicable, please specify NA.

8. Support Fee Change Notice

The Support service renewal fee is subject to change, but is guaranteed for one year on an annual basis.

9. Fee Increases

The fees as specified in this Attachment D shall not increase annually by more than the greater of the increase in the Consumer Price Index or ten percent (10%).