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**ACADEMIC**  
**NESSUS® PROGRAM AND DOCUMENTATION LICENSE AGREEMENT**

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SOUTHWEST RESEARCH INSTITUTE (“SwRI®”) agrees to grant, and

\_\_\_\_\_  
(Academic Institution)

\_\_\_\_\_  
(Department)

(“Customer”) agrees to accept, a nonexclusive, non-transferable license (the “License”) to use the program(s) delivered in executable code form known as NESSUS, and documentation delivered with this Agreement (the “Program(s)” and “Documentation”) (hereinafter the “Intellectual Property” (“IP”)) under the following terms and conditions. Such IP is copyrighted.

1. **LICENSE.** Customer is authorized to use the IP on multiple computer platforms only for Customer’s internal use. Customer may not distribute the IP to a third party. The IP may not be changed or translated without the express written permission of SwRI. Customer may copy for its own use and at its own expense an unlimited number of operator manuals, training materials, and other user-oriented materials, but Customer must reproduce and include SwRI’s copyright notice on any copy. All right, title, and interest in and to the IP are and shall at all times remain the sole and exclusive property of SwRI. Customer may not sublicense, assign, or transfer the IP except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void and shall terminate this License.
2. **TERM.** The Agreement and the License are effective for one (1) year from the date the software and documentation are delivered and shall automatically renew upon payment of license fee for additional one-year terms unless terminated in accordance with this provision. Customer may terminate this Agreement and the License at any time by destroying the IP. The License will also terminate upon conditions set forth elsewhere in this Agreement or if Customer fails to comply with any term or condition of this Agreement. Customer agrees upon such termination to destroy the IP, and if requested, to certify in writing to SwRI confirmation of such destruction.
3. **LIMITED WARRANTY.** SwRI warrants the media containing the IP to be free from defects in materials and workmanship under normal use by the original purchaser for a period of ninety (90) days from date of receipt.

**EXCEPT AS STATED ABOVE, THE IP IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

4. **LIMITATION OF REMEDIES.** The entire liability of SwRI, and Customer’s sole and exclusive remedy, is limited to the replacement of any media not meeting SwRI’s limited warranty provided such defective media shall be returned to SwRI.

**IN NO EVENT WILL SwRI OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, OR DELIVERY OF THE IP BE LIABLE FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION, LIABILITY ARISING OUT OF CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT, WARRANTY OR PATENT OR COPYRIGHT INFRINGEMENT OR ANY INCIDENTAL AND CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST DATA OR PROFITS, ARISING OUT OF THE USE OR INABILITY TO USE THE IP, EVEN IF SwRI OR OTHERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY CLAIM BY ANY PARTY.**

5. **EXPORT/IMPORT COMPLIANCE.** Without limiting the generality of the foregoing, Customer specifically acknowledges and agrees that the IP is subject to U.S., foreign, and international export control, import, and economic sanctions laws and regulations and agrees to comply with all such applicable laws and regulations, including, but not limited to, the U.S. Export Administration Regulations (“EAR”) and regulations administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), in its use of and any other dealings involving the IP.

Customer understands and agrees that the export, reexport, transfer (in-country), sale, lease, or supply, or any other access to or use of the IP to or in a third country or to, by, or for a different end-user or end-use may require a license or other authorization from the Government of the United States. Except as provided herein, Customer warrants that it will not, directly or indirectly, export, reexport, transfer, sell, lease, supply, or allow access to or use of the IP to or by another end-user or third party, excluding an affiliate company, which is permitted under this

License; or to, in, by, or for sanctioned, embargoed, or prohibited countries/regions, persons, or end-uses, without authorization from the U.S. government and the express written approval of SwRI. Customer understands that countries/regions currently sanctioned or embargoed by the United States include, but are not limited to, Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine. Customer further understands that persons subject to U.S. sanctions or other prohibitions include, but are not limited to, individuals or entities identified on or in the U.S. Department of Commerce's Denied Persons List, Unverified List, or Entity List; the U.S. Department of State's Nonproliferation Sanctions determinations; or OFAC's Specially Designated Nationals List, Foreign Sanctions Evaders List, or Sectoral Sanctions Identifications List. In certain cases, entities directly or indirectly 50% or more owned, in the aggregate, by listed individuals/entities also are subject to U.S. sanctions or prohibitions. Finally, Customer understands that prohibited end-uses currently can include, but are not limited to, end-uses related to proliferation of nuclear weapons, maritime nuclear propulsion, missiles, rocket systems, unmanned air vehicles, or chemical or biological weapons, as well as military end-uses/end-users in certain countries (currently, China, Russia, Venezuela, and, in certain instances, Iraq) and certain energy projects in Russia or involving Russian entities.

Notwithstanding any other provision in this Agreement, SwRI shall have the right to terminate this Agreement or stop performance immediately upon the determination by SwRI, at SwRI's sole discretion, that Customer has breached, intends to breach, or insists upon breaching any of the provisions in this Export/Import Compliance provision. Customer further understands and agrees that SwRI may at any time halt performance under this Agreement if such performance is not authorized under the EAR or any other applicable law or regulation or if any change in applicable law or regulation creates an unacceptable risk to SwRI if it continues to perform under this Agreement, which SwRI will determine at its sole discretion. Under any circumstance described in this paragraph, SwRI shall be released from responsibility for fulfilling its obligations under this Agreement and shall not be subject to any penalties for lack of performance or breach of this Agreement; and, if instructed by SwRI, Customer must cease use of and/or destroy or return all copies of the IP immediately.

Customer covenants and agrees to indemnify and hold harmless SwRI from and against any and all damages, claims, allegations, losses, liabilities, penalties, fines, costs, and expenses, including attorney's fees, which arise out of, relate to, or result from Customer's failure to comply with the provisions of this Export/Import Compliance provision or any applicable export control, import, or sanctions law or regulation.

6. **GENERAL.** This Agreement merges all prior written and oral communications regarding the Program(s) and sets forth the entire agreement of the parties. This Agreement shall be construed in accordance with the laws of the State of Texas. Venue shall be in San Antonio, Bexar County, Texas. If any provision of this Agreement is ruled invalid under any law, it shall be deemed modified or omitted to the extent necessary, and the remainder of the Agreement shall continue in full force and effect. No purchase order or any other purchasing instruments issued by Customer, even if such purchase order or other purchasing instrument provides that it takes precedence over any other agreement between the parties, shall be effective to contradict, modify, delete from, or add to the terms of this Agreement in any manner whatsoever. All payments by Customer to SwRI shall be made in United States of America currency, and all payments to SwRI shall be free and clear of all taxes and other governmental charges of any country except the United States of America. This Agreement constitutes the complete and exclusive statement of the agreement between the parties, in the subject matter hereof.

IN WITNESS WHEREOF, the parties hereof have caused this Agreement to be executed by their duly authorized representatives.

**SOUTHWEST RESEARCH INSTITUTE**  
**6220 Culebra Road**  
**San Antonio, TX 78238-5166**  
**USA**

**CUSTOMER (COMPANY AND ADDRESS):**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

DBID \_\_\_\_\_