

APPENDIX D TO DIR CONTRACT NO. DIR-TSO-3387

AURIGO SOFTWARE TECHNOLOGIES, INC.

SOFTWARE LICENSE AGREEMENT

This Software License Agreement (this “**Agreement**”) is entered into as of _____ (“**Effective Date**”) by and between, _____ (“**Customer**”), and Aurigo Software Technologies, Inc. (“**Company**”), and describes the terms and conditions pursuant to which Company will license to Customer certain Software (as defined below).

In consideration of the mutual promises and upon the terms and conditions of DIR Contract No. DIR-TSO-3387 and those set forth below, the parties agree as follows:

1. Definitions

1.1 “**Users**” means all end users of the Software licensed to Customer under this Agreement.

1.2 “**Confidential Information**” means all Software listings, Documentation, information, data, drawings, benchmark tests, specifications, trade secrets, object code and machine- readable copies of the Software, source code relating to the Software, and any other proprietary information supplied to Customer by Company.

1.3 “**Documentation**” means any user instructions, manuals or other materials, and on-line help files regarding the use of the Software that are generally provided by Company in connection with the Software.

1.4 “**Equipment**” means any computer system, including peripheral equipment on operating system software so specified in **Exhibit A**.

1.5 “**Core Software**” means the computer software programs specified in **Exhibit A** provided to Customer pursuant to this Agreement and any Updates thereto.

1.6 “**Custom Software**” means any software that interfaces with Core Software and is developed specifically to the Customer’s requirements as defined in Exhibit A.

1.7 “**Software**” means the complete software package which includes Core Software and Custom Software. **Software** specifically excludes any third party software which maybe be employed to meet the Customer’s specific requirements

1.8 “**Update**” means a release or version of the Software containing revisions, error corrections or bug fixes that are generally made available to Company’s customers under the Maintenance & Support plan as explained in exhibit B, during the term of this Agreement.

2. Grant of License

2.1 **Grant.** Subject to the terms and conditions of DIR Contract No. DIR-TSO-3387 and this Agreement, Company hereby grants to Customer a perpetual, nonexclusive and nontransferable license to (a) use the Software for its own internal information processing services and computing needs, and to make sufficient copies as necessary for such use, and (b) use the Documentation in connection with use of the Software. Customer acknowledges that Company will retain title to the Software and Documentation. Company hereby reserves all rights to the Software, Documentation, or any copyrights, patents, or trademarks, embodied or used in connection therewith, except for the rights expressly granted herein.

2.2 **Delivery.** Company shall issue to Customer, no later than (30) days after the Effective Date, one machine readable copy of the Core Software along with one copy of the appropriate Documentation. Aurigo will install the Core Software on a Machine of the customers choosing. Company shall also deliver Custom Software, whether paid for by the Customer or for free, as per the delivery schedule in Exhibit A. Company shall provide Customer with additional copies of the Documentation at Company’s then current charges in accordance to Appendix C of DIR-TSO-3387. Customer acknowledges that no copy of the source code of the Software will be provided to Customer.

2.3 **Copies.** Customer may make a reasonable number of machine-readable copies of the Software for backup or archival purposes. Customer shall not copy the Software, except as permitted by this Agreement.

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Customer shall maintain accurate and up-to-date records of the number and location of all copies of the Software and inform Company in writing of such location. All copies of the Software will be subject to all terms and conditions of DIR-TSO-3387 and this Agreement. Whenever Customer is permitted to copy or reproduce all or any part of the Software, Customer shall reproduce and not efface any and all titles, trademark symbols, copyright symbols and legends, and other proprietary markings on the Software.

3. License Restrictions

3.1 **Types of Licenses.** Customer shall abide by the following applicable restrictions, as indicated on **Exhibit A**.

(a) **Evaluation License.** If an "Evaluation License" is indicated on **Exhibit A**, Customer's copy of the Software will contain a blocking code restricting use of the Software after the time indicated on **Exhibit A**. Customer may use the Software solely for internal use, in accordance with the restriction of the "Enterprise License" in Section 3.1(c), solely during the evaluation period indicated on **Exhibit A**. If an "Evaluation License" is indicated on **Exhibit A**, notwithstanding anything to the contrary in this Agreement, all Software subject to such evaluation license is delivered "AS-IS," without any express or implied warranties, and no warranties or maintenance obligations will apply to Company. COMPANY HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO SUCH SOFTWARE, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO SUCH SOFTWARE.

(b) **User Seat License.** If a "User Seat License" is indicated on **Exhibit A**, Customer shall not allow access to the server portion of the Software by more than the number of individually defined Users indicated on **Exhibit A**. User seat license is not a concurrent user seat license.

(c) **Enterprise License.** If an "Enterprise License" is indicated on **Exhibit A**, Customer may use the Software solely for its own computing needs, and not on behalf of any other entity or affiliate, unless indicated in **Exhibit A**.

(d) **Site License.** If a "Site License" is indicated on **Exhibit A**, Customer may use the Software solely at the premises indicated on **Exhibit A** and allow use of the Software solely by persons located at such site.

(e) **Client/Server License.** If a "Client/Server License" is indicated on **Exhibit A**, Customer may make as many copies of the client portion of the Software as the number of individually defined Users indicated in **Exhibit A**, and may make and use as many copies of the server portion of the Software as indicated therein. Customer shall not allow access to the server portion of the Software by more than the number of individually defined Users indicated on **Exhibit A**.

(f) **Workbench License.** If a "Workbench License" is indicated on **Exhibit A**, Customer shall not allow access to the Software by more than the number of individually defined Users indicated on **Exhibit A**. Customer shall not allow access to the Software by any User other than Customer's employees.

(g) **CPU License.** If a "CPU License" is indicated on **Exhibit A**, Customer shall not use the Software except on the specific computer indicated on **Exhibit A**. Customer may change such computer with the prior written approval of Licensor, which will not be unreasonably withheld.

3.2 **Additional Restrictions.** Customer shall not itself, or through any parent, subsidiary, affiliate, agent or other third party:

(a) sell, lease, license or sublicense the Software or the Documentation;

(b) decompile, disassemble, or reverse engineer the Software, in whole or in part;

(c) allow access to the Software by any User other than Customer's employees

(d) write or develop any derivative software or any other software program based upon the Software or any Confidential Information;

(e) use the Software to provide processing services to third parties, or otherwise use the Software on a 'service bureau' basis; or

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(f) provide, disclose, divulge or make available to, or permit use of the Software by any third party without Company's prior written consent.

4. License Fee

4.1 **Payment of Fees.** In consideration of the license granted pursuant to Section 2.1, Customer shall pay Company the license fees as specified in Exhibit A and in accordance to Appendix C of DIR Contract No. DIR-TSO-3387. Unless otherwise indicated therein, the license fee is due and payable in accordance to Appendix A, Section 8J of DIR Contract No. DIR-TSO-3387.

4.2 **Additional Licenses.** Customer will have the option to expand the license granted pursuant to Section 2.1 to increase the individually licensed number of Users, or otherwise change the scope of the license, upon Company's receipt of additional license fees for such expanded scope as set forth in Appendix C of DIR Contract No. DIR-TSO-3387.

4.3 **Taxes.** Taxes will be handled in accordance to Appendix A, Section 8E of DIR Contract No. DIR-TSO-3387.

4.4 **Maintenance and Support (M&S).** After the warranty period the Company will provide revisions, corrections and bug fixes for the Software under the Aurigo Maintenance and Support Plan explained in Exhibit B. The Company does not warrant that all revisions of Core Software will be suitable for working with the Custom Software developed specifically for the Customer.

5. Limited Warranty and Limitation of Liability

5.1 **Performance.** Company warrants that the Software will perform in substantial accordance with the Documentation for a period of 12 months after the Company certifies delivery of the Software. If during this time period the Software does not perform as warranted, Company shall, at its option, correct the Software or, replace such Software free of charge. The foregoing are Customer's sole and exclusive remedies for breach of warranty. The warranty set forth above is made to and for the benefit of Customer only. The warranty will apply only if:

(a) the Software has been properly installed and used at all times and in accordance with the instructions for use; and

(b) no modification, alteration or addition has been made to the Software by persons other than Company or Company's authorized representative;

5.2 **Disclaimer.** Except as set forth above, Company makes no warranties, whether express, implied, or statutory regarding or relating to the Software or the Documentation, or any materials or services furnished or provided to Customer under this Agreement. COMPANY HEREBY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SOFTWARE, DOCUMENTATION AND SAID OTHER MATERIALS AND SERVICES, AND WITH RESPECT TO THE USE OF ANY OF THE FOREGOING.

5.3 **Limitation of Liability.** Limitation of Liability will be handled in accordance to DIR Contract No. DIR-TSO-3387.

6. Indemnification for Infringement

6.1 **Indemnity.** Indemnification will be handled in accordance to Appendix A, Section 10A of DIR Contract No. DIR-TSO-3387.

7. Confidential Information

7.1 **Definition.** "Confidential Information" means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects (including without limitation documents, prototypes, samples, plant and equipment), which is designated as "Confidential," "Proprietary" or some similar designation. Information communicated orally will be considered Confidential Information if such information is confirmed in writing as being Confidential Information within a reasonable time after the initial disclosure. Confidential Information may also include information disclosed to a disclosing party by third parties. Confidential Information will not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party;

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(iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure; (iv) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; (v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession; or (vi) is required by law to be disclosed by the receiving party, provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to such disclosure. Confidential Information of Company will include without limitation the Documentation.

7.2 Non-Use and Non-Disclosure. To the extent permissible by law, each party agrees not to use any Confidential Information of the other party for any purpose except to exercise its rights and perform its obligations under this Agreement. Each party agrees not to disclose any Confidential Information of the other party to third parties or to such party's employees, except to those employees of the receiving party with a need to know. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder.

7.3 Maintenance of Confidentiality. To the extent permissible by law, each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own most highly confidential information. Each party shall reproduce the other party's proprietary rights notices on any such approved copies, in

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the same manner in which such notices were set forth in or on the original.

8. Term and Termination

8.1 **Term.** This Agreement will take effect on the Effective Date and will remain in force for a period of _____ months unless renewed for an additional period upon mutual agreement of the parties hereto in accordance with Section 2 of DIR Contract No. DIR-TSO-3387.

8.2 **Termination Events.** When the end user is an instrumentality of the US Government, recourse against the United States for any alleged breach of this Agreement must be made under the contract disputes clause (Contract Disputes Act) as applicable. During any dispute under the disputes clause, the Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

8.3 If any Termination Event occurs, termination will become effective immediately or on the date set forth in the written notice of termination. Termination of this Agreement will not affect the provisions regarding Customer's or Company's treatment of Confidential Information, provisions relating to the payment of amounts due, which provisions will survive termination of this Agreement.

9. Miscellaneous

9.1 **Non-assignment / Binding Agreement.** Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Customer, in whole or in part, whether voluntary or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of Company, which consent will not be unreasonably withheld. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

9.2 **Notices.** Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by first class registered mail, or air mail, as appropriate, or (c) Sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address set forth below. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, 3 business days after deposit in the mail as set forth above, or one day after delivery to an overnight air courier service.

9.3 **No Warranties.** No employee, agent, representative or affiliate of Company has authority to bind Company to any oral representations or warranty concerning the Software. Any written representation or warranty not expressly contained in this Agreement will not be enforceable.

9.4 **Force Majeure.** Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquake, fire and explosions, but the inability to meet financial obligations is expressly excluded.

9.5 **Waiver.** Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not in

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any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

9.6 **Severability.** If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

9.7 **Integration.** DIR Contract No. DIR-TSO-3387 and this agreement (including the Exhibits and any addenda hereto signed by both parties) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter. This Agreement may not be amended, except by a writing signed by both parties.

Notwithstanding anything in this section, this Agreement shall not take precedence over the terms of the underlying DIR Contract No. DIR-TSO-3387.

9.8 **Export.** Customer may not export or re-export the Software without the prior written consent of Company and without the appropriate United States and foreign government licenses.

9.9 **Counterparts.** This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.

9.10 **Governing Law.** This Agreement will be interpreted and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles.

The parties have executed this Agreement below to indicate their acceptance of its terms.

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“Company”

By : _____

Print Name : _____

Title : _____

“Customer”

By : _____

Print Name : _____

Title : _____

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EXHIBIT A

SOFTWARE DESCRIPTION AND LICENSE RESTRICTIONS

Software:

Aurigo Aurigo Masterworks including the following components:

Software Specifically Excluded:

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License Restrictions:

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Payment Terms:

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EXHIBIT B

SOFTWARE MAINTENANCE & SUPPORT PLAN

As part of the standard EULA and Maintenance fee charged by Aurigo, Aurigo is committed to providing Customer software updates, patches and bug fixes for the duration of the agreement. The support and maintenance services shall be provided via a service level agreement (SLA) for issue resolutions as per the table below:

Severity Level	Description	Time to Repair
1	MAJOR issue, with no workaround that must be addressed in the shortest possible timeframe	2 Hours for software outages
2	Customer will tolerate the problem for a SHORT time and he has a workaround available.	Two working days for software defect resolution without workaround
3	Not critical or User Clarification	As required based on specific issue
4	Minor problem / suggestion, non-software issues	No specified turnaround time

Helpdesk Hours: As part of this agreement, Aurigo will provide ongoing support to the users of the system. Live telephonic support shall be provided between 7:00am to 7:00pm CST Monday through Friday except for public holidays. Online support shall be accessible 24/7/365 for online issue submission, with a commitment to respond by the next business day.

Time to Respond: Aurigo guarantees that a maximum of 2 hour "Time to Response" time for 95% of the reported cases. "Time to Response" is defined as the time taken by the support manager to screen the support request, assign priority and respond to the customer with an action plan to resolve it.

Time to Repair: "Time to Repair" is defined as the time taken for Aurigo to provide a suitable fix or workaround to the service.

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The parties have executed this Agreement below to indicate their acceptance of its terms.

“Company”

By : _____

Print Name : _____

Title : _____

“Customer”

By : _____

Print Name : _____

Title : _____