TERM SOFTWARE LICENSE AGREEMENT

This Agreement (defined below) is between the individual or entity agreeing to this Agreement and Univa Corporation, a Delaware corporation (Univa) with its registered office at 2300 N Barrington Road, Suite 400, Hoffman Estates, IL 60195.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING A QUOTATION THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE “CUSTOMER” SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, THEN YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE UNIVA SOFTWARE.

1. SCOPE. This Agreement governs the licensing of the Univa Software and Support provided to Customer.

- **Univa Software** means the software described in the quotation referencing this Agreement ("Quotation"), all updates and enhancements provided by Univa, Univa’s user documentation for such software, and license keys (Univa Software). This Software is licensed and is not sold to Customer.
- **Third-Party Software/Open Source Software** licensing terms are addressed at the bottom of this Agreement.
- **Capacity** means the amount of computing resources on which Customer is licensed to use the Univa Software, as described on the applicable Quotation. Attached as Appendix A are definitions of the terms that may be used in a Quotation to define Capacity.

2. LICENSE. Subject to the terms of this Agreement, Univa grants Customer a non-exclusive, non-transferable, non-sublicensable, license, solely during the term of this Agreement and in accordance with (and not to exceed) the Capacity, to install and use the Univa Software on Customer-controlled systems (including Customer-controlled cloud computing environments) for Customer’s internal business purposes. If Customer is installing the Univa Software, Univa further grants Customer the right to make a reasonable number of copies of the Univa Software for archival and backup purposes. Customer’s contractors and majority owned affiliates are allowed to use the Univa Software under the terms of this Agreement. Customer is responsible for compliance with the terms of this Agreement.

3. RESTRICTIONS. Univa reserves all rights not expressly granted in Section 2 above. Without limiting the preceding sentence, Customer may not, and covenants that it will not, directly or indirectly, and may not authorize any third party to:

   (a) sell, transfer, assign, sublicense, or rent the Univa Software or use the Univa Software for the benefit of third parties (including through as a software service provider or in an outsourcing environment);
   (b) reverse engineer (except to the extent expressly permitted by applicable law despite this limitation), decompile, disassemble, modify, translate, or otherwise attempt to discover the source code of, the Univa Software;
   (c) except for a reasonable number of backup or archival copies, copy the Univa Software;
   (d) create derivative works from the Univa Software; or
   (e) circumvent or otherwise interfere with any authentication or security measures of the Univa Software.

4. PROPRIETARY RIGHTS AND CONFIDENTIALITY.

   (a) **Proprietary Rights.** The Univa Software, workflow processes, designs, know-how and other technologies provided by Univa as part of the Univa Software are the proprietary property of Univa and its licensors, and all right, title and interest in and to such items, including all associated...
intellectual property rights, remain only with Univa. The Univa Software is protected by applicable copyright, trade secret, and other intellectual property laws. Customer may not remove any product identification, copyright, trademark or other notice from the Univa Software.

(b) **Confidentiality.** Recipient may not disclose Confidential Information of Discloser to any third party or use the Confidential Information in violation of this Agreement.

   (i) **Confidential Information** means all proprietary or confidential information that is disclosed to the recipient (Recipient) by the discloser (Discloser), and includes, among other things:
   - any and all information relating to Univa Software or Support provided by a Discloser, its financial information, software code, flow charts, techniques, specifications, development and marketing plans, strategies, and forecasts;
   - as to Univa, the Univa Software and the terms of this Agreement (including without limitation, pricing information).

   (ii) **Confidential Information** excludes information that:
   - was rightfully in Recipient’s possession without any obligation of confidentiality before receipt from the Discloser;
   - is or becomes a matter of public knowledge through no fault of Recipient;
   - is rightfully received by Recipient from a third party without violation of a duty of confidentiality;
   - is independently developed by or for Recipient without use or access to the Confidential Information; or
   - is licensed under an open source license.

Customer acknowledges that any misuse or threatened misuse of the Univa Software may cause immediately irreparable harm to Univa for which there is no adequate remedy at law. Univa may seek immediate injunctive relief in such event.

5. **PAYMENT.** Customer will pay all fees due under a Quotation within 30 days of the invoice date, plus applicable sales, use and other similar taxes.

6. **WARRANTY DISCLAIMER.** UNIVA DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE UNIVA SOFTWARE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.

7. **TERM AND TERMINATION.** This Agreement commences on the date it is accepted by or on behalf of Customer and expires as set forth on the applicable Quotation. This Agreement will be automatically renewed on its expiry for an additional one year period unless a written notification of termination has been received 60 days prior to term expiry. Either party may terminate this Agreement upon a material breach of the other party after a 30 day notice/cure period, if the breach is not cured during such time period. Upon termination of this Agreement or expiration of an order, Customer must discontinue using the Univa Software, de-install it and destroy or return the Univa Software and all copies, within 5 days. Upon Univa’ request, Customer will provide written certification of such compliance.

**SUPPORT INCLUDED.** Univa’s technical support and maintenance services (Support) is included with the fees paid under an order. Univa may change its Support terms, but Support will not materially degrade during any paid term. Univa supports the most current version of its software and one version prior. More details on Support are located at [http://www.univa.com/resources/files/support.pdf](http://www.univa.com/resources/files/support.pdf)

8. **LIMITATION OF LIABILITY AND DISCLAIMER OF DAMAGES.** IN NO EVENT WILL UNIVA BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, TREBLE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, DATA, OR ECONOMIC ADVANTAGE, AND COSTS OF SUBSTITUTE GOODS OR SERVICES) ARISING OUT OF
OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED, AND BASED ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, EVEN IF CUSTOMER IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR CUSTOMER'S PAYMENT OBLIGATIONS, UNIVA'S TOTAL LIABILITY (INCLUDING ATTORNEYS' FEES) ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNT PAID BY CUSTOMER UNDER THE QUOTATION GIVING RISE TO THE CLAIM DURING THE 12-MONTH PERIOD PRIOR TO THE DATE THE CLAIM AROSE. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY.

9. INTELLECTUAL PROPERTY INDEMNITY. If a third party claims that the Univa Software infringes that party's patent, copyright or other intellectual property right, then Univa will defend Customer against that claim at Univa' expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by Univa, provided that Customer:

(a) promptly notifies Univa in writing of the claim; and
(b) allows Univa to control, and cooperates with Univa in, the defense and any related settlement.

If Univa receives information about an infringement claim related to the Univa Software, then Univa will at its discretion and at no cost to Customer obtain a license to enable Customer to continue to use the Univa Software or modify the Univa Software so that it is no longer infringing. If Univa determines that these alternatives are not reasonably available, Univa may terminate the license to the Univa Software and refund any unused fees.

Univa’ obligations above do not apply if the infringement claim is based on Customer's breach of this Agreement, the use of the Univa Software in combination with products not supplied or approved by Univa in writing, or Customer’s failure to use any updates made available by Univa.

This section contains Customer’s exclusive remedies and Univa’ sole liability for infringement claims.

10. GOVERNING LAW AND EXCLUSIVE FORUM. This Agreement is governed by the laws of the State of Illinois, without regard to conflict of law principles. Any dispute arising out of or related to this Agreement may only be brought in the state of Illinois. Customer consents to the personal jurisdiction of such courts and waives any claim that it is an inconvenient forum. The prevailing party in litigation is entitled to recover its attorneys' fees and costs from the other party.

11. MISCELLANEOUS

(a) Inspection and Usage Reporting. Upon request by Univa, Customer must provide a usage report at least 60 days before the renewal anniversary. Usage in the cloud must be reported on a quarterly basis as defined in Appendix A. Univa, or its representative, may audit Customer's usage of the Univa Software at any Customer facility. Customer will cooperate with such audit. Customer agrees to pay within 30 days of written notification any fees applicable to Customer's use of the Univa Software in excess of the license.

(b) Entire Agreement. This agreement, which incorporates by reference Appendix A, and all Quotations referencing this agreement (collectively, the "Agreement"), constitutes the entire agreement between the parties, and supersedes all prior or contemporaneous negotiations, representations or agreements, whether oral or written, related to this subject matter.

(c) Modification Only in Writing. No modification or waiver of any term of this Agreement is effective unless signed by both parties.

(d) Non-Assignment. Neither party may assign or transfer this Agreement to a third party, except that the Agreement may be assigned upon notice as part of a merger, or sale of all or substantially all of the business or assets, of a party.

(e) Export Compliance. Customer must comply with all applicable export control laws of the United States, foreign jurisdictions and other applicable laws and regulations.
(f) **US Government Restricted Rights.** Univa provides the Univa Software, including related data and technology, for ultimate federal government end use solely in accordance with the following: The government hereby agrees that the software qualifies as “commercial” computer software. Government technical data and software rights related to the software include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Univa to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

(g) **Independent Contractors.** The parties are independent contractors with respect to each other.

(h) **Enforceability.** If any term of this Agreement is invalid or unenforceable, the other terms remain in effect.

(i) **No PO Terms.** Univa rejects additional or conflicting terms of a Customer's form-purchasing document.

(j) **No CISG.** The United Nations Convention on Contracts for the International Sale of Goods does not apply.

(k) **Survival.** All terms that by their nature survive termination or expiration of this Agreement, will survive.

Univa Corporation: ________________________________/Customer

By: ________________________________ By: ________________________________

Name: ________________________________ Name: ________________________________

(Authorized Signature) (Print)

Title: ________________________________ Title: ________________________________

Date: ________________________________ Date: ________________________________

**Additional software specific licensing terms:**

Grid Engine and Univa Software incorporate certain third-party software listed at the URL below. These licenses are accepted by use of the software and may represent license grants with restrictions which Univa is bound to provide. We are hereby notifying you of these licenses.

- **Third Party Software** means certain third-party software which is provided along with the Univa Software, and such software is licensed under the license terms located at: [http://www.univa.com/resources/licenses/](http://www.univa.com/resources/licenses/)
- **Open Source Software** means certain opens source software which is provided along with the Univa Software, and such software is licensed under the license terms located at: [http://www.univa.com/resources/licenses/](http://www.univa.com/resources/licenses/)
APPENDIX A
CAPACITY METRICS

The Univa Software is licensed against numbers of cores, vCPUs, Cloud-Instances or GPUs. The following are definitions of the terms that may be used in the Quotation to define “Capacity” for the purposes of the license grant of Univa Software.

**Cores**
The number of “compute cores” as clearly advertised by the CPU vendor. Cores are often referred to as “physical cores” as they are clearly visible as repeated sections on the CPU die to differentiate them from any virtual processing units.

**CPUs:** CPUs or Central Processing Units are the main computational chips for processing by bare-metal servers. Typical examples for CPUs are Intel x86 CPUs or AMD and ARM CPUs.

**Bare-metal server:** A bare metal server is defined as a computer that runs a single copy of an operating system (e.g. Linux or Windows) which has only that single operating system between the user’s applications and the computer hardware.

**vCPU**
Virtual computational processing units (vCPUs) represents a share (or thread) of a physical CPU seen as a Core by the operating system running on a VM (Virtual Machine) which constitutes a Cloud Server. For the purpose of licensing, 1 Core is equivalent to 1 vCPU

**Virtual Machines:** Each Virtual Machine that runs its own copy of an operating system and provides a view to application and end users that is almost undistinguishable from a bare-metal server with an operating system. Multiple copies of Virtual Machines can run on one bare-metal server.

**Cloud-Instance**
A cloud-instance is the computational unit with a single copy of an operating system which customers rent from cloud computing providers. This can either be a virtual machine or a bare-metal server.

**GPU**
Graphical Processing Units (GPUs) are add-on boards to bare-metal servers that enable acceleration of some class of applications by off-loading all or parts of the computation to a single or multiple GPUs being attached to the server.

**Reporting Usage in the cloud**
Customer shall provide a quarterly usage report of core hours, for the three months ended February, May, August and November within 5 calendar days of the end of each three month period. Overage hours will be billed in accordance with the agreed upon overage rates.