

**Agreed Amendment to Master Terms and Conditions and  
End User License Agreement**

**Between the City of Columbia and Doble Engineering Company**

THIS AGREED AMENDMENT (hereinafter "Amendment") by and between the City of Columbia, Missouri, a municipal corporation, hereinafter called or "City", and Doble Engineering Company, a company with the authority to transact business within the State of Missouri, hereinafter called "Doble", is made and entered into on the date of the last signatory noted below ("Effective Date"). City and Doble are each individually referred to herein as a "Party" and collectively as the "Parties".

Whereas:

- A. Doble is the owner of certain software products that may aid the City in its operations;
- B. The City wishes to obtain a license for the use of those products;
- C. Doble has provided price quotations for the products that are attached to this Amendment as Exhibit 1, consisting of Quotation Q-24863 for Doble Test Assistant Pro Software, Version 7, and Exhibit 2, consisting of Quotation Q-21501-1 for Protection Suite Pro.
- D. Doble has certain form documents, namely the Master Terms and Conditions ("MTC"), attached as Exhibit 3, and the End User License Agreement ("EULA"), attached as Exhibit 4, that it uses in licensing its products;
- E. The City and Doble wish to modify those documents to assure compliance with federal, Missouri and local laws and to address other concerns of the City;
- F. Collectively, this Amendment and all Exhibits thereto shall be referred to as "the Agreement".

Now, therefore the City and Doble have agreed by the execution of this Amendment to alter the terms of MTC and EULA as set forth herein.

- 1. Section 3 of the MTC, titled "Security Interest," is deleted.
- 2. The following sentence in Section 4 of the MTC, titled "Shipping, Delivery and Title," is deleted and replaced as indicated below:
  - 2.1. Deleted: Doble shall at all times retain title to all such documents, and Buyer shall not disclose such to any party other than Doble or a party duly authorized by Doble.
  - 2.2. Replaced: Doble shall at all times retain title to all such documents, and Buyer shall not disclose such to any party other than Doble or a party duly

authorized by Doble, except to the extent required pursuant to the Missouri Sunshine Law, Chapter 610 RSMo, or lawful process.

3. The following sentence in Section 4 of the MTC, titled "Shipping, Delivery and Title," is deleted and replaced as follows:
  - 3.1. Doble reserves the right to enter or have its agent enter upon a Buyer's site to recover any Products not currently purchased or licensed by Buyer but currently located on Buyer's site; provided that Doble fully complies with Buyer's facility security rules and regulations.
4. Section 15, titled "Choice of Law," is deleted in its entirety and replaced with the following:
  - 4.1. **Governing Law and Venue:** This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.
5. Section 17 of the MTC, titled "Legal Fees," is deleted in its entirety.
6. The following sentence in Section 19 of the MTC, titled "Confidentiality," is deleted and replaced as indicated below:
  - 6.1. Deleted: Each party is required to hold the other party's Proprietary Information in the strictest confidence; to protect it from disclosure and unauthorized use; to not release it to any third party without the disclosing party's express written consent; and to only use such Proprietary Information in connection to perform its obligations under this Agreement.
  - 6.2. Replaced: Each party is required to hold the other party's Proprietary Information in the strictest confidence; to protect it from disclosure and unauthorized use; to not release it to any third party without the disclosing party's express written consent; and to only use such Proprietary Information in connection to perform its obligations under this Agreement; except that City of Columbia may disclose information to the extent required pursuant to the Missouri Sunshine Law, Chapter 610 RSMo or lawful process.
7. The definition of "Confidential Information" contained in paragraph 1.4 of EULA is deleted and replaced with the following:
  - 7.1. **Confidential Information** means the Software and all of the software code (including, but not limited to, any third party software licensed with the Software), the Software performance information, Documentation, and any trade secrets, concepts, ideas, improvements, processes, plans, designs,

specifications, architecture, database tables and structures, data record layouts, prototypes, models, methods, processes, algorithms, Content, data bases, and all other business operational, financial and Licensee information, whether patentable or not, that is provided, developed, conceived or in any way disclosed by either Party, except to the to the extent that such matters are made public under the Missouri Sunshine Law, Chapter 610 RSMo.

8. The first sentence of the definition of “Master Agreement” contained in paragraph 1.13 of EULA is deleted and replaced with the following:
  - 8.1. **Master Agreement** means the document or set of documents which originate from or are signed by Licensor and which contain the material business terms upon which Licensee purchases or leases the Software. The Master Agreement specifically excludes any terms and conditions which may be automatically attached to or referenced in a purchase order originating from Licensee.
9. The second sentence of paragraph 2.4 of EULA is deleted and replaced with the following:
  - 9.1. Licensee and User will treat as confidential and preserve the confidentiality of the Materials and will not disclose any portion of the Materials to any third party except to the extent required to do so by the Missouri Sunshine Law, Chapter 610 RSMo or lawful process.
10. Subparagraph 3.3(e) of the EULA is deleted and replaced by the following:
  - 10.1. e) required to be disclosed by lawful process, order of a court or other governmental entity, or per applicable law, including public disclosure law.
11. The following sentence is added to Paragraph 3.5 of the EULA:
  - 11.1. This paragraph shall only apply to the extent consistent with Missouri record retention requirements established pursuant to the Revised Statutes of Missouri.
12. The following phrase is deleted from Paragraph 8.1 of the EULA: “to an aggregate maximum equal to Licensee’s purchase price for the Software.”
13. Paragraph 8.3 of the EULA is replaced in its entirety by the following:
  - 13.1. To the extent not prohibited by law, Licensee will defend, indemnify, and hold Licensor and its directors, officers, agents, employees, members, subsidiaries, and affiliates harmless from and against any claim, action, proceeding, liability, loss, damage, cost, or expense (including, without limitation, legal fees and expenses), arising out of or in connection with Licensee’s or User’s use of the Materials (except with regard to any indemnification obligations of Licensor as provided in Section 8.1), including without limitation, any damages Licensor may suffer or incur by reason of the breach of any of the provisions of this Agreement by the Licensee, its employees, agents or sub-

contractors howsoever caused or the acts, omissions or negligence of Licensee, its employees, agents and sub-contractors. This provision does not, however, require Licensee to indemnify, hold harmless, or defend licensor to the extent of Licensor's own negligence or breach of a lawful duty.

14. Paragraph 10.1 of the EULA is replaced with the following language:
  - 14.1. Neither Party will be responsible for any failure in the performance of its obligations under this Agreement to the extent that such failure is due to causes beyond its control including, but not limited to, acts of God, war, acts of any government or agency thereof, fire, explosions, strikes, delivery services, telecommunication providers, strikes, labor difficulties, lockouts, embargoes, severe weather conditions, delay in transportation, or delay of suppliers or subcontractors. In addition, neither party shall be liable or responsible to the extent its performance under these terms and conditions is prevented, delayed or hindered by any pandemic, epidemic or outbreak of widespread illness on a local, national or international scale, or any new or escalated circumstances related thereto outside of its reasonable control, including without limitation quarantines, transportation disruptions, government imposed restrictions, labor shortages or delays or failures of performance by its suppliers or carriers.
15. The following is added to paragraph 14 of the EULA:
  - 15.1. If to Licensee:

Director of Utilities  
City of Columbia  
701 E Broadway  
P.O. Box 6015  
Columbia, MO 65205
16. Paragraph 18.1 is deleted and replaced with the following:
  - 16.1. Governing Law and Venue: This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.
17. The last sentence of paragraph 18.2 of the EULA is deleted in its entirety.
18. Paragraph 18.3 of the EULA is deleted in its entirety.
19. The last sentence in paragraph 18.4 of the EULA is deleted in its entirety.
20. Paragraph 18.5 of the EULA is deleted in its entirety.

21. Exhibit A of the EULA is deleted in its entirety.
22. The second sentence of Paragraph 3.2 of Exhibit B of the EULA is deleted in its entirety and replaced with the following:
  - 22.1. Amounts not paid within sixty (60) days of the date of invoice will be subject to a late charge of one and one-half percent (1.5%) per month (eighteen percent (18%) per year) or any applicable legal maximum, whichever is less.
23. Paragraph 3.3 of Exhibit B of the EULA is deleted in its entirety and replaced with the following:
  - 23.1. In the event Licensee fails to pay Licensor any sum when due, Licensor may, upon thirty days' notice and without waiving or limiting any other remedies to which it may be entitled to hereunder, in law or in equity, terminate the licenses granted in Section 2 and/or discontinue all further training, support, maintenance or other services including, without limitation, issuing software upgrades and enhancements until such time as all amounts due have been paid in full.
24. The following sentence is added at the end of both paragraphs 4.4 and 4.6 of Exhibit B of the EULA:
  - 24.1. This paragraph shall only apply to the extent consistent with Missouri record retention requirements established pursuant to the Revised Statutes of Missouri.
25. Exhibit C of the EULA is deleted in its entirety.
  - 25.1. No Third-Party Beneficiary. No provision of the Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such Person a third-party beneficiary under the Agreement.
  - 25.2. Term and Term Renewal. Regardless of what may be in any exhibits, the term is as established in this paragraph. This Agreement is effective from the Effective Date, and is valid for a period of one year (the "Term"). This Agreement may be extended thereafter for successive term(s) equal in duration to the previous term at them-applicable Doble rates, unless either party notifies the other in writing of its intention to terminate at least thirty (30) days prior to the expiration date. Should the agreement lapse for more than one (1) calendar year, the City shall be required to purchase the software on order to upgrade the new version of the software.
  - 25.3. Employment of Unauthorized Aliens Prohibited. Doble agrees to comply with Missouri State Statute section 285.530 in that they shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri.

- 25.3.1. As a condition for the award of this Agreement, the Doble shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Doble shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. The form of the Work Authorization Affidavit is set forth in Exhibit 5.
- 25.4. No Waiver of Immunities: In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.
- 25.5. Missouri Anti-Discrimination against Israel Act: To the extent required by Missouri Revised Statute Section 34.600, Doble certifies it is not currently engaged in and shall not, for the duration of this Agreement, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel. If any provision of this paragraph, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

**[SIGNATURE PAGES FOLLOW]**

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day set forth below each of their signatures.

**City of Columbia, Missouri**

By: \_\_\_\_\_  
John Glascock, City Manager *JAS*

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

ATTEST:

By: \_\_\_\_\_  
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Nancy Thompson, City Counselor/JKM

I hereby certify that this Agreement is within the purpose of the appropriation to which it is to be charged, that is, account 17620570-504991, and that there is an unencumbered balance to the credit of such account sufficient to pay therefore.

\_\_\_\_\_  
Matthew Lue, Director of Finance

**Doble Engineering Company**

By: \_\_\_\_\_  
*Jonathan O. Nilsen*

Printed Name: Jonathan O. Nilsen

Title: Senior Counsel, Manager of Legal Affairs

Date: 10/18/2021

Attest:

By: Brandon Pugh

Title: Regional Sales Manager



# Exhibit 1

## Doble Engineering Company

123 Felton St.,  
Marlborough, MA, 01752,  
USA  
Phone: +1 617 926 4900 | Fax: +1 617 926 0528

### Prepared For:

Matt Winingear  
City of Columbia, Missouri  
PO Box 7236  
Columbia, MO 65205-7236 USA  
(573) 864-9047  
efec@gocolumbiamo.com

Quote #: Q-24863-1  
Date: 1/13/2021  
Quote Validity: 3/14/2021  
Payment Terms: N30\*  
Shipping Terms: EXW  
Proposed Ship Date: 2-4 Weeks  
Recommended Carrier: UPS  
Delivery Method: Ship

End User: City of Columbia, Missouri

### Your Doble Team:

Doble Representative	Power Solutions, LLC	Regional Sales Manager	
Sales Contact	Chris Miller	Direct Email	
Email	c.j.miller@sbcglobal.net	Direct Phone	
Phone	3149601940	BDM	
Address	9115 Rusticwood Trail Saint Louis MO USA 63126	BDM Contact	

QTY	PRODUCT	DESCRIPTION	SALES PRICE	EXTENDED PRICE
1	DTA7 PRO	Contract: Doble Test Assistant Pro Software, Version 7	\$6,290.00	\$6,290.00
			<b>TOTAL:</b>	<b>\$6,290.00</b>

### Additional Notes

\*Payment terms are subject to credit review.  
All prices in USD. Pricing does not include shipping or sales tax.  
Please forward all Purchase Orders to sales@doble.com. For any questions regarding this quote, please contact your Regional Sales Manager or sales@doble.com.

Doble hardware and software products are supplied in accordance with Doble's Master Terms. Doble Test Instruments are supplied complete with instruction manuals and all cables necessary for the ordered configuration.

**THANK YOU FOR YOUR BUSINESS!**





# Exhibit 2

# Quotation

## Doble Engineering Company

123 Felton St.,  
 Marlborough, MA, 01752,  
 USA  
 Phone: +1 617 926 4900 | Fax: +1 617 926 0528

### Prepared For:

Jessie Shields  
 City of Columbia, Missouri  
 PO Box 7236  
 Columbia, MO 65205-7236 USA  
 573-819-6760  
 jessie.shields@como.gov

Quote #: Q-21501-1  
 Date: 10/26/2020  
 Quote Validity: 12/25/2020  
 Payment Terms: N30\*  
 Shipping Terms: EXW  
 Contract Start Date: 1/25/2021  
 Contract End Date: 1/24/2022  
 Contract Type: Software Maintenance

End User: City of Columbia, Missouri

### Your Doble Team:

Doble Representative	Power Solutions, LLC	Regional Sales Manager	Brandon Pugh
Sales Contact	Chris Miller	Direct Email	bpugh@doble.com
Email	c.j.miller@sbcglobal.net	Direct Phone	
Phone	3149601940	BDM	
Address	9115 Rusticwood Trail Saint Louis MO USA 63126	BDM Contact	

### Software Maintenance Maintenance and Support Renewal Quote

QTY	PART #	DESCRIPTION	UNIT PRICE	DISC (%)	EXTENDED
1	PSP-CL	Protection Suite Pro, Contract (First 5 Devices)  <i>Additional seats may be purchased during contract period for \$220.00 per seat. At the beginning of Renewal period, Contract Renewal Quote will reflect total number of seats installed.</i>	\$3,120.00		\$3,120.00
<b>TOTAL:</b>					\$3,120.00

### Additional Notes

\*Payment terms are subject to credit review.  
 All prices in USD. Pricing does not include shipping or sales tax.  
 Please forward all Purchase Orders to sales@doble.com. For any questions regarding this quote, please contact your Regional Sales Manager or sales@doble.com.

Doble hardware and software products are supplied in accordance with Doble's Master Terms. Doble Test Instruments are supplied complete with instruction manuals and all cables necessary for the ordered configuration.

**THANK YOU FOR YOUR BUSINESS!**

# PROTECTION TESTING AND MAINTENANCE AGREEMENT

This Protection Testing Software Maintenance Agreement, along with the End User License Agreement ("EULA") collectively shall be referenced herein as the "Agreement", and it provides Protection Testing Software products to the Registered User of the Licenses Purchasing Company for a period of one (1) year. This Agreement is effective from 1/25/2021, and is valid until 1/24/2022 (the "Term"). This Agreement may be extended thereafter for successive term(s) equal in duration to the previous term at then-applicable Doble rates, unless either party notifies the other in writing of its intention to terminate at least thirty (30) days prior to the expiration date. Should the agreement lapse for more than one (1) calendar year, the Client shall be required to purchase the software on order to upgrade the new version of the software.

## Maintenance Agreement Includes

Registered User will receive basic application support, all updates, and all upgrades for the duration of the Agreement with the associated documentation for the Protection Testing software products covered by this Agreement, and subject to the terms of the End User License Agreement ("EULA"). Any resale or distribution of the Software to third parties is expressly prohibited, and Doble expressly reserves the right to prosecute violators.

- a. Basic Telephone Support with Protection Application Engineer between 8:00am - 8:00 pm EST:  
North America, the telephone number is 1-800-DDD-OBLE (1-800-333-6253)  
Outside North America, the telephone number is +1-617-926-4900
- b. Email Support using fserieshelp@doble.com giving direct access to a Doble Protection Application Engineer.
- c. Membership in the Protection Testing User Group (PTUG), and Invitation to attend the Protection Testing User Group meetings held in USA, Australia, South America and Europe. These meetings are the largest protection testing focused meeting in their respective regions.
- d. Protection Testing Software access to the Doble Portal, which contains useful information, like papers presented at the past Doble Conferences and much more.

## Glossary of Terms:

**Software Numbering Schema: Major.Minor.Bug**

### **Example: Protection Suite 3.1.2**

Based on the example above

3 is the **Major** release version

1 is the **Minor** release version, i.e. 1 minor update has been release since 3.0

2 is the second **Bug** fix release version of software 3

## **Updates**

Updates are defined as software releases that include a bug revision or a minor revision. Note: Customers with SW under the 1 year warranty period would be eligible for updates that include bug fixes only. At Doble's discretion. Customers under limited warranty period may be provided updates that include minor revision. Customer with Maintenance Agreement would also receive updates.

## **Upgrades**

Upgrades are defined as software revisions that are major releases. For example, Version 2.1 to version 3.0. Only customer with maintenance agreement shall receive upgrades.

## **Maintenance (M)**

Providing updates & upgrades during a contractual period of time, typically a yearly basis. Maintenance agreements also include a basic level of installation and software troubleshooting via email and phone. Maintenance shall never include technical/consulting support i.e. test plan creation.

**Exhibit 3**  
**DOBLE ENGINEERING COMPANY**



**MASTER TERMS AND CONDITIONS**  
Rev.030232020

1. **Applicable Terms and Conditions.** Doble Engineering Company, expressly including all subsidiaries, divisions, and similar affiliates, will be collectively referred to as "Doble", and the person or company purchasing Products will be referred to as "Buyer". "Goods" shall be as defined in Article 2 of the Uniform Commercial Code, as it may be amended from time to time. "Services" shall mean the work to be performed in any contract transaction except to the extent any such transaction includes the transfer of legal ownership over a Good or Goods from Doble to Buyer in exchange for money. Such transfer of ownership is hereby defined as a sale of Goods as opposed to a sale of Services. All Goods and Services sold by Doble to Buyer will be referred to as "Products". The terms and conditions stated below apply to all sales of the Products. Except for those terms and conditions identified below which are expressly subject to alternative terms set out in the applicable quote and/or order confirmation, it is expressly understood that any different or additional terms proposed by Buyer or contained on any purchase order or other document submitted by Buyer are hereby inapplicable and void and, unless expressly acknowledged and accepted by Doble in writing that no other acknowledgment by Doble of, or reference by Doble to, or performance by Doble under, any purchase order of Buyer shall be deemed to be an acceptance by Doble of any term additional or contrary to these terms or conditions. If the parties desire to incorporate any term that is different from or additional to the terms set forth herein, such agreement must be set forth in a separate writing established solely for the purpose of such amending of terms and signed by an officer of Doble. All Products containing or consisting of software ("Software Products") are furnished subject to Buyer's acceptance of the terms and conditions contained in Doble's End User Software License Agreement ("EULA") and/or Software License Agreement ("SLA") contained therein, for the applicable Software Product. Doble will provide a copy of this EULA and/or SLA in advance of any purchase, upon Buyer request. For the avoidance of doubt, the terms of this document are supplemental to any applicable Doble- issued quotation, and, in the event of any conflicts between a quotation and this document, the terms of any such quotations hereby take priority over the terms of this document.
2. **Prices and Payment Terms.** Doble will issue a quotation for each Product request setting forth the price of the Products. Quotations are valid for the period of time specified in the applicable quotation. Prices do not include any federal, state, provincial or local property, license, privilege, sales, use, excise, import, export, transport, VAT, gross receipts, or other like taxes which may now or hereafter be applicable. Buyer shall be responsible for the payment of all such taxes of any nature whatsoever now or hereafter levied by any governmental authority anywhere in the world. Payment is due net 30 days from date of issuance of invoice; provided that Doble reserves the right to require alternate payment terms, dependent upon review of Buyer's credit worthiness. Doble may, in addition to any other remedy available under applicable law, charge Buyer interest at the lesser of the rate of one and one half percent (1½%) per month or the highest rate allowed by applicable law for amounts not paid within the foregoing terms. If Doble shall at any time doubt Buyer's financial condition and its ability to pay for the cost of the Product(s), Doble may demand adequate assurance of due performance or decline to make any further shipments of Goods or supply any further Services except upon receipt of cash payment in advance or security. If Doble demands adequate assurance of due performance and the same is not forthcoming within 10 days after the date of Doble's demand, Doble may, at its option: (i) continue to defer further shipments of Goods or supply of Services under any order from Buyer which has been accepted by Doble until adequate assurance is received, or (ii) cancel any outstanding orders from Buyer which have been accepted by Doble and treat as a termination by Buyer pursuant to Section 12(b) herein.
3. **Security Interest.** For all Buyer purchases of any equipment, Buyer hereby grants Doble a security interest in the Products, and all proceeds thereof and accessions thereto, to secure payment of the purchase price for the Products and all other charges and costs for which Buyer is responsible hereunder. At Doble's direction, Buyer shall, from time to time, do all acts necessary or reasonable to protect Doble's security interest herein created and Buyer shall execute and deliver to Doble all Uniform Commercial Code Financing Statements ("UCCs") (or in cases where the Products are shipped to countries outside of the USA, such foreign countries functional equivalents of a UCC including the Canadian Personal Property Security Registration System, when applicable) which Doble may deem necessary to protect its rights and interests as set forth herein. Buyer hereby irrevocably constitutes and appoints Doble as its true and lawful attorney-in-fact, in its name, place and stead, to execute, deliver, acknowledge, file or record any and all such Uniform Commercial Code Financing and Continuation Statements. The grant of the foregoing power of attorney is coupled with an interest and shall not be revocable by Buyer until all payments due hereunder (including deferred payments whether evidenced by notes or otherwise) shall have been made in cash. To the greatest extent possible under applicable law, Doble shall have the remedies of a secured party under the Uniform Commercial Code in force in the Commonwealth of Massachusetts.
4. **Shipping, Delivery, and Title.** Except as specified in the applicable quotation and/or order confirmation, all Products will be shipped pursuant to Incoterms 2010 Ex-Works, with the delivery site for all continental United States and Canadian shipments being Marlborough, MA, or other applicable Doble facility (identified at time of order). Notwithstanding the foregoing, the delivery site for all Morgan Schaffer Ltd. Products shall be LaSalle, Quebec, and the delivery site for all Manta Test Systems Ltd. Products shall be Mississauga, Ontario unless otherwise identified at the time of order. Except as specified herein this section, title and risk of loss including payment of all transportation and insurance cost pass to Buyer at Doble's door. Buyer will choose the freight forwarder, customs broker, carrier and means of delivery; provided, however that Doble, in its sole discretion, maintains the ability to reject Buyer's selection of freight forwarder, customs broker, carrier and means of delivery. If Doble rejects Buyer's selection of any of the above, Buyer will designate an alternative carrier, broker or means of delivery that is acceptable to Doble. Buyer is responsible for filing any claims with freight forwarders, customs brokers or carriers. If the Products are to be exported, Buyer will be responsible for all export charges, consular and customs declarations and will be responsible for penalties resulting from errors or omissions thereon. Buyer shall not re-export the Product or any goods or items which incorporate the Product if the re-export would violate either United States or Canadian export laws, as applicable. Notwithstanding that risk of loss of the Products pass to Buyer at Doble's door, the Products shall remain the personal property of Doble until fully paid for in cash by Buyer pursuant to a bona fide Doble offer for such Products, and, excepting the immediately preceding condition, the Buyer agrees to perform all acts which may be necessary to perfect and assure retention of title to such product by Doble. Any specifications, drawings, plans, notes, instructions, engineering notices, or technical data of Doble furnished to Buyer shall be deemed to be incorporated herein by reference the same as if fully set forth. Doble shall at all times retain title to all such documents, and Buyer shall not disclose such to any party other than Doble or a party duly authorized by Doble. If there is any situation where the parties desire to ship using any term different from or additional to Incoterms Ex-Works, such agreement must be explicitly set forth in a separate writing and signed by an officer or other authorized representative of Doble. Doble reserves the right to enter or have its agent enter upon a Buyer's site to recover any Products not currently purchased or licensed by Buyer but currently located on Buyer's site. Buyer must expressly declare the final destination of the Products on the applicable purchase order.
5. **Inspection and Acceptance.** Except with respect to Products sold by Morgan Schaffer Ltd. or as specified in Section 7 hereto, Buyer will promptly inspect a Product upon delivery. No claims for shortages will be allowed unless shortages are reported to Doble, in writing, within 10 days after delivery. Acceptance will be deemed to have occurred no later than 30 days after shipment of such Product.
6. **Force Majeure.** Doble will not be liable for delays in shipment or default in delivery or any failure to perform due to any cause beyond Doble's reasonable control including, but not limited to, government action, shortage or labor, raw material, production or transportation facilities, strike or labor difficulty involving employees of Doble or others, fire, flood, act of God, terrorism, civil unrest, war, riot, embargo, fuel or energy shortage, car shortage, wrecks or delay in transportation, or inability to obtain necessary labor, materials or manufacturing facilities from usual sources. In addition, Doble shall not be liable or responsible to the extent Doble's performance under these terms and conditions is prevented, delayed or hindered by any pandemic, epidemic or outbreak of widespread illness on a local, national or international scale, or any new or escalated circumstances related thereto outside of Doble's reasonable control, including without limitation quarantines, transportation disruptions, government imposed restrictions, labor shortages or delays or failures of performance by Doble's suppliers or carriers. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.
7. **Warranty.**
  - A. **Sold Goods.** Unless expressly stated otherwise in the applicable quotation, all Products sold by Doble are warranted to be free from defects in material and workmanship for a period of one year after shipment. During the one (1) year warranty period, upon prompt written notice of defect and confirmation that the Product has been stored, integrated, installed, operated and maintained in accordance with Doble's recommendations and standard industry practice, Doble will, at its option, repair or replace any defective products or components thereof at no additional charge. Doble shall be responsible for arranging and paying for shipment of a Product for warranty service to and from Doble's applicable facility; provided that Buyer shall be responsible for shipping charge(s) in the event that Doble determines any repair(s) are outside of the applicable warranty coverage including, but not limited to, clear mishandling of the Product. Any component of a Good that is sold, but is not marketed by Doble as a Product itself, is hereby a "Part." All Parts sold by Doble are hereby Goods, except that the warranty period of Parts is limited to six (6) months. Solely regarding Morgan Schaffer Products: a) such warranty period shall be for a period of thirty (30) months from the date of the applicable shipment; b) for repaired or refurbished equipment and spare parts, such period shall be one (1) year from the date of shipment; and c) Morgan Schaffer shall pay for the transportation of returned Goods and Parts to be repaired or replaced during the applicable warranty period.
  - B. **Leased Goods.**
    - i. **Definition.** For a recurring annual fee, or as otherwise expressly



- agreed by each party to this Agreement in a signed writing, Doble may provide a package of rentable equipment, Services associated with such rental, and benefits. Such combination of rented equipment, Services, and benefits are hereby, collectively, a "Lease" by name, but the legal and practical nature of the Lease shall only be as expressly set forth herein this Agreement.
- ii. Perpetual Warranty. For so long as a Lease is renewed by the parties, Doble shall, to the extent reasonably possible, promptly repair, adjust, upgrade, or replace, as Doble in its sole discretion believes the circumstances may warrant, any impaired Leased Goods returned by Buyer to Doble at Marlborough, Massachusetts or other site as expressly directed by Doble:
1. Without charge to Buyer for transportation, including handling costs where applicable, or for Doble's actual cost of repair, adjustment, or replacement, if the impairment is solely occasioned by inherent defect;
  2. on payment by Buyer of charges for transportation, including handling costs where applicable, but without charge to Buyer for Doble's actual cost of repair, adjustment or replacement, if the impairment is primarily occasioned by reasonable wear and tear; and
  3. on payment by Buyer of charges for transportation, including handling costs where applicable, and for Doble's actual cost of repair, adjustment or replacement, if the impairment is primarily occasioned by any cause other than inherent defect or reasonable wear and tear.
- iii. Benefits attributable to any Lease shall be as detailed in an applicable Doble- issued Lease quotation.
- iv. The option to rent Goods or Services on a yearly basis, or longer, a la carte may also be made available by Doble to Buyer, but, unless expressly stated in the quotation, any rented, but not Leased, Goods are not eligible for the Perpetual Warranty and only include a warranty, Services, or benefits as described in the quotation only.
- C. Short-Term Rentals.
- i. Definition. Unless otherwise mutually agreed upon in writing, any rental of Doble Goods with an initial rental period of less than 365 days is a "Short-Term Rental".
  - ii. To the extent that a Buyer that has executed a Short-Term Rental, such Buyer shall only be eligible for Perpetual Warranty service on such Short-Term Rental if the Buyer is also a current Lease purchaser. Otherwise, Buyer's Short-Term Rental shall be entitled to the sold Goods warranty described in paragraph A hereof, except, as to any Short-Term Rental that has not been stored, integrated, installed, operated and maintained in accordance with Doble's recommendations and standard industry practice, Buyer shall be responsible for all costs associated with transportation, including handling costs where applicable, and for Doble's actual cost of repair, adjustment or replacement.
- D. Field and Development Services.
- i. Development Services Definition. Any Services offered to Buyer by Doble where Doble will develop hardware, software, or customizations of existing hardware or software, for Buyer are hereby Development Services.
  - ii. Field and Consulting Services Definition. Any Services offered to Buyer by Doble where Doble must go on site to perform or where Doble is providing consulting Services and such Services are not part of an existing Lease package and do not include Development Services, are hereby Field and Consulting Services.
  - iii. Standard of Performance. Doble warrants that Development Services and Field and Consulting Services (collectively "FD Services") will be performed in accordance with generally accepted professional standards. The FD Services warranty period ("FD Warranty Period") shall be for a period of twelve months from the date of Buyer acceptance, but no longer than fifteen (15) months from Doble's submission to Buyer of a final test report in the case of Field and Consulting Services or, alternatively, Doble delivery of final deliverables to Buyer in the case of Development Services, whichever comes first. During the FD Warranty Period, upon prompt written notice of nonconforming Service, Doble will reperform the nonconforming Services at no additional charge.
    1. All warranty work will be performed during normal working hours. If Buyer desires expedited warranty service, Buyer agrees to pay overtime for any warranty work performed outside of normal working hours.
    2. If Doble is unable or unwilling to reperform the nonconforming Services, or if reperformance does not remedy the nonconformity, Doble and Buyer shall negotiate an adjustment in the price for the applicable nonconforming Services.
    3. Doble only warrants that the FD Services were performed in a professional manner. Except as may otherwise be expressly agreed by both parties in writing, Doble makes no warranty or representation as to the condition of any electrical apparatus or recommendation as to how Buyer should interpret or utilize any final reports or other deliverables.
    4. For FD Services involving installation and/or commissioning of Doble or third party instruments, software, or equipment, Doble's warranty does not apply in the event that Doble has performed, installed, or otherwise implemented the FD Services upon an electrical apparatus which has changed subsequent to the performance of the FD Services or has been damaged as a result of accident, misuse, abuse or as a result of modification by anyone other than Doble or an authorized Doble representative.
- iv. Acceptance by Buyer. Doble will submit a test report ("Test Report") to Buyer upon completion of the FD Services. Within thirty (30) days of receipt of the Test Report, Buyer shall notify Doble in writing of any nonconforming FD Services. Doble shall, within a reasonable time, remedy any specified nonconformity in accordance with the warranty obligations of this Section 7(D). If Buyer does not issue a notice of nonconformity, Buyer's acceptance or the FD Services shall be considered final as of the thirty-first (31st) day following the date of Doble's submission of the Test Report.
- E. In-House Lab Services.
- i. Materials Laboratory Services Definition. Any Services offered to Buyer by Doble where Doble will perform in-house testing of a Buyer-submitted oil, dielectric material, or other specimens is hereby "Materials Laboratory Services".
  - ii. High Voltage Laboratory Services Definition. Any Services offered to Buyer by Doble's High Voltage Laboratory where Doble will perform in-house testing or investigations of Buyer-submitted instruments, parts, materials, or other equipment is hereby "High Voltage Laboratory Services".
  - iii. Doble warrants that Materials Laboratory Services and Voltage Laboratory Services (collectively "Laboratory Services") will be performed in accordance with generally accepted professional standards. The warranty period ("Laboratory Warranty Period") shall be for a period of six (6) months from Doble's submission to Buyer of the final test report ("Test Report"). During the Laboratory Warranty Period, upon prompt written notice of nonconforming Service, Doble will, where applicable, reperform the Services. If, in Doble's sole discretion, the results of the reperformance are materially different from the initial results, then the reperformance shall be at no additional charge to Buyer. However, if reperformance yields materially the same results, the Buyer will be responsible for the purchase of a second testing.
    1. All warranty work will be performed during normal working hours. If Buyer desires expedited warranty service, Buyer agrees to pay overtime for any warranty work performed outside of normal working hours.
    2. If Doble is unable or unwilling to reperform the nonconforming Services, or if reperformance does not remedy the nonconformity, Buyer may inspect all records relating to any testing provided such inspection occurs during the Laboratory Warranty Period.
    3. Doble only warrants that the Laboratory Services were performed in a professional manner. Except as may otherwise be expressly agreed by both parties in writing, Doble makes no warranty or representation as to the condition of any samples, parts, instruments, or other equipment or recommendation as to how Buyer should interpret or utilize any Test Reports or other deliverables.
    4. All samples, parts, instruments, or other equipment shipped to Doble for Laboratory Services shall be shipped to, and, if to be returned, from, Doble at Buyer's sole expense and risk of loss
  - iv. Acceptance by Buyer. Doble will submit a test report ("Test Report") to Buyer upon completion of the Laboratory Services. Within thirty (30) days of receipt of the Test Report, Buyer shall notify Doble in writing of any nonconforming Laboratory Services. Doble shall, within a reasonable time, remedy any specified nonconformity in accordance with the warranty obligations of this Section 7(E). If Buyer does not issue a notice of nonconformity, Buyer's acceptance or the Laboratory Services shall be considered final as of the thirty-first (31st) day following the date of Doble's submission of the Test Report.
- F. Doble-Hosted Software Services. All software-based services hosted by Doble shall be warranted as detailed in the applicable end user license agreement for such Product.
- G. Other Services. All other Services not detailed in this section shall be warranted only as detailed in the applicable quotation for such Services.
- H. THE FOREGOING LIMITED WARRANTIES OF THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR ANY WARRANTY ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. IN NO EVENT SHALL DOBLE BE LIABLE TO BUYER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR AS THE RESULT OF, THE SALE, DELIVERY, NON-DELIVERY, SERVICING, PERFORMANCE, FAILURE TO PERFORM, ASSEMBLY, USE, LOSS OF USE OR FAILURE OF THE PRODUCTS OR ANY PART THEREOF, OR FOR ANY CHARGES OR EXPENSES OF ANY NATURE INCURRED, OR ANY DAMAGE OR LOSS OR LOSS OF USE OF PROPERTY, EQUIPMENT OR POWER SYSTEMS OR THE COST OF CAPITAL OR THE COST OF PURCHASED OR REPLACEMENT POWER OR TEMPORARY EQUIPMENT EXPENSES, LOST PROFITS, LOST



SAVINGS, OR OTHER DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT, EVEN IF DOBLE MAY HAVE BEEN NEGLIGENT. IN NO EVENT SHALL DOBLE'S LIABILITY UNDER ANY CLAIM MADE BY BUYER EXCEED THE FACE VALUE OF THE PURCHASE ORDER IN RESPECT OF WHICH DAMAGES ARE CLAIMED. THIS LIMITED WARRANTY DOES NOT EXTEND TO ANY PRODUCTS WHICH HAVE BEEN DAMAGED AS A RESULT OF ACCIDENT, MISUSE, ABUSE, OR AS A RESULT OF MODIFICATION BY ANYONE OTHER THAN SELLER OR AN AUTHORIZED SELLER REPRESENTATIVE.

- i. The remedies of the Buyer set forth herein are exclusive. No action, regardless of form, arising out of the transactions under this contract may be brought by Buyer more than one (1) year after the cause of action has accrued. Any Products supplied by Doble but manufactured by others are warranted only to the extent of the manufacturer's warranty. Any claim for breach or warranty or other action relating to the Products must be commenced by Buyer within one year after the date of shipment of the Products.
  - ii. Doble warrants that any Product purchased by Buyer hereunder will be delivered free of any and all rightful claims, demands, liens or encumbrances. In the event of claim regarding defect to title, Buyer shall promptly notify Doble and Doble, at its expense, will defend the title to any affected Product or part and if unsuccessful will promptly provide to Buyer at no cost, replacement parts or equipment which complies with this warranty.
8. **No Rights in Doble's Trademarks.** Buyer shall not have any ownership right, title or interest, express or implied, in the intellectual property, trademarks, trade names, service marks, logotype, advertising and/or designs, markings or other commercial symbols associated with the Products, including but not limited to the name "Doble" (collectively, "Trademarks") and expressly acknowledges Doble's exclusive right, title and interest in the Trademarks.
9. **Patent Infringement.**
- A. Doble shall, at its expense, defend any suit brought against Buyer based on a claim that any Product furnished by Doble pursuant to this Agreement constitutes an infringement of any United States or Canadian patent, and Doble shall pay all judgments and costs recovered against Buyer in any such suit and shall reimburse Buyer for costs or expenses incurred by Buyer in the defense of any such suit, provided that Buyer gives Doble prompt notice of such suit, reasonable assistance in the defense thereof, and full opportunity to control all aspects of the defense thereof, including settlement. In the event such Product is held to constitute infringement, and the use of the Product is enjoined, Doble shall, at its option: (1) procure for Buyer the right to continue using the Product; (ii) replace it with non-infringing Product; (ii) modify it so it becomes non-infringing; or (iv) refund the price paid by Buyer for the Product and direct the Buyer to return the Product, at Doble's expense or to destroy the Product.
  - B. Doble's liability for patent infringement shall not apply to: (i) any Products supplied according to any custom design specified or required by Buyer; or (ii) any Modifications of or to the Product or combinations of the Product with another product not furnished by Doble. If a suit is brought against Doble on account of the items set forth in this section 9B(i) or (ii) above, Buyer shall indemnify Doble in the same manner and to the same extent that Doble would indemnify Buyer pursuant to paragraph 9A.
10. **Transfer of Products by Buyer.** In the event Buyer transfers to a third party any purchased Product supplied hereunder or any right or interest therein, Buyer agrees to indemnify, defend and save Doble harmless from any and all liability of Doble to such transferee or any subsequent transferee in excess of what Doble's liability would have been if such transferee had been bound by these Terms and Conditions of Sale in the same manner as Buyer.
11. **Delay or Termination.**
- A. **Delay requested by Buyer.** Buyer may request that the delivery date for an order or for certain Products within an order be delayed or rescheduled. If Doble accepts such request and delays or reschedules shipment or performance, Buyer agrees to pay Doble for any fees Doble may charge and/or costs Doble incurs for accepting such delay or rescheduling. In addition, if the prices of the Products change during the period in which delivery of the order is delayed, Doble shall be entitled, at its option, to charge Buyer the prices in effect at the time the Products are shipped or performed, instead of the prices in effect at the time the order was placed. Any order held, delayed, or rescheduled beyond a reasonable period of time may be treated by Doble as a Buyer termination under section (b) below.
  - B. **Termination of Orders by Buyer.** Products cannot be returned, and orders once accepted cannot be cancelled, without Doble's prior specific written consent (and at Doble's sole and absolute discretion). Goods authorized for return and/or Doble approved cancellation orders shall be subject to handling, restocking and/or cancellation charges which will include indemnification of Doble against all direct incidental and consequential loss or damage including but not limited to: direct costs; overhead and other costs which are allocable or apportionable under reasonable accounting practices to the order; storage fees; handling and transportation costs; material or personnel expenses of Doble; and lost profits. Payment for restocking and cancellation charges shall be made within 15 days from date of invoice. Buyer shall be responsible for any loss related to or any additional fees that may become applicable due to Buyer's failure to return any Goods to Doble with a clearly marked, Doble-issued, return merchandise authorization (RMA) number,

regardless of whether such Goods was received by Doble. Unless otherwise specified in the applicable quotation, in the case of Lease, rented equipment, and other ongoing Services extending for a year or more, Buyer's order for such Services shall automatically renew at Doble's then current rates at the end of any term unless Buyer advises Doble of its desire to terminate prior to 60 days before the end of a current billing term.

- C. **Delay for reasons beyond Doble's Control.** When Products are ready for shipment and shipment cannot be made because of reasons beyond Doble's control, Doble shall submit an invoice for such Products payable upon receipt thereof and shall, upon written notice to the Buyer, store such Products for Buyer's benefit. In such event, the following conditions shall apply: (i) Products will be stored in a segregated area and tagged as property of Buyer; (ii) Risk of loss of the Products shall pass to the Buyer upon moving the Products to the segregated storage area; and (iii) All expenses incurred by Doble in connection with the storage of products, including demurrage, the cost of preparation for storage, storage charges, insurance if placed, and handling charges shall be payable by the Buyer upon submission of invoices by Doble.
  - D. **Termination of Orders by Doble.** For any material breach of these terms and conditions by Buyer, Doble shall have the right to cancel any order at any time without penalty by written notice to the Buyer.
12. **Buyer's Premises.** If in connection with the sale of the Products, Doble is required to perform any work in Buyer's premises, Buyer will be solely responsible for isolation and disconnection of any equipment or apparatus to be tested, if applicable. Buyer will be responsible for the supervision, control, health and safety of Buyer's personnel. Buyer will comply with and ensure that its personnel are properly trained and licensed under all laws and regulations relating to health, safety and/or the environment that are applicable in the Buyer's country and jurisdiction including federal, state, and local laws (or international equivalent) and any revisions to such laws or successor legislation. In the event Buyer fails to provide a working environment that meets the requirements set forth herein, such failure is hereby deemed a material breach and Doble has the right to terminate any such order in accord with Section 11(D).
13. **Product Notices.** Buyer shall provide all direct users or purchasers of any Doble equipment (including its employees) with all Doble supplied product notices, warnings, instructions, recommendations, and similar materials.
14. **Limitation on Assignment.** Neither party may assign any of its rights or obligations hereunder without the prior written consent of the other except that Doble shall have the right to subcontract or delegate any portion of its obligations to any party or assign all its rights and obligations to any company with which it is affiliated or to any corporation into which it shall be merged, with which it shall be consolidated, or by which it, or all or substantially all of its assets, shall be acquired.
15. **Choice of Law.** The rights and remedies of the parties hereunder shall be governed by the laws of the Commonwealth of Massachusetts without regard to the choice-of-law rules thereof, and the parties agree that jurisdiction and venue for any action arising out of the terms and conditions herein shall be exclusively in state or federal courts located in Massachusetts, United States of America. Prior to initiation of any legal action by either party, the parties shall attempt in good faith to resolve any dispute promptly by negotiation between their duly authorized representatives. In connection with such negotiations, the parties agree to honor reasonable requests for information and to meet within 30 days of a request by the other party at a mutually acceptable time and place. Notwithstanding the provisions of this section, (i) in the case where the Doble contracting party is Morgan Shaffer Ltd. and provided that the applicable transactions solely take place within Canada, the rights and remedies of the parties hereunder shall be governed by the laws of the Province of Quebec, Canada and the federal laws of Canada applicable therein; and (ii) in the case where the Doble contracting party is Manta Test Systems Ltd. and provided that the applicable transactions solely take place within Canada, the rights and remedies of the parties hereunder shall be governed by the laws of the Province of Ontario, Canada and the federal laws of Canada applicable therein. For greater certainty, the United Nations Convention on Contracts for the International Sale of Goods, including its adoption by the Province of Ontario under the International Sales of Goods Act (Ontario), shall not apply to the Agreement.
16. **Compliance with Laws.** Each party agrees to comply with all applicable local, state and federal laws and executive orders and regulations in the performance of this Agreement. Each party shall indemnify the other party against any loss, cost, damage or liability by reason of such party's violation of this section.
17. **Legal Fees.** In the event of any litigation arising herefrom, Doble shall be entitled to recover from Buyer all reasonable legal fees, costs and expenses incurred by Doble in enforcing any of Doble's other rights hereunder.
18. **Waiver.** Waiver by Doble of any breach of these terms and conditions shall not be construed as a waiver of any other breach, and failure to exercise any right arising from any default hereunder shall not be deemed a waiver of such right which may be exercised at any subsequent time.
19. **Confidentiality.** In connection with the performance of this Agreement, the parties may share and/or exchange proprietary, sensitive and confidential business information with one another. This may include, but is not limited to, know-how, documents, designs, drawings, processes, bills of material, specifications, proposed pricing or other information that is conspicuously marked as proprietary ("Proprietary Information"). Without limiting the generality of the foregoing definition, the parties specifically acknowledge that all Buyer specific information relating to Buyer's assets is deemed Proprietary Information. Each party is required to hold the other party's Proprietary Information in the strictest confidence; to protect it from disclosure and



unauthorized use; to not release it to any third party without the disclosing party's express written consent; and to only use such Proprietary Information in connection to perform its obligations under this Agreement. Doble will be permitted to retain technical data for the sole purpose of creation of statistical models showing representative characteristics of operating data, but without any specific links or identification to the Buyer, the Buyer's Assets or configuration in which the asset was originally linked.

20. **Exceptions and Special Terms.** Subject to Section I, no requested alterations to the terms of this Agreement shall be valid except by Doble's express authorization. Any such mutually agreed-upon alterations to the terms of this Agreement shall be set forth in a separate schedule, which shall be deemed Schedule A to this document and will and must be signed by both parties and include the full legal names of both parties and the date of signing. Such Schedule A shall be effective as to the later of the two dates in the signature block.
21. **Entire Agreement.** This document, together with the applicable quote and/or order confirmation, contains the entire agreement between Doble and Buyer and constitutes the final, complete and exclusive expression of the terms of the agreement, all prior or contemporaneous written or oral agreements or negotiations with respect to the subject matter hereof being merged herein.
22. **Severability.** In the event that any provision hereof shall violate any applicable statute, ordinance, or rule of law, such provision shall be ineffective to the extent of such violation without invalidating any other provision hereof. Notwithstanding the foregoing, to the extent the rights and remedies hereunder are governed by Canadian law in accordance with Section 15, if any section, subsection, sentence or clause hereof shall be adjudged illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of these terms and conditions as a whole or of any article, subsection, sentence or clause hereof not so adjudged, and the remaining terms and provisions of this shall remain unimpaired and in full force and effect.
23. **Timely On-Site Performance by Doble.** Any timely on-site performance by Doble is contingent upon Buyer providing Doble with: (i) an appropriate work area; (ii) unrestricted access to Buyer's assets (which will be isolated and disconnected by Buyer, if applicable); (iii) all required technical information and data, including drawing approvals, and required commercial documentation; (iv) removal or remedy of obstructions to or interruptions in the performance of the Services; (v) any special instrument necessary for the performance of the Services as specified in the quotation and (vi) the support of Buyer's employees, as needed.
24. **Choice of Language.** The parties have requested and do hereby confirm their request that the present contract be in English only. LES PARTIES DECLARENT QU'ILS ONT EXIGÉ ET PAR LES PRESENTS CONFIRMENT LEUR DEMANDE QUE CE CONTRAT SOIT REDIGÉ EN ANGLAIS SEULEMENT.



**END USER LICENSE AGREEMENT**

**DO NOT USE OR LOAD THIS SOFTWARE UNTIL YOU HAVE CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS. BY LOADING OR USING THE SOFTWARE, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT WISH TO SO AGREE, DO NOT INSTALL OR USE THE SOFTWARE.**

This End User License Agreement (hereinafter referred to as the "Agreement" or "EULA") has been presented to User in conjunction with User's attempt to use, try out, or install a computer program composed of a number of computer files, including but not limited to executables, knowledge files, data, slave files, and other supporting files (collectively "Software.") Doble Engineering Company, its divisions, subsidiaries, and other affiliates (collectively referred to herein as "Doble" or the "Licensor") is the developer of and the exclusive source and owner of this Software. Licensor provides this Software and other products like it to be used exclusively by authorized Licensees. Licensee herein has purchased or leased this Software either directly from Licensor or from a Licensor authorized dealer under a Master Agreement. Licensee has been made aware of and offered an opportunity prior to purchase or lease of the Software to review the terms of this Agreement. Licensee assumes all responsibility for the selection of the Software to achieve the Licensee's intended results, and for the installation, use, and results obtained from the Software.

**1. DEFINITIONS**

The following terms, when used in this Agreement, have the following meanings:

- 1.1 **Authorized Facilities** mean (a) Licensee's primary location as identified in writing by the Parties, where the Software may be located and operated ("Primary License Facility") and (b) Licensee's back-up location, as identified in writing by the Parties in the event of a failure of the Primary License Facility ("Emergency Back-up Facility").
- 1.2 **Authorized Use** means Licensee's limited use of the Software or the outputs and results derived therefrom in whatever form as specified expressly in writing by the Parties.
- 1.3 **Business Days** means any weekday other than a day designated as a federal holiday.
- 1.4 **Confidential Information** means the terms and conditions of this Agreement, the Software and all of the software code (including, but not limited to, any third party software licensed with the Software), the Software performance information, Documentation, and any trade secrets, concepts, ideas, improvements, processes, plans, designs, specifications, architecture, database tables and structures, data record layouts, prototypes, models, methods, processes, algorithms, Content, data bases, and all other business operational, financial and Licensee information, whether patentable or not, that is (a) provided, developed, conceived or in any way disclosed by either Party.



- 1.5 **Content** means any information, business data, and any other materials provided by Licensee and entered into and processed by the licensed Software.
- 1.6 **Documentation** means any and all manuals, written documents, or embedded documentation, whether original, complete or partial copies, in electronic or paper form, provided by Licensor related to the Software, including but not limited to Product Manuals, training materials, requirements specifications, release notes, and any other correspondence related to the installation and implementation of the Software.
- 1.7 **EULA** means this Doble End User License Agreement, and all attachments and exhibits thereto.
- 1.8 **Environment** means the hardware, LAN, VPN and all third party operating and database systems, as specified in writing, that are required to run and utilize the Software including network applications, database servers, and the computer processor unit or workstation used to operate, gain access to or view the Software or any outputs and results therefrom linked thereto.
- 1.9 **Intellectual Property Rights** means all patents, trademarks, service marks, registered designs, applications for any of the foregoing, trade and business names, unregistered trademarks and service marks, including goodwill in relation to the foregoing, Know-how, copyright, database rights, rights in designs (whether registerable or not), inventions, rights under licenses and consents in relation to any such rights and rights of the same or similar effect or nature that may be granted or recognized under United States, Canadian, or other foreign legislation in any part of the world.
- 1.10 **Know-how** means the trade secrets, processes, techniques and methods of working, all of a secret, confidential or proprietary nature which have been or are being developed by Licensor and including without limitation all scientific, engineering, information, expertise and manufacturing design and software specifications designs or codes (whether object code or source code) in or to the Materials.
- 1.11 **Licensee** means an entity that is granted a license to use the Software pursuant to a transaction involving the purchase or lease of such Software from Licensor or from a Licensor authorized dealer.
- 1.12 **Licensor** has the meaning assigned to it in the first paragraph of this Agreement.
- 1.13 **Master Agreement** means the document or set of documents which originate from Licensor and which contain the material business terms upon which Licensee purchases or leases the Software. The Master Agreement specifically excludes any documents which do not originate from or are signed by Licensor and specifically excludes any terms and conditions which may be attached to a purchase order originating from Licensee.





- 1.14 **Materials** means the Software and the Documentation.
- 1.15 **Modifications** includes any translation, abridgement, condensation, retrenchment, revision, correction, improvement, enhancement, customization, expansion, addition, update, upgrade, or other modification to the Materials.
- 1.16 **MS** means Morgan Schaffer.
- 1.17 **Open Source Software** or "OSS" means computer software components with its source code made available and licensed with an open-source license in which the copyright holder provides the rights to study, change, and distribute such software components for free to anyone and for any purpose. To the extent not expressly restricted or reserved by the applicable OSS license, OSS as used herein does not include any derivative works developed by Licensor.
- 1.18 **Permitted User** shall be limited to Licensee's employees and agents.
- 1.19 **Product Manuals** mean the user guides and manuals for use of the Software.
- 1.20 **Significant Defect** is any reproducible and verifiable material error, defect, bug, virus, design flaw or other malfunction (taking into account the severity and technical difficulty in fixing the same) in the Software, which result from causes within Doble's reasonable control and which have not resulted from the inoperability, incompatibility, action or inaction when reasonably required under the circumstances, of material supplied by Licensee
- 1.21 **Software** has the meaning assigned to it in the first paragraph of this Agreement and as further defined in the applicable exhibit. Specifically with regard to InsideView DGA Diagnostics™, this excludes any OSS, but includes all Modifications to such software which may be provided to the User by Doble at any time.
- 1.22 **Source Code** means a copy of the source code version of all parts of the Software in human-readable form and in machine-readable form on machine-readable storage medium and which, when compiled, will produce the object code version of the Software.
- 1.23 **TAL** means a license key provided by Doble to the User that enables the User to activate and access certain functionalities of the Software for use with one specific piece of equipment of the User. Solely with regard to TAL, **Use** means to access, install, download, execute, copy, or otherwise benefit from using those functionalities of the Software as set forth in the TAL.



- 1.24 **Territory** shall mean worldwide usage, subject to any restrictions on Territory expressly stated on the face of the applicable purchase order, or in the applicable software license agreement, as the case may be.
- 1.25 **Third Party Resource** means a third party engaged by Licensee to integrate the Software into the Licensee's business.
- 1.26 **User** means any person who is authorized by Licensee to access or use the Materials.

## 2. INTELLECTUAL PROPERTY RIGHTS.

- 2.1 ENOSERV RTS®, ENOSERV PowerBase® Series, DTAWeb, Protection Suite, and Insideview DGA Diagnostics™ (herein collectively referred to as "Software") are proprietary products of Licensor and are protected by patent, copyright, trademark, trade dress, trade secret, and/or other intellectual property laws and international treaty. As between Licensee and Licensor, Licensee agrees that Licensor is the sole and exclusive owner of the Software and Documentation and the intellectual property represented thereby or contained therein.
- 2.2 Licensor or its suppliers retain ownership of the Materials, and any copies thereof, and all related Intellectual Property Rights, including, without limitation, all rights to any images, photographs, animations, videos, audio, text and "applets" incorporated into the Materials.
- 2.3 Licensee and User are not permitted to create any modifications to or derivative works based upon any portion of the Materials, unless such modification or derivative work has been expressly authorized by the Licensor in writing.
- 2.4 The Materials, including without limitation, the structure, organization, user interface, user experience, and code of the Software, contain information and valuable trade secrets that are not generally known to the public. Licensee and User will treat as confidential and preserve the confidentiality of the Materials and will not disclose any portion of the Materials to any third party. The foregoing obligation does not apply to any information that: (a) was already in Licensee's possession prior to acquiring any copy of the Materials, as shown by documentary evidence; (b) is or becomes publicly available through no fault of Licensee; or (c) is obtained by Licensee from a third person who through no inducement by Licensee and without breach by such third person of an obligation of confidence has obtained and disclosed such to Licensee. Information will not be deemed to be within the foregoing exceptions merely because it is: (i) embraced by more general information in the public domain or in the possession of the party receiving such information, or (ii) a combination of individual items of information that could be pieced together to reconstruct such combination from non-confidential information.



- 2.5 Licensee agrees to secure and protect the proprietary rights of Licensor in the Materials and all copies thereof (in whatever form), and to take appropriate action to secure and protect same by instruction to, or agreement with its Users who are permitted access to the Materials. Licensee will not take any action which adversely affects Licensor's Intellectual Property Rights or other proprietary rights in the Materials.
- 2.6 If Licensee plans to utilize the services of a Third Party Resource in connection with the implementation of the Materials in the Licensee's business, prior to disclosing the Materials or any portion thereof to such Third Party Resource, Licensee will require that such Third Party Resource enter into a written non-disclosure agreement containing terms at least as restrictive as those set forth in this Agreement with regard to maintaining the confidentiality of the Materials.
- 2.7 Open Source Software. In the event that the Software contains any OSS, this EULA is provided to the Licensee inclusive of the applicable OSS license(s), which are incorporated herein by reference. Licensee's use of such software shall be additionally and expressly subject to the terms and conditions of the applicable OSS. Licensee may view the terms of the OSS at <https://www.doble.com/privacy-policy-legal-disclosures/doble-software-information-resources/>, or contact Doble for additional information.

### 3. CONFIDENTIALITY.

- 3.1 Licensor and Licensee may have a proprietary interest in certain Confidential Information furnished to each other pursuant to this Agreement. Licensee and Licensor shall keep in confidence and shall not disclose, without prior written consent of the other party, any such Confidential Information of the other party, provided it is identifiable in writing as Confidential Information, or if as a written follow-up to any oral disclosure by one party to the other that the subject matter disclosed was Confidential.
- 3.2 Licensor and the Licensee shall protect each other's Confidential Information with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which the receiving party utilizes for its own confidential information.
- 3.3 No party bears a responsibility for safeguarding information that is a) publicly available, b) demonstrably already in the receiving party's possession prior such receipt, c) obtained by either party from third parties not under a duty of nondisclosure, d) independently developed by either party without reference to the Confidential Information, or e) required to be disclosed by order of a court or other governmental entity, or per applicable law, including public disclosure law. If either party is so requested or required to disclose any Confidential



Information, the party receiving the request will provide the other party with prompt notice of such request. Under no circumstances will either party have any responsibility or obligation whatsoever to initiate, defend against or otherwise cooperate or participate in any such action, claim, suit, arbitration or proceeding relating to the Confidential Information.

- 3.4 In the event either party knows or should reasonably know that any third party has gained unauthorized access to the Software, Documentation, or other Confidential Information hereunder, the knowing party shall immediately notify the other party in writing of the full particulars of such access or disclosure.
- 3.5 Upon the written request of a party, and in any event upon termination of the Agreement, each party, shall, at the request of the other, either return all of the Confidential Information of the other party in its possession, including all originals, copies and records thereof, or furnish to the requesting party an officer's certificate of destruction of the other party's Confidential Information. Notwithstanding the aforementioned, Licensor shall be allowed to retain certain Licensee testing data solely for Licensor's internal, anonymized, and aggregated analysis purposes.
- 3.6 In the event that disclosure of a party's Confidential Information occurs or is threatened, the other party will be entitled (in addition to any and all other remedies) to seek injunctive relief, specific performance and other equitable remedies upon posting a bond or other security.

#### **4. PRIVACY POLICY.**

- 4.1 The Licensor continually seeks to improve its product offerings, and generally improve the usage of the users of the Software. For that purpose, Licensor has incorporated third party analytic tools (collectively referred to as "cookies") within the Software that tracks general user activities. These cookies are used to store anonymous, non-personally identifiable information. The cookies are utilized for the purpose of measuring general usage of the Software over time, continuity of the Software, and anti-fraud and information security purposes.
- 4.2 Licensor does not share any information with third parties. The cookies will be activated upon download of the Software, but can may be disable by the Licensee at any time. Browser add-ons are available to users who wish to opt-out of this data collection (<https://tools.google.com/dlpage/gaoptout>), and users may also refer to the help information in their browser software for instructions on how to disable the cookies.
- 4.3 The internet protocol address of the electronic device accessing the software is obfuscated in the communication sent to the server. In addition, the data collected by the cookies is securely stored, remotely on a server in a secure warehouse. The data is aggregated and presented meaningfully for use by the Licensor, and cannot



be reverse engineered to access the identity of any one individual, entity, product, and/or associated private data.

**5. U. S. GOVERNMENT END USERS.**

5.1 The Materials are “commercial items” as that term is defined at 48 C.F.R. 2.101, and if Software is licensed hereunder, the Software consists of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the right to use and access the Materials with only those limited rights set forth herein.

**6. HIGH RISK ACTIVITY.**

6.1 Licensee is solely responsible for the accuracy and adequacy of the Materials for Licensee’s intended use. The Materials are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the direct operation of nuclear facilities, air or space travel, power plant design or operation, communication systems, weapons systems, life support or medical operations or machines, or any other application in which the failure of the Materials could lead directly to death, personal injury, or severe physical or property damage (collectively, "High Risk Activities"). Licensor expressly disclaims any express or implied warranty of fitness for High Risk Activities and will have no liability for any such activities including, but not limited to, not using ENOSERV-labeled RTS products in conjunction with testing under load, which Licensor neither recommends nor condones.

**7. EXPORT CONTROL.**

7.1 The Materials are subject to the U.S. Export Administration Regulations, Canadian export laws, as well as the comparable export laws of any and all other nationality that may have jurisdiction over the transaction(s) contemplated by this Agreement. Licensee and User may not export, import or transfer the Materials contrary to U.S. or other applicable laws, whether directly or indirectly, and will not cause, approve or otherwise facilitate others such as agents or any third parties in doing so. Licensee and User agree not to use or transfer the Materials for end use relating to any nuclear, chemical or biological weapons, or missile technology unless authorized by the U.S. Government by regulation or specific license. Additionally, Licensee and User acknowledge that the Materials are subject to export control regulations in the European Union and Licensee and User hereby declare and agree that the Materials will not be used for any other purpose than civil (non-military) purposes. The parties agree to cooperate with each other with respect to any application for any required licenses and approvals, however, Licensee acknowledges that it is its responsibility to comply with any and all export and import laws and that Licensor has no responsibility within the original country of sale. If the Software is identified as an export-controlled item under the applicable



export laws, Licensee represents and warrants that it is not a citizen, or otherwise located within an embargoed nation, and that it is not otherwise prohibited under the applicable export laws from receiving the Software. All rights to use the Software are expressly contingent and conditioned upon the previously stated representations and warranties, and a breach of the same shall result in Licensee immediately forfeiting all such rights.

## 8. INDEMNIFICATION.

- 8.1 *Infringement Claims.* Licensor will indemnify and hold Licensee harmless and will defend or settle any claim, suit or proceeding brought against Licensee that is based upon a claim that the Software infringes the Intellectual Property Rights of a third party ("**Claim**"), but only to the extent that such Claim arises directly out of the use of the Software except for any infringement claim resulting from (a) adherence to Licensee's specifications, drawings or instructions; (b) a combination of the Software with other equipment, software, or processes; (c) modifications of the Software; or (d) Licensee's willful, knowing or deliberate infringement of any Intellectual Property Rights. In the excepted cases stated above, Licensee will indemnify and hold Licensor harmless against any losses, damages, liabilities, fines, penalties, and expenses (including reasonable attorneys' fees), which may be incurred by Licensor as a result of such excepted cases. Licensee must notify Licensor in writing of any Claim within ten (10) business days after Licensee first receives notice of the Claim, and Licensee must cooperate with Licensor as Licensor may reasonably request from time to time in connection with the defense of the Claim. Licensor will have sole control over any Claim (including, without limitation, the selection of counsel and the right to settle on Licensee's behalf on any terms Licensor deems desirable in the sole exercise of its discretion). Licensee may, at Licensee's sole cost, retain separate counsel and participate in the defense or settlement negotiations. Licensor will pay actual damages, costs, and legal fees awarded against Licensee (or payable by Licensee pursuant to a settlement agreement) in connection with a Claim to the extent such damages and costs are not reimbursed to Licensee by insurance or a third party, to an aggregate maximum equal to Licensee's purchase price for the Software.
- 8.2 If the Software, any portion thereof, or the use thereof, becomes the subject of a Claim or if use of the Software or any portion thereof is enjoined, or if in the opinion of Licensor's legal counsel the Software is likely to become the subject of a Claim, Licensor may attempt to resolve the Claim by using commercially reasonable efforts to modify the Software or obtain a license to continue using the Software. If in Licensor's opinion the Claim, the injunction or potential Claim cannot be resolved through reasonable modification or licensing, Licensor, at its own election, may terminate this Agreement (including all rights granted hereunder) without penalty, and refund to Licensee on a pro rata basis (calculated over three years) any fees paid in advance by Licensee to Licensor. THE FOREGOING



OBLIGATIONS SET FORTH IN SECTIONS 8.1 AND 8.2 CONSTITUTE LICENSOR'S SOLE AND EXCLUSIVE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT.

- 8.3 Licensee will defend, indemnify, and hold Licensor and its directors, officers, agents, employees, members, subsidiaries, and affiliates harmless from and against any claim, action, proceeding, liability, loss, damage, cost, or expense (including, without limitation, legal fees and expenses), arising out of or in connection with Licensee's or User's use of the Materials (except with regard to any indemnification obligations of Licensor as provided in Section 8.1), including without limitation, any damages Licensor may suffer or incur by reason of the breach of any of the provisions of this Agreement by the Licensee, its employees, agents or sub-contractors howsoever caused or the acts, omissions or negligence of Licensee, its employees, agents and sub-contractors

**9. LIMITATION OF LIABILITY.**

- 9.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT IS LICENSOR LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS OR REVENUE, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE MATERIALS OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSOR'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT IS LIMITED TO THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE MATERIALS. Because some states and jurisdictions do not allow the exclusion or limitation of liability, the above limitation may not apply to Licensee. In such states and jurisdictions, Licensor's liability is limited to the greatest extent permitted by law.

**10. FORCE MAJEURE.**

- 10.1 Licensor will not be responsible for any failure in the performance of its obligations under this Agreement to the extent that such failure is due to causes beyond Licensor's control including, but not limited to, acts of God, war, acts of any government or agency thereof, fire, explosions, strikes, delivery services, telecommunication providers, strikes, labor difficulties, lockouts, embargoes, severe weather conditions, delay in transportation, or delay of suppliers or subcontractors. In addition, Licensor shall not be liable or responsible to the extent Licensor's performance under these terms and conditions is prevented, delayed or hindered by any pandemic, epidemic or outbreak of widespread illness on a local, national or international scale, or any new or escalated circumstances related thereto outside of Licensor's reasonable control, including without limitation



quarantines, transportation disruptions, government imposed restrictions, labor shortages or delays or failures of performance by Licensor's suppliers or carriers.

**11. Contract Interpretation.**

11.1 **Captions; Section Number.** Article, section and paragraph numbers and captions are provided for convenience of reference and do not constitute a part of this Agreement. Any reference to a particular Section of this Agreement shall be deemed to include reference to any and all subsections thereof.

11.2 **Singular and Plural.** The use herein of the singular number shall be deemed to include the plural and vice versa, and the use hereof of the masculine shall be deemed to mean the feminine or neuter and vice versa, wherever the sense of this Agreement so requires.

**12. Authority to Enter Into Agreement.** Each party warrants that it has all necessary power and authority to enter into this Agreement.

**13. Drafting.** This Agreement shall be deemed to have been drafted by all parties, since all parties have been assisted by their counsel in reviewing and agreeing thereto (or have chosen not to be so assisted), and no ambiguity shall be resolved against any party because of its participation in the drafting of this Agreement.

**14. Notice.** 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 certified mail, or air mail, as appropriate, (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address set forth below, or (d) sent by email or similar electronic communication. 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, certificate of confirmed receipt via mail as set forth above, one (1) day after delivery to an overnight air courier service, or confirmed receipt of electronic communication.

If to Licensor:  
Doble Engineering Company  
123 Felton Street  
Marlborough, MA 01752  
Attn: Jonathan O. Nilsen, Esq., Senior Counsel

**15. SEVERABILITY.**

15.1 If any provision of this Agreement is found to be invalid or unenforceable by any court, such provision will be ineffective only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions of the Agreement.

**16. ASSIGNMENT.**





16.1 Neither this Agreement nor any interest in this Agreement may be assigned by Licensee without the prior express written approval of Licensor. Any attempted assignment of rights in violation of this Agreement is void.

**17. WAIVER.**

17.1 All waivers under this Agreement must be in writing to be effective. No failure or delay by a party to exercise any right it may have by reason of the default of the other party will operate as a waiver of default or as a modification of this Agreement or will prevent the exercise of any right of the non-defaulting party under this Agreement.

**18. GOVERNING LAW; DISPUTE RESOLUTION.**

18.1 This Agreement and the privileges, responsibilities, obligations, and liabilities of the parties shall be governed by laws of the Commonwealth of Massachusetts, U.S.A. This Agreement shall be deemed to have been entered into, wholly performed in, and executed in the Commonwealth of Massachusetts., without regard to any conflict of law principles. The parties agree that the U.N. Convention for the Sale of Goods does not apply to this Agreement. This Agreement must be interpreted solely in the English language, and no translation into any foreign language will have any effect. With regard to any matters and/or disputes that solely occur within Canada, this Agreement and the privileges, responsibilities, obligations, and liabilities of the parties shall be governed by laws of the Province of Quebec and the federal laws of Canada applicable therein.

18.2 Upon any dispute, controversy or claim between the parties, either with respect to the interpretation of any provisions of the Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, or with respect to the performance of the parties under the Agreement, as well as non-contractual claims related to this Agreement (a "Dispute"), at the request of either party, each of the parties will designate a representative from its senior management who (to the extent practicable) does not devote substantially all of his or her time to performance under the Agreement to attempt to resolve such matter. The designated representatives will negotiate in good faith in an effort to resolve the Dispute for a period of thirty (30) days after the date of the notice of the Dispute. In the event that the parties' designated representatives are unable to resolve the Dispute within such thirty (30) day period, or any additional extension of time that is mutually agreed upon by the parties in writing, then either party may by written notice request arbitration in accordance with the following provision.

18.3 Upon written notice from either party that a Dispute has not been settled following the resolution process set forth above, then either Party may initiate binding arbitration before the American Arbitration Association ("AAA") in accordance with AAA's Commercial Arbitration Rules. The Parties will share



equally in the costs of the arbitration, including, but not limited to, the arbitrator's time charges and travel expenses. Each Party shall bear its own attorney's fees and costs related to the arbitration as well as any time charges or travel expenses for its own personnel who attend the arbitration. The arbitrator(s) shall not award any punitive, exemplary or consequential damages. The arbitration is to be conducted in Boston, Massachusetts before one (1) arbitrator with at least ten years of experience resolving international business disputes. The arbitrator shall provide detailed written findings of fact and conclusions of law in support of any award. Judgment upon any such award may be enforced in any court of competent jurisdiction. Each party shall be limited to 5 depositions per side. Each party shall only be allowed to advance a maximum of 5 witnesses in any such proceeding. Upon initiating arbitration, the parties will enter into a scheduling order with the arbitrator within one month. Thereafter discovery shall begin. The arbitration will be concluded within 4 months. The arbitrator must agree to enter the ruling within two months of the arbitration.

- 18.4 Notwithstanding the foregoing, Licensor may seek injunctive relief to enforce or protect any of its intellectual property rights or any of its interests that may be subject to irreparable harm in any court of competent jurisdiction without reference to the arbitration proceedings set forth herein. Any such action or proceeding arising from or relating to this Agreement may also be brought in a state or federal court for the city of Boston, Massachusetts and each party irrevocably submits and waives any objections to the jurisdiction and venue of any such court in any such action or proceeding.
- 18.5 Licensee and User hereby agrees that acceptance of the terms and conditions of this Agreement may, in lieu of execution of a hard copy, be made by opening the software product package, by means of an electronic signature, or installation or use of the software product (whichever occurs first).

## **19. TAXES.**

- 19.1 Prices do not include any federal, state, or local property, license, privilege, sales, use, excise, import, export, transport, VAT, gross receipts, or other like taxes which may now or hereafter be applicable (collectively referred to herein as "Taxes"). Customer shall be responsible for the payment of all such Taxes of any nature whatsoever now or hereafter levied by any governmental authority anywhere in the world. In the event that Customer and/or any of the Services are considered tax-exempt, Customer shall provide to Doble a certificate of any such tax-exempt status.

## **20. ENTIRE AGREEMENT.**

- 20.1 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all other prior and contemporary agreements, understandings, trade usage, courses of dealing, and commitments between the parties regarding the subject matter of this Agreement. This Agreement



may not be modified or amended except by a written instrument executed by the parties. In particular, any provisions, terms, or conditions contained in Licensee-provided documents including without limitation any purchase order issued by Licensee, that are in any way inconsistent with or in addition to the terms and conditions of this Agreement will not be binding upon Licensor.

## **Exhibit A**

### **ENOSERV RTS and ENOSERV Powerbase Software License Agreement**

**WHEREAS** Doble is the developer of software related to system protection testing;

**WHEREAS** Licensee is desirous of licensing certain of Doble software according to the terms set out herein and Doble is desirous of granting such license; and,

**WHEREAS** the parties agree that the license granted herein is perpetual, but subject to cancellation as set out below, and allows Licensee to continue to use its then-current version of the license software upon cessation of payment of Maintenance Service Fees, but that after such cessation Licensee will no longer be entitled to upgrades or improvements.

**NOW, THEREFORE**, in consideration of the mutual promises and upon the terms and conditions set forth below, the parties agree as follows:

#### **1.0 DEFINITIONS**

**1.1** Capitalized terms used herein without definition shall have the meanings ascribed to them in the body of the Agreement.

#### **2.0 LICENSE GRANT**

**2.1 License.** Subject to timely payment of the License Fees and for so long as Licensee is not in material breach of the provisions contained herein, Licensor grants Licensee a nonexclusive, perpetual (except as provided herein) right and license for the



Authorized use of the Software at the Authorized Facilities in the Territory in the conduct of Licensee's own internal business (the "License", hereinafter)

- 2.1.1** The annual Maintenance Service Fee will be owed and due, on the anniversary of the Effective Date (or on such other date as is mutually agreed to by the parties) unless terminated before said date as is provided herein.
  - 2.1.2** Subject to this Agreement, LICENSOR grants a limited license to use as many copies of the Software as indicated on the attached LICENSOR invoice (Number of licenses/Seats) on single-user computers or on workstations/terminals of a local area network. Each copy of the Software on a single-user computer or on a workstation/terminal of a local area network, whether executing from memory or store on a hard disk or other storage device, must be separately licensed. Any distribution to other persons or companies outside Licensee is strictly forbidden. If the software package contains more than one media type, Licensee is licensed to use only one of the media forms.
  - 2.1.3** Licensee may not sub-license, rent, lease, or otherwise transfer the Software to, or permit use by, a third party without prior written consent of LICENSOR, such consent being granted in LICENSOR's sole discretion. Any attempted transfer in the absence of prior consent will be void *ab initio* and will automatically terminate the license granted herein.
  - 2.1.4** Subject to this Agreement, Licensee may copy the Software or parts thereof as often as is reasonably necessary as part of a regularly scheduled incremental or full system backup. Licensee may copy all or any part of the Documentation as is reasonably necessary for its own internal use and in furtherance of this Agreement, so long as all titles, trademark symbols, copyright symbols and legends, and other proprietary markings are reproduced exactly as they appear in the Documentation.
- 2.2 Restrictions.** The rights granted in Section 2.1 are subject to the following restrictions:
- 2.2.1** Licensee may not reverse engineer, disassemble, decompile, modify, translate or otherwise attempt to derive any source code of the Software for any purpose. Licensee may not disable, circumvent, or otherwise obscure any notices that might be presented by the program during startup or otherwise. Further, Licensee shall not commission, permit, or assist any other in doing



any of the foregoing.

- 2.2.2** Licensee may not sublicense or use the Software for commercial time-sharing, rental, outsourcing, or service bureau use for the benefit of third parties. Use by contractors is allowed only if the Software is installed and utilized on computer equipment belonging to the Licensee for the sole benefit of Licensee and is returned upon completion of said service.
  - 2.2.3** Licensee may not make copies of the Software or Documentation except as permitted by this agreement in Article 2.1.3.
  - 2.2.4** Licensee may use the Software only on the operating system for which it was designed. Use of the Software on an operating system other than that for which the product was designed voids the product warranty set forth in this agreement. Any use of the Software other than specified within this Agreement is an unauthorized use, and such use voids the product warranty set forth in this agreement.
  - 2.2.5** The License granted herein transfers neither title, nor any proprietary or intellectual property rights to the Software, Documentation, or any copyrights, patents, or trademarks, embodied or used in connection therewith.
  - 2.2.6** Licensee is responsible for the acquisition, installation, configuration and testing, at its own cost and expense; (a) of the Environment required to operate the Software, and (b) any other third party software that may be required for users to operate the Software, which is available upon request.
- 2.3 Fees.** Licensee shall pay the License Fees as set forth in the applicable exhibit, in accordance with the schedule set forth therein.
- 2.3.1** Failure to pay any License Fees or other fees required herein will result in Termination of Support and updates and will result in the appearance of a notice screen upon launch and intermittently throughout the program.

### **3.0 WARRANTIES**

- 3.1** LICENSOR has all right, title, and interest in the Software and Documentation necessary to make the grant of license to Licensee contemplated in this Agreement.
- 3.2** The Software furnished under the Agreement will perform in substantial compliance with the written materials accompanying the Software.



- 3.3** LICENSOR will not be liable for any breach of the warranties set out herein if and to the extent to which the relevant breach is attributable to:
- 3.3.1** use of the Software, in any manner or for any purpose which is not permitted under this agreement;
  - 3.3.2** modification of the Software without the prior written consent of LICENSOR;
  - 3.3.3** the Software not being used in accordance with the Documentation;
  - 3.3.4** any negligence on the part of the Licensee relating to the use of the Software;
  - 3.3.5** any other event or circumstance beyond the reasonable control of LICENSOR, or
  - 3.3.6** any failure of the Software to comply with the Software Warranty which is caused by the Licensee's data or systems.
- 3.4** If the Licensee reports, in writing, a Significant Defect to LICENSOR, and LICENSOR is unable to correct it within ninety (90) business days of the date the Licensee reports the defect, the Licensee may return the Software and accompanying materials, and LICENSOR will credit the purchase price towards future purchases.
- 3.5** LICENSOR will replace, at no charge, defective media and product materials that are returned within ninety (90) calendar days of the original shipping date.
- 3.6** THE FOREGOING, TOGETHER WITH ALL EXPRESS WARRANTIES CONTAINED IN ANY STATEMENT OF WORK HEREUNDER OR OTHERWISE INCORPORATED HEREIN, CONSTITUTES AND EXPRESSES THE ENTIRE STATEMENT OF THE PARTIES WITH RESPECT TO WARRANTIES.
- 3.7** Specifically with regard to any OSS that may be included in the Software, the OSS is provided "as is", without warranty of any kind, express or implied, including but not limited to the warranties of merchantability, fitness for a particular purpose and non-infringement. In no event shall Licensor, or the authors or copyright holders of the OSS, be liable for any claim, damages, or other liability, whether in an action of contract, tort, or otherwise, arising from, out of or in connection with the OSS, or the use or other dealings in the OSS.

#### **4.0 TERM AND TERMINATION**



## 4.1 Licensee Termination

**4.1.1 Termination by Licensee for Any Reason.** Licensee may terminate this Agreement, with or without cause, by providing written notice to LICENSOR of its intent not to renew its license to all or part of the Software at least sixty (60) calendar days in advance of the renewal date of the associated Maintenance Service Fees, provided that such termination will not entitle Licensee to a refund of any portion of the associated Maintenance Fee.

**4.1.2 Termination by Licensee For Cause.** Licensee may terminate this Agreement by written notice to LICENSOR, upon the occurrence of any of the following events and the continuance thereof without cure, for thirty (30) business Days after written notice of same has been delivered to LICENSOR (any such termination being a “Licensee Termination for Cause”):  
LICENSOR materially breaches a warranty hereunder.

LICENSOR’s breaches its obligations under Section 6 or breaches any other obligation herein that is incapable of cure.

## 4.2 Licensor Termination

LICENSOR may terminate this agreement for Cause if Licensee is in material breach of the Confidentiality provisions of Section 5 or if Licensee is otherwise in material breach of this Agreement. If LICENSOR terminates for Cause as is provided for herein, any license to the Software granted herein (including the Post Termination License granted below, if any) will be terminated.

## 4.3 Effects of Termination.

**4.3.1 Effective Date of Termination.** If either LICENSOR or Licensee terminates this agreement as provided herein, termination will become effective immediately or on the date set forth in the written Notice of Termination.

**4.3.2 Survival of Contract Provisions.** Termination of this Agreement by either party will not affect the provisions regarding Licensee’s or LICENSOR’s treatment of Confidential Information, the Restrictions of Section 2.2, the provisions relating to the payment of amounts due or provisions limiting or disclaiming liability, which provisions will survive termination of this Agreement for a period of five (5) years.

**4.3.3 Licensee’s Return or Destruction of Materials.** No later than thirty (30) calendar days after the date of termination or discontinuance of this Agreement for any reason whatsoever, Licensee shall either (1) return to LICENSOR any Confidential Information of LICENSOR in its possession that is in tangible form or (2) destroy all such LICENSOR Confidential Information in its possession in tangible form. Licensee shall furnish

LICENSOR with a certificate signed by an officer or director of Licensee verifying that such has been done.

**4.3.4 LICENSOR's Return or Destruction of Materials.** No later than thirty (30) calendar days after the date of termination or discontinuance of this Agreement for any reason whatsoever, LICENSOR shall destroy or return all Confidential Information of Licensee in its possession that is in tangible form. LICENSOR shall furnish Licensee with a certificate signed by an officer or director of LICENSOR verifying that such has been done.

**4.3.5 Software License after Termination.** If the instant Agreement is terminated by Licensee pursuant to this Agreement, the License to the software granted above shall continue uninterrupted in perpetuity subject to the additional conditions that follow (the License together with the following additional conditions comprising the "Post Termination License", hereinafter).

- (a) The number of copies of the Software for which a license is granted pursuant to the Post Termination License shall be the same as the number of licenses authorized to Licensee at the time of the termination.
- (b) The Post Termination License grants Licensee the right to continue to use, pursuant to this Agreement, the last version of the Software that was properly obtained from LICENSOR while the Maintenance Service Fees were being paid.
- (c) Software that is utilized after termination of this Agreement may contain one or more reminder screens that notify the user that such use is pursuant to the Post Termination License. Licensee agrees, as a condition of the granting of the Post Termination License, that such notices shall not be modified, circumvented, disabled, or removed.
- (d) Breach of any of the foregoing shall result in cancellation of the Post Termination License.
- (e) After termination pursuant to this section, if Licensee reinstates payments of Maintenance Service Fees or otherwise reacquires a license to the then-current version of LICENSOR's software or any portion thereof, this Post Termination License will be automatically terminated to be replaced by the license granted to the then-current version of LICENSOR's software.
- (f) If the Post Termination License is terminated for any reason whatsoever, Licensee hereby agrees to return or destroy the Software and all copies and versions thereof, to return or destroy the Documentation and all copies or versions thereof, and to return or destroy all of LICENSOR's Confidential Information and all copies thereof. Licensee agrees to provide written assurances by an officer of the company that this has been done within thirty (30) calendar days of such termination.





**4.3.6 No Software License after Termination for Cause.** If the Agreement is terminated by LICENSOR for cause, no such Post Termination License will be granted. In such a case, Licensee hereby agrees to return or destroy the Software and all copies and versions thereof, to return or destroy the Documentation and all copies or versions thereof, and to return or destroy all of LICENSOR's Confidential Information and all copies thereof. Licensee agrees to provide written assurances by an officer of the company that this has been done within thirty (30) calendar days of such termination for cause.

**4.3.7 Remedies.** In the event of a party's Termination for Cause, the other party shall be liable to the terminating party for any direct damages resulting from the occurrence giving rise to termination.

**5.0 Survival.** The obligations and rights of the Parties pursuant Sections 1, 2, 3, and 4, of this SLA, and Sections 1, 2, 3, 7, 8, 9, and 18 of the EULA shall survive termination of this agreement for any reason.

## **Exhibit B**

### **Doble Software End User License Agreement**

**WHEREAS** Doble is the developer of Software;

**WHEREAS** Licensee is desirous of licensing certain of Doble's Software according to the terms set out herein and Doble is desirous of granting such license; and,

**NOW, THEREFORE,** in consideration of the mutual promises and upon the terms and conditions set forth below, the parties agree as follows:

#### **1.0 DEFINITIONS**

**1.1** Capitalized terms used herein without definition shall have the meanings ascribed to them in the body of the Agreement.

#### **2.0 LICENSE GRANT.**

**2.1** Licensor provides this Software and other products like it to be used exclusively by authorized Licensees. Licensee herein has purchased or leased this Software either directly from Licensor or from a Licensor authorized dealer under a Master Agreement. Licensee has been made aware of and offered an opportunity prior to purchase or lease of the Software to review the terms of this EULA. Licensee assumes all responsibility for the selection of the Software to achieve the Licensee's intended results, and for the installation, use, and results obtained from the Software.



**2.2 License Grant.** Subject to the terms and conditions of this EULA, Licensor hereby grants Licensee a non-exclusive, revocable, perpetual (subject to termination as set forth herein), personal, non-transferable license to:

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- 4.2.3** fails to pay any sum due to Licensor within ninety (90) days after the due date set forth on any invoice from Licensor; or
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