

# ANALYTICAL GRAPHICS, INC.

## Desktop Software License Agreement

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### 1. DEFINITIONS

"Designated Computer" means one central processing unit and associated displays and peripheral equipment, all at one location, which accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions, and as identified by your providing the computer Host Identification.

"Documentation" means the licensed specifications, user manuals, installation instructions and other supporting materials, including additional, updated or revised materials, if any, that are provided by AGI in connection with the Software.

"Host Identification or Host ID" means the unique, physical address for the computer hardware.

"Software" means AGI software and all of the contents of the files, disks(s), CD-ROM(s) or other media with which this Agreement is provided, including but not limited to (i) AGI or third party computer information or software; and (ii) digital images, stock photographs, video, clip art, sound(s) or other work.

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2.3 You shall not:

(a) build an external interface for the purpose of serving the functionality or output of a component of the Software to third parties.

(b) use the Software on a server or computer that is accessible to third parties over a network for the purpose of remotely providing the functionality or output of a component of the Software to a third party for any purpose.

(c) distribute, transfer, lease or rent a component of the Software to a third party.

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### **3. ACCEPTANCE**

The definition of ACCEPTANCE shall be in accordance with the NOTICE TO USER section found hereinabove.

### **4. LIMITATION AND WARRANTIES**

4.1 THE SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. YOU ASSUME THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE. AGI DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

4.2 SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS, IN WHOLE OR IN PART, MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

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5.2 AGI'S OBLIGATIONS UNDER THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY OR CONTRIBUTION, SHALL NOT EXCEED THE AMOUNT OF THE APPLICABLE LICENSE FEE PAID BY YOU FOR THE SOFTWARE.

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## **7. TERMINATION**

The license granted under this Agreement is effective until terminated. You may terminate this license at any time by destroying all copies of the Software in your possession, and providing written notice of such termination and destruction to AGI. The license granted under this Agreement will terminate if you violate any of the terms and conditions of the Agreement, including without limitation, to pay the license fees and any other sums due AGI pursuant to this Agreement. You agree, upon such termination, to promptly destroy all copies of the Software in your possession and to certify in writing to AGI that such action has been taken.

## **8. LAW TO GOVERN**

This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, United States of America. You hereby agree that the jurisdiction and venue for any claim, dispute, controversy or other action arising out of or in connection with the Software, this Agreement and/or AGI, shall be in the Commonwealth of Pennsylvania, Court of Common Pleas for Chester County, or the United States District Court for the Eastern District of Pennsylvania located in Philadelphia, Pennsylvania.

## **9. ASSIGNMENT**

None of your rights, duties or obligations under this Agreement may be sold, sublicensed, assigned, rented, licensed, loaned or otherwise transferred without the prior written consent of AGI, and any attempt to so sell, sublicense, assign, rent, lease, loan or transfer without AGI's prior written consent is void.

Notwithstanding the foregoing provision, AGI shall permit transfers of this Agreement from contractors to customer end users, provided the original software purchase transaction was completed pursuant to a valid contract, and you have obtained AGI's prior written consent, which shall not be unreasonably withheld.

## **10. NOTICES**

Any notices regarding this Agreement shall be sent to:

Analytical Graphics, Inc.  
Attn: Contracts Department  
220 Valley Creek Blvd.  
Exton, PA 19341

## **11. AUDIT**

AGI or its designee may, from time to time, at its sole expense, and consistent with your security obligations and requirements, conduct an audit of your computer hardware, computer software, books and other records related to the Software sufficient to substantiate compliance with this Agreement. Such audit shall take place during normal business hours and will be conducted in a manner so as to not interfere with your operations.

## **12. INTELLECTUAL PROPERTY AND OWNERSHIP**

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**14. THIRD PARTY CONTENT**

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**15. INDEMNIFICATION – CUSTOM APPLICATIONS**

If you are purchasing an RT3 Client License to use a custom RT3 Application developed using the RT3 Development Kit, the following additional clause applies to you:

You will indemnify, hold harmless and defend AGI against any and all claims, including claims by third parties, which arise directly or indirectly, as a result of your use or operation of the custom RT3 Application. You agree to cooperate as fully as reasonably required in the defense of any such claim.

**16. ACKNOWLEDGEMENTS**

16.1 YOU HAVE READ THIS ENTIRE AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS;

16.2 THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE UNDERSTANDING AND CONTRACT BETWEEN US AND SUPERSEDES ANY AND ALL PRIOR ORAL OR WRITTEN COMMUNICATIONS RELATING TO THE SUBJECT MATTER HEREOF;

16.3 THIS AGREEMENT MAY NOT BE MODIFIED, AMENDED OR IN ANY WAY ALTERED EXCEPT BY A WRITTEN AGREEMENT SIGNED BY BOTH YOU AND AGI;

16.4 ANY PROVISION FOUND BY A COURT OF LAW TO BE ILLEGAL, INVALID, OR UNENFORCEABLE SHALL AUTOMATICALLY BE DEEMED CONFORMED TO THE MINIMUM REQUIREMENTS OF LAW AND IT, WITH ALL OTHER PROVISIONS, SHALL BE GIVEN FULL FORCE AND EFFECT. WAIVER OF A PROVISION IN ONE INSTANCE SHALL NOT PRECLUDE ITS ENFORCEMENT ON FUTURE OCCASIONS. SUCH FINDINGS OF ILLEGALITY, INVALIDITY, AND/OR UNENFORCEABILITY OF ONE OR MORE OF THE PROVISIONS HEREIN SHALL NOT AFFECT THE REMAINING PROVISIONS; AND

16.5 YOU HEREBY AGREE THAT AGI WOULD BE IRREPARABLY DAMAGED IF THE TERMS AND CONDITIONS OF THIS AGREEMENT WERE NOT SPECIFICALLY ENFORCED, AND THEREFORE YOU AGREE THAT AGI SHALL BE ENTITLED TO APPROPRIATE EQUITABLE REMEDIES WITH RESPECT TO BREACHES OF THIS AGREEMENT, IN ADDITION TO SUCH OTHER REMEDIES AS AGI MAY OTHERWISE HAVE AVAILABLE TO IT UNDER APPLICABLE LAWS. IN THE EVENT THAT AGI IS REQUIRED TO BRING AN ACTION, SUIT, OR OTHER PROCEEDING FOR FEES, OTHER MONIES DUE UNDER THIS AGREEMENT, OR THE ENFORCEMENT OF ANY PROVISION OF OR UNDER THIS AGREEMENT; YOU AGREE TO REIMBURSE AGI FOR ANY AND ALL COSTS AND EXPENSES, INCLUDING ATTORNEY AND PROFESSIONAL OR EXPERT FEES, INCURRED BY AGI.

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