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3. Pricing:
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   b. Engine: Pay-Per-Page model.

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e. The Development Server License is for development purposes only. It may not be used as a production or end user system. The Developer License allows a single report to be concurrently generated, for a maximum of 250 reports per day, and the output is watermarked.

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The Test Server License is for testing purposes only. It may not be used as a production or end user system. The Test Server output is watermarked.

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(c) have resources available who are able and capable of giving instruction and training in the use of the Software to existing and new Customers.

(d) coordinate all Second Level Support requirements with Apyrse and working directly with Customers on all matters pertaining to First Level Support requirements.

(e) provide Customers with Updates.

(f) designate two members of its technical staff as Licensee’s sole representatives for contact with Apyrse regarding Apyrse technical support obligations under this Agreement. The technical contacts shall also be the main contacts for First Level Support requests by Customers.

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(b) research problems reported by Licensee; and

(c) provide Licensee with Updates.

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   (1) Pay-per-server License with expiration date.

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7.2 Termination. This Agreement and the License granted herein may be terminated immediately upon written notice (a) by Apryse if any amounts owed by Licensee are past due; (b) by a party upon the material breach by the other party of any of its other obligations under this Agreement, which breach has not been cured within thirty (30) days after the breaching party has received written notice thereof; or (c) by Apryse if Licensee has violated Sections 1, 2, 3, or 9 of the Agreement.

7.3 Effect of Termination. Upon termination Licensee shall promptly cease using and delete the Software from Licensee’s system and destroy the Documentation and any copies of the Software or Documentation. Upon termination of this Agreement, any applicable fees owed by Licensee through the date of termination shall become due and payable. Licensee shall promptly return to the other all Confidential Information of Apryse that Licensee may have in Licensee’s possession or control. For ASP Licenses and ISV Licenses, upon termination of this Agreement (a) all rights and licenses of and obligations of and restrictions on Apryse hereunder shall terminate, except that licenses granted to Customers in accordance with this Agreement will remain in effect in accordance with their terms; (b) Licensee will, at the option of Apryse, destroy or return all Software, Software keys, catalogues, and literature in its possession, custody or control in whichever form held (including all copies or embodiments thereof) and will cease using the Software, Services and Apryse Marks. Notwithstanding the termination of this Agreement for any reason, the rights and duties of the parties under Sections 7.3, 8, 9, 11, 12 and 13 and all payment obligations and license restrictions of this Agreement shall survive such termination and remain in full force and effect.

8. Intellectual Property. Subject only to the Licenses expressly granted in this Agreement, as between Apryse and Licensee, Apryse shall be the sole owner of all intellectual property rights in and to the Software, Software keys, and the Documentation. Licensee shall not remove any of Apryse’s or its licensor’s copyright, trademark and other proprietary notices contained on or in the Software or the Documentation, and Licensee will reproduce all such notices on all copies permitted to be made by Licensee under this Agreement. Apryse may utilize all ideas, suggestions, feedback, improvements data, reports or the like that Licensee provides to Apryse or otherwise makes with respect to the Software or the Services without any obligation to Licensee. To the extent that Licensee has or otherwise obtains any intellectual property rights in and to the Software or Services or any future enhancement or modification thereto or any part thereof, by operation of law or otherwise, Licensee hereby disclaims such rights, assigns and transfers such rights exclusively to Apryse, and agrees to provide reasonable assistance to Apryse, to give effect to such assignment and to protect, enforce and maintain such rights. Licensee shall not remove any of Apryse’s or its licensor’s copyright and other proprietary notices contained on or in the Software, Services, Documentation or any other materials delivered to Licensee, and Licensee will reproduce all such notices on all copies permitted to be made by Licensee under this Agreement.
9. **CONFIDENTIAL INFORMATION.** “Confidential Information” means (a) the Software, the Documentation and any business or technical nonpublic information of Apryse, including without limitation, License keys provided to Licensee by Apryse; (b) any other information of Apryse that is specifically designated by Apryse as confidential or proprietary; and (c) the terms and conditions of this Agreement. Confidential Information shall not include information that (i) is in or enters the public domain without breach of this Agreement through no fault of Licensee; (ii) Licensee were demonstrably in possession of prior to first receiving it from Apryse without obligation of restrictions; (iii) Licensee can demonstrate was developed by Licensee independently and without use of or reference to the Apryse’s Confidential Information; or (iv) Licensee receive from a third party without restriction on disclosure and without breach of a nondisclosure obligation. Licensee shall maintain the Confidential Information in strict confidence during the Term and, until such time as the Confidential Information enters the public domain pursuant to items (i) through (iv) above. Licensee shall exercise no less than reasonable care with respect to the handling and protection of such Confidential Information. Licensee shall use the Confidential Information only during the Term and as expressly permitted herein and shall disclose such Confidential Information only to Licensee’s employees as is reasonably required in connection with the exercise of Licensee’s rights and obligations under this Agreement (so long as those employees are subject to binding use and disclosure restrictions at least as protective as those set forth herein).

10. **WARRANTIES AND DISCLAIMERS.**

10.1 **By Apryse.** Apryse warrants that, for a period of ninety (90) days from initial delivery of the Software to Licensee, the Software will, when properly installed and used in accordance with the Documentation, perform substantially in accordance with the specifications for the Software as described in the applicable Documentation. As Licensee’s exclusive remedy and Apryse’s sole obligation for breach of this warranty, Apryse shall use commercially reasonable efforts to correct any reproducible error in the Software constituting a breach of the warranty at no additional charge. Apryse does not warrant that Licensee’s use of the Software will be error-free, virus-free or uninterrupted. Apryse makes no other warranty, express or implied, with respect to any Services or Software provided by Apryse under this Agreement. **APRYSE HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS AND OTHER TERMS, WHETHER STATUTORY, ARISING FROM COURSE OF DEALING, OR OTHERWISE, INCLUDING WITHOUT LIMITATION TERMS AS TO QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT.**

10.2 **ASP Licensee and ISV Licensee Warranties.** For ASP Licenses and ISV Licenses, Licensee represents and warrants that neither this Agreement (or any term hereof) nor the performance of or exercise of rights under this Agreement, is restricted by, contrary to, in conflict with, ineffective under, requires registration or approval or tax withholding under, or affects Apryse’s proprietary rights (or the duration thereof) under, or will require any termination payment or compulsory licensing under, any law or regulation of any organization, country, group of countries or political or governmental entity located within or including all or a portion of the territories where Licensee sells the ASP Bundled Offering or ISV Bundled Offering to Customers. Licensee will not make or publish any representations, warranties, or guarantees on behalf of Apryse or its suppliers concerning the Products that are inconsistent with any warranties made by Apryse to its end users concerning the Products without Apryse’s specific prior written approval.

11. **INFRINGEMENT.**

11.1 **By Apryse.** Apryse agrees to defend Licensee from and against any third party claims alleging that the Software or Documentation as furnished to Licensee and used within the scope of this Agreement infringes any U.S. patent issued as of the Effective Date, or any copyright, trademark or a misappropriation of any trade secret of such third party and Apryse will pay all final judgments awarded or settlements entered into on such claims. The foregoing indemnity obligation shall not extend to any claims of infringement arising out of or related to (i) a modification of the Software or Documentation by anyone other than Apryse or its duly authorized agent; (ii) the incorporation into the Software or Documentation of any information provided by or requested by Licensee; (iii) a combination of the Software with any third party software or equipment not specified in the Documentation and where such combination is the cause of such infringement; or (iv) the use of a version of the Software other than the then-current version if the infringement would have been avoided by using the then-current version. In the event the Software or Documentation are held or are believed by Apryse to infringe, Apryse may, at its sole option and expense, elect to (a) modify the Software or Documentation so that they are non-infringing; (b) replace the Software with non-infringing Software which are functionally equivalent; (c) obtain a License for Licensee to continue to use the Software as provided hereunder; or if none of (a), (b), or (c) is commercially reasonable, then (d) terminate the License for the infringing Software or Documentation and refund the License fees paid for that Software or Documentation, prorated over a five (5) year term from the Effective Date. This Section 11.1 states Apryse’s entire liability and Licensee’s sole and exclusive remedy for any infringement of third-party proprietary rights of any kind.

11.2 **By Licensee.** Except for claims covered by Section 11.1, Licensee agree to indemnify and defend Apryse from and against all third-party claims arising out of or related to this Agreement (including Licensee’s use of the Software) or by Licensee’s negligence, willful misconduct or breach of the terms of this Agreement.

11.3 **Indemnification Procedure.** The party seeking indemnification must (a) give prompt notice of the claim to the other party; (b) grant sole control of the defense or settlement of the claim or action to the other party; and (c) provide reasonable cooperation to the other party and, at the other party’s request and expense, assistance in the defense or settlement of the claim.

12. **LIMITATION ON LIABILITY.** NEITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, SUFFERED BY THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTIONS OR OTHER ECONOMIC LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY USE OF OR FAILURE TO BE ABLE TO USE THE
SOFTWARE OR SERVICES. APRYSE SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATED TO (i) TRANSACTIONS PERFORMED USING THE SOFTWARE OR SERVICES; OR (ii) MODIFICATIONS TO THE SOFTWARE OR SERVICES BY LICENSEE, WHETHER SUFFERED BY LICENSEE OR ANY THIRD PARTY. APRYSE’S TOTAL AGGREGATE LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE FEES PAID BY LICENSEE HEREUNDER FOR THE SOFTWARE OR SERVICE THAT IS THE SUBJECT OF THE ACTION. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT. LICENSEE ACKNOWLEDGE THAT APRYSE’S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED IN THIS SECTION WILL APPLY REGARDLESS OF WHETHER ANY LIMITED OR EXCLUSIVE REMEDY SPECIFIED IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY TO LIABILITY ARISING FROM ANY BREACH OF SECTIONS 1, 2, 3, OR 7 AND ANY OBLIGATIONS UNDER SECTION 11.


13.1 Publicity. Aplyse may, in its reasonable discretion, contact any Customer at any time for any purpose related to such Customer’s use of the ASP Bundled Offering or ISV Bundled Offering, as applicable. Aplyse may, and Licensee shall ensure that Aplyse has the rights necessary, to use the name and logo of any Customers in connection with promoting the Aplyse products and services.

13.2 Notices. All notices required under this Agreement shall be (a) in writing, (b) deemed to have been duly made and received when (i) personally served, (ii) delivered by commercially established courier service, or (iii) ten (10) days after deposit in mail via certified mail, return receipt requested, to the addresses specified in the Order or at such other address as the parties shall designate in writing from time to time, and, (c) for notices to Aplyse, marked “Attention: Contracts Department”.

13.3 Export Control. The Software may be subject to United States export control regulations. Licensee shall obtain at Licensee’s expense all necessary licenses, permits and regulatory approvals required by any and all governmental authorities and agencies having jurisdiction over the export and re-export of software and technical data in accordance with all applicable regulations of the Office of Export Administration of the U.S. Department of Commerce and the U.S. Treasury Department Office of Foreign Asset Control.

13.4 U.S. Government End Users. For any Software or Documentation licensed directly or indirectly on behalf of a unit or agency of the United States Government, this provision applies. The Software and Documentation: (a) was developed at private expense and are in all respects the proprietary information of Aplyse; (b) were not developed with government funds; (c) are a trade secret of Aplyse for all purposes of the Freedom of Information Act; (d) are commercial items and thus, pursuant to Section 12.212 of the Federal Acquisition Regulations (FAR) and DFAR Supplement Section 227.7202, Government’s use, duplication or disclosure of the Software or Documentation is subject to the restrictions set forth by Aplyse.

13.5 Dispute Resolution. Any unresolved disputes between the parties relating to or arising from this Agreement shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “AAA Rules”) before a single neutral and competent arbitrator selected in accordance with the AAA Rules. Such arbitration shall be held in Denver, Colorado and conducted in the English language. The cost and expense of arbitration shall be shared equally by the parties to the arbitration and each party will bear its own attorney fees, regardless of which party prevails. The arbitration shall be conducted in accordance with the following time schedule unless otherwise mutually agreed to in writing by the parties: (i) no later than thirty (30) days after the appointment of the arbitrator, the arbitrator shall schedule a hearing on the dispute and (ii) within thirty (30) business days after the date of the hearing referenced in clause (i), the arbitrator shall render a decision. The decision or award of the arbitrator shall be final and binding upon the parties, and to the same extent and to the same degree as if the matter had been adjudicated by a court of competent jurisdiction and shall be enforceable under the Federal Arbitration Act. However, the parties agree that any breach of a party’s confidentiality obligations and the license grant and restrictions set forth in this Agreement will result in irreparable injury to the other party for which there is no adequate remedy at law. Therefore, in the event of any breach or threatened breach of such obligations, the nonbreaching party will be entitled to seek equitable relief in addition to its other available legal remedies without submitting such matter to arbitration. Each party hereby irrevocably submits to the exclusive jurisdiction and venue of the state and federal courts located in Denver, Colorado for any action seeking injunctive relief hereunder.

13.6 Integration and Modification. This Agreement sets forth the entire agreement between the parties and supersedes any and all prior proposals, agreements or communications, written or oral, of the parties with respect to the subject matter hereof. This Agreement sets forth the general terms and conditions applicable to all Services provided by Aplyse to Licensee under the specific terms and conditions set forth in the applicable order, renewal notice, or quotation provided by Aplyse, if any. The provision and receipt of Services are expressly conditioned on the acceptance of the terms in this Agreement. No other terms apply. No terms and conditions proposed by either party shall be binding on the other party unless accepted in writing by both parties, and each party hereby objects to and rejects all terms and conditions not so accepted. This Agreement may not be modified, altered or amended, except by written instrument duly executed by both parties.

13.7 Miscellaneous. No failure or delay by either party in exercising any right hereunder will operate as a waiver thereof. If Licensee wishes to assign or otherwise transfer this Agreement to anyone, Licensee must obtain Aplyse’s prior written consent, which consent shall not be unreasonably withheld. This Agreement will be binding on the parties, their successors and permitted assigns. This Agreement will be construed under the laws of the State of Colorado, without regard to its conflicts of law principles. Except as required by Section 13.4 above, any action or lawsuit related to this Agreement must be brought exclusively in either the federal or state courts.
located in the City and County of Denver, Colorado and each party hereby irrevocably submits and waives any objection to the exclusive jurisdiction and forum of such courts. The parties hereby disclaim the application of the 1980 U.N. Convention on Contracts for the International Sale of Goods. The English language version of this Agreement shall be controlling in the interpretation or application of the terms of this Agreement. If any provision of this Agreement is, for any reason, held invalid or illegal in any respect by an arbitrator or a court of competent jurisdiction, such inability or illegality shall not affect the validity of this Agreement itself and there shall be substituted for the affected provision, a valid and enforceable provision which most closely approximates the intent and economic effect of the invalid provision. If such provision cannot be amended so as to be valid and enforceable, then such provision is severable from this Agreement, and the remaining provisions of this Agreement shall remain valid and enforceable. If any legal action is brought to enforce the terms and conditions of this Agreement, the prevailing party will be entitled to recover its attorneys’ fees, court costs, and other collection expenses, from the non-prevailing party in addition to any other relief it may be awarded.

Effective February 8, 2023