

## **STANDARD SHADOWBASE TERMS AND CONDITIONS AGREEMENT**

1. **LICENSE.** Gravic, Inc., a Pennsylvania corporation with offices at 17 General Warren Blvd., Malvern, PA 19355-1245 USA (“Gravic”) grants to the licensee of certain Gravic software products (“Licensee”) and Licensee accepts a non-exclusive, non-transferable (subject to Section 15) license (“License”) to use each such software product provided by Gravic and the related user manuals (“Documentation”, and collectively with the software, "Product") to operate solely on the systems and in the locations designated by Licensee in writing to Gravic (“Designated Systems”), in accordance with the terms and conditions of this Agreement. The License is solely for use on the Designated Systems for the indicated purposes only. Licensee may transfer the License to a different system of the same processing type (different system serial number) and purpose, upon prior written notice to Gravic and payment to Gravic of 10% of the total first year charges established by Gravic. Licensee may transfer the License to a different system of a higher processing type or purpose, upon prior written notice to Gravic and payment to Gravic of the difference between the list price of the higher system type or purpose, less the amount previously paid for the lower system type or purpose. All Products shall be provided by Gravic in machine readable form, on computer readable media or in such other tangible form as Licensee may reasonably request. The Licensee is deemed to have accepted each Product (“Acceptance”) thirty (30) days after the date the Product is received by Licensee, unless the Product does not operate in substantial conformance with the Documentation or the Product does not substantially operate in Licensee’s computer environment and Licensee notifies Gravic of the alleged deficiencies in reasonable detail by certified mail delivered to Gravic within such thirty-day period. Upon timely notice of non-Acceptance, Gravic (or its Designated Distributor) shall promptly refund the License fee paid by Licensee for such Product.

2. **PERMITTED USES.** Licensee may:

- A. Use the Products on Licensee's Designated Systems for which license and support fees have been paid to Gravic or an Gravic designated distributor (“Designated Distributor”).
- B. Use the Product to process its own data only.
- C. Use the Product in the ordinary course of Licensee's own business.
- D. Make a reasonable number of backup copies of the Product (for Licensee's own protection) that include Gravic 's copyright notice.

3. **PROHIBITIONS.** Licensee may not, and may not permit any third party to:

- A. Create or recreate the source code for the Product, or re-engineer, reverse engineer, decompile, reverse compile, or disassemble the Product.
- B. Modify, adapt, translate or create derivative works based upon the Product, or, combine or merge any part of the Product with or into any other software or documentation, provided Licensee shall not be precluded from creating user exits for use with the Product.
- C. Refer to or otherwise use any Gravic Proprietary Information (as defined in Section 11) as part of any effort to develop a program having any functional attributes, visual expressions or other features to compete with or be similar to the Products.
- D. Remove, erase, or tamper with any copyright, trademark, or other proprietary notice printed or stamped on, affixed to, or encoded or recorded on any Product or in any Gravic Proprietary Information, or fail to preserve all copyright and other proprietary notices in any copy of any Product or Gravic Proprietary Information.

- E. Sell, market, license, sublicense, distribute, copy or otherwise grant or make available to any person, including without limitation any outsourcer, vendor, consultant or partner, any right to use the Product or any other Gravic Proprietary Information, in whole or in part.
- F. Use the Product to operate a service bureau.
- G. Disclose the results of benchmark tests or other evaluation of the Product or any other information relating to the Product to any third party without the express prior written approval of Gravic.

4. **TERM.** The initial term of the License for each Product shall commence upon the date of the original delivery of the Product to Licensee. Licensee or Gravic may terminate any License for a Product by providing written notice to the other party at least thirty (30) days prior to the intended termination date. Upon termination of a License for a Product, the Licensee shall cease using the Product and return all copies of the Product under such License, accompanied by a letter certifying the de-installation from the Designated System signed by an officer of Licensee. Gravic may terminate a License or this Agreement as provided in Section 8. Notwithstanding any termination of this Agreement, the provisions of Sections 3, 4, 6, 7, 9, 10, 11, 13, 14, 18 and 19 and any accrued payment obligations of Licensee shall continue in full force and effect.

5. **MAINTENANCE/SUPPORT.** This Agreement may include maintenance and support (“M&S”) as defined below for each Product if elected by Licensee and agreed to by Gravic. For each Product, M&S will be provided at Gravic’s then current standard rates, and will be invoiced sixty (60) days in advance and Gravic will continue to provide M&S as long as such invoices are paid within 30 days after receipt. M&S includes: any new releases of the Product; any routine enhancements for the Product; off-site support (telephone, fax, email) 9:00 a.m.–5:00 p.m. Eastern United States Time Monday through Friday excluding national holidays (24-hour support is available if Licensee requests such support and pays the proper uplift charge); any Product program fixes; and technical documentation including Product documentation update service for the original manual. All new releases, enhancements, fixes and documentation shall be promptly provided to Licensee after their release. If Licensee chooses to not migrate to a new Product release, Gravic will support the current version of the Product as long as the computer and database vendors (e.g. Hewlett Packard and Oracle) supports the version of the operating system and database to which the release is tied. During the above specified coverage hours, Gravic shall, by telephone, facsimile, or email as set forth in Gravic’s Maintenance/Support Response Policy (available at <http://www.gravic.com/shadowbase/SupportPolicy.html>), use reasonable commercial efforts to answer questions or solve problems relating to the Product. When calling to report a problem, Licensee shall describe the symptoms of the problem and reasonably categorize the problem into one of the four problem classes as defined in the Maintenance/Support Response Policy. Licensee shall provide Gravic reasonable assistance to demonstrate and diagnose the problem. Upon receiving such notice, Gravic shall acknowledge receipt and use reasonable commercial efforts to respond to Licensee within the respective response times and to promptly begin performing corrective maintenance at the respective severity level. If Licensee requests on-site support or design consultation, such services may be provided by Gravic under a separate written agreement on such terms and conditions as may be agreed by the parties.

6. **PAYMENTS.** Licensee shall pay Gravic (or its Designated Distributor) as set forth in the applicable Shadowbase proposal or quote. All fees shall be invoiced by Gravic and shall be due thirty (30) days after receipt thereof. Gravic reserves the exclusive right to change its Designated Distributor upon notice to Licensee.

7. **TAXES AND DUTIES.** There shall be added to any charges under this Agreement amounts equal to any tariff, duties and/or sales or use tax, or any tax in lieu thereof imposed either presently or in the future, which additional amount will be paid by Licensee. Licensee shall not be responsible for any tax based on Gravic's net income.

8. **DEFAULT.** Gravic may terminate this Agreement in the event of any default by Licensee under this Agreement, including without limitation Licensee's failure to pay any amount within thirty (30) days after written notice to Licensee that the same is delinquent; if any distress, execution, or attachment is levied or attempted on the License or any Product; if Licensee shall be insolvent, shall initiate, or shall have instituted against Licensee and shall have not dismissed or stayed within 30 days thereafter, bankruptcy, receivership or similar creditor proceedings; or upon the failure of Licensee to fulfill any of the other terms or conditions of this Agreement which failure continues thirty (30) days after written notice of such failure is received by Licensee.

9. **TITLE.** Gravic retains sole and exclusive title, ownership, copyright, patent, and proprietary right to the Products and its Proprietary Information, and Licensee agrees not to contest Gravic's rights therein. Except for the License granted to Licensee on the express terms and conditions of this Agreement, Gravic retains all, and Licensee does not obtain any, right, title and interest in the Products and Gravic Proprietary Information.

10. **LIMITED WARRANTIES, LIABILITY.** Gravic represents and warrants for a period of one year after Acceptance: a) the Product when delivered and installed will operate substantially as specified in the Documentation for the Product; and b) any service rendered by Gravic will be performed in a professional manner by qualified personnel. This limited warranty is void in the event of any Licensee modification of the Product, unauthorized use of the Product, or violation by Licensee of this Agreement. Gravic will use reasonable commercial efforts to repair or replace any Product or re-perform any service not fulfilling the above warranties, or at its option, refund the price paid for such Product or service. These are Licensee's exclusive remedies. **GRAVIC WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, IRRESPECTIVE OF WHETHER GRAVIC HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE BASIS FOR THE ACTION. GRAVIC DOES NOT WARRANT THAT THE FUNCTIONALITY CONTAINED IN OR THE PERFORMANCE OF THE PRODUCT WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE.** Gravic's liability for damages, regardless of the form of the action, will be confined to direct damages and will in no event exceed the amounts paid by Licensee hereunder for license of the Product (limited to the unamortized portion of the License fee, amortized over a 60 month period, or six months of Licensee payments, whichever is less) or for the service (limited to six months of M&S, if applicable) giving rise to such damages. **GRAVIC MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. THE FOREGOING WARRANTIES BY GRAVIC ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

11. **PROPRIETARY INFORMATION.** Licensee agrees that the information provided by Gravic (including without limitation the Products, user manual, sample reports, run time instructions, executable code, report source, etc.), and Gravic agrees that the information provided by Licensee, whether or not protected by patent or copyright, which is identified and labeled by the disclosing party as being proprietary ("Proprietary Information"), shall be treated by the receiving party as being proprietary and shall not be disclosed to any third party or used by the receiving party except as

expressly authorized by this Agreement without the prior written consent of a duly authorized representative of the disclosing party. The receiving party agrees that the disclosing party shall be entitled to preliminary and permanent injunctive and equitable relief, without the necessity of posting bonds, and reimbursement of its attorney, court and related costs, to prevent any unauthorized disclosure or use of information, threatened or actual. The obligations in this Section do not apply to information which (i) is or becomes generally available to the public other than as a result of a disclosure by the receiving party; (ii) was available to the receiving party on a non-confidential basis prior to its disclosure; or (iii) is obtained from a third party by the receiving party in good faith without knowledge of any breach of a secrecy agreement, unless and until Licensee has actual knowledge of the confidential nature of such information. Licensee acknowledges that each Product contains valuable trade secrets of Gravic and has been developed by Gravic through the expenditure of substantial time, effort, and money.

**12. PATENTS AND COPYRIGHTS.** Gravic agrees to indemnify, defend and hold harmless Licensee from and against all damages, settlement amounts, costs, expenses and fees (including reasonable attorneys' fees) paid by Licensee to a third party arising out of any claim, suit, or proceeding brought against Licensee alleging that the Products infringe upon any United States patent, copyright, trademark, or service mark, provided Licensee promptly notifies Gravic in writing of any such claim, such claim is not based on other software, hardware or Licensee modifications of the Product, and Licensee allows Gravic to defend any such claim, provided further Gravic reserves the right at its sole option to modify a Product (but retaining its basic functionality) to make it non-infringing, to obtain a license for the Product's continued use, to substitute a functionally similar or alternative product, or to cancel this Agreement and return to Licensee the unamortized portion of the License fee, amortized over a 60 month period, or six months of Licensee payments, whichever is less.

**13. U.S. GOVERNMENT RESTRICTED RIGHTS.** The Product is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c) (1)(ii) of The Rights in Technical Data and Computer Software clause at DFARS 52.227-7013 or subparagraphs (c) (1) and (2) of the Commercial Computer Software – Restricted Rights at 58 CFR 52.227-19, as applicable. Contractor/manufacturer is Gravic, Inc., 17 General Warren Blvd., Malvern, PA 19355-1245 USA.

**14. EXPORT RESTRICTIONS.** Licensee agrees that it will not export or re-export the Product, the Gravic Proprietary Information, any part thereof, or any process or service that is the direct product thereof (the foregoing collectively referred to the "Restricted Components") to any country, person, entity, or end user subject to U.S. export restrictions. Licensee specifically agrees not to export or re-export any of the Restricted Components (i) to any country which the U.S. has embargoed or restricted the export of goods or services, or to any national of any such country, wherever located, who intends to transmit or transport the Restricted Components back to such country; (ii) to any end user who Licensee knows or has reason to know will utilize the Restricted Components in the design, development, or production of nuclear, chemical, or biological weapons; or (iii) to any end user who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. Government. Licensee warrants and represents that neither the BXA nor any other U.S. federal agency has suspended, revoked, or denied its export privileges.

**15. ASSIGNMENT.** Licensee may not assign this Agreement or any rights or obligations hereunder without the prior written consent of Gravic, provided that Gravic will not unreasonably withhold or delay its consent to an assignment of this Agreement to a wholly-owned subsidiary of Licensee or to any entity which acquires (through merger or otherwise) all or substantially all of the stock (which

shall be deemed an assignment for purposes of this Section) or assets of Licensee, provided Gravic has received the written undertaking of the assignee to be bound by this Agreement and reasonable assurance that such assignee has the resources to undertake the obligations herein. Gravic may assign this Agreement or its rights or obligations hereunder by delivery of prior written notice to Licensee. This Agreement shall bind the permitted assigns or successors of a party.

16. **SEVERABILITY.** If any provision of this Agreement is invalid under any applicable law, it is to be modified to the minimum extent necessary to be deemed valid, or if that is not feasible, than to the minimum extent necessary will be deemed omitted. All other terms and conditions remain in effect.

17. **NON-WAIVER.** No delay or failure of either party in exercising any right hereunder and no partial or single exercise thereof shall be deemed of itself to constitute a waiver of such right or any other rights hereunder.

18. **APPLICABLE LAW.** This Agreement shall be construed and governed by the internal laws of the State of Pennsylvania excluding its provisions on conflicts of laws. The parties consent to the exclusive jurisdiction of the federal and state courts located in Pennsylvania, provided Gravic shall be entitled to enforce its proprietary rights or any judgment under this Agreement in any other applicable jurisdiction.

19. **NOTICES.** All notices required or permitted by this Agreement shall be in writing and shall be sent by certified mail or by reputable overnight delivery service.

20. **FORCE MAJEURE.** A party will not incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement, other than payment obligations, if such delay or failure is caused by events, occurrences, or causes beyond the control and without negligence of such party. Such events, occurrences or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquakes, fire and explosions.

21. **GENERAL.** This Agreement, the exhibits attached now or in the future hereto, and any prior confidentiality agreement between the parties contain the entire agreement between the parties with respect to the subject matter hereof, and may not be waived, altered or modified except by written agreement of the parties. Any terms and conditions contained in any Licensee purchase order or other document shall be inapplicable, unless expressly referred to in a writing signed by Gravic and incorporated by reference into this Agreement. In the event of a conflict between the terms of this Agreement and any exhibit prepared by Gravic and accepted by Licensee, the terms of the exhibit shall take precedence. No information otherwise supplied by Gravic or its Designated Distributors may be relied upon by Licensee. Section captions are inserted for convenience, but shall not be construed as part of this Agreement.

Version 20061121.1