BUSINESS APPLICATIONS PERFORMANCE CORPORATION
(BAPCo®)

LICENSE AGREEMENT FOR BAPCo BENCHMARK PRODUCT

This software (the "Software") includes an executable BAPCo benchmark program, accompanying documentation, and pruned application software provided by third party licensors (the "Application Vendors") for use only in connection with execution of the BAPCo benchmark program in compliance with this agreement.

Read the terms and conditions of this license agreement (this "Agreement") carefully before clicking to accept and agree to the terms of this Agreement and install or use the Software.

1. Authorized Acceptance. The individual accepting this Agreement on behalf of USER represents and warrantsto BAPCo that he or she is duly authorized to do so on behalf of USER, and that USER has entered into an agreement with BAPCo or an authorized BAPCo reseller for purchase of the license hereunder, specifying USER’s authorized License Level, based upon USER’s total global number of employees (including subsidiaries and affiliates), as follows:

<table>
<thead>
<tr>
<th>License Level</th>
<th>Global Number of Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small Business</td>
<td>Up to 50</td>
</tr>
<tr>
<td>Medium Business</td>
<td>51-250</td>
</tr>
<tr>
<td>Corporate</td>
<td>251-1000</td>
</tr>
<tr>
<td>Enterprise &amp; Publish</td>
<td>Unlimited</td>
</tr>
</tbody>
</table>

2. BAPCo Intellectual Property.

(a) BAPCo owns all trademarks and rights to trade names which includes the mark “BAPCo.” All other brand and product names of pruned application software included in the Software are trademarks of the applicable Application Vendors.

(b) Subject only to the limited license granted herein and the rights of the Application Vendors in the pruned application software, the Software and all performance measurement results generated by executing it (“Benchmark Results”), whether by USER or any third party, are the intellectual property of BAPCo, to and of which BAPCo retains the sole and exclusive copyright and rights of use, duplication, disclosure and publication.

(c) In any publication of Benchmark Results authorized hereunder, USER shall acknowledge BAPCo’s ownership thereof with a legend as follows: “BAPCo® & [applicable BAPCo product name] are registered trademarks of Business Applications Performance Corporation. Benchmark Results are subject to BAPCo copyright and publication thereof is subject to compliance with BAPCo’s Benchmarking Rules.”

3. License Grant. On the terms, and subject to the conditions, limitations and restrictions set forth herein, BAPCo licenses and authorizes USER (i) to duplicate, install and execute the Software for the limited purpose of measuring the performance of industry-standard computer hardware platforms, and (ii) to use, duplicate, disclose and publish resulting Benchmark Results. This license is non-exclusive, non-sublicensable and non-transferable. BAPCo retains the right to terminate this license and authority immediately upon notice to USER at its discretion, without refund of the purchase price, on the basis of reasonable evidence that USER, including any of USER’s personnel, agents or representatives, has breached any of such conditions or restrictions or permitted or facilitated any third party in doing so.

4. Authorized Duplication of Software. USER is authorized to duplicate the Software only for its own internal use consistent with Section 3 and the applicable License Level as follows:
(a) USER may install and simultaneously execute a total number of copies of the Software consistent with USER’s License Level on computer workstations of personnel of USER and its wholly- (but not less than wholly-) owned subsidiary entities, and across USER’s internal local- or wide-area network, but only for use on the business premises of USER and its wholly-owned subsidiaries.

(b) USER may make one backup copy of the Software for USER’s archival use, exact and complete without modification or merger with any other software (an unlimited number of such backup copies, in the case of an Enterprise & Publish License).

USER shall take reasonable precautions to prevent its personnel from otherwise using, duplicating, installing or releasing the Software or any portion thereof or permitting any third party to do so.

5. Restrictions on Use of Software. USER shall not: (i) modify, translate, reverse engineer, decompile, disassemble, create derivative works based on, or duplicate or copy the Software or any portion thereof, other than as provided in Section 4; (ii) sublicense, loan, rent, transfer or grant any rights in the Software to any third party; (iii) remove any proprietary notices, labels or marks in or on the Software; or (iv) use the Software for any purpose other than as authorized in Section 3.

6. Restrictions on Release of Benchmark Results. USER is authorized to use, duplicate, disclose and publish Benchmark Results resulting from authorized execution of the Software only as follows:

(a) Internally on a confidential, need-to-know basis for product development, testing and improvement, including without limitation competitive analysis; and

(b) Publication in compliance with the Benchmarking Rules for the applicable product, posted at: https://BAPCo.com/compliance.

The Benchmarking Rules are incorporated fully herein by this reference, and require generation of a Full Disclosure Report (FDR), which USER shall be obligated to submit to BAPCo upon request, in connection with each and every publication of Benchmark Results. Private sale or disclosure of Benchmark Results to any third party without compliance with either the Benchmarking Rules or other specific written authorization of BAPCo, whether or not under conditions of non-disclosure, is not authorized and constitutes a breach of this Agreement, which BAPCo shall be entitled to treat as cause for termination under Section 3. The Benchmarking Rules also prohibit, among other things, reporting or publishing of (i) partial Benchmark Results, or (ii) results which have been generated by execution of the Software on modified platforms (unless the modification is noted in the applicable FDR).

7. Term. This Agreement and the license granted hereunder take effect upon acceptance and USER’s downloading or installation of the Software, and continue in effect until terminated, effective upon the earlier to occur of: (a) BAPCo’s written notification to USER that it has reasonable evidence that USER, including any of USER’s personnel, agents or representatives, has breached any of the conditions or restrictions set forth in Sections 5 or 6 or has permitted or facilitated any third party in doing so; (b) thirty (30) days after BAPCo gives USER written notice of USER’S breach or default of any other provision of this Agreement, which USER has not cured prior to the expiration of the thirty (30) day notice period; (c) BAPCo making available to USER, without charge, of a replacement release of the Software, subject to USER’s acceptance of the license agreement governing use of the replacement release; or (d) USER’s rejection of the Software and destruction or permanent removal of all copies thereof from all platforms of USER. USER shall in any case destroy or permanently remove all such copies from all of USER’S platforms immediately upon such termination. All provisions of this Agreement other than such license nevertheless shall survive any termination.

8. Indemnity. USER shall indemnify and hold BAPCo and the Application Vendors harmless from any claims, expenses or liabilities caused by USER’s use of the Software and any publication or use by USER of Benchmark Results or any other data arising from its use of the Software.

9. Notice of Infringement Claims. If USER receives any notice or claim of infringement, USER immediately shall communicate such notice to BAPCo via electronic mail to: support@BAPCo.com.
10. Disclaimer of Warranties; Limitation of Liability.

   (a) **USER accepts the Software “as is.”** BAPCo and the Application Vendors disclaim and exclude all warranties whatsoever, express or implied, relating to the sale, use or performance of the Software, including, without limitation, any warranty of non-infringement, merchantability or fitness for a particular use or purpose; and disclaim all other liability with respect to the Software, including without limitation any liability for infringement of intellectual property rights or negligence.

   (b) **IN NO EVENT WILL BAPCo OR ANY APPLICATION VENDOR BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING THE SALE, USE OR PERFORMANCE OF THE SOFTWARE, EVEN IF BAPCo SHALL HAVE KNOWLEDGE OF THE POSSIBILITY OF SUCH POTENTIAL. BAPCo’S TOTAL LIABILITY FOR ANY REASON SHALL NOT IN ANY CASE EXCEED THE AMOUNT OF THE PURCHASE PRICE RECEIVED BY BAPCo FOR THE SOFTWARE.**

   (c) **BAPCo disclaims any assurance that any Benchmark Results generated by the Software will reflect USER’s system values, preferences or priorities although BAPCo has strived to make the Software a relevant and impartial measure for comparing general system performance and/or battery life on widely used business applications.**

11. Resale and Export Restrictions. USER shall not sell, resell, transfer, assign, lease, sublicense or convey this Agreement or any rights hereunder or the Software or Benchmark Results or any right to use them (provided that USER’s rights hereunder may transfer by operation of law in the case of acquisition of USER and all or substantially all of USER’s business assets). USER shall not in any case export or re-export the Software except in compliance with all applicable U.S. laws and regulations, including without limitation the U.S. Export Administration Regulations, 15 C.F.R. § 730 et seq., and the regulations promulgated by the U.S. Department of Treasury Office of Foreign Assets Control, the U.S. Department of Commerce Bureau of Industry and Security, and the U.S. Department of State Directorate of Defense Trade Controls.

12. No Waiver. The failure of a party to take action to enforce a right hereunder shall not be deemed a waiver by that party as to the subsequent enforcement of that right or any other rights hereunder.

13. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of California. If any term of this Agreement is declared void or not enforceable by any competent court of jurisdiction, all other terms shall remain in effect.

14. Integrated Agreement. This Agreement represents the entire agreement between USER and BAPCo concerning the Software and all Benchmark Results. It supersedes and excludes any prior proposal, representation or understanding between the parties concerning the subject matters it addresses.