

**POWERTECH  
DSATools™  
SOFTWARE LICENSE AGREEMENT**

This Agreement is made as of \_\_\_\_\_, 20\_\_\_\_\_ (the “**Effective Date**”) between **Powertech Labs Inc.**, a corporation under the laws of British Columbia, Canada (“**Powertech**”), and \_\_\_\_\_ (“**Customer**”), a \_\_\_\_\_ under the laws of \_\_\_\_\_.

Powertech is a testing and research laboratory located in British Columbia, Canada, and offers software and services for the management of utility generation, transmission and distribution power systems.

Under this Agreement, Powertech will grant to Customer a license to use the DSATools™ Software modules specified in the Order Document, and will perform certain related support services, if applicable, all as more particularly described in this Agreement.

This Agreement consists of this signature form, the attached, the attached General Terms, and the attached Order Document (Annex A) and Support Services Schedule (Annex B).

To confirm their agreement to the terms of this Agreement, Customer and Powertech have signed this Agreement as of the Effective Date.

\_\_\_\_\_  
Per:  
  
\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
I/We have authority to bind Customer.

**POWERTECH LABS INC.**  
Per:  
  
\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Director, Power Systems  
I/We have authority to bind Powertech.

# GENERAL TERMS

## ARTICLE 1 DEFINITIONS

### 1.1 Defined Terms

When used in this Agreement, the following terms shall have the following meanings unless the context otherwise requires:

“**Affiliate**” when used to indicate a relationship with a specified person, means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified person, and a person shall be deemed to be controlled by another person if controlled in any manner whatsoever that results in control in fact by that other person (or that other person and any person or persons with whom that other person is acting jointly or in concert), whether directly or indirectly, and whether through the ownership of shares or other securities, a trust, a contract or otherwise.

“**Agreement**” means this Agreement, including the signature page (if agreement is verified by signature; if agreement is verified by online acceptance of terms, this agreement will be valid without a signature page), Order Document, General Terms, Support Services Schedule and any other attachments, as it may from time to time be supplemented or amended.

“**Applicable Laws**” means, in respect of any person, property, transaction or event, all applicable Canadian, US or foreign federal, provincial, state, municipal or local government laws, statutes, rules, by-laws and regulations, and all applicable official rules, policies, notices, directives, orders, judgments and decrees of governmental authorities, all as amended from time to time.

“**Application Type**” means, in relation to any Licensed Software product, the Application Type for that Licensed Software specified in the Order Document. Application Types are discussed in section 2.3, and include an On-line License and an Off-line License.

“**Confidential Information**” has the meaning specified in section 5.1.

“**Content**” means software (including machine images), data, text, audio, video, images or other content that may be accessible through the Licensed Software.

“**Customer**” means the entity purchasing the Software License, as specified in the Order Document.

“**Derivative Work**” means, in relation to Licensed Software, a revision, modification, translation, abridgement, condensation or expansion of the Licensed Software, or the creation of any other form in which such Licensed Software may be recast, transferred or adapted, which if prepared without the consent of Powertech would constitute copyright infringement. Embedding the Licensed Software in whole or in part into any other computer program shall be deemed to be a Derivative Work.

“**Effective Date**” has the meaning specified on the signature page of this Agreement, unless agreement is verified by way of online acceptance, in which case the Effective Date shall mean the date of such acceptance.

“**including**” means “including, without limitation”, and is not intended to be limiting.

“**License Type**” means, in relation to any Licensed Software product, the License Type for that Licensed Software specified in the Order Document. License Types are discussed in section 2.2.

“**License Seat**” means a softkey license seat used to manage the use of Licensed Software by Customer. A License Seat enables a user in Customer’s organization to use the Licensed Software. The number of concurrent users of the software shall be limited by the number of purchased License Seats. Without a License Seat to activate the Licensed Software, the Licensed Software will not run. License Seats may be “fixed”, where the License Seat is activated directly onto the computer that will be using the Licensed Software, or “floating”, where the License Seats are managed over a network by a license server.

“**License Seat Fee**” means the fee payable for each License Seat that exceeds the number of License Seats included with the software purchase. The number of License Seats included with the software purchase is specified in the Order Document. The License Seat Fee is specified in the Proposal.

“**Licensed Software**” means the executable code version of the Powertech computer programs specified in the Order Document, and any related License Seats. The Licensed Software shall also include any new releases, updates, revisions, modifications, additions, corrections and fixes of the Licensed Software that Customer receives as part of the Support Services, if applicable. From and after the Effective Date, “Licensed Software” shall also include, and this Agreement shall also apply to, any prior versions of the Licensed Software licensed by Customer and shall supersede any prior agreement for such Licensed Software. For greater certainty, this Agreement does not grant Customer the right to any new releases, updates, revisions, modifications, additions, corrections and fixes of the Licensed Software unless provided by Powertech as part of the Support Services.

“**Order Document**” means the Order Document attached to this Agreement as Annex A.

“**Powertech**” means Powertech Labs Inc.

“**Proposal**” means the Proposal/Quotation referenced in the Order Document.

“**Single User License**” means a license permitting the Licensed Software to be installed on one or more computers provided that it can be used by only a single user at a time, and not permitting additional License Seats for the same Licensed Software to be added, with or without fees.

“**Support Fees**” means the fees payable by Customer for Support Services during any Support Services Term as specified in the Proposal.

“**Software License Term**” means the term beginning on the Software License Effective Date specified in the Order Document and continuing: (a) in perpetuity if so specified in the Order Document; or (b) to and including the Software License Termination Date if so specified in the Order Document, in each case unless terminated at an earlier date in accordance with the terms of this Agreement.

“**Support Services**” means the support services described in the Support Services Schedule.

“**Support Services Initial Term**” means the term beginning on the Support Effective Date specified in the Order Document and continuing to and including the Initial Support Termination Date specified in the Order Document, unless terminated at an earlier date in accordance with the terms of this Agreement.

“**Support Services Renewal Term**” has the meaning provided in the Support Services Schedule.

“**Support Services Term**” means any Support Services Initial Term and any Support Services Renewal Terms.

“**User Manual(s)**” means the user manual(s) for the Licensed Software and any other technical documentation for the Licensed Software that is provided from time to time by Powertech to Customer, as each may be amended or supplemented from time to time by Powertech. The user manual and such other technical documentation may be provided online, or within the Licensed Software, or in separate paper or electronic form.

## **ARTICLE 2 THE LICENSED SOFTWARE**

### **2.1 Customer Rights to Use the Licensed Software**

Powertech grants solely to Customer, as an end user, a personal, non-transferable, non-sublicensable and non-exclusive license to use the Licensed Software during the Software License Term, subject to the terms and conditions in this Agreement, including the limitations on use as prescribed based on the License Type or as Specified in Article 3. Powertech reserves all other rights.

## 2.2 License Types

Different License Types are available from Powertech, although not all License Types are available for each specific Licensed Software product. The applicable License Type is identified in the Order Document.

- (a) *Consulting License.* A Software License which entitles the Customer, subject to the terms of this Agreement, to install and use the Licensed Software for its own internal use and benefit and to provide consulting services to external clients. Customer can add additional License Seats for the Licensed Software under this license provided that (1) Customer is a current subscriber for Support Services, (2) the total number of added License Seats does not exceed the limit specified in the Order Document, and (3) Customer pays a fee specified in the Proposal or negotiated between the parties.
- (b) *Development License.* A Software License which entitles the Customer, subject to the terms of this Agreement, to install and use the Licensed Software solely to develop interfaces that will permit the integration of the Licensed Software with the products and services of Customer. The permitted number of License Seats are specified in the Order Document. Customer can add additional License Seats for the Licensed Software under this license provided that (1) Customer is a current subscriber for Support Services, (2) the total number of added License Seats does not exceed the limit specified in the Order Document, and (3) Customer pays a fee specified in the Proposal or negotiated between the parties.
- (c) *Enterprise License.* A Software License which entitles the Customer, subject to the terms of this Agreement, to install and use the Licensed Software for its own internal purposes. An Enterprise License comes with the number of License Seats specified in the Order Document. Customer can add an unlimited number of License Seats for the Licensed Software under this Agreement at the price specified in the Proposal or negotiated between the parties.
- (d) *Internal Use (Commercial) License.* A Software License which entitles the Customer, subject to the terms of this Agreement, to install and use the Licensed Software for its own internal use. Customer can add additional License Seats for the Licensed Software under this license provided that (1) Customer is a current subscriber for Support Services, (2) the total number of added License Seats does not exceed the limit specified in the Order Document, and (3) Customer pays a fee specified in the Proposal or negotiated between the parties.
- (e) *Internal Use (Educational) License.* A Software License which entitles the Customer, subject to the terms of this Agreement, to install and use the Licensed Software for its own non-profit research and educational purposes only. An Education License comes with the number of License Seats specified in the Order Document. Only direct employees of Customer and students registered at Customer's educational institution may use the Licensed Software. Contractors and consultants hired by Customer are not permitted to use the Licensed Software. Unless Customer has the prior written approval of Powertech, Customer is not permitted to use the Licensed Software to provide consulting services or data analysis to any external client, with or without compensation. Customer can add additional License Seats for the Licensed Software under this license provided that (1) Customer is a current subscriber for Support Services, (2) the total number of added License Seats does not exceed the limit specified in the Order Document, and (3) Customer pays a fee specified in the Proposal or negotiated between the parties.
- (f) *Training License.* A Software License which entitles the Customer, subject to the terms of this Agreement, to install and use the Licensed Software solely to provide training to Customer's personnel. The permitted number of License Seats are specified in the Order Document. Customer can add additional License Seats for the Licensed Software under this license provided that (1) Customer is a current subscriber for Support Services, (2) the total number of added License Seats does not exceed the limit specified in the Order Document, and (3) Customer pays a fee specified in the Proposal or negotiated between the parties.
- (g) *Trial or Demonstration License.* A Single-User License authorizing the Customer, subject to the terms of this Agreement, to install and use one copy of the Licensed Software (protected by a License Seat) for evaluation purposes only and with the sole objective of examining and assessing

the functions and performance of the Licensed Software. With this type of Software License, the Customer shall not use the Licensed Software to conduct any actual studies or investigations for Customer or any third party. The results of the evaluation shall not be disclosed to any third party without the prior review and approval by Powertech.

### 2.3 Application Types

Each Licensed Software product is either an On-line License or an Off-line License. The applicable Application Type is identified in the Order Document.

- (a) *On-line License.* For an “On-line License”, Customer is authorized to use the Licensed Software to connect to a data source that is generated automatically by another tool such as a state estimator in an Energy Management System (EMS), Wide Area Measurement System (WAMS), power market system, Dispatcher Training Simulator (DTS), or other similar system. All computation, analysis, and result visualization tasks in such applications are automated without the requirement of human intervention.
- (b) *Off-line License.* For an “Off-line License”, Customer is not authorized to use the Licensed Software to connect to a data source as described for the On-line License. Instead, Customer uses existing data prepared in computer systems. All or part of the data preparation/connection, analysis, or result visualization requires human intervention.

### 2.4 License Restrictions

The license granted under this Agreement is subject to the following restrictions:

- (a) *Internal Use Only.* Customer shall use the Licensed Software only for its own internal use and benefit, and shall not use the Licensed Software to provide for-profit consulting services, data analysis services or any other services related to the Licensed Software to any external client or Affiliate. Notwithstanding the foregoing, if the License Type is a “Consulting License”, then Customer is authorized to use the Licensed Software to provide for-profit consulting services to external clients and Affiliates.
- (b) *Personnel.* Customer may permit personnel to use the Licensed Software as follows: (i) individuals who are direct employees of Customer; (ii) individuals who are direct employees of contractors or consultants hired by Customer and who are using the Licensed Software on computers owned by Customer; and (iii) other individuals only with prior written consent of Powertech and upon payment of an additional license fee. Customer assumes responsibility for all acts of its employees and the employees of its contractors and consultants, and others to whom they have provided access to the Licensed Software, as if all such acts were acts by Customer.
- (c) *No Third Party Access or Use.* Customer shall not permit any third party to access or use the Licensed Software (including without limitation, via the Internet).
- (d) *Softkey License Seats.* Limitations on the use of Licensed Software are managed by Powertech through the use of License Seats. Customer acknowledges that this management by Powertech is reasonable and necessary in respect of the Licensed Software.

### 2.5 User Manual

Powertech grants to Customer the right to use the User Manual and to make a reasonable number of copies of the User Manual, for use in connection with Customer’s use of the Licensed Software. Powertech reserves all other rights.

## 2.6 Support Services

Provided that Customer has paid all required fees for the Support Services, Powertech will provide the Support Services, as described in Annex B, to Customer during the Support Services Term. For greater certainty, Powertech has no obligation to provide any of the Support Services described in the Support Services Schedule unless Customer has elected to receive such Support Services and has paid all required fees for such Support Services.

## ARTICLE 3 ADDITIONAL TERMS

### 3.1 Compliance with Applicable Laws

Powertech shall comply with all Applicable Laws that are generally applicable to the licensing of software and the provision of support services. However, Powertech is not responsible for compliance with any Applicable Laws or other requirements or standards that are specifically applicable to Customer or Customer's industry, including any security, cyber security or other requirements or standards imposed by the US Federal Energy Regulatory Commission, the North American Electric Reliability Corporation, or any other governmental authority or agent of any such other governmental authority (collectively the "**Industry Requirements**"). It is the responsibility of Customer to determine whether the use of the Licensed Software by Customer and its end-users complies with the Industry Requirements and Applicable Laws, and to comply with all Applicable Laws that are applicable to its use of Licensed Software.

### 3.2 Acceptable Use

- (a) Customer may use the Licensed Software only in accordance with this Agreement.
- (b) Customer may not reverse engineer, decompile, disassemble, or work around technical limitations in the Licensed Software or attempt to determine the underlying algorithms used by the Licensed Software, except to the extent Applicable Laws permit such actions despite these limitations.
- (c) Customer shall not prepare or have prepared Derivative Works based upon the Licensed Software and Customer shall not use any such Derivative Works without Powertech's prior written approval.
- (d) Customer may not, without prior written approval from Powertech, license, sublicense, rent, lease, lend, resell, transfer, disclose, host or offer as a service the Licensed Software or any Derivative Works, or any portion thereof, to or for third parties. Customer may not use the Licensed Software for software-as-a-service, timesharing, facilities management, outsourcing, hosting, service bureau use, or otherwise to provide data processing services to third parties.
- (e) Customer shall not make any copies of the Licensed Software, except a reasonable number of archival back-up copies. On all such copies, Customer shall reproduce all copyright, trademark and other proprietary rights notices in the Licensed Software. Customer shall not remove any copyright, trademark or other proprietary rights notices in the Licensed Software or the User Manual.
- (f) Customer and its end-users must not use the Licensed Software: (i) in any way prohibited by Applicable Laws; (ii) to violate the rights of others; (iii) to try to gain unauthorized access to or disrupt any service, device, data, account or network; (iv) to spam or distribute malware; (v) in a way that could harm the Licensed Software or impair anyone else's use of it; or (vi) in any application or situation where failure of the Licensed Software could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage.
- (g) Any Off-Line Licensed Software is designed to allow Customer to access Customer data on an occasional intermittent basis for use in building cases for power system studies, and is not designed for continuous real-time coordination or management of the generation, transmission or distribution of electricity. Accordingly, Customer acknowledges and agrees that it shall not use Off-line

Licensed Software for the real-time coordination or management of the generation, transmission or distribution of electricity.

### **3.3 Third Party Software and Content**

- (a) For certain Licensed Software, Customer must acquire a license to third party software in order to use the Licensed Software. Any such requirements are specified in the User Manual.
- (b) For certain Licensed Software, Powertech has embedded certain run time or other elements provided by third party suppliers to Powertech (“**Third Party Components**”). Any such Third Party Components are specified in the User Manual. For certain Licensed Software, the Third Party Components may be comprised of or may include open source software components, as specified in the User Manual. Third Party Components are licensed to Customer pursuant to this Agreement, and are deemed to be part of the Licensed Software. Customer may only access Third Party Components of the Licensed Software in the course of using the Licensed Software. Customer may not make or attempt any direct access to any such Third Party Components other than with the Licensed Software. Customer agrees that such third party suppliers are intended third party beneficiaries of all terms and conditions of this Agreement intended to protect intellectual property rights in the Licensed Software and limit certain uses thereof.
- (c) For certain Licensed Software, Powertech may also deliver certain third party software programs that Customer licenses directly from the third party supplier on and subject to the third party’s terms and conditions (“**Third Party Software**”). Any such Third Party Software is specified in the User Manual. For certain Licensed Software, the Third Party Software may be comprised of or may include open source software, as specified in the User Manual. All Third Party Software is provided by the licensor of the Third Party Software and solely under such third party’s terms and conditions and not by Powertech. Third Party Software is not licensed to Customer pursuant to this Agreement, and is deemed not to be part of the Licensed Software.
- (d) Certain other Content provided by third parties may be made available to Customer as part of the Licensed Software under separate terms and conditions. For information, please see the User Manual.

### **3.4 Audits**

- (a) Customer shall keep records of the location, model and serial number of all machines on which the Licensed Software is installed or from which the Licensed Software is accessed and the names of all users that are accessing the Licensed Software, and shall provide those records to Powertech upon request. Customer shall implement a reasonable process to ensure that Customer’s use of the Licensed Software does not exceed the use permitted under this Agreement. Customer shall take all necessary steps to destroy or erase all Licensed Software before disposing of any media containing the Licensed Software. Customer shall promptly provide written notice to Powertech if Customer’s use of the Licensed Software exceeds the use permitted under this Agreement.
- (b) Upon Powertech’s reasonable request, but not more frequently than annually without reasonable cause, Customer shall provide Powertech with a statement signed by a senior officer of Customer, confirming that Customer is in compliance with its obligations under this Agreement and confirming that Customer’s use of the Licensed Software does not exceed the use permitted under this Agreement.
- (c) Upon Powertech’s reasonable request, but not more frequently than annually without reasonable cause, Customer shall permit Powertech to audit the use of the Licensed Software at such times as may be mutually agreed upon. If Customer’s usage exceeds the use permitted under this Agreement, then, without prejudice to any other rights or remedies Powertech may have, Customer shall pay Powertech the then current license fee and Support Fees charged by Powertech for the use of the additional License Seats.

**ARTICLE 4  
FEES, EXPENSES AND TAXES**

**4.1 Fees**

- (a) For the use of the Licensed Software during the Software License Term, Customer shall pay to Powertech the fee specified in the Proposal.
- (b) For the User Support Services during the Initial Support Services Term, Customer shall pay to Powertech the fee specified in the Proposal.
- (c) For User Support Services during the Support Services Renewal Term, Customer shall pay to Powertech the fee agreed to by the Parties with respect thereto.
- (d) All fees are payable as specified in the Proposal, unless otherwise agreed.

**4.2 Invoices**

Powertech will invoice Customer, and invoices will be payable, as specified in the Proposal, unless otherwise agreed.

**4.3 Interest**

If Customer fails to make any payment when due under this Agreement, then, unless prohibited by Applicable Laws, Customer shall pay to Powertech interest on such amount from the due date until the date of payment at a rate of interest equal to the lesser of: (a) 1.0% per month (equivalent to 12.68% per annum); or (b) the maximum rate permitted under Applicable Laws.

**4.4 Taxes**

Prices are exclusive of any taxes. Customer shall pay any applicable value added, goods and services, sales, or like taxes that are owed with respect to this Agreement and which Powertech is permitted to collect from Customer under Applicable Laws. Customer will be responsible for any taxes that Customer is legally obligated to pay. Powertech will be responsible for all taxes based on Powertech's net income or on Powertech's property ownership. If any taxes are required to be withheld on payments Customer makes to Powertech, then Customer may deduct such taxes from the amount owed to Powertech and pay them to the appropriate taxing authority; provided, however, that Customer promptly secures and delivers an official receipt for those withholdings and provides such other documents as Powertech may reasonably request to claim a foreign tax credit or refund. Customer shall ensure that any taxes withheld are minimized to the extent possible under Applicable Laws.

**4.5 Payments Non-Refundable**

All payments by Customer under this Agreement are non-refundable.

**ARTICLE 5  
CONFIDENTIALITY**

**5.1 Definitions**

In this Article 5, the following terms shall have the following meanings:

“**Confidential Information**” means all information, written or oral, provided or disclosed by either party, directly or indirectly, to other party, or which the other party learns or obtains verbally, through observation or through analyses, interpretations, studies or evaluations of such information, and whether provided, disclosed, learned or obtained before or after the Effective Date, including all customer, financial, operating, technical and other information and materials concerning the party or its customers, businesses, properties,



assets or prospects. The Confidential Information of Powertech includes the Licensed Software and its source code, object code and documentation, the algorithms used by the Licensed Software, and the User Manual.

“**Representatives**” means, with respect to either party, the designated representatives of that party and its directors, officers, employees, financial, legal and accounting advisors and other agents who need to know the Confidential Information of the other party for the purposes specified in this Agreement.

## **5.2 Permitted Use**

Neither party shall make any use of any Confidential Information of the other party, except in accordance with the terms of this Agreement. Each party shall use the Confidential Information of the other party only for the purpose of performing its obligations and enforcing its rights under this Agreement and, in the case of Customer, enjoying the benefit of the Services.

## **5.3 Non-Disclosure and Confidentiality**

Each party shall retain in strictest confidence all Confidential Information of the other party. A party may disclose Confidential Information of the other party only to those of its Representatives who have a reasonable need to know that Confidential Information for the purpose of this Agreement. Any disclosure or misuse of Confidential Information by any Representative of a party shall be deemed to be disclosure or misuse by such party, and such party shall be liable for any such disclosure or misuse as if such party had so disclosed or misused the Confidential Information. Each party shall provide at least the same level of protection to the Confidential Information of the other party as it affords to its own proprietary information.

## **5.4 Disclosure Required by Applicable Laws**

If a party is requested pursuant to, or is required by, Applicable Laws to disclose any Confidential Information of the other party, then the party shall, unless prohibited by Applicable Laws, promptly notify the other party in writing, so that appropriate remedies may be taken or compliance with the terms of this Agreement be waived. In such case, the party shall disclose only that portion of the Confidential Information of the other party that is legally required to be disclosed and shall exercise all reasonable efforts to obtain reliable assurances that confidential treatment shall be accorded the disclosed Confidential Information of the other party. Such disclosure shall not alter, limit or abrogate the party’s continuing obligations of confidentiality with respect to such disclosed Confidential Information. Nothing in this Article 5 shall require either party to violate any Applicable Laws.

## **5.5 Excluded Information**

The restrictions in this Agreement on the use and disclosure by a party of Confidential Information of the other party shall not apply to those portions of Confidential Information that constitute: (a) information that is or becomes generally available to the public; (b) information that was available to such party on a non-confidential basis prior to its disclosure to such party; (c) information that becomes available to such party on a non-confidential basis from a third party, provided that such source is not to the knowledge of the receiving party bound by a confidentiality agreement with the other party; and (d) information that is independently developed by such party without reference to any Confidential Information of the other party.

## **5.6 Return or Destruction of Confidential Information**

On the expiry of the Software License Term or the earlier termination of this Agreement, each party shall return or destroy all counterparts of the Confidential Information of the other party which are in printed, CD or other hard copy format, and shall use all commercially reasonable efforts to delete or destroy all electronic counterparts of such Confidential Information of the other party. If requested by the other party, a senior officer of the party shall certify in writing to the other party that it has fully complied with its obligations under this section 5.6. Notwithstanding any other provision of this Agreement, each party may retain copies of the Confidential Information of the other party if and to the extent such retention is required under Applicable Laws.

## 5.7 Injunctive Relief

Each party acknowledges that irreparable harm may result if it breaches its obligations under this Article 5. Each party acknowledges that such a breach would not be properly compensable by an award of damages and that, in addition to any other available remedies, the other party shall be entitled to seek injunctive relief to prevent the misuse, threatened misuse, disclosure or threatened disclosure of its Confidential Information.

## ARTICLE 6 LIMITED WARRANTY, INDEMNITIES, AND LIMITATION OF LIABILITY

### 6.1 Limited Warranty

Powertech warrants that, for a period of 90 days from delivery to Customer, the Licensed Software will operate substantially in accordance with the functionality described in the User Manual. In the event that the Licensed Software fails to conform to this warranty during such period, the sole right of Customer, and the sole responsibility of Powertech in respect thereof, shall be for Powertech to exercise commercially reasonable efforts to cause the Licensed Software to conform to the warranty within a commercially reasonable time after receipt by Powertech of a written notice from Customer identifying any such failure to so conform. If Powertech reasonably determines that such remedy is not economically or technically feasible, Customer shall be entitled to a full refund of the fees paid by Customer with respect to that particular Licensed Software and Customer's license to use such Licensed Software will terminate. This limited warranty does not cover problems caused by accident, abuse or use of the Licensed Software in a manner inconsistent with this Agreement or the User Manual, or resulting from events beyond Powertech's reasonable control. This warranty does not apply to Trial Licenses, Development Licenses or Training Licenses. Powertech does not warrant that the availability of the Licensed Software will be uninterrupted or error free at all times and in all circumstances. Powertech warrants that the Support Services will be provided with reasonable care. In the event that any of the Support Services fails to conform to this warranty, the sole right of Customer, and the sole responsibility of Powertech in respect thereof, shall be for Powertech to exercise commercially reasonable efforts to reperform such Support Services, as applicable, so as to cause them to conform to the warranty within a commercially reasonable time after receipt by Powertech from Customer of a written notice identifying any such failure to so conform. Powertech warrants that it will use current commercially available virus scanning software to attempt to ensure that the Licensed Software is free from known viruses, detectable by that virus scanning software, prior to delivery. Powertech does not otherwise warrant that the Licensed Software is free of viruses. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THERE ARE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED OR STATUTORY, WITH RESPECT TO THE LICENSED SOFTWARE OR THE SERVICES, AND POWERTECH SPECIFICALLY DISCLAIMS AND CUSTOMER HEREBY WAIVES ALL OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING ANY IMPLIED OR STATUTORY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

### 6.2 Indemnity by Powertech for IP Infringement Claims

Powertech will defend, indemnify, and hold harmless Customer and its Affiliates, and each of their respective employees, officers, directors, and representatives, from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable legal fees) arising out of or relating to any third party claims brought against Customer which allege an infringement of a Canadian or US patent, copyright or trade secret resulting from the use of the Licensed Software by Customer ("**IP Infringement Claims**"), on the condition that:

- (a) Customer promptly notifies Powertech in writing within 30 days of Customer's first knowledge of an IP Infringement Claim; provided however that this provision shall only excuse the obligations of Powertech hereunder to the extent that Powertech suffers actual prejudice as a result;
- (b) Customer agrees to allow Powertech to fully control any litigation and settlement of such IP Infringement Claim; provided however that Customer may (at its own cost) appoint its own counsel to monitor any such litigation and settlement proceedings to the extent that the same relate to or might affect Customer;

- (c) Customer shall not knowingly do or omit to do anything in relation to an infringement or alleged infringement which could increase any IP Infringement Claim;
- (d) Customer shall at the request of Powertech provide to Powertech all reasonable assistance for the purpose of investigating or contesting any IP Infringement Claim; and
- (e) Customer shall not make any admissions which may be prejudicial to the defense or settlement of any IP Infringement Claim.

If, in Powertech's reasonable opinion, the Licensed Software is likely to become the subject of an IP Infringement Claim, then Powertech may, at its option and its expense and without limiting its indemnification obligations hereunder, take any one or more of the following actions: (i) procure for Customer the right to continue using the Licensed Software; (ii) replace the Licensed Software with non-infringing software acceptable to Customer, acting reasonably; or (iii) modify the Licensed Software to be non-infringing (in a manner that is acceptable to Customer, acting reasonably).

If Customer is enjoined from using the Licensed Software as a result of an IP Infringement Claim and such injunction is not dissolved within 30 days, or if Customer is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed a Canadian or US patent, copyright or trade secret in its use of the Licensed Software, then Powertech shall, at its expense and without limiting its indemnification obligations hereunder, take any one or more of the following actions: (i) procure for Customer the right to continue using the Licensed Software; (ii) replace the Licensed Software with non-infringing services acceptable to Customer, acting reasonably; or (iii) modify the Licensed Software to be non-infringing (in a manner that is acceptable to Customer, acting reasonably). If the foregoing options are not commercially reasonable in the opinion of Powertech, acting reasonably, then Powertech may terminate Customer's license in the Licensed Software. In such event, Powertech will provide Customer with written notice and will pay to Customer a pro-rata portion of the license fees calculated amortizing such license fees over a ten year period beginning on the Effective Date.

### **6.3 Indemnity by Customer for Third Party Claims**

Customer will defend, indemnify, and hold harmless Powertech, its Affiliates and licensors, and each of their respective employees, officers, directors, and representatives, from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable legal fees) arising out of or relating to any third party claim concerning: (i) the use of the Licensed Software by Customer or its end-users; or (ii) the breach of this Agreement or violation of Applicable Laws by Customer or its end-users; (each, a "**Third Party Claim**"), on the condition that:

- (a) Powertech promptly notifies Customer in writing within 30 days of Powertech's first knowledge of a Third Party Claim; provided however that this provision shall only excuse the obligations of Customer hereunder to the extent that Customer suffers actual prejudice as a result;
- (b) Powertech agrees to allow Customer to fully control any litigation and settlement of such Third Party Claim; provided however that Powertech may (at its own cost) appoint its own counsel to monitor any such litigation and settlement proceedings to the extent that the same relate to or might affect Powertech;
- (c) Powertech shall not knowingly do or omit to do anything in relation to an infringement or alleged infringement which could increase any Third Party Claim;
- (d) Powertech shall at the request of Customer provide to Customer all reasonable assistance for the purpose of investigating or contesting any Third Party Claim; and
- (e) Powertech shall not make any admissions which may be prejudicial to the defense or settlement of any Third Party Claim.

#### **6.4 Certain Exclusions**

EXCEPT AS OTHERWISE PROVIDED IN SECTION 6.6, IN NO EVENT WILL POWERTECH OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS, OR CUSTOMER, BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (A) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, PROFIT OR GOODWILL; (B) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (C) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (D) CLAIMS OF THIRD PARTIES; OR (E) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, AGGRAVATED, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

#### **6.5 Limitation of Liability**

EXCEPT AS OTHERWISE PROVIDED IN SECTION 6.6, IN NO EVENT WILL (A) THE COLLECTIVE AGGREGATE LIABILITY OF POWERTECH AND ITS LICENSORS, SERVICE PROVIDERS AND SUPPLIERS, OR (B) THE COLLECTIVE AGGREGATE LIABILITY OF CUSTOMER, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED AN AMOUNT EQUAL TO THE AGGREGATE OF THE AMOUNTS PAID OR PAYABLE BY CUSTOMER TO POWERTECH UNDER THIS AGREEMENT DURING THE CALENDAR YEAR IN WHICH THE CLAIMS AROSE. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

#### **6.6 Exceptions**

The exclusions and limitations in sections 6.4 and 6.5 do not apply to Powertech's obligations under section 6.2, to Customer's obligations under section 6.3, or to Customer liability for an infringement of the intellectual property rights of Powertech.

### **ARTICLE 7 TERM AND TERMINATION**

#### **7.1 Software License Term**

This Agreement will apply from the Effective Date, and will continue until the earlier of: (a) the expiry of the Software License Term; or (b) the termination of this Agreement in accordance its terms.

#### **7.2 Termination by Customer**

In addition to all other rights available at law or under this Agreement, Customer may immediately terminate this Agreement by notice in writing to Powertech if Powertech has breached any material provision of this Agreement, and such breach is not remedied by Powertech within 30 days of notice in writing from Customer.

#### **7.3 Termination by Powertech**

In addition to all other rights available at law or under this Agreement, Powertech may immediately terminate this Agreement by notice in writing to Customer if Customer has breached any material provision of this Agreement, and such breach is not remedied by Customer within 30 days of notice in writing from Powertech.

#### **7.4 Effect of Termination**

- (a) On the termination of this Agreement, Customer shall immediately cease using the Licensed Software, User Manual and any other related documentation. Within 30 days of such termination, Customer shall return or destroy all counterparts of the Licensed Software, User Manual and any other related documentation, all License Seats and Dongles, and all Powertech Confidential Information then in its possession which are in printed, CD, USB data storage, on-line cloud storage, downloaded data, or other hard copy format, and shall use all commercially reasonable efforts to delete or destroy all electronic counterparts of the same. If requested by Powertech, a senior officer of Customer shall certify in writing to Powertech that it has fully complied with its obligations under this section 7.4(a).
- (b) On the termination of this Agreement, each of the parties shall remain liable for all financial and other obligations arising under this Agreement which may have accrued prior to such termination. The express rights of termination in this Agreement are in addition to, and shall in no way limit, any rights or remedies Customer or Powertech may have under this Agreement, at law or in equity.

#### **7.5 Suspension**

Powertech may suspend the Services or Customer's rights to use of the Licensed Software if:

- (a) Customer does not pay any undisputed amounts that are due under this Agreement, and if such amounts are not less than 90 business days in arrears; or
- (b) Customer is in breach of its other obligations under this Agreement.

If one or more of these conditions occurs, then Powertech may suspend the Services or Customer's use of the Licensed Software. A suspension will be in effect only while the condition or need exists. Powertech will give notice before Powertech suspends, except where Powertech reasonably believes Powertech needs to suspend immediately. Powertech will give at least 30 days' notice before suspending for non-payment. If Customer does not fully address the reasons for the suspension within 60 days after Powertech so suspends, then Powertech may terminate this Agreement.

#### **7.6 Survival**

For greater certainty, the following provisions of this Agreement shall survive the termination or expiry of this Agreement: sections 3.1, 3.2(e) and 3.5, Articles 4, 5 and 6, section 7.4, and Article 8, as well as those sections that by their nature are intended to survive the termination or expiry of this Agreement.

### **ARTICLE 8 GENERAL**

#### **8.1 Notices**

All notices, requests, demands, claims, and other material communications under this Agreement shall be in writing, and shall be deemed duly given when delivered, personally or by courier, in each case addressed to the intended recipient as follows:

If to Customer: At the address indicated in the Order Document.

If to Powertech: Powertech Labs Inc.  
12388 88<sup>th</sup> Avenue  
Surrey, British Columbia

Attention: Director, Software Technology

Either party may change its address for notice from time to time by notice given in accordance with this section.

## **8.2 Subcontractors**

Powertech may engage subcontractors to perform some or all of the Services. Powertech shall be responsible and liable for all acts and failures to act by a subcontractor, as if those acts or failures to act had been acts or failures to act by Powertech itself.

## **8.3 Assignment**

Neither party may assign its interest in this Agreement without the prior written consent of the other party.

## **8.4 Interpretation**

Unless otherwise indicated in this Agreement, all dollar amounts referred to in this Agreement are in the currency of the United States of America. The parties agree that this Agreement was drafted with the participation of both parties, and shall not be construed either against or in favour of either party.

## **8.5 Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter of this Agreement. There are no warranties, conditions, or representations and there are no agreements in connection with such subject matter, except as specifically set forth or referred to in this Agreement.

## **8.6 No Transfer of Ownership**

Powertech does not transfer any ownership rights in any Licensed Software.

## **8.7 Remainder Not Affected by Invalidity**

If any term or provision of this Agreement is determined to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. On such determination that any term or provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement shall be consummated as originally intended to the greatest extent possible.

## **8.8 Waiver**

A waiver of any term or breach of this Agreement is effective only if it is in writing and signed by, or on behalf of, the waiving party. No omission, delay or failure to exercise any right or power, or any waiver by either party of any breach or default, whether expressed or implied, or any failure to insist on strict compliance with any provision of this Agreement, shall constitute a waiver of any other provision. Any waiver of any provision of this Agreement shall not constitute a continuing waiver unless otherwise expressly provided.

## **8.9 Remedies Not Exclusive**

Except as otherwise specified in this Agreement, the remedies set forth in this Agreement are cumulative, and are in addition to all the rights and remedies available to Powertech or Customer, as the case may be, under law, equity or otherwise. Nothing contained in this Agreement shall limit any other remedies which either party may have as a result of the default of the other party under this Agreement, and the parties agree that remedies for breach of this Agreement may be in equity by way of injunctive relief or specific performance, as well as for damages and any other relief available, whether in law or in equity.

**8.10 Recovery of Legal Costs**

Each party shall be entitled to be reimbursed by the other party for all reasonable costs and expenses (including reasonable legal fees and disbursements) in its successful prosecution or defense of any breach or alleged breach of a provision of this Agreement.

**8.11 Independent Contractors**

The parties to this Agreement are independent contractors, and not agents, partners, joint venturers or employees of one another. Nothing in this Agreement shall make or be construed to make Powertech and Customer partners or agents of each other or to create any other relationship by which the acts of either party may bind the other or result in any liability to the other. Nothing in this Agreement shall prevent Powertech and its Affiliates from providing similar services to other customers.

**8.12 Force Majeure**

Neither party shall be liable for damages caused by delay or failure to perform its obligations under this Agreement where such delay or failure is caused by an event beyond its reasonable control, such as, without limitation, fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber-terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of the Licensed Software or the Services). This provision does not apply to any of Customer's obligations to make payments under this Agreement.

**8.13 Publicity**

Each party shall obtain the other party's prior written consent before making any public communication related to this Agreement, the Licensed Software or the Services. Notwithstanding the foregoing, Powertech may cite the provision of the Licensed Software and the performance of the Services to its customers and prospective customers as an indication of Powertech's experience.

**8.14 Export Jurisdiction**

The Licensed Software may be subject to U.S. and Canadian export jurisdiction. Customer shall comply with all Applicable Laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S., Canadian and other governments.

**8.15 Arbitration**

All disputes arising out of or in connection with this Agreement, or in respect of any defined legal relationship associated therewith or derived therefrom, shall be referred to and finally resolved by arbitration before a single arbitrator under the International Commercial Arbitration Rules of Procedure of the British Columbia International Commercial Arbitration Centre (unless Customer is a Canadian organization, in which case the applicable rules will be the "Domestic Commercial Arbitration Rules of Procedure"). The appointing authority shall be the British Columbia International Commercial Arbitration Centre. The case shall be administered by the British Columbia International Commercial Arbitration Centre in accordance with its rules. The place of arbitration shall be Vancouver, British Columbia, Canada.

**8.16 Governing Law**

This Agreement shall be governed by the laws of the Province of British Columbia and the federal laws of Canada applicable therein. Subject to section 8.15, the parties consent to the exclusive jurisdiction of the courts sitting in the City of Vancouver in the Province of British Columbia for any legal action instituted by either party with respect to any dispute arising under or in connection with this Agreement.

**8.17 Amendment**

This Agreement may not be amended except by a written amending agreement executed by duly authorized officers of both parties.

**8.18 Counterparts**

This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument. Signature pages exchanged by electronic means shall be binding on the executing parties to the same extent as the original executed pages.

**ANNEX A - ORDER DOCUMENT**

1. **Customer Name:**

2. **Customer Address:**

3. **Customer Contact Person:**

**4. Licensed Software and Modules:**

Software

- PSAT
- VSAT
- TSAT
- SSAT
- DSA Manager

Add-on Modules

- Harmonics
- ePMU
- CDT
- SSR
- ST DSA Manager
- TRI

5. **Proposal/Quotation #**

**6. License Type, Application Type & Seats:**

**License Types for Off-Line Licenses**

- |   |                            |                                       |
|---|----------------------------|---------------------------------------|
| <input type="checkbox"/> Consulting                 | # of Seats Included: _____ | # of Added Seats Available: _____     |
| <input type="checkbox"/> Enterprise                 | # of Seats Included: _____ | # of Added Seats Available: Unlimited |
| <input type="checkbox"/> Internal Use (Commercial)  | # of Seats Included: _____ | # of Added Seats Available: _____     |
| <input type="checkbox"/> Internal Use (Educational) | # of Seats Included: _____ | # of Added Seats Available: _____     |
| <input type="checkbox"/> Training                   | # of Seats Included: _____ | # of Added Seats Available: _____     |
| <input type="checkbox"/> Trial/Demonstration        | # of Seats Included: _____ | # of Added Seats Available: _____     |

**License Types for On-Line Licenses**

- |  |                            |                                       |
|--|----------------------------|---------------------------------------|
| <input type="checkbox"/> Developer                 | # of Seats Included: _____ | # of Added Seats Available: _____     |
| <input type="checkbox"/> Enterprise                | # of Seats Included: _____ | # of Added Seats Available: Unlimited |
| <input type="checkbox"/> Internal Use (Commercial) | # of Seats Included: _____ | # of Added Seats Available: _____     |
| <input type="checkbox"/> Training                  | # of Seats Included: _____ | # of Added Seats Available: _____     |
| <input type="checkbox"/> Trial/Demonstration       | # of Seats Included: _____ | # of Added Seats Available: _____     |



**License Types for On & Off Line Licenses**

- Enterprise # of Seats Included: \_\_\_\_\_ # of Added Seats Available: Unlimited
- Internal Use (Commercial) # of Seats Included: \_\_\_\_\_ # of Added Seats Available: \_\_\_\_\_
- Training # of Seats Included: \_\_\_\_\_ # of Added Seats Available: \_\_\_\_\_
- Trial/Demonstration # of Seats Included: \_\_\_\_\_ # of Added Seats Available: \_\_\_\_\_

**7. Special Terms and Conditions:**

**8. Software License Term:**

**Start:**

The license for the Licensed Software starts on  (the “**Software License Effective Date**”).

**End:**

- The license for the Licensed Software is perpetual.
- The license for the Licensed Software ends on  (the “**Software License Termination Date**”).<sup>1</sup>

**9. Support Services:**

- The Support Services Initial Term will start on  (the “**Support Effective Date**”) until  (the “**Initial Support Termination Date**”).
- Support Services are not applicable.

**10. Powertech Address: 12388 88<sup>th</sup> Avenue, Surrey BC, V3W 7R7, Canada**

## ANNEX B

### SUPPORT SERVICES SCHEDULE

Provided that Customer has paid all required fees for the Support Services for the duration of the Software Services Initial Term or Software Services Renewal Term, as specified in the Order Document or as is otherwise applicable, Powertech will provide the following Support Services to Customer during the applicable Software Support Term.

#### 1. Support Fees and Support Hours

Customer shall be entitled to Support Services upon payment of Support Fees and for the duration of the Support Services Term, as both are specified in the Order Document. Support Fees for the Support Services Term or any Support Services Renewal Term are non-refundable.

Powertech will respond to all support inquiries in a timely manner during regular business hours (between 9:00 am and 5:00 pm Pacific Time, Monday to Friday, excluding statutory holidays in British Columbia, Canada).

Support Services are provided by email through the dedicated email address dsainfo@powertechlabs.com. Powertech may also elect, at its option, to provide user support by other methods, including telephone and Internet.

#### 2. Scope of the Support Services

The Support Services include:

- (a) general assistance with the use of the Licensed Software, including installation, results interpretation and troubleshooting;
- (b) minor updates and upgrades, including bug fixes and software upgrades for new versions of operating systems on which the Licensed Software is designed to operate;
- (c) software upgrades with enhanced features and functions;
- (d) investigation of possible defects in the Licensed Software pursuant to section 5;
- (e) License Seat and Dongle services pursuant to section 6;
- (f) sharing of common non-proprietary user-defined models and data that are developed without financial support from Customer; and
- (g) organization of user group meetings.

#### 3. Out of Scope Services

The following are not included in the Support Services:

- (a) support outside of regular business hours;
- (b) enhancements to the Licensed Software, including the addition of customized features and functionality;
- (c) model development;
- (d) technical consulting; and
- (e) training.

However, some of the above services may be arranged at the request of Customer for an additional fee based on Powertech's then current rates for such services.

#### **4. Target Response Times**

Powertech will use commercially reasonable efforts to respond to Customer support requests within the following service level targets (all times are Pacific Time; business days are Monday to Friday excluding statutory holidays in British Columbia, Canada):

- (a) For a support request received before noon on a business day (including any received in the preceding weekend or statutory holiday), Powertech will reply before the end of the business day, with either the solution or an acknowledgement of the receipt of the support request.
- (b) For a support request received in the afternoon of a business day, Powertech will reply before the end of the next business day, with either the solution or an acknowledgement of the receipt of the user support request.
- (c) Powertech's target resolution time for a support request is two business days. If an issue cannot be resolved within this time frame, then, within two business days, Powertech will provide its best estimate of the time required for resolution.
- (d) These service level targets do not apply during the period between Christmas and New Year's Day.
- (e) These service level targets do not apply to a Trial License, an Educational License, a Training License, or a Development License.

A failure by Powertech to achieve a target response time does not trigger any obligation to provide a service level credit.

#### **5. Correction of Reproducible Defects**

Customer may request that Powertech investigate possible defects in the Licensed Software. Powertech will use the following approach to respond to such requests:

- (a) Powertech will use commercially reasonable efforts, consistent with industry standards and subject to Customer's compliance with section 5(b), to respond to and investigate reported defects in the Licensed Software. Customer shall comply with the requirements specified in section 5(b), and send to Powertech all required information described in section 5(b) to enable Powertech to reproduce and correct the defect. If Powertech is able to reproduce the reported defect, then resolution may take the form of a written response, supplementary documentation, work-around, alternative data and models, a patch release of the Licensed Software, or other correctional aids. If Powertech is unable to reproduce the reported defect, then Powertech will so advise Customer. Powertech will have no obligation to remedy, or to attempt to remedy, any reported defect which Powertech is not able to reproduce, or any reported defect which is caused by Customer's modification of the Licensed Software or by use of the Licensed Software in a manner inconsistent with this Agreement or the User Manual.
- (b) When reporting a defect, Customer shall:
  - (i) ensure that its use of the Licensed Software is in accordance with the documentation;
  - (ii) use reasonable efforts to eliminate any hardware, operating system software, third party software, and application software deficiencies that might exist within the systems of Customer;
  - (iii) capture all relevant data and document all operating conditions and other operating information and fully supply Powertech's technical support representatives with requested diagnostic information necessary to reproduce the error; and
  - (iv) implement recommended remedial, corrective or work-around procedures and fully describe any limitations imposed by such remedial, corrective or work-around procedures.

## 6. License Seats

- (a) As part of the Support Services, Powertech will provide the following services relating to License Seats:
- (i) On the purchase of Licensed Software and on the purchase of additional License Seats for Licensed Software, Powertech will assist Customer to activate all License Seats.
  - (ii) At the request of Customer, Powertech will assist Customer to move a License Seat installed on one computer to another computer at no cost to Customer. Customer will provide to Powertech all information reasonably requested by Powertech for such move.
  - (iii) For a lost License Seat (for example, as a result of a decommissioned computer or stolen computer), Powertech will replace the lost License Seat with the same type of License Seat at no charge to Customer. A written statement from Customer claiming the loss of License Seat is required for this service. This service is available at no charge once only per calendar year, for one lost License Seat associated with any license for Customer. For each subsequent lost License Seat in the same calendar year, Customer shall pay Powertech's then current fees to provide a replacement License Seat.
  - (iv) For a License Seat that stops working, for example, as a result of an operating system upgrade, Powertech will replace the non-working License Seat with the same type of License Seat at no charge to Customer. Before such replacement, Customer must allow Powertech to deactivate the non-working License Seat.
  - (v) At the request of Customer, Powertech will exchange a Customer floating License Seat for a fixed License Seat, and vice versa, at no charge to Customer.
- (b) Depending on the License Type and the number of License Seats previously purchased, Customer may be permitted to license additional License Seats, up to the number specified in the Order Document:
- (c) Please contact Powertech (dsainfo@powertechlabs.com) if any of the above services are required, including License Seat price quotes.

## 7. Customer Responsibilities

Customer shall promptly provide to Powertech all such documents, information, instructions, approvals and other support, including access to Customer personnel, as Powertech may reasonably request for the purpose of performing the Services. Customer acknowledges and agrees that Powertech will have no liability for any failure to perform its obligations under this Agreement in a timely manner to the extent such failure is due to Customer not performing its obligations in a timely manner.

## 8. Renewal of Support Services

Unless Customer provides to Powertech a purchase order in an agreed amount for the renewal of the Support Services Term, Support Services shall no longer be available to the Customer upon expiry of the Support Services Term or of the Support Services Renewal Term, as applicable. Customer may designate the duration of the renewal or renewals (each a "**Support Services Renewal Term**"). Each renewal shall be on the same terms as this Agreement, except for the payment of fees. The fees payable for the Support Services during a Support Services Renewal Term shall be determined by Powertech, in its discretion, provided that in no event shall the fees for the Support Services for a Support Services Renewal Term be less than the fees payable for the Support Services for the prior year of the Support Services Term.

## 9. Lapse in Support Services Term

If at any time a Customer allows its Support Services Term to lapse, such Customer will cease to be entitled to any software upgrades, patches or fixes, however minor, and shall also cease to become entitled to receive any other

Support Services. If at any future time Customer wishes to reinstate Support Services it may only do so upon payment of any and all fees, as determined by Powertech in its sole discretion, that would have been payable as Support Fees from the end of the prior paid Support Services Term or Support Services Renewal Term, as applicable, to the date of the reinstatement.

**10. Other Terms**

Powertech is not obligated to provide Support Services if Customer is then in default under the terms of this Agreement.