

**重要须知** - 使用本软件之前，请仔细阅读本最终用户许可协议（以下简称“本协议”）。在同意接受本协议所有条款与条件的情况下，PARASOFT 公司（以下简称“Parasoft”）愿意向个人或公司（以下简称“您”）授予本软件许可。本协议是您与 PARASOFT 之间具有法律效力的协议。您一旦单击“接受”或“是”按钮、以其他电子方式表示同意，或安装本软件，即表示您同意接受本协议各项条款与条件。若您不同意这些条款与条件，请单击“我不接受”或“否”按钮，并不再使用本软件。

## 1.0 定义

- 1.1 **“免费版”** 指特定软件具有免费许可证的限制版本。在单台机器上您只能执行一个免费版的实例。您需要在安装时向 Parasoft 提供一个有效的电子邮件地址，并且该电子邮件地址不得被任何其他个人用于注册免费版。未经 Parasoft 事先书面批准，您不得转让免费版到另一台机器。您不得篡改或者试图绕过任何免费版的安装步骤，如果您这样做，Parasoft 将终止您对免费版的使用权。尽管本协议有其他规定，Parasoft (a) 对免费版不提供维保服务；(b) 对免费版不提供保修；(c) 对免费版不提供赔偿；和 (d) 对免费版不承担责任。
- 1.2 **“实例”** 指软件在一台机器上的一次初始化或一次运行。同一时间，禁止在同一台机器上使用本软件的多个实例。
- 1.3 **“许可证类型”** 指以下各项。
  - 1.3.1 **“自动化”** 许可证类型允许您通过命令行界面使用本软件以执行自动化流程。
  - 1.3.2 **“桌面”** 许可证类型允许您通过图形用户界面 (GUI) 使用本软件。桌面许可证适用于需要用户直接交互以运行本软件的个人计算环境。严禁将桌面许可证用于自动化或基于服务器的操作。
  - 1.3.3 **“服务器”** 许可证类型允许您将本软件安装在一台集中式机器上，该机器 (a) 可供多名用户或多台机器访问，并且 (b) 能为其他系统执行服务。每台运行本软件的集中式机器都需单独的服务器许可证。
- 1.4 **“许可容量”** 指 Parasoft 的许可定价指标，包括但不限于所有许可证类型及所有使用模式。
- 1.5 **“维保”** 指根据本协议，由 Parasoft 提供的软件维护和技术支持服务。
- 1.6 **“软件”** 指在您的订单中确认并在您订购期间内可商业化使用的以目标代码形式呈现的 Parasoft 软件产品，以及由 Parasoft 提供的任何与维保相关的修改，更正与更新。
- 1.7 **“区域”** 指您与 Parasoft 签订的单独协议中所规定的使用本软件许可的一个或多个国家；如果单独协议中未指定区域，则以您下发订单所在的国家为指定区域。
- 1.8 **“使用模式”** 指与许可证类型相关的权利和限制，包括以下各项。
  - 1.8.1 **“并发”** 是用于在多个计算设备上安装本软件和访问的许可证，包括物理机、虚拟机和容器化环境。桌面并发许可证 (a) 在任何连续的二十四 (24) 小时周期内最多允许三 (3) 名用户使用，并且 (b) 任何单个时间点仅允许一 (1) 名用户使用。
  - 1.8.2 **“贡献开发者”** 是面向每一位个人授予的许可证，无论其职位头衔、角色或使用频率，即 (a) 直接或间接编写、修改、审查或提交经本软件开展分析的源代码的个人；或 (b) 其工作成果以其他形式需接受本软件的分析、执行或报告生成的个人。如果同一贡献开发者使用了多个用户名访问本软件来向代码仓库提交源代码，除非您以书面形式通知 Parasoft，否则每个用户名将被视为一名单独的贡献开发者。Parasoft 有权每九十 (90) 天要求您提供不超过一次的书面报告，说明在此前九十 (90) 天内任意时间点的最大贡献开发者数量。除非另有书面约定，就超出您许可数量的任何贡献开发者，您应按当时的列表价格向 Parasoft 支付费用。
  - 1.8.3 **“指定用户”** 是用于您指定的使用本软件的个人的许可证。未经 Parasoft 事先书面同意，指定用户许可证转让或分配给其他指定用户的次数不得超过每三十 (30) 天一次。
  - 1.8.4 **“节点锁定”** 是用于仅运行本软件单个实例的单台机器的许可证。您可以将当前处于维保期内的节点锁定许可证转移到另一台机器上，并向 Parasoft 申请新的许可证密钥。
- 1.9 **“用户文档”** 指用户指南、安装指南和/或适用于本软件的在线文档。用户文档不包括市场营销资料或对招标需求的答复。

## 2.0 软件许可授权和使用

- 2.1 **许可授权。** 根据本协议的条款与条件, Parasoft 依照用户文档和经授权许可容量, 授予您在规定区域内使用软件的非独占性许可。根据 (a) 您与 Parasoft 之间签署的生效协议; (b) Parasoft 提供的销售报价; (c) 您向 Parasoft 发起的采购订单; 或者 (d) 在 Parasoft 的网站或授权第三方网站上找到的在线订购流程所述, 该许可证可在有限时间期限内使用或永久使用。您需承认且同意, 本协议仅授予如本协议所述的软件许可证, 而非出售 Parasoft 软件本身。无论是通过合同还是所适用的著作权法, 您都无权转售本软件。
- 2.2 **使用权。** 您只能使用本软件和/或用户文档进行内部业务运营、测试您的软件以及处理您的数据。您不得 (a) 允许任何第三方或未获许可的实体使用本软件或用户文档; (b) 测试或允许测试任何非您所有的软件, 处理或允许处理任何非您所有的数据; (c) 将本软件或用户文档分许可、出租或租赁给第三方; 或 (d) 向任何第三方演示、公开或发布有关本软件或用户文档的任何基准测试或其他比较。未从 Parasoft 获得适当数量的许可之前, 您不得在多个计算机、多个分区、虚拟或云托管计算机上同时使用本软件。您不得绕过或试图绕过软件中包含的或由 Parasoft 规定的任何许可授权控制。未经 Parasoft 事先书面同意, 您不得允许第三方外包商以您的名义使用本软件测试任何软件或处理任何数据。您不得使用本软件向第三方提供服务。
- 2.3 **产品使用限制。** 严禁您将 Parasoft 的 C/C++test CT TÜV 认证 (以下简称“该功能”) 用于 GoogleTest 框架, 以获取、支持或主张依据任何第三方或政府标准的各类合规认证、资质认定或评估相关事宜。未经 Parasoft 出具书面明示授权, 严禁将该功能用于任何与认证相关的用途。
- 2.4 **许可密钥。** 您已知晓本软件包含一个或多个许可密钥, 以启用本软件以及本软件内嵌或随本软件分发的第三方软件的功能。您只能通过 Parasoft 发布的许可密钥访问和使用本软件, 且不得试图修改、篡改、反向工程、反向编译或反汇编任何许可密钥。若 Parasoft 发布了本软件新的许可密钥, 您不得通过使用先前的许可密钥来启用本软件。如果某个许可证当前处于维保期内, 您可将该许可证转移至另一台机器, 并向 Parasoft 申请一个新的许可密钥。
- 2.5 **存档副本。** 您仅可基于备份和存档的目的制作本软件的一个副本。您可以制作合理数量的用户文档副本用于内部使用。软件和用户文档的所有副本必须包含原件上或原件中出现的所有版权和类似所有权声明。本软件副本可异地存储, 前提是所有可访问软件的人员均须遵守本协议规定的义务, 且您采取合理的预防措施以确保遵守这些义务。若 Parasoft 有合理理由相信您未能履行本协议的义务, Parasoft 将有权取消您对受版权保护的专有材料的复制权限。
- 2.6 **许可容量。** Parasoft 基于许可容量针对本协议中定义的不同使用类型授予软件许可。无论对于哪种使用类型, 在用量增长超出您所持有许可证的许可容量时, 您必须立即书面通知 Parasoft。任何许可容量的增加都必须获得相应许可, 且您需同意根据 Parasoft 当时的列表价格支付 Parasoft 额外的软件许可费用。
- 2.7 **评估许可。** 若 Parasoft 出于评估目的向您提供了本软件, 则适用第 2.7 条。Parasoft 授权您 30 天的有限许可, 仅用于内部评估。除了购买之前的评估目的, 严禁您出于任何生产目的或其他目的使用本软件。Parasoft 没有义务为您评估软件提供维保或支持服务。您确认, 用于评估的软件可能 (a) 功能有限; (b) 仅在有限时间段内运行; 或 (c) 具有本软件商业版所没有的其他限制。尽管本协议中有任何相反规定, Parasoft 仍“按原样”向您提供评估软件, Parasoft 不承认任何形式的保证 (包括对适销性、特定目的的适用性的任何暗示保证和法定不侵权保证)、责任以及任何形式的赔偿义务。若本第 2.7 条与本协议其他任何条款冲突, 就许可给您用于评估目的的软件而言, 应以本第 2.7 条为准并取代该等其他条款。
- 2.8 **教育许可。** 若您是教育或学术机构且获得 Parasoft 的折扣购买, 您仅可以出于教育或学术目的使用本软件, 不得用于商业用途。Parasoft 可以要求您提供您作为教育或学术机构的身份证明。
- 2.9 **审计。** 您应当保留本软件使用和部署相关的准确业务记录。Parasoft 有权在提前 10 个工作日发出书面通知的情况下, 每 12 个月不超过一次地通过审计您的业务记录以及您在信息技术系统中对本软件的使用和部署情况, 核实您是否遵守本协议项下的义务。Parasoft 和/或 Parasoft 选择的公共会计事务所会在您日常工作时间依据您合理的安保政策和程序进行审计工作。您要求该公共会计事务所签订的任何协议不得妨碍其对 Parasoft 审计结果的披露。您应当合理配合并协助审计工作。您应当根据要求向 Parasoft 支付任何经审计所披露的未经授权部署和/或软件产品超限使用而产生的许可和维保费。Parasoft 应自行负责审计工作的花费和支出, 除非该审计表明您已经超出其许可容量或超过其许可限制。若当时不符合规定的软件部署的列表价格超过当时实际许可的软件列表价格总额的 5%, 则您应根据要求偿还 Parasoft 进行审计的所有合理成本及开支。

**3.0 所有权。** Parasoft 保留本软件 and 用户文档及其所有副本、改进、升级、修改以及衍生作品相关的所有权利、所有权及权益，包括但不限于所有专利、著作权、商业秘密、商标和其他知识产权。您同意不应且不得授权他人基于本软件或用户文档进行复制（除本协议明确允许）、修改、翻译、反汇编、反编译、反向工程、解码或改变、或创建衍生作品。除另有规定外，在本许可下，Parasoft 未明示或暗示地授予其专利、版权、商业秘密、商标或其他知识产权的任何权利。

#### **4.0 终止**

**4.1 违约；破产。** 若发生以下情况，Parasoft 可终止本协议：(a) 您未按与 Parasoft 签订的任何订单约定按时支付任何款项，且在收到未付款书面通知后十（10）天内未予补救；(b) 您实质违反本协议，且在收到违约书面警告函后三十（30）天内仍未纠正该违约行为；(c) 依据适用的破产和清算法条款，在破产请求或程序申请后六十（60）天内未解除的情况下，您成为任何相关非自愿程序的主体；或 (d) 根据适用的破产或清算法律，或在破产管理、清算、债权人利益和解申请后六十（60）天内未解除的情况下，您成为任何相关自愿或非自愿程序的主体。

**4.2 终止的效力。** 本协议终止后，您应当立即停止使用、卸载且销毁所有软件及副本。本协议终止后十天（10）内，您应向 Parasoft 提交一份由您的高级职员签署的书面证明，证明所有软件已从您的计算机系统中卸载并销毁。

#### **5.0 有限保证**

**5.1 性能保证。** Parasoft 保证，自软件首次交付之日起 90 天内，Parasoft 交付的软件在按照用户文档和本协议条款使用时，将基本按照用户文档执行。若该软件未如保证运转，且您在 90 天保证期内向 Parasoft 提供相应不符合性能要求的书面通知，Parasoft 可以选择下列方式：(a) 修复软件；(b) 使用具有实质相同功能的软件替代该软件；或者 (c) 终止不合格软件的许可并退还 Parasoft 收取的不合格软件的许可费。上述保证明确排除软件基于以下原因导致的缺陷或不合格：

(a) 以不符合用户文档的方式使用本软件；(b) 您或者以您的名义修改或改进了本软件；(c) 将本软件与非 Parasoft 提供的产品、软件或设备整合；或 (d) 计算机硬件故障、未经授权的修理、意外或滥用。

**5.2 免责声明。** 第 5 条中规定的保证具有排他性，且取代所有其他明示或默示的保证，Parasoft 明确否认所有其它保证，包括任何对适销性，适用于某种特定用途的默认保证，以及不侵权的法定保证。Parasoft 不保证该软件将满足您的要求，或本软件的使用不会中断或没有任何错误。第 5 条所列的补救是您获得的唯一且专有的补偿，Parasoft 仅对第 5 条中所保证的软件功能或运转的问题承担责任。

#### **6.0 赔偿**

**6.1 侵权。** Parasoft 会为任何针对您提出的关于本软件侵犯第三方知识产权的诉求进行抗辩，只要该第三方所在国家属于伯尔尼公约签约国。并且，Parasoft 应赔偿终审法院最终判定或 Parasoft 在和解中同意的、可归因于此类索赔的任何及所有损失，只要您 (a) 向 Parasoft 及时提供该诉求的书面通知；(b) 向 Parasoft 提供所有合理的协助和信息使 Parasoft 公司可以履行第 6 条规定的义务；(c) 允许 Parasoft 单独负责抗辩和所有相关的和解谈判；及 (d) 尚未和解或解决上述起诉。若该软件被确认侵权，或者若 Parasoft 单方认为其很可能侵权，Parasoft 可以选择：(a) 为您获取继续使用该软件的权利；(b) 修改该软件使其不侵权或用非侵权的功能等价物代替，在该情况下您应停止使用该软件的任何侵权版本；或 (c) 依据本协议终止您与该软件相关的权利以及 Parasoft 相应的义务，并向您退款，(i) 如果您持有的是期限许可证，则退还许可期限剩余时间内任何预付的和未使用的软件许可费用；或者，(ii) 如果您持有的是永久许可证，则退还根据软件交付之日起的五年直线折旧时间表计算软件许可费用的未摊销部分。上述补偿保证将不适用于基于以下原因发生的侵权：(a) 使用该软件的方式不符合用户文档；(b) 您或以您的名义修改或改进该软件，(c) 将其与非 Parasoft 提供的产品相组合、使用或运行；或 (d) 在本可以使用该软件另一版本的情况下使用本软件的涉嫌侵权版本。

**6.2 免责声明。** 第 6 条已列明了针对 Parasoft 侵犯或盗用第三方任何知识产权您的唯一和独家补救措施，以及 Parasoft 的唯一和独家责任。

**7.0 赔偿责任限制。** 在任何情况下，任何一方都不对另一方承担：(a) 任何特殊的、附带的、间接的或后果性的损害或；(b) 数据丢失、利润损失、业务中断或类似的损害或损失，即使该方已被告知发生此类损害的可能性。除了受适用法律的限制以及第 6 条（赔偿）Parasoft 所承担的责任之外，无论您的诉求依据是什么，本协议下 Parasoft 的最大责任将限

于为引起索赔的软件或维保支付的许可证或维保费。并且即使任何有限补救的基本目的未能实现，上述责任限制仍将适用。

**8.0 保密信息。** 依据本协议，“保密信息”包括软件 and 用户文档所包含的商业秘密、软件和维保（包括价格建议书）的条款和价格，以及（a）由任一方在披露时确认为保密的信息；（b）根据披露的实质内容和情形能够被合理地认为应进行保密的信息（统称“保密信息”）。保密信息不包含以下信息：（a）通过接收方的不作为或疏漏已进入公有领域的信息；（b）在披露方披露前已被接收方合法获取的信息；（c）由第三方合法向接收方披露且未附加披露限制的信息；（d）由接收方在不违反本协议的前提下独立开发出的信息。任一方均应同意对所有保密信息进行保密，除非在本协议允许的前提下，否则不得向第三方披露或使用任何保密信息。任一方均应采取一切合理的预防措施确保保密信息不被当事人或其雇员、代理商或授权使用者披露给第三方。任一方均应同意在发生未经授权获取或披露保密信息后立即通知另一方。接收方同意违反第 8 条会对披露方造成不可弥补的损害，披露方除了依据本协议或法律获取补救之外有权要求衡平法补救。

## 9.0 维保

**9.1 期限许可证维保。** 如果您购买了一个期限许可证，则维保包含在这个期限内，不需要额外的费用。

**9.2 永久许可证维保。** 如果您购买了一个永久许可证，您需要购买本软件第一年的维保，维保期从本软件的首次交付起算为期一年。您可选择依据之后的订单续约该维保期。在续约之前，Parasoft 可通过十（10）个工作日的书面通知要求您提供关于您软件使用和开发的书面报告。该报告应说明（a）许可容量的类型和数额以及（b）软件版本。Parasoft 应在当前维保期到期前至少九十（90）天向您发送年度续约通知。维护费将基于当时的列表价格，如有价格变动，恕不另行通知。如果您允许永久许可证的维保期满，您可以在之后续约维保服务，具体方法包括（a）按当时的费用为适用软件支付新的年度维保费用，以及（b）在维保服务中断期间为适用软件支付维保费用。

**9.3 支持协调人。** 维保所包含的支持服务由 Parasoft 通过电话、电子邮件和网站向您指定的支持协调人（和一个后备协调人）提供。在本区域的工作时间内均可以获得支持，包括除法定假日之外的周一至周五。

**9.4 新版本。** 在您有权获取维保的期间内，Parasoft 应向您提供该软件的新版本，包含可获得的错误更正、修订、维保补丁、升级（除非 Parasoft 单独列明了价格且不包含在当时的软件新许可中）和修订的用户文档。除上述之外，不属于新版本一部分的单独错误更正将不被单独支持，但会纳入该软件的下一版本中。若您安装了该软件的新版本，您可以在 90 天内继续使用本软件之前的版本，以协助您转移至新版本。一旦您完成了软件新版本的转移，您必须停止使用本软件之前的版本。

**9.5 支持的版本。** 在您支付了维保费用并添加了由 Parasoft 发布的针对本软件各版本所有维保补丁的情况下，Parasoft 会在软件停用或发布新版本后的 12 个月内继续支持之前版本。

## 10.0 一般条款

**10.1 独立合同方。** 当事人承认并同意各方均为独立合同方。本协议不会被解读为在当事人间建立了合伙、合资或代理关系。

**10.2 完整协议。** 本协议的条款和条件适用于所提供的所有许可软件、用户文档，以及所购买的所有维保。本协议将取代贵方任何订购单、采购订单或其他订购文件中的任何不同、不一致或预先印制的条款和条件。

**10.3 转让。** 未经 Parasoft 事先书面同意并支付相应的转让费，您无权全部或部分转让、分许可、抵押或转移任何您关于该软件、用户文档或本协议的权利（统称“转让”）。任何未经同意的转让均是无效的。对于您机构或实体控制者的变化，无论是以合并、股份购买、资产销售或其他方式，均被视为第 10.3 款所限制的转让。

**10.4 不可抗力。** 除支付本协议项下应付的许可费外，出于以下原因未履行本协议或迟延履行不会构成违约：出于目前或未来超出当事人合理控制范围的原因，包括但不限于政府机构、民事机构或军事机关的行为或不作为、火灾、罢工，停工或其他劳动纠纷，无法及时获得劳动力或材料、洪水、战争、暴乱、盗窃，地震或其他自然灾害（简称“不可抗力事件”）。受不可抗力事件影响的一方应采取一切合理措施尽量降低不可抗力事件带来的后果。

**10.5 分离性。** 若本协议的某一条款被管辖法院认定无效或不可执行，该条款将被分离，本协议余下条款仍完全有效。

**10.6 弃权。** 在一种情况下放弃任何权利或选择任何补救措施不会影响在另一种情况下的任何权利或补救措施。弃权仅由当事人授权代表的书面签署才生效。

- 10.7 **通知。** 本协议所需的所有通知均应采取书面形式向当事人通知送达，并在以下情况下视为有效送达或收取：(a) 若通过挂号信或认证邮件寄送，并预付费且要求收到回执的，则收到回执时视为送达；(b) 若以传真发送，且传送的确认经由发送机发出，该传真副本通过第 10.7 款所确认的另一种方式即时送达的，即视为送达；或 (c) 若私人寄送或通过快递服务寄送，则在收件人确认接收时视为送达。通知应按相关订单所列地址发送至各方，并注明由法律部门收悉。为了通知目的的地址变更依据上述流程进行。
- 10.8 **出口限制。** 您承认本软件和某些保密信息（统称“技术数据”）受美国出口管制法律法规的约束，包括但不限于《出口管理条例》，《美国财政部外国资产管制办公室制裁条例》和《国际武器贸易条例》（统称“出口管制法”）。双方均同意对于技术数据遵守出口管制法的所有要求。在不限制上述规定事项的情况下，您不得 (a) 向任何出口管制法所限制或禁止的目的地、公司或人员出口、再出口、转移或转让任何上述技术数据或其直接产品；(b) 向任何出口管制法所限制或禁止披露的国家的任何公民披露上述技术数据；(c) 直接或间接出口或再出口用于核、导弹或化学/生物武器等出口管制法律禁止的最终用途的技术数据。
- 10.9 **管辖法；管辖权。** 本协议受美国加利福尼亚州法律管辖并依据美国加利福尼亚州法律解释，不受《联合国国际货物销售合同公约》任何条款的约束，包括其任何修正案，且不考虑法律冲突原则。任何有关本协议的诉讼在美国加利福尼亚州中区联邦法院或美国加利福尼亚州洛杉矶县州法院审理。
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- 10.11 **存续。** 本协议中所有依其性质在本协议终止或到期后仍需延续的条款将继续有效。此类条款将包括但不限于本协议中与责任限制、本软件所有权和权利相关的所有条款以及所有一般条款。

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1.3 **“License Type”** means each of the following.

1.3.1 **“Automation”** is a License Type that allows You to use the Software through a command line interface for the execution of automated processes.

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1.4 **“Licensed Capacity”** means Parasoft’s license pricing metrics, including, without limitation, all License Types and all Usage Models.

1.5 **“Maintenance”** means the maintenance and technical support services for the Software and provided by Parasoft pursuant to this Agreement.

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1.7 **“Territory”** means the country or countries in which You have a license to use the Software, as specified in a separate agreement between You and Parasoft; or, if no Territory is specified, the country from which Your order has been issued.

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1.8.2 **“Contributing Developer”** is a license for each individual, regardless of job title, role, or frequency of use (a) who directly or indirectly writes, modifies, reviews, or commits source code that is analyzed by the Software, or (b) whose work product is otherwise subject to analysis, execution, or reporting by the Software. Unless You notify Parasoft in writing that the same Contributing Developer has accessed the Software with multiple user names to commit source code to repositories, each user name will be counted as a separate Contributing Developer. At Parasoft’s request, not more than once every ninety (90) days, You shall provide Parasoft with a written report stating Your maximum number of Contributing Developers at any point in time during the preceding ninety (90) days. Unless otherwise agreed in writing, You shall pay Parasoft the then current list price for any Contributing Developers in excess of Your licensed quantity.

1.8.3 **“Named User”** is a license for a single named individual designated by You to use the Software. A Named User license may not be transferred or assigned to a different Named User more often than once every thirty (30) days without prior written consent from Parasoft.

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2.7 **Evaluation License.** This Section 2.7 applies if Parasoft has provided the Software to You for evaluation purposes. Parasoft grants to You a thirty (30) day, limited license solely for the purpose of internal evaluation. You are strictly prohibited from using the Software for any production purpose or any purpose other than the sole purpose of determining whether to purchase a commercial license for the Software that You are evaluating. Parasoft is not obligated to provide maintenance or support for the evaluation Software. YOU ACKNOWLEDGE THAT SOFTWARE PROVIDED FOR EVALUATION MAY (A) HAVE LIMITED FEATURES; (B) FUNCTION

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**2.9 Audit.** You shall maintain accurate business records relating to its use and deployment of the Software. Parasoft shall have the right, not more than once every twelve (12) months and upon ten (10) business days prior written notice, to verify Your compliance with its obligations under this Agreement by auditing Your business records and Your use and deployment of the Software within Your information technology systems. Parasoft and/or a public accounting firm selected by Parasoft shall perform the audit during Your regular business hours and comply with Your reasonable safety and security policies and procedures. Any agreement You may require the public accounting firm to execute shall not prevent disclosure of the audit results to Parasoft. You shall reasonably cooperate and assist with such audit. You shall, upon demand, pay to Parasoft all license and Maintenance fees for any unauthorized deployments and/or excess usage of Software products disclosed by the audit. License fees for such unauthorized deployments and/or excess usage shall be invoiced to and paid by You at Parasoft's then-current list price, and applicable Maintenance fees shall be applied retroactively to the entire period of the unauthorized and/or excess usage. Parasoft shall be responsible for its own costs and expenses in conducting the audit, unless the audit indicates that You have exceeded its Licensed Capacity or otherwise exceeds its license restrictions, such that the then-current list price of non-compliant Software deployment exceeds five percent (5%) of the total then-current list price of the Software actually licensed by You, in which event You shall, upon demand, reimburse Parasoft for all reasonable costs and expenses of the audit.

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#### **4.0 TERMINATION**

**4.1 Default; Bankruptcy.** Parasoft may terminate this Agreement if (a) You fail to pay any amount when due under any order You have placed with Parasoft and do not cure such non-payment within ten (10) days of receipt of written notice of non-payment; (b) You materially breach this Agreement and do not cure such breach within thirty (30) days of receipt of written notice of such breach; (c) subject to provisions of applicable bankruptcy and insolvency laws, You become the subject of any involuntary proceeding relating to insolvency and such petition or proceeding is not dismissed within sixty (60) days of filing; or (d) You become the subject of any voluntary or involuntary petition pursuant to applicable bankruptcy or insolvency laws, or request for receivership, liquidation, or composition for the benefit of creditors and such petition, request or proceeding is not dismissed within sixty (60) days of filing.

**4.2 Effect of Termination.** Upon termination of this Agreement, You shall immediately discontinue use of, and uninstall and destroy all copies of, all Software. Within ten (10) days following termination, You shall certify to Parasoft in a writing signed by an officer of Yours that all Software has been uninstalled from Your computer systems and destroyed.

#### **5.0 LIMITED WARRANTY**

**5.1 Performance Warranty.** Parasoft warrants that the Software, as delivered by Parasoft and when used in accordance with the User Documentation and the terms of this Agreement, will substantially perform in accordance with the User Documentation for a period of ninety (90) days from the date of initial delivery of the Software. If the Software does not operate as warranted and You have provided written notice of the non-conformity to Parasoft within the ninety (90) day warranty period, Parasoft shall at its option (a) repair the Software; (b) replace the Software with software of substantially the same functionality; or (c) terminate the license for the nonconforming Software and refund the applicable license fees received by Parasoft for the nonconforming Software. The foregoing warranty specifically excludes defects in or non-conformance of the Software resulting from (a) use of the Software in a manner not in accordance with the User Documentation; (b) modifications or enhancements to the Software made by or on behalf of You; (c) combining the Software with products, software, or devices not provided by Parasoft; or (d) computer hardware malfunctions, unauthorized repair, accident, or abuse.

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**6.1 Infringement.** Parasoft shall defend any claim against You that the Software infringes any intellectual property right of a third party, provided that the third party is located in a country that is a signatory to the Berne Convention, and shall indemnify You against any and all damages finally awarded against You by a court of final appeal, or agreed to in settlement by Parasoft and attributable to such claim, so long as You (a) provide Parasoft prompt written notice of the claim; (b) provide Parasoft all reasonable assistance and information to enable Parasoft to perform its duties under this Section 6; (c) allow Parasoft sole control of the defense and all related settlement negotiations; and (d) have not compromised or settled such claim. If the Software is found to infringe, or if Parasoft determines in its sole opinion that it is likely to be found to infringe, then Parasoft may, at its option (a) obtain for You the right to continue to use the Software; (b) modify the Software to be non-infringing or replace it with a non-infringing functional equivalent, in which case You shall stop using any infringing version of the Software; or (c) terminate Your rights and Parasoft's obligations under this Agreement with respect to such Software and refund to You (i) if You have a term license, any prepaid and unused Software license fee for the remainder of the license term or (ii) if you have a perpetual license, the unamortized portion of the Software license fee based on a five year straight-line depreciation schedule commencing on the date of delivery of the Software. The foregoing indemnity will not apply to any infringement resulting from (a) use of the Software in a manner not in accordance with the User Documentation; (b) modifications or enhancements to the Software made by or on behalf of You; (c) combination, use, or operation of the Software with products not provided by Parasoft; or (d) use of an allegedly infringing version of the Software if the alleged infringement could be avoided by the use of a different version of the Software made available to You.

**6.2 Disclaimers.** THIS SECTION 6 STATES YOUR SOLE AND EXCLUSIVE REMEDY AND PARASOFT'S SOLE AND EXCLUSIVE LIABILITY REGARDING INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY.

**7.0 LIMITATION OF LIABILITY.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR (A) ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR (B) LOSS OF DATA, LOSS OF PROFITS, BUSINESS INTERRUPTION, OR SIMILAR DAMAGES OR LOSS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS LIMITED BY APPLICABLE LAW AND EXCLUDING PARASOFT'S LIABILITY TO YOU UNDER SECTION 6 (INDEMNIFICATION), AND REGARDLESS OF THE BASIS FOR YOUR CLAIM, PARASOFT'S MAXIMUM LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE LICENSE OR MAINTENANCE FEES PAID FOR THE SOFTWARE OR MAINTENANCE GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**8.0 CONFIDENTIAL INFORMATION.** For purposes of this Agreement, "Confidential Information" will include trade secrets contained within the Software and User Documentation, the terms and pricing of the Software and Maintenance (including any pricing proposals), and such other information (a) identified by either party as confidential at the time of disclosure or (b) that a reasonable person would consider confidential due to its nature and circumstances of disclosure ("Confidential Information"). Confidential Information will not include information that (a) is or becomes a part of the public domain through no act or omission of the receiving party; (b) was in the receiving party's lawful possession prior to receiving it from the disclosing party; (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (d) is independently developed by the receiving party without breaching this Agreement. Each party agrees to maintain all Confidential Information in confidence and not disclose any Confidential Information to a third party or use the Confidential Information except as permitted under this Agreement. Each party shall take all reasonable precautions necessary to ensure that the Confidential Information is not disclosed by such party or its employees, agents or authorized users to any third party. Each party agrees to immediately notify the other party of any unauthorized access to or disclosure of the Confidential Information. The receiving party agrees that any breach of this Section 8 may cause irreparable harm to the disclosing party, and such disclosing party shall be entitled to seek equitable relief in addition to all other remedies provided by this Agreement or available at law.

## **9.0 MAINTENANCE**

**9.1 Maintenance for Term Licenses.** If You have purchased a term license, Maintenance during the term is included at no additional charge.

**9.2 Maintenance for Perpetual Licenses.** If You have purchased a perpetual license, You are required to purchase first year Maintenance with the Software, and the Maintenance period will commence upon the initial delivery of the Software and continue for a period of one year. The Maintenance period, at Your option, may be renewed pursuant to subsequent orders. Prior to such renewal, Parasoft may, upon ten (10) business days written notice, require You to provide a written report on Your use and deployment of the Software. Such report will specify (a) the type and amount of Licensed Capacity and (b) the Software version. Parasoft shall issue an annual renewal notice to You at least ninety (90) days prior to the expiration of the then-current Maintenance period. Maintenance fees will be based on the then-current list price and are subject to change without notice. If You allow Maintenance for a perpetual license to expire, You may at a later date renew Maintenance by paying (a) the new annual Maintenance for the applicable Software at the then current fee and (b) the Maintenance fee for the applicable Software for the entire period during which Maintenance had lapsed.

**9.3 Support Coordinators.** Maintenance will consist of support services provided by Parasoft to one designated support coordinator of Yours (and one backup coordinator) per Your location, by telephone, email, and website. Support is available during normal business hours in the applicable location within the Territory, Monday through Friday, excluding nationally observed holidays.

**9.4 New Releases.** During any period in which You are current on Maintenance, Parasoft shall provide You with any new release of the Software, which may include generally available error corrections, modifications, maintenance patch releases, enhancements (unless priced separately by Parasoft and generally not included with new licenses for the Software at that time), and the revised User Documentation, if applicable. Notwithstanding the foregoing, stand-alone error corrections that are not part of a new release will not be independently supported but will be incorporated into the next release of the Software. If You install a new release of the Software, You may continue to use the previous version of the Software for up to ninety (90) days in order to assist You in the transition to the new release. Once You complete its transition to the new release of the Software, You must discontinue use of the previous version of the Software.

**9.5 Supported Releases.** Parasoft shall continue to support the immediately preceding release of the Software for a period of twelve (12) months following the discontinuance of such Software or the date on which the new release becomes generally available, provided that You have paid applicable Maintenance fees and incorporated all Maintenance patch releases issued by Parasoft for the release of the Software.

## **10.0 GENERAL**

**10.1 Independent Contractors.** The parties acknowledge and agree that each is an independent contractor. This Agreement will not be construed to create a partnership, joint venture or agency relationship between the parties.

**10.2 Entire Agreement.** The terms and conditions of this Agreement apply to all Software licensed, all User Documentation provided, and all Maintenance purchased hereunder. This Agreement will supersede any different, inconsistent or preprinted terms and conditions in any order form of Yours, purchase order or other ordering document.

**10.3 Assignment.** You have no right to assign, sublicense, pledge, or otherwise transfer any of Your rights in and to the Software, User Documentation or this Agreement, in whole or in part (collectively, an "Assignment"), without Parasoft's prior written consent and payment of the applicable assignment fee. Any Assignment without such consent will be null and void. Any change in control of Your organization or entity, whether by merger, share purchase, asset sale, or otherwise, will be deemed an Assignment subject to the terms of this Section 10.3.

**10.4 Force Majeure.** No failure, delay or default in performance of any obligation of a party to this Agreement, except payment of license fees due hereunder, will constitute an event of default or breach of the Agreement to the extent that such failure to perform, delay or default arises out of a cause, existing or future, that is beyond the reasonable control of such party, including, without limitation, action or inaction of a governmental agency, civil or military authority, fire, strike, lockout or other labor dispute, inability to obtain labor or materials on time, flood, war, riot, theft, earthquake or other natural disaster ("Force Majeure Event"). The party affected by such Force Majeure Event shall take all reasonable actions to minimize the consequences of any Force Majeure Event.

**10.5 Severability.** If any provision of this Agreement is held to be illegal or otherwise unenforceable by a court of competent jurisdiction, that provision will be severed and the remainder of the Agreement will remain in full force and effect.

**10.6 Waiver.** The waiver of any right or election of any remedy in one instance will not affect any rights or remedies in another instance. A waiver will be effective only if made in writing and signed by an authorized representative of the applicable party.

**10.7 Notices.** All notices required by this Agreement will be in writing, addressed to the party to be notified and deemed to have been effectively given and received (a) upon receipt, if sent by registered or certified mail, postage prepaid, with return receipt requested; (b) upon transmission, if sent by fax and confirmation of transmission is produced by the sending machine and a copy of such fax is promptly sent by another means specified in this Section 10.7; or (c) upon delivery, if delivered personally or sent by express courier service and receipt is confirmed by the recipient. Notices will be addressed to the parties based on the address stated in the applicable order, to the attention of the Legal Department. A change of address for notice purposes may be made pursuant to the procedures set forth above.

**10.8 Export Restrictions.** You acknowledge that the Software and certain Confidential Information (collectively "Technical Data") are subject to United States export controls laws and regulations, including but not limited to the Export Administration Regulations, the sanctions regulations of the Office of Foreign Assets Control of the U. S. Department of Treasury, and the International Traffic in Arms Regulations (collectively, "Export Control Laws"). Each party agrees to comply with all requirements of the Export Control Laws with respect to the Technical Data. Without limiting the foregoing, You shall not (a) export, re-export, divert or transfer any such Technical Data, or any direct product thereof, to any destination, company, or person restricted or prohibited by Export Control Laws; (b) disclose any such Technical Data to any national of any country when such disclosure is restricted or prohibited by the Export Control Laws; or (c) export or re-export the Technical Data, directly or indirectly, for nuclear, missile, or chemical/biological weaponry end uses prohibited by the Export Control Laws.

**10.9 Governing Law; Jurisdiction.** This Agreement is governed by and construed in accordance with the laws of the State of California, USA, exclusive of any provisions of the United Nations Convention on Contracts for the International Sale of Goods, including any amendments thereto, and without regard to principles of conflicts of law. Any suits concerning this Agreement will be brought in the federal courts for the Central District of California, USA or the state courts in Los Angeles County, California, USA.

**10.10 Amendment.** This Agreement may only be modified by a written document signed by an authorized representative of Parasoft and by You.

**10.11 Survival.** Any terms of this Agreement which by their nature extend beyond the termination or expiration of this Agreement will remain in effect. Such terms will include, without limitation, all provisions herein relating to limitation of liability, title and ownership of Software, and all general provisions.