Analytic Schools
Application Service and Software License Agreement

The Agreement

This **Application Service and Software License Agreement** (the **"Agreement"**) is a legal agreement between **Analytic**, a California Corporation having an address of 530 Lytton Ave, 2nd Floor, Palo Alto, California 94301, and **Client**,

Mountain View-Whisman School District
750-A San Pierre Way, Mountain View CA 94043

entered into as of the Effective Date marked below. The "**Terms and Conditions Version 4.1**" (hereinafter referred to as "**Terms & Conditions**") of this agreement are incorporated by reference and considered part of this agreement.

Solution and Objectives

Analytic Schools is a Cloud-Based software solution for the management of Human Resources and Financial functions of K-14 School Districts as described in the Analytic Schools Feature Set and Terms & Conditions section 2. Client has had a reasonable opportunity to inspect the operation of the Application Service and the Software and finds that they meet Client's needs. Client wishes to access the Application Service and license the Software for its users to manage Client's Functions and related information, and Analytic desires to offer access to the Application, host Client's data, and license the Workstation, Web-based and Mobile Software to Client and its users, all subject to the Terms & Conditions of this Agreement.

Initial and Renewal Terms

The **Term** of this Agreement is:

July 1, 2018 through June 30, 2019

This Agreement will **automatically renew** after the Initial Term for periods of one (1) year each, (a "**Renewal Term**"), *for up to four (4) Renewal Terms*, unless either party notifies the other party by written notice that the agreement will not be renewed, provided that such written notice is given at least thirty (30) days prior to the expiration of the Initial Term or applicable Renewal Term.

Application Service and Software License Fees

The **Fee** for the **Term** of this Application Service and Software License is:

$ 11,397.00

due and payable at the beginning of the Term.
The **Fee** for each **Renewal Term** is:

$ 11,397.00

due and payable in advance of each Renewal Term. Analytic reserves the right to change the Fee for Renewal Terms by providing written notice to Client at least thirty (30) days prior to the commencement of the Renewal Term to which the Fee would apply.

Resource Usage Limitations

The following resource usage limitations apply to this agreement as described in section 12: Maximum Number of Simultaneous Workstation User Sessions is 20; Maximum data transferred per day by all Client User Sessions is 4GB; Maximum Data Storage of all Client Databases is 4GB.

Client's Responsibility for Exporting Data

Analytic maintains all client's data in a secure database environment. Exporting and Importing of data into unsecure, non-encrypted environments by Client is permitted via reports, tools and batch processes. Client recognizes that this can expose their data to theft, loss of privacy and corruption, especially if data is saved on portable devices. Client accepts full responsibility to protect any data that is exported by Client as stated in Terms & Conditions sections 14, 15 and 16.

Training and Support

Basic online support via online documentation and videos, email, and online collaborative meetings are included in this agreement as indicated in the Terms & Conditions section 10. Analytic may import basic data tables from spreadsheets in a format specified by Analytic as described in the Terms & Conditions section 9. Any additional training and professional services that client may require of Analytic may be authorized by an amendment as specified in Terms & Conditions sections 10 and 11.

Approvals

Executed below in accordance with the Terms & Conditions sections 4 and 5:

For Analytic:

Richard J. Wilmuth
President

For Client:

Robert Clark	**Effective Date**
Assistant Superintendent	

Analytic

530 Lytton Avenue, 2nd Floor
Palo Alto, CA 94301
(650) 799-8200

Invoice   **Invoice**   **Invoice**   **Invoice**   **Invoice**   **Invoice**   **Invoice**   **Invoice**

Mountain View-Whisman School District
Attn: Robert Clark
750-A San Pierre Way
Mountain View, CA   94043

Date: 7/1/18
Period: July 2018
Invoice No: 4532

Application Service and Software License
for July 2018 - June 2019

Item	Date	Description	Quantity	Rate	Amount
6124	7/1/18	Annual Renewal of Analytic Application Hosting and Software Licensing Agreement for Human Resources, Financial, Budget Development, Leave Mgmt Systems for the period of 7/1/2018 through 6/30/2019. Non Taxable Service and License (SBOE Reg#1502.D)	1.0000	11,397.0000	11,397.00

TOTAL					**$11,397.00**

Terms: Due and Payable Upon receipt of Invoice.

1. The Agreement

The **Analytic Schools Application Service and Software Solution** is provided under an "**Application Service and Software License Agreement**" (the "Agreement") executed between Analytic, a California Corporation located at 530 Lytton Ave, 2nd Floor, Palo Alto, California 94301 and Client ("the Client"). This document defines the Terms and Conditions of that Agreement and is incorporated by reference as a part of that Agreement.

2. The Analytic Schools Solution

"Analytic Schools" is a Cloud-Based solution for the management of Human Resources and Financial functions of K-14 School Districts. All databases, processing and reporting is managed in the "Cloud" on the Analytic network of servers available 24x7 from anywhere in the world via an internet connection.

Analytic Schools Human Resources manages an extensive array of functions. Employee information includes: basic employee data, taxes and benefits, detailed job information, degrees, certifications, classes, credentials, experiences and evaluations. Position Control manages the assignment of employees to well-defined, staffing positions including financial account distributions for budgeting and payroll. Salary projection computes all salaries and benefits for employee information, budget development, labor negotiations and payroll. All of the above functions will provide the infrastructure for a One-Click payroll process currently under development.

Analytic Schools Financial provides flexible financial accounting and reporting. The budget development model includes budgeting salary projection from HR, specialized budget worksheets and budget journal management. Multiple budget models provide the basis for rapid, extensive "what-if" modeling to support alternative decision-making. A flexible, intuitive financial report writer is designed to make extensive financial analysis straightforward. Payroll and purchasing subsystems are currently under development.

Analytic Schools provides workstation Apps that securely access the services running on the Analytic server network. These Apps are designed to be intuitive to the user that is familiar with managing education administrative functions. They allow for the display and editing of information using an extensive collection of tab-based form views and intelligent grid views. All information is reachable within a few mouse clicks. The approach to editing uses clear methodology designed to eliminate errors. Searches are extensive and results are easily displayed. Cut/paste and import/export are widely supported as expected in modern software implementations. Apps are easily installed from the Web and updated automatically.

Analytic Schools provides secure web apps and mobile apps for employees and managers to access essential information directly and quickly. Employees can view their own key data including position assignments, classes and degrees. They may submit changes to their contact information and enter timesheet and leave information. Managers may access staffing lists, monthly financial reports, and approve leave and timesheets. Purchase order requests is currently under development.

3. Grant of License

Analytic agrees to provide to a Client as specified in the Services and Software License Agreement with Analytic, the Application Service and the Workstation Application Software and grants Client a temporary, limited, non-sub-licensable and non-exclusive license to use the Workstation Software. This Agreement is for a Multi-User, Organizational License, permitting use by an unlimited number of users within, and only within, Client's organization within the system resource usage limitations as specified in the agreement. It is understood that this is not a license for the Source Code of any of the Software. This expressly does not include the right for Client to use the Application as an application service provider for a third party. The Software must be used exclusively for Analytic Functions. The Services and Software license shall terminate immediately upon the expiration or termination of the Agreement with Analytic for any reason.

4. Approval

Client represents that the individual signing on its behalf is fully authorized to execute contracts and agreements subject to the policies of the Client and the State Education Code, and upon execution of this Agreement the Client shall make the first payment under this Agreement.

If, in addition, such approval requires approval by Client's Board, this Agreement shall be presented to the Board for ratification at its next regular Board meeting and in the event the Board votes to not ratify this Agreement, this Agreement shall terminate immediately and Analytic shall refund the Initial Fee to Client.

5. Purchase Orders

If Client requires a purchase order in order to authorize payment for the Fees of the Agreement, then that purchase order will be considered part of this Agreement upon execution by Client and receipt by Analytic, provided that terms and conditions in the purchase order do not vary or contradict the terms of this Agreement. It is understood that by execution of this Agreement that Client, if necessary, will promptly provide Analytic a purchase order. It is further understood that although the Agreement is effective on the Effective Date, Client will receive Workstation Software, database setup and access to the Application only after receipt of a purchase order or payment of the first installment of the Fees and will not change the term of the Agreement.

6. Evaluation Period

This Agreement may include an "Evaluation Period" with a beginning and ending date. All Terms and Conditions specified here apply to this Evaluation Period. Analytic may provide limited database initialization or a demonstration database for Client to evaluate the service and software as indicated in the Agreement. At the end of the Evaluation Period, Client must either complete the approval and execution of the agreement or the agreement will be considered terminated.

7. Termination

Client may terminate this Agreement for convenience during the Term of the Agreement as the case may be upon at least ninety (90) days' written notice to Analytic identifying the effective date of termination ("Termination Effective Date"). In the event of such termination for convenience, Analytic shall be entitled to retain a share of the Annual Fee, as the case may be, which Client prepaid for the Term (the "Fee Paid"). The amount Analytic is entitled to retain (the "Analytic Share") shall be the greater of: (a) an amount equal to the Fee Paid times the fraction whose numerator is the number of calendar days in the Partial Term from its beginning until the Termination Effective Date and whose denominator is 365 days, or (b) one-half of the Fee Paid. After the Termination Effective Date, Analytic shall refund Client an amount equal to the Fee Paid less the Analytic Share.

Either party may terminate this Agreement upon thirty (30) days' written notice to the other party in the event that the other party materially breaches, defaults, or fails to comply with any term or provision of this Agreement, provided that the other party fails to cure the same within such thirty (30) day period.

Upon expiration or termination of this Agreement for any reason, all rights and licenses granted to Client under this Agreement shall terminate.

Notwithstanding the foregoing, in the event that Analytic is unable to support this Application Service and Software License, for instance, because of but not necessarily limited to, bankruptcy or termination of business, Client may continue to use Software with all rights and licenses granted to Client under this Agreement, and in such event, all terms and conditions of this Agreement shall remain in effect including the payment of Initial Fees and Annual Fees.

8. A Non-Taxable Service

The Application Services and Workstation Software provided under this agreement are considered non-taxable according to the California State Board of Equalization Regulation 1502(d). If for any reason or at any time, it is determined that the Workstation Software or service provided under this Agreement is subject to sales tax, Client, as purchaser of the licenses and services provided in this Agreement, will be responsible for the payment of such sales tax and will reimburse Analytic if Analytic is required to pay such sales tax.

9. Initialization

Analytic will provide services to setup and initialize Client's database and import the basic data tables received from Client in a standard Excel spreadsheet format as specified by Analytic. Examples of such tables include: Chart of Accounts, Salary Schedules, Employee Basic Information, Degrees, Classes, Certifications, Benefits, Position Definitions and Position Assignments. Additional Fees may be charged for such services as agreed to in the Agreement with the Client.

10. Knowledge Base, Training and Support

The Analytic Schools Knowledge Base is entirely on-line and is accessed via the table of contents and help buttons within the workstation application. The Table of Contents provides access to the entire knowledge base. Context Help buttons take the user directly to pages contextually related to the current application view. Slide show presentations provide users process training on many subjects. Analytic also uses on-line meetings with clients to help solve specific problems and customer support for issues that may not be covered in the Knowledge Base.   Clients may also obtain custom, in-house training from Analytic on a fee per session basis. In-house training fees must be specified in the Agreement.

11. Professional Services

Analytic may separately provide professional services described in a Professional Services Exhibit attached to the Agreement. In consideration of the Professional Services, Client shall pay the fees described in the Professional Services Exhibit and reimburse Analytic for any reasonable reimbursable expenses incurred by Analytic on behalf of Client. Analytic shall send Client a separate invoice for Professional Services Fees and Expenses, which Client shall pay within thirty (30) days of receipt. Any Professional Services provided by Analytic covered in a Professional Services Exhibit shall terminate upon notice by the Client to Analytic. Payment for any Professional Services Fees and Expenses already rendered or incurred by Analytic prior to such termination shall be the responsibility of the Client.

12. System Resource Usage Limitations

Analytic maintains statistics on the usage of resources by Client. Client agrees to the maximum limitations on resource utilization in terms of the maximum number of simultaneous users connected to the Application, the maximum disk storage usage, and the maximum volume of data transferred per day. These limits are specified in the Agreement based on assessment of client's needs.

13. Availability, Security and Data Protection

Analytic shall use commercially reasonable efforts in providing application hosting services to Client. Analytic shall advise Client of all significant problems, issues and developments and consult with Client in advance with respect to any significant decisions or actions to be taken that may affect Client. Analytic shall use commercially reasonable efforts to protect its servers from penetration by intruders and denial of service attacks.

Analytic's servers, including processor speed, memory capacity, disk capacity, network bandwidth and other system parameters have been configured to provide more than adequate performance for hosting and operating the Application. Nonetheless, the parties acknowledge that, since the Internet is neither owned nor controlled by one entity, Analytic makes no guarantee that any given user will be able to access the Application at any given time. There are no assurances that access will be available at all times and uninterrupted, and Analytic will not be liable to Client for any unavailability of the Service.

Analytic's servers shall be maintained in a secure co-location facility that provides a backup power supply. Application databases shall be placed on RAIDed drives and backed up daily onto a separate disk drive. Analytic shall also backup databases off-site periodically. Analytic shall have a backup server to which Client's databases and applications can be moved on an interim basis in the case of failure of Analytic's primary server.

14. Import-Export Batch Process Tool

Analytic has a Batch Process Import-Export tool that can be installed on client's servers to export and import data from the Analytic database. This facilitates exporting data to import/synchronize into other Client system. This tool may also import/synchronize data exported from other systems into the Analytic database. This tool facilitates automatically populating certain fields in Analytic and other databases eliminating duplicate entry of common fields thereby achieving the objective of data consistency across multiple software systems.

In using the Import-Export Batch Process Tool, Client and Analytic will jointly specify all data fields to be exported into text files on client's servers or imported to Analytic from text files on client's servers. This will include: (1) a list of each field, (2) their target or source systems, and (3) the frequency and time of import/export for each field that is imported or exported by Analytic. This specification will be done via an Exhibit, "Import-Export Field Specifications."   This specification may be changed from time to time, by mutual agreement.

There is currently no fee charged for use of the import-export Batch Process Tool. However, since customization and use of this tool may cause additional support burdens on Analytic, Analytic may charge Additional Fees for use of this tool. Any such additional fees will be specified in the Exhibit and approved by both Client and Analytic. Analytic also reserves the right to change these fees upon renewal of the subscription for Analytic Schools by giving at least 30 days notice to Client.

15. Client's Security and Privacy Responsibilities with Importing and Exporting of Data

Analytic takes significant measures to secure and protect all the data that is held on Analytic servers and transmitted to and from Client's workstations or devices. This includes multiple levels of encryption. It is recognized by Client that importing/exporting data into/from unencrypted text files leaves that data exposed to data theft, security breach and loss of privacy of employees, especially if that data is stored on laptops or portable devices. Client agrees to take full responsibility for any data theft, security breach, or violation of privacy for any data stored in unencrypted text files on client's servers, workstations and devices from the use Analytic Tools, Data

Grids, Report Writers and the Import-Export Batch Process tool.

16. Data Consistency and Corruption Issues Due to Importing and Exporting of Data

Client may be importing data exported from the Analytic database into other systems under client's control. It is recognized by client that the process of importing data to client's other systems is client's full responsibility. This includes re-formatting data, inserting data into databases and synchronizing with unique ID's and data in client's other systems. Client recognizes that improperly carrying out this methodology could cause data corruption or data inconsistency in client's other systems. Client agrees to take full responsibility for the process of synchronizing data into other systems and relieves Analytic of any responsibility in this manner including checking exported data from Analytic for correct content and format. Analytic will assume similar responsibility in importing data into Analytic databases that is provided from Client's other systems.

17. Compliance Auditing

If Client is a commercial customer of Analytic or Analytic affiliate, Client hereby grants Analytic, or an agent selected by Analytic, the right to perform an audit of Client's use of and access to the Workstation Software. Such audit may include logging or monitoring Client's use of the Workstation Software and Application Service connected to a server on the Analytic Server network. Client agrees to cooperate with Analytic in such audit, and Client agrees to provide Analytic with all records reasonably related to Client's use
 of the Workstation Software. The audit will be limited to verification of Client's compliances with the terms of this Agreement.

18. Client Security Responsibilities

Clients will implement reasonable security procedures necessary to limit access to the Application and workstations running the Workstation Software to prevent unauthorized use. Client will notify Analytic immediately if it knows or has reason to believe that there has been a security breach relating to the Application or Workstation Software, or unauthorized use of the Application.

19. Copies of Software and Documentation

All Analytic Schools Software is either downloadable from the Analytic web site or is web-based. All updates are provided automatically upon user login. All documentation is maintained on-line and accessible from the Workstation App. Any updates or new documentation pages are immediately available to the Client. Therefore, copies of Workstation Software is not permitted and it is unnecessary for Clients to make copies of the workstation software or the documentation.

It is however permitted for Clients to make screen shots or videos of the Workstation App or Knowledge Base pages for the sole internal use of the Client. However these copies are not to be provided to any third party. Notwithstanding these restrictions, Client must obtain the advance written consent of Analytic before providing access to Workstation Software or any documentation or copies thereof through any means including Internet access (such as web, FTP, instant messaging, e-mail or on-line meetings), even if such access is protected by password.

20. Property Rights

The parties acknowledge that some of the Software will be licensed third party software (the "Third Party Code"), and that the Third Party Code is subject to licenses granted to Analytic. Analytic shall provide notice of any terms, conditions, or other notices required by such licenses ("Third Party Terms") to Client, and Client agrees that this Agreement is subject to Third Party Terms, which shall be incorporated by reference in this Agreement as if fully set forth. To the extent not covered in the Third Party Terms, Analytic hereby grants Client a royalty-free, non sub-licensable, and non-exclusive license during the term of this Agreement to use, reproduce, and perform the Third Party Code solely as part of Client's use of the Software hereunder, subject to any restrictions in the Third Party Terms.

All right, title and interest in and to the Software and all copies of the Software, including but not limited to all rights under any patent, trademark, copyright, trade secret, or other form of intellectual property (collectively, "Intellectual Property Rights"), shall at all times remain the property of Analytic and/or Analytic's licensors. Client shall not de-compile, disassemble or reverse engineer the Software.

Client acknowledges and agrees that any services, suggestions, ideas, reports, identification of defects or deficiencies, expenditures, or other contributions by Client (herein after called "Suggestions") shall not give or grant Client any right, title or interest in the Software. Client agrees to allow Analytic to incorporate into any commercial products and/or service any Suggestions of any kind, without compensation and without retention by Client of any proprietary claim, except a non-exclusive license to use such Suggestions. Client hereby assigns any and all right, title and interest (including, but not limited to, any copyright, patent, trade secret, trademark, show-

how, know-how, moral rights, and any and all other intellectual property rights) that Client may have in and to any and all Suggestions to Analytic, except for said non-exclusive license to use such Suggestions.

21. Analytic's Confidential Information

Client acknowledges that the Software contains Confidential Information of a proprietary nature to Analytic. "Confidential Information" includes any competitively sensitive or secret business, marketing or technical information disclosed by Analytic to Client. In all cases, Confidential Information shall include the source code of the Software. Confidential Information also includes but is not necessarily limited to definitions of data structures, database tables, algorithms, process and techniques used within the Software that may be disclosed to or discovered or observed by Client. Any information that is designated by the phrase "Analytic Confidential" is clearly understood by Client to be Confidential Information.

Client agrees that, except as expressly set forth in this Agreement, it will not use in any way for its own account or the account of any third party (for instance, for development of similar software), nor disclose to any third party any Analytic Confidential Information. Client shall at all times maintain such Confidential Information in confidence in the same manner and to the same extent as Client protects its own confidential and/or proprietary information of like kind or nature, but in any event, shall exercise reasonable care to preserve the confidentiality of the Confidential Information.

Client understands that third party professionals, such as Management Consultants, Information Technology Consultants and Software Developers, possess the technical skills and knowledge to decipher, copy and make use of this Confidential Information in such a way that can damage Analytic's competitive advantage. Client agrees to notify Analytic, in writing, of Client's engagement of such professionals in any manner that may expose Analytic's Confidential Information to these third party professionals. Client agrees that Analytic has the right to deny access to any third party that it may deem to compromise its Confidential Information and competitive advantage.

Client acknowledges that violation of this provision will cause immediate termination of the Application Service and Software License and subject the Client to irreversible harms as a result of improper disclosure of Analytic's Confidential Information, and Analytic shall be entitled to injunctive relief to enjoin such violations.

22. Client's Confidential Information

Analytic, as part of providing the services set forth in this Agreement, may from time to time have access to Client's confidential data. Analytic understands that this data may contain information that is confidential to Client. Analytic agrees that all Client information ("Client Confidential Information") to which Analytic gains access in the course of performing its responsibilities under this Agreement, whether labeled confidential or not, is the property of the Client and is to not be given to or revealed to any other party, except when Analytic is required to disclose Client Confidential Information by applicable law or administrative or judicial process.

During Initialization, Conversion, and from time to time as required to support the application, it will be required to work with Client's data at Analytic offices. As much as reasonably possible, this data will remain on The Server. It may be transferred to Analytic workstations with encrypted file transfer protocols to be worked on. When work is completed, it shall be transferred back to The Server and erased from Analytic workstations.

23. Limited Warranty, Disclaimer of Warranties, and Risk of Use

ANALYTIC WARRANTS THAT PROFESSIONAL SERVICES WILL BE PERFORMED IN A WORKMANLIKE FASHION. EXCEPT AS SET FORTH IN THE FOREGOING SENTENCE, IT IS UNDERSTOOD BY CLIENT THAT THE SOFTWARE MAY CONTAIN DEFECTS AND THAT ANALYTIC AND ANALYTIC'S LICENSORS MAKE NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WHATSOEVER REGARDING THE USE, PERFORMANCE, OPERATION OR SUPPORT OF THE SOFTWARE OR REGARDING THE PROFESSIONAL SERVICES. BY WAY OF EXAMPLE, BUT NOT LIMITATION, ANALYTIC AND ANALYTIC'S LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. CLIENT ACKNOWLEDGES THAT EXCEPT AS SET FORTH IN THIS SECTION, THE SOFTWARE AND PROFESSIONAL SERVICES ARE DELIVERED ON AN "AS-IS" BASIS AND THAT CLIENT'S USE OF THE SOFTWARE SHALL BE AT THE CLIENT'S SOLE RISK. ANALYTIC AND ANALYTIC'S LICENSORS DO NOT WARRANT THAT THE USE OF THE SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, WITHOUT BREACHES

OF SECURITY, OR WITHOUT DELAYS. CLIENT ASSUMES THE RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE TO ACHIEVE CLIENT'S INTENDED RESULTS.

24. Force Majeure

Except for the obligation to make payments, nonperformance of either party shall be excused to the extent the performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of and is not caused by the negligence of the nonperforming party.

25. Limitation of Liability

IN NO EVENT SHALL ANALYTIC OR ANALYTIC'S LICENSORS BE LIABLE UNDER ANY THEORY OF LIABILITY (INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTE, OR ANY OTHER THEORY OF LIABILITY) FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES SUCH AS, BUT NOT LIMITED TO, EQUIPMENT DOWN-TIME, LOSS OF DATA. LOSS PROFITS, LOSS OF INFORMATION, EXEMPLARY OR PUNITIVE DAMAGES, OR ANY OTHER SIMILAR DAMAGES, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT ANALYTIC OR ITS REPRESENTATIVES OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY ALSO APPLIES TO ANY DEVELOPER, SUPPLIER OR LICENSOR, INCLUDING ANALYTIC, OF THE SOFTWARE OR PORTION THEREOF, SUCH DEVELOPER, SUPPLIER OR LICENSOR IS AN INTENDED BENEFICIARY OF THIS SECTION. IN NO EVENT SHALL ANALYTIC'S OR ANALYTIC'S LICENSORS' LIABILITY FOR ANY AND ALL CLAIMS, LOSSES, OR DAMAGES ARISING OUT OF OR RELATING TO, IN WHOLE OR IN PART, THIS AGREEMENT, THE SOFTWARE, OR THE PROFESSIONAL SERVICES, WHETHER UNDER CONTRACT, BREACH OF WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTE, OR OTHERWISE, EXCEED THE SUM OF THE INITIAL FEE, ANNUAL FEE, PROFESSIONAL SERVICES FEES, AND EXPENSES PAID OR PAYABLE BY CLIENT TO ANALYTIC. THE FOREGOING LIMITATIONS AND EXCLUSIONS OF DAMAGES SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

26. U.S. Government Restricted Rights

The Workstation Software and documentation are "commercial items" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.72002-1 through 227.72002-4, all U.S. Government end users acquire the Workstation Software and documentation with only those rights set forth herein. Manufacturer is Analytic.

27. Insurance

Analytic maintains a $4,000,000 Aggregate Business Liability Insurance policy and Statutory Worker's Compensation Coverage. Analytic will provide Client a Certificate of Insurance upon request.

28. Independent Contractor

While engaged in carrying out the terms and conditions of this Agreement, Analytic is an independent contractor, and not an officer, employee, agent, partner, or joint venturer of Client.

29. General Terms

This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of California, without giving effect to its conflicts or laws principles. Any claims or legal actions by one party against the other arising under this Agreement or concerning any rights under this Agreement shall be commenced and maintained in any state or federal court located in Santa Clara County, California and both parties hereby submit to the jurisdiction and venue of any such court.

Notice required by this Agreement is to be delivered by certified mail or private delivery services provided that return receipt is requested. Notices will be deemed received as of the date and time of delivery.

This Agreement (which includes all exhibits attached hereto) contains the entire understanding of the parties with respect to the matters contained herein, and there are no promises, covenants or undertakings other than those expressly set forth herein. This Agreement cannot be modified, except pursuant to a written document signed by both Client and Analytic. The headings and captions contained herein shall not be considered to be part of the Agreement but are for convenience only.

Each provision of this Agreement is severable. If a provision is found to be unenforceable, this finding does not affect the enforceability of the remaining provisions, terms or conditions of this Agreement. Client shall not assign this Agreement or delegate its duties hereunder without Analytic's advance written consent. Subject to the foregoing, this Agreement is binding on and inures to the benefit of the parties and their respective successors and assigns.

If any provision hereof is or becomes, at any time or for any reason, unenforceable or invalid, no other provision hereof shall be affected thereby and the remaining provisions shall continue with the same effect as if such unenforceable or invalid provisions shall not have been inserted herein, provided that the ability of either party to obtain substantially the agreed-to performance of the other shall not have thereby been impaired. It is expressly understood that in the event either party shall, on any occasion, fail to perform any term hereof and the other party shall not enforce that term, the failure to enforce on any occasion shall not constitute a waiver of any term and shall not prevent enforcement on any other occasion.

Client agrees that Client will not, directly or indirectly, export, re-export, or transship this Software or any technical data received under this Agreement in any form without the appropriate United States and foreign government licenses.

30. Dispute Resolution

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The foregoing sentence, however, shall not preclude either party from seeking injunctive relief for breaches of the sections entitled "Analytic Confidential Information" and "Client Confidential Information" and shall not preclude Analytic from seeking injunctive relief to enforce its Intellectual Property Rights in the Software.

The prevailing party in any suit or arbitration brought by one party against the other and arising out of this Agreement will be entitled, in addition to any other rights or remedies it may have, to reimbursement for court or arbitration costs, the costs of the suit or arbitration (including without limitation the fees of any arbitrator or special master), and reasonable attorneys' fees.

31. Survivability

Sections 20 through 22 on Property Rights and Confidential Information shall survive expiration or termination of this Agreement for any reason.