



3000 Town Center  
Suite 1330  
Southfield, MI 48075 USA

Agreement No. \_\_\_\_\_

### ILF AND ALF SOFTWARE LICENSE AND SERVICE AGREEMENT

ELYSIUM INC. ("ELYSIUM") and

CUSTOMER \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
CITY \_\_\_\_\_  
STATE \_\_\_\_\_  
ZIP CODE \_\_\_\_\_

This Agreement shall consist of the terms and conditions in the Schedules listed below which are designated by Customer's Initials and a License Software Designation Agreement executed by ELYSIUM and Customer referencing the Agreement Number cited above. Additional ELYSIUM software and services may be ordered from time-to-time by Customer's execution of a supplemental Licensed Software Designation Agreement referencing the Agreement Number cited above, and upon execution by ELYSIUM of such supplemental Licensed Software Designation Agreement, such future orders shall be governed by the terms and conditions referenced herein.

Terms and Conditions	Customer's Initials
• Annual Software License Schedule	_____
• Maintenance and Support Schedule	_____

This Agreement, together with the terms and conditions incorporated herein by reference, contains the entire understanding of ELYSIUM and Customer and supersedes all prior written or oral communications between the parties with respect to the subject matter hereof. This Agreement does not operate as an acceptance of any conflicting terms and conditions and shall prevail over any conflicting provisions of any purchase order of Customer or any other instruments, it being understood that any purchase order issued by Customer shall be for Customer's convenience only and shall not be made a part of this Agreement. Deviations from these terms and conditions shall not be valid unless specifically agreed to in writing by an authorized employee of ELYSIUM. By executing this Agreement below, Customer acknowledges that it has reviewed the terms and conditions incorporated into this Agreement and agrees to be legally bound by same. Customer may not assign any of its rights or obligations under this Agreement. This Agreement shall be governed by, subject and construed in accordance with the laws of the State of Michigan.

CUSTOMER \_\_\_\_\_  
SIGNATURE \_\_\_\_\_  
NAME \_\_\_\_\_  
TITLE \_\_\_\_\_

ELYSIUM INC.  
SIGNATURE \_\_\_\_\_  
NAME \_\_\_\_\_  
TITLE \_\_\_\_\_



## ANNUAL SOFTWARE LICENSE SCHEDULE

CUSTOMER \_\_\_\_\_  
ADDRESS \_\_\_\_\_

The following are the terms and conditions under which Elysium Inc. ("ELYSIUM") licenses its standard software on an annual basis.

### 1. Definitions:

- 1.1. **Licensed Program(s)** means the executable code version of the ELYSIUM software designated by Customer in the Licensed Software Designation Agreement, including any updates, enhancements or modifications to the Licensed Program(s) released by ELYSIUM to customer, and any related documentation.
- 1.2. **Computer System** means the computer hardware equipment at the location designated as the "Site" in the Licensed Software Designation Agreement on which Customer has elected to install and/or execute Licensed Program(s).

### 2. License Fee:

- 2.1. The annual license fee is the aggregate of the fees stated in the Licensed Software Designation Agreement for each Licensed Program selected by Customer.
- 2.2. The annual fee is due and payable upon shipment of the Licensed Program(s) and on each anniversary of the date of shipment if Customer elects to renew the annual license for an additional one year term. It will constitute a material default under the terms of this Agreement by Customer if Customer fails to pay to Elysium any license fee or other amount payable to Elysium under the terms of this Agreement.

### 3. License Grant:

- 3.1. Licensed Program(s), including any documentation relating to or describing such Licensed Program(s) such as, but not limited to, user manuals, now or hereafter provided by ELYSIUM, are furnished to Customer under a non-exclusive, non-transferable and non-assignable license solely for Customer's own internal use at the Site on the single designated Computer System only on which each Licensed Program is first installed. The Licensed Program(s) may only be copied with the proper inclusion of ELYSIUM's copyright notice for use on such single Computer System for archival and back-up purposes. The Licensed Program(s) may not be decompiled, reverse compiled, disassembled or otherwise reverse engineered. Customer will not allow time-sharing or an on-line Application Service Provider type of software usage.
- 3.2. If Customer is unable to operate the Licensed Program(s) on the Computer System due to equipment malfunction, the Licensed Program(s) may be transferred temporarily to another Computer System during the period of equipment malfunction.
- 3.3. Customer is completely and solely responsible for confirming the accuracy of any results it obtains by using the Licensed Program(s). Elysium makes no commitment or assurances regarding the accuracy of the data transfer or the compatibility of the Licensed Program(s).

### 4. Installation:

Customer shall install the Licensed Program(s) only at the site on Customer's Computer System designated on the Licensed Software Designation Agreement.

### 5. Title:

No title to or ownership in the Licensed Program(s) is transferred to Customer. Title to and all applicable rights in patents, copyrights and trade secrets in the Licensed Program(s) shall remain in ELYSIUM or third parties from whom ELYSIUM has obtained rights to license the Licensed Program(s). Licensed Program(s) provided hereunder, including the ideas, concepts, know-how and technology contained therein, are proprietary and confidential to and contain trade secrets of ELYSIUM or third parties from whom ELYSIUM has obtained rights to license the Licensed Program(s), and Customer agrees to be bound by and observe the proprietary, confidential and trade secret nature thereof as herein provided. Customer agrees to take appropriate action by instruction or agreement with its employees who are permitted access to the Licensed Program(s) to fulfill its obligations hereunder. Except as may be permitted in writing by ELYSIUM, Customer shall not provide, or otherwise make available, the Licensed Program(s) or copies thereof to any third party.

### 6. Term and Termination:

- 6.1. The term of the license is a period of one year commencing upon the date the annual license fee is due and payable by Customer.
- 6.2. The annual license shall automatically renew for an additional period of one year at the then current ELYSIUM standard license fees unless 90 days advance written cancellation notice is given by Customer or ELYSIUM.
- 6.3. Customer understands and agrees that if it fails to timely pay Elysium the amounts described herein, then security features contained in the Licensed Program(s) will prevent the Licensed Program(s) from operating upon expiration of the current term.
- 6.4. ELYSIUM shall have the right to terminate Customer's license if Customer fails to pay any required license fee(s) or otherwise fails to comply with these license terms and conditions. ELYSIUM shall give written notice to Customer of such default and if such default has not been remedied within 30 days after such notice, this license shall terminate.
- 6.5. Customer agrees, upon expiration of the license term or upon termination by reason of Customer's default, to immediately return or destroy the Licensed Program(s) and copies thereof as directed by ELYSIUM and, if requested by ELYSIUM, to certify in writing as to the destruction or return of the Licensed Program(s) and all copies thereof.

### 7. Warranty:

- 7.1. ELYSIUM WARRANTS THAT FOR A PERIOD OF 90 DAYS AFTER DELIVERY OF LICENSED PROGRAM(S) TO CUSTOMER, THE LICENSED PROGRAM(S) WILL PERFORM IN ACCORDANCE WITH THE ELYSIUM USER DOCUMENTATION. IN THE EVENT THE LICENSED PROGRAM(S) DO NOT PERFORM IN ACCORDANCE WITH THE USER DOCUMENTATION, THEN DURING THE 90 DAY WARRANTY PERIOD ELYSIUM SHALL AT ITS OPTION (I) CORRECT ANY VARIANCE BETWEEN LICENSED PROGRAM(S) PERFORMANCE AND LICENSED PROGRAM(S) USER DOCUMENTATION; OR (II) REPLACE THE LICENSED PROGRAM(S) MEDIA. THE FOREGOING SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ERROR OR EFFECT IN THE LICENSED PROGRAM(S).
- 7.2. THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WHICH WARRANTIES ARE HEREBY DISCLAIMED, INCLUDING THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY WARRANTIES ALLEGED TO HAVE ARISEN FROM CUSTOM, USAGE, OR A COURSE OF DEALINGS BETWEEN THE PARTIES.

### 8. Patent and Copyright Indemnification:

ELYSIUM shall defend any action, suit or proceeding brought against Customer in so far as it is based on a claim that the Licensed Program(s) delivered hereunder infringe any United States patent or copyright issued or registered as of the date of this Agreement provided that ELYSIUM is promptly notified by Customer of the action and given full authority, information and assistance (at ELYSIUM's expense) for the defense of the action. ELYSIUM shall pay all damages and costs awarded therein against Customer, but shall not be responsible for any compromise made without its consent. ELYSIUM may, at its option and expense, replace or modify the Licensed Program(s) so that infringement will not exist or refund to Customer the price thereof as depreciated or amortized by an equal annual amount over the lifetime of the Licensed Program(s) as established by ELYSIUM. ELYSIUM's commitment shall not extend to any infringement or claim thereof which is based upon the combination of the Licensed Program(s) delivered hereunder with software not supplied by

ELYSIUM, any modification or alteration of the Licensed Program(s) by Customer or Customer's use of a version of the Licensed Program(s) other than the most current version.

**9. Use of Licensed Program(s) and Limitation of Liability:**

- 9.1. Customer shall retain full control over the use of the Licensed Program(s) and any modifications or enhancements thereof as well as Customer's use of any recommendations provided by ELYSIUM during the course of providing services under any other Schedule of this Agreement. Accordingly Customer agrees to be solely responsible for the design, repair and configuration of Customer's equipment, machinery, systems and/or products. Customer assumes all risks and liability for results obtained by the use or implementation of the designs in any way influenced by the use of the Licensed Program(s) or the provision of services, whether such designs are used singly or in combination with other designs or products. Customer agrees that ELYSIUM shall have no liability to the Customer or to any third party for any ordinary, special or consequential damages or losses which might arise directly or indirectly by reason of the Customer's use of the Licensed Program(s) or the provision of services. Customer shall protect, indemnify, hold harmless and defend ELYSIUM of and from any loss, cost, damage or expense, including attorney's fees, arising from any claim asserted against ELYSIUM that is in any way associated with the matters set forth in this Agreement.
- 9.2. With respect to any claim not subject to Section 9.1., the liability of ELYSIUM for any claim hereunder, regardless of the form of action, whether in contract or tort, including claims of negligence against ELYSIUM, shall be limited to the total of all amounts Customer has paid to ELYSIUM for the Licensed Program(s) or services that are alleged to have caused damages or that is related to the cause of action. In no event shall ELYSIUM be liable for any incidental or consequential damages including, without limitation, loss of use, loss of profits or other consequential damages, even if ELYSIUM has been advised of the possibility of such damages. No action, regardless of form, arising out of the transactions under this Agreement may be brought by Customer more than two years after the cause of action has occurred.

**10. Maintenance and Support:**

Maintenance and Support services are available to Customer pursuant to the terms and fees contained in this Agreement, the Maintenance and Support Schedule and the Licensed Software Designation Agreement.

**11. Proprietary Rights:**

Information and data supplied by ELYSIUM with the Licensed Program(s) delivered hereunder, such as, but not limited to, user manuals and documentation, are confidential and proprietary to ELYSIUM and contain trade secrets of ELYSIUM. Such information and data are furnished solely to assist Customer in the installation, operation and use of the Licensed Program(s). All such confidential and proprietary information and data shall be so marked and Customer agrees to abide by the terms of such markings and not to reproduce or copy such data except as is reasonably necessary for proper use of the Licensed Program(s).

**12. Export:**

- 12.1. Customer acknowledges that the Licensed Program(s) provided hereunder may be subject to export controls. Customer agrees that any Licensed Program(s) licensed hereunder will not be exported (or reexported from the country where it was first installed), directly or indirectly, separately or as part of a system, without Customer, at its own cost, first obtaining all licenses from the United States Department of Commerce and any other appropriate agency of the United States Government as may be required by law.
- 12.2. Customer acknowledges and agrees that it shall not use the Licensed Program(s) in the design, development, production, stockpiling or use of missiles, or chemical or biological weapons nor shall it use the Licensed Program(s) for facilities which are intended to produce chemical weapons or chemical weapon precursors, unless a validated export license is obtained from the U.S. Department of Commerce where required.
- 12.3. Customer further acknowledges and agrees that it shall not use the Licensed Program(s) either directly or indirectly to design, develop, fabricate or test nuclear weapons or nuclear explosive devices or to design, construct, fabricate, operate or construct components for facilities: for the chemical processing of irradiated special nuclear or source material; for the production of heavy water; for the separation of isotopes of source and special nuclear material; or for the fabrication of nuclear reactor fuel containing plutonium unless a validated export license is obtained from the U.S. Department of Commerce where required.

**13. Taxes:**

The license fees and any other amounts payable pursuant to this Agreement are exclusive of all national, state, regional, local, municipal or other taxes and fees including, but not limited to, excise, sales, use, property, ad valorem, intangibles, goods and services and value added taxes, customs duties and registration fees, now in force or enacted in the future, and all such taxes and fees, except taxes based on ELYSIUM's net worth, capital or net income, shall be paid directly by the Customer, or if paid by ELYSIUM, Customer will reimburse ELYSIUM.

**14. Notice:**

All notices required to be given hereunder shall be in writing. Notice shall be considered delivered and effective upon receipt when sent by registered or certified mail, return receipt requested, addressed to the parties as set forth above. Either party, upon written notice to the other, may change any name or address to which future notice shall be sent.

**15. Uncontrollable Circumstances:**

If the performance of any part of this Agreement by ELYSIUM or Customer is prevented or delayed by acts of civil or military authority, flood, fire, epidemic, war or riot, or other acts beyond the reasonable control of either party, the party affected shall be excused from such performance only during the continuance of any such event; provided, however, that if such delay in performance extends for more than 60 days, the other party, at its discretion, upon giving written notice, may terminate this Agreement.

**16. General:**

- 16.1. Customer may not assign any of its obligations, rights or remedies hereunder and any such attempted assignment shall be null and void.
- 16.2. Customer shall not in any manner or form disclose, provide or otherwise make available, in whole or in part, any Licensed Program(s) and/or documentation to any third parties.
- 16.3. The waiver or failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder. This Schedule constitutes the entire terms and conditions between the parties with respect to the subject licensing of the Licensed Program(s) on an annual basis and supersedes all proposals, all previous negotiations and agreements, written or oral, express or implied, between the parties with respect to the license.
- 16.4. The terms and provisions contained in Sections 5, 9, 11 and 12 shall survive the termination of this Agreement.
- 16.5. This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Michigan.



3000 Town Center  
 Suite 1330  
 Southfield, MI 48075 USA

Agreement No. \_\_\_\_\_  
 Designation No. \_\_\_\_\_

**LICENSED SOFTWARE DESIGNATION AGREEMENT**

CUSTOMER \_\_\_\_\_  
 ADDRESS \_\_\_\_\_

1. Fees

Part Number	Description	Number of Users	End-user computer ID Number and Site	License Type	License Fee	Total
				Initial License Fee		
				Annual License Fee		

2. **Operating System (circle):**

Windows XP/Vista/7

3. **Password Issuance:**

Machine ID: \_\_\_\_\_

Password: \_\_\_\_\_

Termination Date: \_\_\_\_\_

Issuance Date: \_\_\_\_\_

4. **Delivery Method:**

Website

DVD (\$ 100 charge)

CUSTOMER \_\_\_\_\_

ELYSIUM INC.

SIGNATURE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

NAME \_\_\_\_\_

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

TITLE \_\_\_\_\_

The Licensed Program (s) and/or services described herein are provided under the terms and conditions in the Agreement noted above.

## MAINTENANCE AND SUPPORT SCHEDULE

The following are the terms and conditions under which Elysium agrees to furnish and Customer agrees to accept Maintenance and Support services for the Licensed Program(s) listed on the Licensed Software Designation Agreement under the Agreement cited above.

### 1. Term:

This Schedule covers Maintenance and Support services (defined below) for the Licensed Program(s) commencing on the first day of the license grant and continuing for so long as the Agreement remains in effect, provided that (a) Customer timely pays all amounts due to Elysium under the Agreement, (b) Customer is not otherwise in breach of any provision of the Agreement, and (c) Customer is using the most current version of the Licensed Program(s) (including any Upgrades thereto) provided by Elysium under the Agreement. Without limiting the foregoing, the Maintenance and Support services provided to Customer under this Schedule will terminate concurrently with the termination of the Agreement, and Customer will thereafter be entitled to receive no further Maintenance and Support services unless and until Customer pays Elysium for Annual Maintenance Fees in accordance with the Licensed Software Designation Agreement of this Agreement.

### 2. Support Services:

Elysium will provide the following Maintenance and Support services (the "Support Services") between the hours of 8:00 a.m. and 5:00 p.m., United States - Eastern Standard Time, Monday through Friday, excluding holidays ("Business Hours"). Support Services will be initiated, if made during Business Hours, when Elysium receives notification by telephone or e-mail from Customer that Customer requires assistance operating the Licensed Program(s) or that Customer's unaltered current release of the Licensed Program(s) contain "bugs" or otherwise does not operate in accordance with the Documentation (such "bugs" and/or failure to operate in accordance with the Documentation shall constitute "Errors" for purposes of this Exhibit). For notification made outside Business Hours, maintenance actions will be initiated the next business day. Elysium's Support Services are as follows:

- 2.1 **Telephone and E-mail Support.** During the Term, Elysium will provide a telephone support hotline for reporting Errors and for requesting operating assistance. Customer may also contact Elysium via email to request assistance or to report Licensed Program(s) problems, by sending an email to Elysium at the following address, [support@elysiuminc.com](mailto:support@elysiuminc.com), and specifying in the email, in reasonable detail, the nature of the assistance requested or of the problem encountered.
  - (a) **Operating Assistance.** For any telephone call received during Business Hours to request operating assistance, Elysium will exercise reasonable efforts to provide such assistance during the course of that telephone call. If Elysium is unable to provide the requested assistance at that time, then Elysium will exercise reasonable efforts to return Customer's call and provide the requested assistance within forty eight (48) hours after receipt of the telephone request. For requests for operating assistance sent to Elysium via email, Elysium will exercise reasonable efforts to call or email Customer and provide a response to the requested assistance within forty eight (48) hours after Elysium receives Customer's email.
  - (b) **Error Correction.** Elysium will investigate and analyze any reported Error, and correct any confirmed Errors to resolve verified Licensed Program(s) nonconformance. Elysium's obligations hereunder shall be limited to reasonable efforts to correct Errors as follows: by issuing corrected code, revising the Documentation, or making other appropriate changes to the Licensed Program(s). Customer understands and acknowledges, however, that Elysium does not warrant that the Licensed Program(s) will be free of all errors.
- 2.2 **Updates and Upgrades.** Provided Customer has purchased Maintenance and Support service, Elysium will provide Customer with any Upgrades for no additional charge when such Upgrades are developed or published by Elysium and made generally available to other Customers of the Licensed Program(s) for no additional charge. All Upgrades will become part of the Licensed Program(s) and Elysium will be free to license them to others. As used herein, "Upgrade" will include any Error corrections made to the Licensed Program(s) by Elysium. Elysium's obligation to provide Support Services applies only to the current version of the Licensed Program(s) (which includes any Upgrades thereto that have been provided to Customer at no charge), and should Customer decline to use any Upgrade that Elysium provides at no charge, Elysium's obligation to provide Support Services under this Agreement shall cease.

### 3. Additional Services:

Should Customer require any maintenance or support services not identified in Section 2 above ("Additional Services"), Customer will provide Elysium with notification by telephone or e-mail setting forth the Additional Services that Customer requires. Should Elysium determine in its sole discretion to provide such Additional Services to Customer, Customer and Elysium will negotiate in good faith regarding a statement of work and the applicable fees and expenses for such Additional Services; if no written agreement has been signed within thirty (30) days after Elysium's receipt of notice of Customer's request for such Additional Services, neither party shall be obligated to continue such negotiations.

### 4. Customer Responsibilities:

As a condition of its receipt of Support Services (and, if applicable, the Additional Services) under this Schedule, Customer will be responsible for the following:

- 4.1 **Identification of Problems.** For certain Licensed Program(s) problems, Elysium may require Customer to furnish a test case and sufficient supporting information to allow Elysium to duplicate the Licensed Program(s) problem. Customer will provide these materials within two (2) days of any request for them in writing by Elysium.
- 4.2 **Installation and Operation.** Except as otherwise provided herein, Customer is solely responsible for installing, operating, and managing the Licensed Program(s) and any support or maintenance items delivered under this Schedule.
- 4.3 **No Modifications.** In no event will Elysium be required to undertake the correction of any Errors or other damage resulting from Customer's unauthorized use of, changes to, or modification of the Licensed Program(s).
- 4.4 Customer agrees that Elysium may perform such tests as Elysium deems necessary to monitor compliance with applicable software licenses at any time, with or without notice, during normal business hours.