

## **ANALYTICAL GRAPHICS, INC.**

### **AGI Components License Agreement**

**NOTICE TO USER:** PLEASE READ THIS AGI COMPONENTS LICENSE AGREEMENT (“AGREEMENT”) CAREFULLY. THIS IS A LEGALLY BINDING AGREEMENT BETWEEN YOU AND ANALYTICAL GRAPHICS, INC. (“AGI”), A PENNSYLVANIA CORPORATION, LOCATED AT 220 VALLEY CREEK BOULEVARD, EXTON, PA 19341. BY USING ALL OR ANY PORTION OF THE AGI COMPONENTS MADE AVAILABLE BY AGI, YOU ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ANY OF THESE TERMS, PLEASE DO NOT INSTALL, DOWNLOAD OR USE AGI COMPONENTS. YOU ACCEPT ALL RESPONSIBILITY AND LIABILITY RESULTING FROM THE SELECTION OF AGI COMPONENTS TO ACHIEVE YOUR INTENDED RESULTS, AND FOR INSTALLATION, USE AND RESULTS OBTAINED FROM AGI COMPONENTS, AND FOR RELIANCE ON THE RESULTS OBTAINED.

#### **1. DEFINITIONS**

“AGI Components” means AGI software technology that includes AGI functionality and subprograms or dynamic linked libraries, including but not limited to the Dynamic Geometry Library, Navigation Accuracy Library, Terrain Analysis Library, Spatial Analysis Library, Communications Library, Insight3D Visualization Library, Tracking Library, Routing Library, and HPOP Library.

“Client-Server Environment” means a networking environment consisting of a requesting computer (client) which receives application processing from a server.

“Component Application” means a custom application created by You that incorporates AGI Components and software and/or functionality derived from Component Developer Resources and utilizes up to the Licensed Number of Processing Cores.

“Licensed Number of Processing Cores” means the number of processing cores the Component Application will utilize per Run-Time License. The Licensed Number of Processing Cores for this License Agreement is specified in the Runtime License Purchase Order details. If not specified, the Licensed Number of Processing Cores is two (2).

“Component Application Licensee” means a legal entity to which a Component Application has been licensed.

“Component Developer Resources” means the Documentation, Installation Utilities and Component Reference Applications, as provided and owned by AGI.

“Development Kit” means, collectively, AGI Components and Component Developer Resources, provided and licensed to You by AGI at no charge for specified renewable time periods.

“Documentation” means the licensed specifications, user manuals, installation instructions and other supporting materials, including additional, updated or revised materials, if any, that are provided by AGI in connection with AGI Components.

“Library” means a dynamic linked library that is a collection of software functions that can be called by a higher level program that individually or as part of a collection form an AGI Component.

“License Term” means a period for use of the Development Kit, as such period may be extended by AGI.

“Named User” means a unique person who has been specifically authorized to use the Development Kit or a Component Application.

“Run-Time License” means a license purchased from AGI and required for authorized access to a Component Application appropriate to the environment in which the Component Application will be deployed, and includes any of the following:

- (a) Named User Run-Time License, which authorizes a Component Application, utilizing up to the Licensed Number of Processing Cores, to be deployed as a desktop application or in a Client-Server Environment, all on a Named User basis.
- (b) Enterprise Server Run-Time License, which authorizes deployment of a Component Application, utilizing up to the Licensed Number of Processing Cores, in a Client-Server Environment with unknown end users on a Server.

“Server” means a computer that makes software application services, such as access to data files, and programs available to workstations on a network.

"Third Party Content" means software (whether embedded or not) and other materials owned and licensed by third parties that is supplied by AGI with AGI Components.

"Use or Using" means to access/open, install, download, copy, or otherwise benefit from AGI Components or the Documentation.

“End Use” means any use of a Component Application beyond development or testing of the Component Application.

## **2. TECHNOLOGY LICENSE**

2.1 Subject to the terms and conditions of this Agreement and payment of all resulting applicable fees, AGI grants to you a non-exclusive, non-transferable license to:

- (a) use the Development Kit in accordance with the terms of this Agreement for the License Term;
- (b) use AGI Components to develop Component Applications that include AGI Components and Software and/or functionality derived from Component Developer Resources;
- (c) reproduce, distribute and use Component Applications for Yourself; and
- (d) reproduce, distribute, and license Component Applications to third party Named Users (without the right to further sublicense) throughout the world (subject to Your obligations under Section 5).

2.2 You may:

- (a) for each Development Kit that You have licensed, install and use the AGI Components on a Named User basis, on any computer, solely for the purpose of individual research, development, and demonstration of a prototype application, for the duration of the License Term;
- (b) for each Runtime license that You have purchased, build AGI Component applications for End Use, for use on funded research, for deployment in corporate or operational environments, or for commercial resale;
- (c) copy and distribute Component Applications for Your use, provided that you shall have purchased a Run-Time License appropriate to the environment in which you deploy the Component Application and required for the number of Named Users who may access the Component Application. For each Named User Run-Time License purchased, deploy Component Applications, utilizing up to the Licensed Number of Processing Cores, as desktop applications or in a Client-Server Environment, both on a Named User basis. For each Enterprise Server Run-Time License purchased, deploy Component Applications, utilizing up to the Licensed Number of Processing Cores, in a Client-Server Environment with unknown end users; and

(d) subject to Your obligations under Section 5, copy, distribute and license a Component Application to third party Named Users, provided that for each Component Application licensed to a third party Named User, You have purchased a Run-Time License appropriate to the environment under which You intend to deploy the Component Application, utilizing up to the Licensed Number of Processing Cores, and for the number of third party Named Users who may access the Component Application, and further provided that you shall have obtained the acceptance of such Named Users to a Component Application, utilizing up to the Licensed Number of Processing Cores, License agreement that complies with Section 2.4 below as part of a Component Application.

2.3 You and Your Named Users and your third party licensees and their Named Users shall not:

(a) distribute, license, lease, sell, transfer or otherwise disseminate through any means now existing or later developed, AGI Components, or distribute, license, sell, or transfer any component of AGI Components, except as part of a Component Application;

(b) use AGI's name, logo(s) or trademarks to market or promote Component Applications, except as may be permitted in a separate agreement between You and AGI;

(c) reverse assemble, reverse compile or translate any Library of AGI Components;

(d) remove a copyright notice, disclaimer, or other form of attribution from any Library of AGI Components;

(e) share any Library of AGI Components over a network, for any purpose;

(f) circumvent the operation of any Run-Time License by any means;

(g) operate multiple copies of the software at the same time on different computers with a single license. Software licensed on a "Named User" basis may be installed on multiple computers but may only be accessed by the Named User; and

(h) distribute any of the Component Developer Resources, as provided by AGI, to a Named User, except as incorporated into a Component Application.

2.4 The use of Component Applications by third party Named Users is strictly conditioned on acceptance of a Component Application License that, at a minimum:

(a) includes the prohibitions recited in Section 2.3 (b)-(g);

(b) prohibits the Component Application Licensee and its Named Users from copying any Library of AGI Components, except as necessary to use the licensed copy of any Library of the AGI Components, provided that a Named User may make a copy for back-up purposes so long as the copy is not distributed to a third party;

(c) describes that operation of a Component Application requires the Component Application Licensee and its Named Users to obtain a Run-Time License as provided by You and purchased from AGI;

(d) clearly states that the Component Application Licensee and its Named Users assume all risks and liability arising from the use of a component for any purpose, including the security of all data stored on its computers;

(e) includes a disclaimer of warranty that by its terms is applicable to AGI and its suppliers and that is at least as limiting as the disclaimer of warranty of Section 3 of this Agreement; and

(f) includes a disclaimer of liability that by its terms is applicable to AGI and its suppliers and that is at least as limiting as the limitations of liability of Section 4 of this Agreement.

## 2.5 Acknowledgements

- (a) You acknowledge and agree that you are responsible for the security of all data stored on its computer as a result of the operation of any Library of AGI Components by You.
- (b) You accept all risks and liability arising from the use of any AGI-provided software component for any purpose.

## 3. LIMITATION AND WARRANTIES

3.1 AGI COMPONENTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. YOU ASSUME THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF AGI COMPONENTS. AGI DOES NOT WARRANT THAT THE FUNCTIONS OR TECHNOLOGY CONTAINED IN AGI COMPONENTS WILL BE UNINTERRUPTED OR ERROR FREE.

3.2 SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS, IN WHOLE OR IN PART, MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

3.3 AGI PROVIDES NO WARRANTY OF ANY KIND WITH REGARD TO COMPONENT APPLICATIONS THAT YOU CREATE USING AGI COMPONENTS, NOR IS AGI OBLIGATED TO PROVIDE UPDATES, MAINTENANCE, SUPPORT, DOCUMENTATION OR ANY OTHER SERVICES OR SUPPORT TO ANY THIRD PARTY TO WHOM YOU HAVE DISTRIBUTED COMPONENT APPLICATIONS CREATED WITH AGI COMPONENTS.

## 4. LIMITATION OF REMEDIES

4.1 IN NO EVENT WILL AGI OR ITS SUPPLIERS, DISTRIBUTORS, OR DEALERS BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT OR OTHER DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE AGI COMPONENTS, OR A LOSS OF DATA OR PROFITS, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE OR OTHER TORTIOUS ACTION, EVEN IF AGI OR ANY AUTHORIZED AGI BUSINESS PARTNER HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOR SHALL AGI BE LIABLE FOR ANY SIMILAR CLAIM AGAINST YOU BY ANY OTHER PARTY.

4.2 AGI'S OBLIGATIONS UNDER THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY OR CONTRIBUTION, SHALL NOT EXCEED THE AMOUNT OF APPLICABLE RUN-TIME LICENSE FEES PAID BY YOU.

## 5. UNITED STATES EXPORT CONTROL

You hereby acknowledge and agree that the AGI Software Products provided under this Agreement are subject to U.S. Export Control Regulations and Laws, including but not limited to the Export Administration Regulations (EAR) and as may be applicable, the International Traffic in Arms Regulations (ITAR), and may be subject to the import or export regulations of other countries. You agree to strictly comply with all such laws and regulations and acknowledge your responsibility to obtain licenses for export, re-export or import of the Software, as may be required. You acknowledge and agree to comply with U.S. antiboycott laws and regulations, including but not limited to those regarding foreign boycott of Israel, as administered by the U.S. Internal Revenue Service (IRS) and the U.S. Department of Commerce, Office of Antiboycott Compliance (OAC). In the event that transfer of bank funds to AGI results from this Agreement, all transactions shall be exclusively and directly between customer's bank and AGI, and shall not be used for transactions in violation of U.S. law, including but not limited to laws administered by the

U.S. Department of Treasury, Office of Foreign Asset Control (OFAC). This export control provision shall survive the expiration or termination of this Agreement.

## **6. TERMINATION**

The license granted under this Agreement is effective until terminated. You may terminate this license at any time by destroying all copies of AGI Components in your possession, and providing written notice of such termination and destruction to AGI. The license granted under this Agreement will terminate if you violate any of the terms and conditions of the Agreement, including without limitation, to pay the license fees and any other sums due AGI pursuant to this Agreement. You agree, upon such termination, to promptly destroy all copies of AGI Components in your possession and to certify in writing to AGI that such action has been taken.

## **7. LAW TO GOVERN**

This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, United States of America. You hereby agree that the jurisdiction and venue for any claim, dispute, controversy or other action arising out of or in connection with AGI Components, this Agreement and/or AGI, shall be in the Commonwealth of Pennsylvania, Court of Common Pleas for Chester County, or the United States District Court for the Eastern District of Pennsylvania located in Philadelphia, Pennsylvania.

## **8. ASSIGNMENT**

None of your rights, duties or obligations under this Agreement may be sold, sublicensed, assigned, rented, licensed, loaned or otherwise transferred without the prior written consent of AGI, and any attempt to so sell, sublicense, assign, rent, lease, loan or transfer without AGI's prior written consent is void.

Notwithstanding the foregoing provision, AGI shall permit transfers of this Agreement, provided the original software purchase transaction was completed pursuant to a valid contract, and you have obtained AGI's prior written consent, which shall not be unreasonably withheld.

## **9. NOTICES**

Any notices regarding this Agreement shall be sent to:

Analytical Graphics, Inc.  
Attn: Contracts Department  
220 Valley Creek Blvd.  
Exton, PA 19341

## **10. AUDIT AND LICENSE TRACKING**

AGI or its designee may, from time to time, at its sole expense, and consistent with your security obligations and requirements, conduct an audit of your computer hardware, computer software, books and other records related to AGI Components sufficient to substantiate compliance with this Agreement. Such audit shall take place during normal business hours and will be conducted in a manner so as to not interfere with your operations. Furthermore and on an annual basis, You agree to use commercially reasonable efforts to track and account for the total number of Named User or Enterprise Server Run-Time Licenses distributed in the aggregate to the number of such Run-Time Licenses purchased under the terms of this Agreement. In the event the actual number of Run-Time Licenses distributed exceeds the number of Run-Time Licenses purchased from AGI, You hereby agree to pay AGI for the corresponding underpaid Run-Time License fees.

## **11. INTELLECTUAL PROPERTY AND OWNERSHIP**

AGI or its suppliers retain all right, title and interest in and to AGI Components. This Agreement shall not be construed in any manner as transferring any rights of ownership or license to AGI Components thereof, and/or to the features or information therein except as expressly licensed under Section 2. All rights not expressly granted by AGI are reserved. AGI Components are protected by copyright and other intellectual property laws and treaties.

## **12. U.S. GOVERNMENT END USERS**

12.1 AGI Components and Documentation are "Commercial Items," as defined in FAR 2.101, consisting of Commercial Computer Software and Commercial Computer Software Documentation. Government software and technical data rights in AGI Components and its Documentation include only those rights customarily provided to the public as defined in this License.

12.2 The use, duplication of or disclosure of AGI Component and its Documentation by the U.S. Government is subject to the restrictions set forth in FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software) and, for Department of Defense purchases, DFAR 252.227-7015 (Technical Data – Commercial Items) and 227.7202-3 (Rights in Commercial Computer Software or Commercial Computer Software Documentation), as applicable. Accordingly, all U.S. Government End Users acquire AGI Components and its Documentation with only those rights set forth herein. The developer and manufacturer is Analytical Graphics, Inc., located at 220 Valley Creek Boulevard, Exton, PA 19341.

## **13. THIRD PARTY CONTENT**

AGI Components may incorporate Third Party Content which is subject to the terms and conditions of such respective third parties. Third party terms, conditions and copyright attributions may also be viewed at [www.agi.com/sla](http://www.agi.com/sla).

## **14. INDEMNIFICATION**

You agree to indemnify, defend and hold harmless AGI and its suppliers from any and all claims or lawsuits, including attorney's fees, arising out of or in connection to Your use and operation of AGI Components, and the distribution of Component Applications that You have created using AGI Components.

## **15. ACKNOWLEDGEMENTS**

15.1 YOU HAVE READ THIS ENTIRE AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS;

15.2 THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE UNDERSTANDING AND CONTRACT BETWEEN US AND SUPERSEDES ANY AND ALL PRIOR ORAL OR WRITTEN COMMUNICATIONS RELATING TO THE SUBJECT MATTER HEREOF;

15.3 THIS AGREEMENT MAY NOT BE MODIFIED, AMENDED OR IN ANY WAY ALTERED EXCEPT BY A WRITTEN AGREEMENT SIGNED BY BOTH YOU AND AGI;

15.4 ANY PROVISION FOUND BY A COURT OF LAW TO BE ILLEGAL, INVALID, OR UNENFORCEABLE SHALL AUTOMATICALLY BE DEEMED CONFORMED TO THE MINIMUM REQUIREMENTS OF LAW AND IT, WITH ALL OTHER PROVISIONS, SHALL BE GIVEN FULL FORCE AND EFFECT. WAIVER OF A PROVISION IN ONE INSTANCE SHALL NOT PRECLUDE ITS ENFORCEMENT ON FUTURE OCCASIONS. SUCH FINDINGS OF ILLEGALITY, INVALIDITY, AND/OR UNENFORCEABILITY OF ONE OR MORE OF THE PROVISIONS HEREIN SHALL NOT AFFECT THE REMAINING PROVISIONS; AND

15.5 YOU HEREBY AGREE THAT AGI WOULD BE IRREPARABLY DAMAGED IF THE TERMS AND CONDITIONS OF THIS AGREEMENT WERE NOT SPECIFICALLY ENFORCED, AND THEREFORE YOU AGREE THAT AGI SHALL BE ENTITLED TO APPROPRIATE EQUITABLE REMEDIES WITH RESPECT TO BREACHES OF THIS AGREEMENT, IN ADDITION TO SUCH OTHER REMEDIES AS AGI MAY OTHERWISE HAVE AVAILABLE TO IT UNDER APPLICABLE LAWS. IN THE EVENT THAT AGI IS REQUIRED TO BRING AN ACTION, SUIT, OR OTHER PROCEEDING FOR FEES, OTHER MONIES DUE UNDER THIS AGREEMENT, OR THE ENFORCEMENT OF ANY PROVISION OF OR UNDER THIS AGREEMENT; YOU AGREE TO REIMBURSE AGI FOR ANY AND ALL COSTS AND EXPENSES, INCLUDING ATTORNEY AND PROFESSIONAL OR EXPERT FEES, INCURRED BY AGI.