

PLEASE READ THIS AGREEMENT CAREFULLY. THIS AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU AND LICENSOR. BY CLICKING THE "I ACCEPT" BUTTON, YOU ACKNOWLEDGE AND REPRESENT THAT YOU ACCEPT AND AGREE TO ALL OF THE TERMS OF THIS MAINTENANCE AND SUPPORT AGREEMENT; THAT YOU ARE AUTHORIZED TO ACCEPT IT; AND THAT YOU HAVE READ AND UNDERSTOOD THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, THEN DO NOT CLICK THE "I ACCEPT" BUTTON.

PLEASE NOTE: THE TERMS CONTAINED HEREIN MAY HAVE CHANGED.

MAINTENANCE AND SUPPORT AGREEMENT

This Maintenance and Support Agreement ("Agreement") shall govern the services to be provided by Advance Fiber Optics, Inc. ("Licensor"), a corporation organized under the laws of the State of Utah, United States of America, with its principal place of business at 871 West Robinson Drive, North Salt Lake, Utah, 84054, with respect to the Covered Software set forth in the Order for Services submitted by the undersigned or person/entity accepting these terms and conditions of this Agreement ("Licensee") and shall be effective upon Lessee's payment of the applicable Annual Maintenance Charge and confirmation by Licensor (the "Effective Date").

1. Definitions:

- 1.1. "Covered Software" means the Software titles and numbers of licenses/users set forth on the Order for Services.
- 1.2. "Documentation" means a written guide in any form or media describing the use and operation of Software, together with any related supporting documentation.
- 1.3. "Lapse" means an interruption in the continuous Maintenance and Support Services coverage (or allowing an agreement for Maintenance and Support Services to expire without renewing).
- 1.4. "Order for Services" means the form, telephonic or online request completed by or on behalf of Licensee that sets forth the Covered Software including Software titles, number of users, and the annual maintenance plan and it's a prerequisite for entering into this Agreement.
- 1.5. "Software" means the proprietary computer software offered by Licensor in machine-readable form and shall include the original and all whole or partial copies and the following material: 1) machine-readable instructions and data, 2) components and releases, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related software materials, and 5) Software use documents or keys, and Documentation.
- 1.6. "Special Services" means services not within the scope of this Agreement, but that may be performed by Licensor for additional charge.
- 1.7. "Supported Version" means the current version of the Software and such prior versions for which Licensor is providing support services.
- 1.8. "Term" means the term set forth in Section 4 below.

2. Services: Provided Licensee pays the Annual Maintenance Charge and an End User License Agreement is in effect for a Supported Version of the Covered Software, Licensor will provide the following Maintenance and Support Services during the applicable Term:

2.1. Technical Support Services

- 2.1.1. All fixes and patches ("Updates") applicable to the Covered Software and distributed by Licensor via the website at http://www.ospinsight.com/products/demo_download.html.
- 2.1.2. Reasonable access by telephone and/or Internet (Monday through Friday, 8:00 a.m. to 5:30 p.m. MST. UTC/GMT -7 hours) to Licensor's technical staff for support in the use and operation of the Covered Software.
- 2.1.3. Technical Support Services pertain to software bugs or specific problems that relate to how the Covered Software operates and is intended to provide limited aid in the use of the Covered Software. It is not intended to be used for training on the Software.
- 2.1.4. This service is for the Covered Software and any features of associated third-party applications that are directly related to the Covered Software and provided by Licensor only. Other third-party

features and/or applications are outside the scope of this Agreement and are not supported. Licensee should refer to the provider or developer of such third-party features and/or applications.

2.2. Upgrade Maintenance Service

- 2.2.1.** All new versions of a prior Covered Software containing additional and/or improved functionality as it pertains to each Covered Software individually, not collectively, among the various Software made available by Licensor ("Upgrades"). All Upgrades, updates, fixes, workarounds and modifications of Covered Software shall be deemed to be part of such Covered Software subject in all respects to the terms of this Agreement, and shall be owned in all respects and exclusively by Licensor. To the extent Licensee or its personnel or any affiliate thereof may acquire any right or interest therein by operation of law, or otherwise, Licensee hereby irrevocably assigns all such right, title and interest exclusively to Licensor.
- 2.2.2.** Notification of Upgrades by Licensor to Licensee within a reasonable time from the time Upgrades are completed and made available to end users. Upgrades will be made available via download by the end user from the applicable download site.
- 2.2.3.** No obligation is made or implied herein by Licensor to develop and distribute Upgrades within any defined period of time; Licensor, will, however, make available to current subscribers to a technical support and maintenance agreement such Upgrades as are developed from time to time and made available to end users by Licensor.
- 2.2.4.** Licensor reserves the right to require payment of an additional fee if substantial additional functions or improved performance is provided with respect to Covered Software.

2.3. Maintenance Services Exclusions. In accordance with the applicable End User License Agreement and unless otherwise agreed to in writing by Licensor, the Maintenance and Support Services and the charges associates therewith do not cover or including the following:

- 2.3.1.** Support of Software which has been modified or required other than by Licensor or by a third party engaged by Licensor;
- 2.3.2.** Making specification changes or performing services connected with the relocation of Software;
- 2.3.3.** Modification or replacement of Software, repair of damage, or increase in service timer caused by failure to continually provide a suitable operational environment with all facilities prescribed by the applicable Documentation, including, but not limited to, the failure to provide or the failure of adequate electrical power, temperature or humidity control, or computing environment;
- 2.3.4.** Modification or replacement of Software, repair of damage, or increase in services time caused by the use of the Software for other than the purposes for which it is authorized or not in accordance with the Software operating guidelines;
- 2.3.5.** Modification or replacement of Software, repair of damage, or increase in service time caused by: accident, natural or man-made disaster which shall include but not be limited to fire, water, wind, and lightening, transportation, neglect or misuse.
- 2.3.6.** Maintenance or replacement of Software, or increase in services time caused by the use of the Software in combination with other products;
- 2.3.7.** Backing up or restoring programs and/or data;
- 2.3.8.** Keying, importing, converting or manipulation of data;
- 2.3.9.** On-site or formal classroom training on the operation and use of the Software;
- 2.3.10.** Initial installation of the Software and any subsequent releases; or
- 2.3.11.** Use of the Software other than in accordance with system requirements; or
- 2.3.12.** Support of Software which is not Covered Software.
- 2.3.13.** In the sole discretion of Licensor, Licensor may perform any of the foregoing services on a separate billable Special Service basis or as part of a separate agreement. Licensee agrees that any services rendered pursuant to Licensee's request of services which is determined by Licensor to have been caused by problem set forth in the exclusions above shall be a Special Service.

2.4. Licensor reserves the right to change or modify the Maintenance and Support Services at any time and from time to time upon 30 days written notice to Licensee. In the event of a conflict between this Agreement and the End User License Agreement concerning which Services apply and how such Services will be provided the End User License Agreement shall control.

3. **Annual Maintenance Charge:** Licensee shall pay to Licensor the Annual Maintenance Charge in effect as of the Effective Date or as of the commencement of any Renewal Period.

- 3.1. The Annual Maintenance Charge shall be adjusted to account for any additional licenses that Licensee may purchase in accordance with Licensor's fees in effect at such time.
- 3.2. Licensor may for an additional cost provide software maintenance management services for third-party products that are either embedded within Covered Software or are used as optional add-ins. These products are outside the pricing control of Licensor and ongoing maintenance and technical support fees for third party products are not covered by this Agreement.
- 3.3. All Annual Maintenance Charges are due and payable upon Licensee's acceptance of this Agreement as set forth in Section below and within thirty (30) days of the invoice date for any Renewal Period(s) or any Special Services. In the event Licensee fails to make payment to Licensor when due, Licensor reserves the right to cancel any Maintenance and Support Services with written notice to Licensee. Upon cancellation of the Maintenance and Support Services, Licensee shall have no further right to receive any Maintenance and Support Services.

4. **Term:** This Agreement shall commence on the Effective Date and shall remain in effect through the last day of the same calendar month in the following calendar year (the "Initial Term"). Licensee may renew this Agreement for an additional period (a "Renewal Period") provided Licensee is bound by an effective End User License Agreement for use of the Software. The Initial Term and any Renewal Period(s) are collectively referred to herein as the "Term". Licensee's renewal of this Agreement shall be subject to payment of the Annual Maintenance Charge which may be adjusted in accordance with Licensor's then-current prices, any may include additional charges associated with reinstatement due to any Lapse.

5. **License:** All Services provided to Licensee hereunder shall be deemed to be a part of the Licensed Product, and all terms and conditions of the License Agreement not inconsistent with the express provisions of this Agreement shall be applicable to such Services, including without limitation those relating to use, copying, return of materials, assignments, ownership, copyright, trade secret and patent protection and applicable law.

6. **Agreement and Acceptance.**

- 6.1. Licensee's placement of an Order for Services and payment of the Annual Maintenance Charge constitutes acceptance of this Agreement. This Agreement is not effective until it has been confirmed by Licensor. Maintenance and Support for the Covered Software may be subject to different terms and conditions.
- 6.2. UPON RECEIPT OF ORDER CONFIRMATION FROM LICENSOR VIA EMAIL OR INVOICE, OR, BY CHECKING THE "I AGREE" BOX, LICENSEE HEREBY ACKNOWLEDGES THAT (1) IT HAS READ AND UNDERSTANDS THIS AGREEMENT; (2) IT IS AUTHORIZED TO ACCEPT THIS AGREEMENT; AND (3) IT AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.
- 6.3. FOR ON LINE TRANSACTIONS ONLY: IF LICENSEE DOES NOT ACCEPT THE TERMS AND CONDITIONS CONTAINED HEREIN, DO NOT CHECK THE "I AGREE" BOX AND THIS AGREEMENT WILL NOT TAKE EFFECT.
- 6.4. FOR OFFLINE TRANSACTIONS ONLY: AFTER PLACEMENT OF AN OFFLINE ORDER FOR SERVICES, LICENSEE MAY CANCEL THIS AGREEMENT BY SENDING A WRITTEN NOTICE OF CANCELLATION TO LICENSOR WHICH MUST BE RECEIVED BY LICENSOR WITHIN TEN (10) CALENDAR DAYS OF THE DATE OF THE ORDER FOR SERVICES FOR SUCH CANCELLATION TO TAKE EFFECT; PROVIDED, HOWEVER, THAT LICENSEE MAY NOT CANCEL THIS AGREEMENT IF IT HAS ALREADY REQUESTED AND RECEIVED MAINTENANCE AND SUPPORT SERVICES FROM LICENSOR.

7. **Limited Warranty**

Licensor warrants that the media on which the Software is furnished will be free from defects in materials and workmanship under normal use for a period of thirty (30) days from the date of delivery ("Warranty Period"). Licensor does not warrant that the functions contained in the Licensed Product will meet Licensee's requirements or that the operation of the Software will be uninterrupted or error-free. The Licensed Product is furnished "AS IS" and without warranty as to the performance or results and performance of the Licensed Product is assumed by you. Any other software and any hardware furnished with or accompanying the

Software is not warranted by Licensor. Licensee's exclusive remedy under this limited warranty is the replacement of any defective physical media on which the Software is furnished, as provided below. To receive a replacement for defective media under this limited warranty, return the defective media to Supplier during the Warranty Period, with proof of payment.

8. **Restricted Rights Legend:** The Software and Documentation are provided with "RESTRICTED RIGHTS" applicable to private and public licenses alike. Without limiting the foregoing, the 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 or 48 C.F.R. §227.7202, as applicable, and any successor regulations. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. . Unpublished-rights reserved under the copyright laws of the United States. Manufacturer: Advance Fiber Optics, Inc., 871 West Robinson Drive, North Salt Lake, Utah, 84054.
9. **Force Majeure:** Licensor shall not be liable to Licensee for any failure or delay caused by events beyond Licensor's reasonable control, including Licensee's failure to furnish necessary information; sabotage; failure or delays in transportation or communication; failures or substitutions of equipment; labor disputes; accidents; shortages of labor, fuel, raw materials or equipment; or technical failures.
10. **Non-Assignment:** Licensee shall not assign this without written permission from Licensor, which may be withheld in Licensor's sole and absolute discretion. Any permitted successor must agree in writing to be bound by this Agreement. Licensor shall have the right to assign this Agreement, in whole or in part, and/or to subcontract its performance obligations hereunder, at any time and from time-to-time in its sole and absolute discretion.
11. **Entire Agreement:** This Agreement, together with the License Agreement and any and all exhibits, schedules and appendices attached hereto and thereto, is the complete, entire and exclusive statement of the agreement between Licensee and Licensor, and supersedes any prior or contemporaneous oral or written communications, proposals, agreements and representations with respect to its subject matter; and prevails over any conflicting or additional terms of any quote, order, acknowledgment, or similar communications between the parties relating in any way to the subject matter of this License Agreement. This License Agreement may not be amended or modified except by a written agreement signed by authorized representatives of each party.
12. **Governing Law:** This License Agreement shall in all respects be governed by and interpreted under the laws of the State of Tennessee, United States of America, without regard to conflicts of law provisions. Licensee hereby unconditionally submits and consents to the sole and exclusive jurisdiction and venue of the state and federal courts located in Williamson County, United States to resolve any disputes arising under or in any way related to this License Agreement and waives any objection to the jurisdiction or venue of such courts or Tennessee law governing this License Agreement. No lawsuit, proceeding or any other action relating to or arising under this license agreement may be commenced or prosecuted in any other forum. THIS LICENSE AGREEMENT WILL NOT BE GOVERNED BY OR OTHERWISE CONSTRUED AND ENFORCED BY OR UNDER THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS, INCLUDING WITHOUT LIMITATION ITS CONFLICT OF LAWS RULES, THE APPLICATION OF WHICH IS HEREBY EXPRESSLY EXCLUDED.
13. **Notices:** Any notice required under this Agreement shall be given in writing and delivered personally or by telecopy (with transmission confirmed), registered or certified mail, return receipt requested, or overnight courier to the parties at their addresses noted above or such other addresses as shall have been designated to each other in writing. All notices to Licensor shall be directed to the attention of Customer Service Manager.
14. **Severability:** If any provision of this License Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to

the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

15. **Enforcement:** The failure of either party in any one or more instances to insist upon strict performance of any of the terms or provisions of this Agreement shall not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms or provisions on any future occasion. The headings are for convenience only and do not affect the meaning of this Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this agreement as of the 29th day of MAY, 2018

Agreed to:

Agreed to:

LICENSEE:

LICENSOR:

City of Franklin

ADVANCE FIBER OPTICS, INC.

By: 
Authorized Signature

By: 
Authorized Signature

Name: ERIC S. STUCKEY
Date: 6-05-18

Name: Clark Stevenson
Date: 5-29-2018

Address:
109 3RD AVENUE SOUTH
FRANKLIN, IN 37065

Address:
871 W. Robinson Drive
North Salt Lake, UT 84054
Attention: Clark Stevenson

Approved as to Form:



Tiffani M. Pope, Staff Attorney

EXHIBIT A – AFO LICENSED PRODUCT DESCRIPTION AND SERIAL NUMBER IDENTIFICATION

The Licensed Product referred to in the Maintenance and Support Agreement consists of computer software programs and related documentation created and/or developed by AFO (Advance Fiber Optics, Inc.) as listed below and identified by specific license number(s):

Licensed Product Description	Serial Number
OSPInSight® Edit for ESRI	EM800-1179 License ID: 63660218 Activation Password: 6U742789
OSPInSight® SpliceGUI	SPLGUEM800-1179 License ID: 63660220 Activation Password: WJ446385
OSPINSIGHT Widgets for ARCGIS Server	ARCW800-1181
Effective Through April 29, 2019	

*Third party product and subject to additional service fees as defined in Section 2.2



END USER LICENSE AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE COMPLETING THE INSTALLATION PROCESS AS THE TERMS MAY HAVE CHANGED. THIS AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU AND LICENSOR. BY INSTALLING, COPYING OR USING ALL OR ANY PORTION OF THE SOFTWARE, OR BY CLICKING THE "I ACCEPT" BUTTON, YOU ACKNOWLEDGE AND REPRESENT THAT YOU ACCEPT AND AGREE TO ALL OF THE TERMS OF THIS LICENSE AGREEMENT; THAT YOU ARE AUTHORIZED TO ACCEPT IT; AND THAT YOU HAVE READ AND UNDERSTOOD THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, THEN DO NOT INSTALL AND/OR USE THE SOFTWARE.

PLEASE NOTE: THE TERMS CONTAINED HEREIN MAY HAVE CHANGED. FURTHER, THIS AGREEMENT CONTAINS TERMS THAT APPLY TO A PERPETUAL RIGHT TO USE THE SOFTWARE AND TERMS THAT APPLY TO AN ANNUAL ONLINE SUBSCRIPTION (DEPENDING UPON HOW YOU PURCHASED THE RIGHT TO USE THE SOFTWARE) AND TERMS THAT ARE COMMON TO EACH OF THE FOREGOING.

******If you have any questions as to which terms are applicable to you, please contact Licensor.******

A. COMMON TERMS

1. License

1.1 In this End User License Agreement (this "License Agreement"), you, the acquirer of the license rights granted by this Agreement, are referred to as "Licensee" or "You". In accordance with the terms and conditions of this License Agreement, Advance Fiber Optics, Inc. ("Licensor") grants Licensee a non-exclusive license to use the accompanying software, OSPInSight ("Software") and documentation ("Documentation") in accordance with its intended use only and only in the country where acquired it from your supplier ("Supplier"). In this License Agreement, the Software and Documentation and any copies or modifications are referred to as the "Licensed Product." You agree that you will not use the Licensed Product other than as permitted by this Agreement and you will not use the Software in a manner inconsistent with its design or Documentation.

1.2 All rights to and in the Licensed Product, including, but not limited to, all copyright, trade secret and any and all other intellectual property rights, belong to and are retained by Licensor and Licensor holds title to each copy of the Software. The structure, organization and code of the Licensed Products are valuable trade secrets, confidential and proprietary information of Licensor. The Licensed Product is protected by law, including but not limited to the copyright laws of the United States and other countries and by international treaty provisions. Except as expressly stated herein, this License Agreement does not grant to you any intellectual property rights in the Licensed Product and all rights not expressly granted are reserved by Licensor.

2. Restrictions

2.1 Licensee shall not copy or modify the Licensed Product, except that Licensee may make one copy of the Software in machine-readable form for the sole purpose of backup as long as all copyright and other notices are reproduced and included on the backup copy. Licensee may not sell, transfer, rent, lease, sublicense, distribute or otherwise grant any rights in or to the Licensed Product or any copy of the Software made for backup purposes to others, and this License Agreement shall automatically terminate in the event of such a transfer or distribution.

2.2 Licensee agrees that Licensor shall have the right to audit Licensee's use of the Software for compliance with these terms, upon written notice. In the event that such audit reveals any use of the Licensed Product other than in full compliance with the terms of this License Agreement, Licensor may terminate this License Agreement and Licensee's use of the Software in its sole and absolute discretion.



2.3 Licensee may receive the Software in more than one medium but Licensee shall only install or use one medium. Regardless of the number of media Licensee receives, Licensee may use only the medium that is appropriate for the server or computer on which the Software is to be installed. Licensee shall not use the Software to develop any product having the same primary function as the Software. In the event that Licensee fails to comply with this License Agreement, Licensor may terminate this License Agreement and Licensee's use of the Licensed Products and Licensee must return, destroy and/or deinstall all copies of the Software (with all other rights of Licensor and all other provisions of this License Agreement surviving any such termination), which destruction and/or deinstallation shall be certified by an executive officer of Licensee.

2.4 The Software is delivered in object code only. Licensee shall not work around any technical limitations in the Software, publish the Software for others to copy, use the Software for commercial software hosting services, alter, merge, modify, adapt or translate the Software, or decompile, disassemble, reverse compile or otherwise reverse engineer or attempt to discover the source code of the Software, nor allow anyone else to use the Software to do so.

2.5 The Software may include various applications, utilities and components, may support multiple platforms and languages and may be provided to you on multiple media or in multiple copies. Nonetheless, the Software is designed and provided to you a single product to be used as a single product. You may not unbundle the component parts of the Software for use on different computers. You may not unbundle or repackage the Software.

2.6 Licensor may terminate this License Agreement if Licensee breaches any of the terms and conditions hereof. Upon termination of this License Agreement for any reason, Licensee shall return all copies of the Licensed Product to Licensor. If the Licensed Product is OSPInSight Web, then Licensor may terminate Licensee's access to the applicable website or URL and any services provided thereby or thereunder or otherwise in connection with this License Agreement.

2.7 You acknowledge that the Software and related technical data and services (collectively "Controlled Technology") may be subject to the import and export laws of the United States, specifically the U.S. Export Administration Regulations (EAR), and the laws of any country where Controlled Technology is imported or re-exported or any other export laws, restrictions or regulations (collectively the "Export Laws"). You agree to comply with all Export Laws and will not export any Controlled Technology in contravention to U.S. law nor to any prohibited country, entity, or person for which an export license or other governmental approval is required. In addition, if the Software is identified as an export controlled item under the Export Laws, you represent and warrant that you are not a citizen of, or located within, an embargoed or otherwise restricted nation (including without limitation Iran, Syria, Sudan, Cuba and North Korea) and that you are not otherwise prohibited under the Export Laws from receiving the Software. All rights to use the Software are granted on condition that such rights are forfeited if you fail to comply with the terms of this License Agreement.

3. Database Structure

The Licensed Product database structure is open to the Licensee for purposes of allowing the Licensee to link to data external to the application and to allow the Licensee the ability to create reports and perform other analysis on the data contained in the Licensed Product database. Licensee agrees that the knowledge of the database structure will not be used for purposes of moving the data to a software application that replaces or competes with the Licensed Product. Also, in no event shall Licensee give or allow access to either the database structure or the knowledge of the database structure to another entity or party for any purpose, including without limitation moving the data to a software application that replaces or competes in the marketplace with the Licensed Product. In the event that such a service is required, Licensee shall contract with Licensor at then applicable rates to move the data to a format conducive to such a transfer.

4. Limited Warranty

Licensor warrants that the media on which the Software is furnished will be free from defects in materials and workmanship under normal use for a period of thirty (30) days from the date of delivery ("Warranty Period"). Licensor does not warrant that the functions contained in the Licensed Product will meet Licensee's requirements or that the operation of the Software will be uninterrupted or error-free. The Licensed Product is furnished "AS IS"



and without warranty as to the performance or results and performance of the Licensed Produced is assumed by you. Any other software and any hardware furnished with or accompanying the Software is not warranted by Licensor. Licensee's exclusive remedy under this limited warranty is the replacement of any defective physical media on which the Software is furnished, as provided below. To receive a replacement for defective media under this limited warranty, return the defective media to Supplier during the Warranty Period, with proof of payment.

5. General

5.1 Any hardware provided to Licensee by Licensor shall not be exported or re-exported in violation of any export provisions of the United States or any other applicable jurisdiction. Any attempt to sublicense, license, assign, lease, grant or otherwise transfer or convey any of the rights, duties or obligations hereunder is void ab initio.

5.2 This License Agreement shall in all respects be governed by and interpreted under the laws of the State of Tennessee, United States of America, without regard to conflicts of law provisions. Licensee hereby and unconditionally submits and consents to the sole and exclusive jurisdiction and venue of the state and federal courts located in Williamson County, Tennessee, United States to resolve any disputes arising under or in any way related to this License Agreement and waives any objection to the jurisdiction or venue of such courts or Tennessee law governing this License Agreement. No lawsuit, proceeding or any other action relating to or arising under this license agreement may be commenced or prosecuted in any other forum. **THIS LICENSE AGREEMENT WILL NOT BE GOVERNED BY OR OTHERWISE CONSTRUED AND ENFORCED BY OR UNDER THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS, INCLUDING WITHOUT LIMITATION ITS CONFLICT OF LAWS RULES, THE APPLICATION OF WHICH IS HEREBY EXPRESSLY EXCLUDED.** To the maximum extent permissible under applicable law and notwithstanding anything contained herein to the contrary, Licensor reserves the right at all times to monitor, review, retain and/or disclose any data or other information as necessary to satisfy any applicable law, regulation, legal process or governmental request, or to investigate any use or suspected breach of this License Agreement.

5.3 Licensor reserves the right to change or modify the terms and conditions of this Agreement upon thirty (30) days written notice to You. If any changes are made to this Agreement, such changes will: (a) only be applied prospectively; and (b) not be specifically directed against You or your authorized users and will apply to all similarly situation customers using the Licensed Products. Continued use of the Licensed Products after the effective date of any change to this Agreement constitutes your acceptance of the change but does not affect any termination rights contained herein.

5.4 This License Agreement is the enter agreement between You and Licensor relating to the Licensed Product and supersedes all prior or contemporaneous oral or written communication, proposals and representations with respect to the Licensed Produce or any other subject matter covered by this License Agreement. If any term of this License Agreement is held invalid or unenforceable for any reason, the parties agree that such invalidity will not affect the validity of the remaining provisions of this License Agreement, and further agree to substitute for the invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provision. All provisions of this Agreement relating to disclaimers of warranties, limitation of liability, remedies, or damages, and Licensor's proprietary rights shall survive termination.

5.5 None of the requirements of this License Agreement shall be considered waived by either party unless the waiver is in writing, and then only by persons executing this License Agreement or other duly authorized agents or representatives. The waiver by either party of a breach or a violation of any provision of this License Agreement shall not operate as or be construed to be a waiver of any subsequent breach or violation.

5.6 All work performed under or in connection with this License Agreement by a party shall be performed as an independent contractor and not as an agent for the other. No persons furnished by either party shall be considered the other party's employees or agents, and each party shall be responsible for its own employees' compliance with all laws, rules, and regulations involving employment of labor, working conditions, payment of wages, and payment of taxes, such as unemployment, social security, and other payroll taxes, including applicable contributions from such persons when required by law.



6. Restricted Rights Legend

The Software and Documentation are provided with "RESTRICTED RIGHTS" applicable to private and public licenses alike. Without limiting the foregoing, the 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 or 48 C.F.R. §227.7202, as applicable, and any successor regulations. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States. Manufacturer: Advance Fiber Optics, Inc., 871 West Robinson Drive, North Salt Lake, Utah 84054.

7. Acknowledgment

Licensee acknowledges that it has read and understands this License Agreement and agrees to be bound by its terms. Licensee further agrees that this License Agreement is the complete, entire and exclusive statement of the agreement between Licensee and Licensor, and supersedes any prior or contemporaneous oral or written communications, proposals, agreements and representations with respect to its subject matter; and prevails over any conflicting or additional terms of any quote, order, acknowledgment, or similar communications between the parties relating in any way to the subject matter of this License Agreement. Licensee agrees that any varying or additional terms contained in any purchase order or other written notification or document issued by Licensee in relation to the Software licensed hereunder shall be of no effect. If any provision of this License Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect. This License Agreement is in the English language only, which language shall be controlling in all respects, and all other versions thereof in any other languages, if any, shall be for accommodation only and shall not be binding upon the parties. All communications to be made or given pursuant to this Agreement shall be in the English language. The failure or delay of Licensor to exercise any of its rights under this License Agreement or upon any breach of this License Agreement shall not be deemed a waiver of those rights or of the breach.

B. TERMS THAT APPLY TO PERPETUAL, SINGLE-USER LICENSED PRODUCT

8. Single-User License

8.1 Subject to your payment of the applicable license fees and your compliance with the terms of this License Agreement, Licensor grants to You a limited, personal, perpetual, non-exclusive license, nontransferable and non-assignable right to use the Licensed Product as set forth in this License Agreement and this Section 10

8.2 The Software shall only be installed and used on a single computer/workstation at one time. A license for the Software may not be shared, installed or used concurrently on different computers. If you wish to use the Software concurrently on additional computers/workstations, you must purchase additional licenses.

C. TERMS THAT APPLY TO ANNUAL, WEB-BASED CONCURRENT-USER LICENSED PRODUCT

9. Concurrent-User License

9.1 Subject to your payment of all applicable fees and your compliance with the remaining Common Terms of this License Agreement, Licensor grants to You a limited, personal, nonexclusive, non-transferable and non-assignable, concurrent right to use the Licensed Product during a one-year term from the date of invoice and such applicable renewal terms thereafter as Licensee elects and pays the applicable fees.



9.2The OSPInSight Web is a web-based product with a concurrent user, one-year license term that must be renewed annually by paying the license fee in effect at such time for the number concurrent users covered by the license. The number of users simultaneously logged into Your license of OSPInSight Web is restricted to the number of concurrent users covered by Your OSPInSight Web license.

9.3In the event You do not renew the OSPInSight Web license by paying the applicable fees within 30 days prior to the end of the previous term, the license term for the Licensed Product will terminate and the Licensed Product will deactivate at the end of such previous term. Without renewing the term of the OSPInSight Web license, those services provided thereunder will no longer be available.