

# SOFTWARE LICENSE AGREEMENT

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This Software License Agreement (the "Agreement") is made and effective [DATE],

**BETWEEN:** [LICENSOR NAME] (the "Licensor"), a corporation organized and existing under the laws of the [STATE/PROVINCE], with its head office located at:

**AND:** [LICENSEE NAME] (the "Licensee"), a corporation organized and existing under the laws of the [STATE/PROVINCE], with its head office located at:

WHEREAS, Licensor has developed certain computer programs and related documentation more particularly described in Schedule A attached hereto (the "Products") and desires to grant Licensee a license to use the Software.

WHEREAS, Licensee wishes to use the Software under the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, Licensee and Licensor hereby agree as follows:

## 1. DEFINITIONS

When used in this Agreement, the following terms shall have the respective meanings indicated, such meanings to be applicable to both the singular and plural forms of the terms defined:

**"Acceptance"** of Software means completion of the acceptance testing process set forth in Section 3 of this Agreement.

**"Agreement"** includes this agreement and its Schedules and Riders.

**"Delivery Date"** is the date on which Licensor ships the Software to Licensee.

**"Designated Environment"** means the computer equipment and software operating system described on Schedule C.

**"Documentation"** means the user, system, and installation documentation for the Software.

**"Error"** means a material failure of the Software to function in conformity with the Specifications.

**"License"** means the license granted by Licensor to Licensee to use the Software and Documentation in accordance with the terms and conditions of this Agreement.

**"Licensed Copies"** means the number of copies of the Software and Documentation being licensed to the Licensee.

**"Location(s)"** means Licensee's offices at the location(s) specified in Schedule D.

**"Maintenance Agreement"** means the Software Maintenance Agreement between the parties effective as of the date of this Agreement.

**"Price"** means the License Fees Licensee shall pay as specified in Schedule B.

**"Rider"** refers to any riders attached to this Agreement, or any subsequently prepared document which the parties agree in writing to be considered a Rider.

**"Schedule"** refers to any schedule attached to this Agreement, or any subsequently prepared document which the parties agree in writing to be considered a Schedule.

**"Software"** means the computer programs specified in Schedule A in machine-readable, object code form, and any computer programs delivered to Licensee in machine-readable, object code form as Maintenance Releases and Product Releases (as these terms are defined in the Maintenance Agreement).

**"Specifications"** means Licensors current published Product Release Definitions.

**"Target Date"** means the date set forth by which parties anticipate delivery of the Software.

**"Warranty Period"** means [NUMBER] days from the date of Acceptance.

## **2. SOFTWARE LICENSE**

### **2.1 License**

Licensors grants Licensee a non-exclusive, non-transferable license to (1) use the Software and Documentation solely for its internal operations at the Location(s) and on the Designated Environment, and (2) copy the Software and Documentation for archival or backup purposes only, provided that all titles, trademarks, and copyright, proprietary and restricted rights notices shall be reproduced in all such copies, and that all copies shall be subject to the terms of this Agreement.

### **2.2 Distribution**

Except as explicitly provided herein, Licensee shall not: (1) make available nor distribute all or part of the Software or Documentation to any third party by assignment, sublicense, or by any other means; (2) copy, adapt, reverse engineer, decompile, disassemble, or modify, in whole or in part, any of the Software or Documentation; or (3) use the Software to operate in or as a time-sharing, outsourcing, or service bureau environment, or in any way allow third party access to the Software.

## **3. INSTALLATION AND ACCEPTANCE**

Licensors shall use reasonable efforts to deliver the Licensed Copies of the Software and Documentation to the Location(s) on or about the Target Date. Licensee shall have [NUMBER] days from the Delivery Date to perform acceptance testing. Licensee's Acceptance of the Software shall occur at the earlier of Licensee's operational use of the Software, or the expiration of [NUMBER] days from the Delivery Date without the provision of notice by Licensee to Licensors of any Error(s). If Licensee provides notice to Licensors of any Error(s) and Licensors verifies the alleged Error(s), the Software shall be accepted upon Licensors correction of such Error(s).

## **4. PRICE AND PAYMENT**

### **4.1 Price**

Licensee shall pay the Price in accordance with the payment plan set forth in Schedule B. Licensors shall invoice any additional costs reasonably incurred by Licensors in the delivery of the Software as they are incurred. Payment shall be made by Licensee to Licensors in full without any right of set-off or

deduction, and Licensee shall pay the Price and such costs within [NUMBER] days from the date of invoice.

#### **4.2 Tax**

Licensee shall be responsible for any applicable sales or use taxes or any value added or similar taxes payable with respect to the licensing of the Software, or arising out of or in connection with this Agreement, other than taxes levied or imposed based upon Licensor's income. In the event that Licensor pays any such taxes on behalf of Licensee, Licensor shall invoice Licensee for such taxes and Licensee agrees to pay such taxes in accordance with this Agreement.

#### **4.3 Interest**

Failure by Licensee to pay any amounts invoiced under this Agreement in full in accordance with this Agreement shall make Licensee liable to pay Licensor interest at the rate of [%] per month on the remaining amount due, or at the highest amount permitted by applicable law, such interest to accrue on a daily basis after as well as before any judgment relating to collection of the amount due.

### **5. PROPRIETARY RIGHTS**

Licensee acknowledges and agrees that the copyright, patent, trade secret, and all other intellectual property rights of whatever nature in the Software, Documentation and Specifications are and shall remain the property of Licensor, and nothing in this Agreement should be construed as transferring any aspects of such rights to Licensee or any third party.

### **6. CONFIDENTIALITY**

#### **6.1 Confidential Information**

"Confidential Information", shall mean the Software, Documentation, Specifications, and terms and conditions of this Agreement. Licensee acknowledges the confidential and proprietary nature of the Confidential Information and agrees that it shall not reveal or disclose any Confidential Information for any purpose to any other person, firm, corporation, or other entity, other than Licensee's employees with a need to know such Confidential Information to perform employment responsibilities consistent with Licensee's rights under this Agreement. Licensee shall safeguard and protect the Confidential Information from theft, piracy, or unauthorized access in a manner at least consistent with the protections Licensee uses to protect its own most confidential information. Licensee shall inform its employees of their obligations under this Agreement, and shall take such steps as may be reasonable in the circumstances, or as may be reasonably requested by Licensor, to prevent any unauthorized disclosure, copying or use of the Confidential Information. Licensee acknowledges and agrees that in the event of the Licensee's breach of this Agreement, Licensor will suffer irreparable injuries not compensated by money damages and therefore shall not have an adequate remedy at law. Accordingly, Licensor shall be entitled to a preliminary and final injunction without the necessity of posting any bond or undertaking in connection therewith to prevent any further breach of these confidentiality obligations or further unauthorized use of Confidential Information. This remedy is separate and apart from any other remedy Licensor may have.

#### **6.2 Unauthorized Disclosure**

Licensee shall notify Licensor immediately upon discovery of any prohibited use or disclosure of the Confidential Information, or any other breach of these confidentiality obligations by Licensee, and shall fully cooperate with Licensor to help Licensor regain possession of the Confidential Information and prevent the further prohibited use or disclosure of the Confidential Information.

### **7. WARRANTY**

#### **7.1 Operation**

Licensor represents to Licensee that: (1) during the Warranty Period, the Software shall operate without any Errors; and (2) upon notification to Licensor during the Warranty Period of any Errors, Licensor will, during its normal business hours and at no cost to Licensee, use reasonable efforts to correct such Errors which are reproducible and verifiable by Licensor, excluding any Errors caused by uses of the Software which were not in accordance with the Specifications.

## **7.2 Correction**

In the event that Licensee notifies Licensor of an Error during the Warranty Period, Licensor's sole liability, and Licensee's sole remedy, will be Licensor's use of reasonable efforts to correct such Errors or, in Licensor's sole discretion, to refund the portion of the prepaid Price applicable to the portion of the Software which is defective.

## **7.3 Warranty Disclaimer**

THE PARTIES AGREE THAT THE SOFTWARE'S FAILURE TO PERFORM IN ACCORDANCE WITH THE SPECIFICATIONS SHALL NOT BE CONSIDERED A FAILURE OF THE ESSENTIAL PURPOSE OF THE REMEDIES CONTAINED HEREIN. EXCEPT FOR THE ABOVE LIMITED WARRANTY, THE ENTIRE RISK OF THE SOFTWARE'S QUALITY AND PERFORMANCE IS WITH LICENSEE.

# **8. INDEMNITY**

## **8.1 Indemnification**

Licensor hereby indemnifies Licensee against any claim that the Software, furnished and used within the scope of this Agreement, infringes any [COUNTRY] registered copyright or patent, provided that: (1) Licensor is given prompt notice of the claim; (2) Licensor is given immediate and complete control over the defense and/or settlement of the claim, and Licensee fully cooperates with Licensor in such defense and/or settlement; (3) Licensee does not prejudice in any manner Licensor's conduct of such claim; and (4) the alleged infringement is not based upon the use of the Software in a manner prohibited under this Agreement, in a manner for which the Software was not designed, or in a manner not in accordance with the Specifications.

## **8.2 Altered Version**

Licensor shall have no liability for any claim of infringement based on (a) the use of a superseded or altered version of the Software if infringement would have been avoided by the use of a current or unaltered version of the Software which Licensor made available to Licensee; or (b) the combination, operation or use of the Software with software, hardware, or other materials not furnished by Licensor.

## **8.3 Injunction**

If a final injunction is obtained against the use of any part of the Software by reason of infringement of [COUNTRY] registered copyright or patent, Licensor will, at its option and expense, either (1) procure for Licensee the right to continue to use the Software; (2) modify the Software so that it becomes non-infringing; or (3) repurchase the Software and Documentation less depreciation at the rate of [%] per year, or pro rata for part of the year, from the date of Acceptance to the date of removal of the Software. If Licensor selects this third option, Licensee shall, immediately upon receipt from Licensor of the payment set forth above, at Licensor's option destroy or return all copies of the Software and Documentation in its possession or under its control.

## **8.4 Liability**

The foregoing states Licensor's entire obligation and liability with respect to the infringement of any property right.

## **8.5 Infringement**

Licensee hereby indemnifies Licensor against any claim for (1) alleged infringement of any [COUNTRY] registered copyright or patent, arising out of the use of the Software by Licensee in any manner prohibited by this Agreement and (2) any claim related to or arising out of a financial transaction brought by any third party based on the use of the Software.

## **9. LIMITATION OF LIABILITY**

### **9.1 Limitation**

LICENSOR SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF LICENSOR TO LICENSEE FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE LESSER OF THE AMOUNT PAID TO LICENSOR BY LICENSEE UNDER THIS AGREEMENT OR [AMOUNT].

THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. BOTH PARTIES UNDERSTAND AND AGREE THAT THE REMEDIES AND LIMITATIONS HEREIN ALLOCATE THE RISKS OF PRODUCT AND SERVICE NONCONFORMITY BETWEEN THE PARTIES AS AUTHORIZED BY APPLICABLE LAWS. THE FEES HEREIN REFLECT, AND ARE SET IN RELIANCE UPON, THIS ALLOCATION OF RISK AND THE EXCLUSION OF CONSEQUENTIAL DAMAGES SET FORTH IN THIS AGREEMENT.

### **9.2 Force Majeure**

Neither party shall be under any liability for any loss or for any failure to perform any obligation hereunder due to causes beyond its control including without limitation industrial disputes of whatever nature, power loss, telecommunications failure, acts of God, or any other cause beyond its reasonable control.

## **10. TERM AND TERMINATION**

### **10.1 Termination**

The License granted herein shall remain in effect perpetually unless terminated as provided for in Sections 10.2 or 10.3 herein.

### **10.2 Breach**

Licensor may terminate this Agreement and the License, without prejudice to any other remedy Licensor may have, immediately without further obligation to Licensee, in the event of (1) any breach by Licensee of Sections 2, 5, or 6 of this Agreement which cannot be remedied within twenty-four (24) hours of Licensor's notice to Licensee of the breach and Licensor's intent to terminate the License; (2) any material breach of Sections other than those set forth above which cannot be remedied within [NUMBER] days of Licensor's notice to Licensee of the breach and Licensor's intent to terminate the License; or (3) Licensee's making an assignment for the benefit of its creditors, the filing under any voluntary bankruptcy or insolvency law, under the reorganization or arrangement provisions of the United States Bankruptcy Code, or under the provisions of any law of like import in connection with Licensee, or the appointment of a trustee or receiver for Licensee or its property.

### **10.3 Remedy**

Licensee may terminate the License, without prejudice to any other remedy Licensee may have, in the event of any material breach of this Agreement which is not remedied within [NUMBER] days of

Licensee's notice to Licensor of the breach and Licensee's intent to terminate the License. Termination shall not relieve Licensee's obligation to pay all amounts which are due and payable or which Licensee has agreed to pay.

#### **10.4 Cessation of Use**

Upon termination of this Agreement, Licensee shall cease using the Software and Documentation and promptly return all copies of the Software, Documentation, and all other Confidential Information in its possession or control. Licensee shall delete all copies of such materials residing in- on- or off-line computer memory, and destroy all copies of such materials which also incorporate Licensee's Confidential Information. Licensor shall be entitled to enter the Location(s) to repossess and remove the Software, Documentation, and any other Confidential Information. Licensee shall, within [NUMBER] days from the effective date of the termination, certify in writing by an officer or director of the party that all copies of the Software and Documentation have been returned, deleted and destroyed.

### **11. HEADINGS**

The headings used in this Agreement are for convenience only and are not intended to be used as an aid to interpretation.

### **12. VALIDITY**

If any part of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected.

### **13. BINDING AGREEMENT**

This Agreement will be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns. Licensee may not assign its rights or obligations under this Agreement without the prior written consent of Licensor.

### **14. NO WAIVER**

Failure by either party to exercise any right or remedy under this Agreement does not signify acceptance of the event giving rise to such right or remedy.

### **15. SOLICITATION**

Licensee shall not solicit the employment of nor employ any Licensor personnel who has been directly involved in the development, sale, installation, or support of the Software for a period of [NUMBER] years from the later of the termination of such individual's employment at Licensor or the last date of Acceptance of any Software.

### **16. GOVERNING LAW**

This Agreement shall be deemed to have been executed in the State of [STATE/PROVINCE] and will be governed by and construed in accordance with the laws of the State of [STATE/PROVINCE]. The parties hereby consent to the jurisdiction of the courts of the State of [STATE/PROVINCE] for the purpose of any action or proceeding brought by either of them in connection with this Agreement.

## **17. NOTICE**

Unless otherwise agreed to by the parties, any notice required or permitted to be given or delivered under this Agreement shall be delivered to the address set forth in this Agreement. Notice shall be deemed to have been received by any party, and shall be effective, (i) on the day given, if personally delivered or if sent by confirmed facsimile transmission, receipt verified or (ii) on the third day after which such notice is deposited, if mailed by certified, first class, postage prepaid, return receipt requested mail.

## **18. ATTORNEYS' FEES**

Licensee shall be responsible for Licensor's reasonable attorneys' fees associated with the enforcement of the terms of this Agreement or the collection of any amounts due under this Agreement.

## **19. SURVIVAL**

Sections 5, 6, 8, 9, and 11 shall survive the termination of this Agreement for any reason.

## **20. ENTIRE AGREEMENT**

This Agreement and its Riders and Schedules comprise the entire agreement between the parties regarding the subject matter hereof and supersedes and merges all prior proposals, understandings, and all other agreements, oral, and written between the parties relating to the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth first above, with full knowledge of its content and significance and intending to be legally bound by the terms hereof.

LICENSOR

LICENSEE

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title