

CENTRA MASTER LICENSE AGREEMENT

This Centra Master License Agreement ("Agreement"), between Centra Software, Inc. ("Centra") a Delaware corporation having a principal address at 430 Bedford Street, Lexington, MA 02420 and The Regents of New Mexico State University (NMSU) ("Customer") a Land Grant University having a principal address at Box 30001, Las Cruces, NM 88003 effective on 3/15/02 ("Effective Date") sets forth the terms and conditions under which the parties agree that Customer may, pursuant to one or more separately executed Sales Orders, obtain licenses to use Centra's proprietary software ("Software") listed on the relevant Sales Order(s), and the associated user documentation ("Documentation"), and/or purchase the services listed on the relevant Sales Order(s).

This Agreement shall consist of this Agreement, any Attachments, and all executed Sales Orders. This Agreement is effective only upon full execution by both parties. By signing below, each party agrees to the terms of this Agreement. Any executed copy of this Agreement made by reliable means (e.g., photocopy or facsimile) is considered an original.

CENTRA MASTER LICENSE AGREEMENT GENERAL TERMS AND CONDITIONS

1. LICENSE GRANT AND RIGHT OF USE.

a. Definitions:

"Documentation" means the user guides, reference manuals, installation materials and other written materials provided by Centra to Customer and related to the Software.

"Software" means the object code versions of the Centra Software, including any third party software imbedded in the Software, both Server Software and Client Software, identified on Centra's Sales Orders, together with all subsequent Centra-authorized updates, replacements, modifications or enhancements provided by Centra to Customer under Maintenance.

"Server Software" provides and controls the administration of the Software and provides the major functionality.

"Client Software" provides an individual with the ability to access the Server Software's functionality.

- b. Centra grants to Customer a non-exclusive, world-wide and (subject to the provisions of section 9 (c)) non-transferable license to install and use the number of copies of the object code version of the Software pursuant to the terms and conditions herein and in the fully executed Sales Orders. Unless otherwise designated on a Sales Order, all licenses granted hereunder shall (subject to the provisions of section 5) be perpetual. Each Centra Software Server license restricts the Server Software to a single server machine under the control of Customer. Each Centra Software Client license (either Named or Concurrent) is restricted to users authorized by the Customer under the terms of this Agreement to access the Centra Software Server. Simultaneous use access is limited to the number of user licenses (either Concurrent or Named) acquired and is controlled by a key issued by Centra and installed in the Server Software. Each Named User Client license is further restricted to use by the individual named by the Customer in the Server Software and may not be renamed until such named user no longer requires access to the software.
- c. Customer shall not except to the extent required to be permitted by law (and shall not permit any employee or other third party to) copy, use, analyze, reverse engineer, decompile, disassemble, translate, convert, or apply any procedure or process to the Software in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Software or any trade secret information or process contained in the Software. Any third party software imbedded in the Software may be used only in conjunction with the Software and may not be used separately.
- d. Customer shall not alter or remove any notices, graphics or text contained on or in the Software or the Documentation; or modify the Software in any form, without express written permission from Centra.
- e. Customer may keep a reasonable number of copies of the Server Software, solely for back-up or archival purposes for no additional fees or costs. Customer may copy the Documentation, as needed, for Customer's use as specified in this Agreement and in any Attachments hereto. Customer agrees that any copies of the Software or Documentation that it makes under this Agreement will bear all copyright, trademark and other proprietary notices included therein by Centra.

f. Customer may not rent, lease or sublicense the Software to others not bound by this Agreement, in any way whatever (including without limitation, using the Software for the purpose of operating a bureau service or application service provider, or other revenue generating purposes.

g. Customer's rights in the Software will be limited to those expressly granted in this Agreement. Centra reserves all rights and licenses in and to the Software not expressly granted to Customer under this Agreement.

2. FEES

a. Customer shall pay Centra the license fees and the Maintenance fees for the Software specified on the applicable Sales Order within 30 days after receipt of Centra's invoice. Fees for subsequent Annual Maintenance Periods (as the term is defined in Section 3) are due and payable at the beginning of each Annual Maintenance Period. All license fees paid hereunder are nonrefundable, except as provided in Section 6.a. below.

b. Customer shall pay any other fees and prices specified on a Sales Order within 30 days after receipt of Centra's applicable invoice.

c. All prices and fees are in U.S. dollars unless otherwise specified. All amounts payable under this Agreement are exclusive of all sales, use, value-added, excise, property, withholding, and other taxes and duties. Customer will pay all taxes and duties assessed by any authority in connection with this Agreement and with Customer's performance hereunder. Customer will promptly reimburse Centra for any and all taxes or duties that Centra may be required to pay in connection with this Agreement or its performance. This provision does not apply to franchise taxes, taxes based on Centra's income, or any taxes for which Customer is exempt, provided Customer has furnished Centra with a valid tax exemption certificate.

3. MAINTENANCE & SUPPORT AND OTHER SERVICES

a. Provided Customer elects to obtain maintenance & support services ("Maintenance") for the Software and pays all applicable Maintenance fees, Centra shall provide Customer with the following Maintenance services, for the then current and immediately preceding version of the Software, for the period commencing on the date Centra delivers the relevant Software to Customer through the period ending one anniversary year thereafter (the "Initial Maintenance Period"):

i. Updates to the Software. An Update shall mean a subsequent release of the Software that Centra makes generally available to its current Maintenance customers for the Software. Updates include changes and corrections to the Software as are required to keep the Software in substantial conformance with the applicable Documentation and that are created by Centra as corrections for defects in the Software. Updates include linear improvements in functionality, but shall not include any release, option or future product that Centra licenses separately; and

ii. Web-based support, consisting of information on the most current release of the Software through Centra's web site; and

iii. Phone Support in the form of advice and counsel via telephone regarding Customer's use of the Software. Phone Support shall be provided from 8:00 AM to 8:00 PM (Eastern Time), Monday through Friday, exclusive of holidays observed by Centra which are available on Centra's Support & Maintenance website.

- b. Upon expiration of the Initial Maintenance Period, Maintenance shall automatically renew for successive annual periods (each an "Annual Maintenance Period"), provided (i) Centra continues to offer Maintenance to its general Customer base; (ii) Customer pays the Maintenance fees applicable for the relevant Annual Maintenance Period; and (iii) Customer does not terminate Maintenance by providing Centra with at least 30 days written notice prior to the expiration of the applicable Initial or Annual Maintenance Period. Fees for the Initial and subsequent Annual Maintenance Periods shall be based on the then current Centra price list for Maintenance. Customer may reinstate terminated Maintenance at any time during the term of this Agreement. If Customer requests such reinstatement, Customer shall pay a reinstatement fee equal to the actual Maintenance fees which would have been paid by Customer during the suspension period had it not suspended Maintenance.
- c. Customer agrees to provide Centra with all reasonable information and materials requested by Centra for use in replicating, diagnosing and correcting an error or other Software problem reported by Customer. Customer acknowledges that all Updates provided by Centra will be cumulative in nature, and therefore Customer agrees to install all Updates provided by Centra. Customer further acknowledges that Centra's ability to provide satisfactory Maintenance is dependent on Customer (i) installing all Updates; (ii) providing Centra with the information necessary to replicate Software problems; (iii) maintaining the correct operating environment in accordance with any specified requirements; (iv) designating a single service contact per location; and (v) allowing Centra reasonable access to Customer's computer system and necessary data.
- d. Centra shall provide consulting and training Services (each an "Engagement"), under the terms of this Agreement, agreed to by the parties and specified on one or more separately executed Sales Order(s). In the event of any conflict between this Agreement and an Engagement, the provisions of the Engagement shall prevail. All Engagements shall be billed at the rates specified on a Sales Order. Customer agrees to use the number of consulting days specified on a Sales Order within six months of the effective date of such Sales Order. Any days or time not used within the six-month period shall be forfeited by Customer and no credit or refund will be given for these unused days or time. Provided Centra remains responsible for performance, Centra shall have the right to use third parties in performance of Engagements hereunder and, for purposes of this Agreement, all references to Centra or its employees shall be deemed to include such third parties. Customer shall provide Centra access to its equipment, systems and other facilities to the extent reasonably required by Centra for the performance of Engagements hereunder. For any on-site services requested by Customer, Customer agrees to reimburse Centra for its actual, reasonable travel and other out-of-pocket expenses incurred in connection therewith.

4. CONFIDENTIALITY

- a. To the maximum extent allowed by law, any written, oral or visual, business, operational or technical information provided to Customer by Centra hereunder that is marked or otherwise identified as confidential or proprietary, or that Customer knows or should know is confidential or proprietary, the Software and other deliverables furnished by Centra, and the terms of and pricing under this Agreement (collectively Centra's "Proprietary Information") contain valuable and confidential information that is proprietary to Centra and to third parties from whom Centra has obtained marketing rights (the "Third Party Licensors"), and which includes and constitutes trade secrets and unpublished copyrighted material of Centra and the Third Party Licensors.

Customer agrees to maintain the confidentiality of Centra's Proprietary Information and to only use it in carrying out its rights and obligations under this Agreement. Nothing in this Agreement shall be construed to convey any title or ownership rights to the Software or Proprietary Information to Customer. Customer shall not sublicense, rent, assign, transfer or disclose the Proprietary Information to any third party and shall not reproduce, perform, display, prepare derivative works of, or distribute the Proprietary Information except as expressly permitted in this Agreement. Customer shall not disclose the results of any benchmark tests of the Software to any third party without Centra's prior written approval. Customer shall make commercially reasonable efforts to prevent the theft of any Proprietary Information and/or the disclosure, copying, reproduction, performance, display, distribution and preparation of derivative works of the Proprietary Information except as expressly authorized herein.

- b. Centra agrees to maintain the confidentiality of business, operational and other information provided by Customer to Centra hereunder, provided such information is marked or otherwise identified by Customer as confidential or proprietary or is of a nature that Centra knows or should know is confidential or proprietary (also referred to herein as "Proprietary Information"), and will only use it in carrying out its rights and obligations under this Agreement.
- c. Both parties agree to restrict access to the Proprietary Information of the other only to employees who (i) require access in the course of their assigned duties and responsibilities in connection with this Agreement, and (ii) have agreed in writing to be bound by provisions no less restrictive than those set forth in this Section 4. The confidentiality obligations of the parties regarding the Proprietary Information of the other shall not apply to any material or information that (i) is or becomes a part of the public domain through no act or omission by the receiving party, (ii) is independently developed by employees of the receiving party without use or reference to the Proprietary Information of the other party, (iii) is disclosed to the receiving party by a third party that, to the receiving party's knowledge, was not bound by a confidentiality obligation to the other party, or (iv) is demanded by a lawful order from any court or any body empowered to issue such an order. Each party agrees to notify the other promptly of the receipt of any such order, and to provide the other with a copy of such order.
- d. The provisions of this section 4 shall remain in full force and effect despite termination of this Agreement for whatever reason.

5. TERM AND TERMINATION

- a. This Agreement shall continue in force and effect perpetually unless terminated pursuant to its provisions.
- b. This Agreement, any Assignment, and/or any license granted hereunder may be terminated in accordance with the following:
- i. Centra may terminate this Agreement, any Assignment and/or any licenses granted herein:
- a) Upon 15 calendar days notice if Customer uses, transfers or discloses any of the Software or other Proprietary Information, or any copy or modification thereof, in violation of this Agreement, unless Customer has substantially cured such breach within each 15 day period;
- b) Upon 30 calendar days written notice if Customer has breached any other material provision of this Agreement, including failure to make payments

when due, and such breach is not substantially cured within such 30 day period.

- ii. Customer may terminate this Agreement or any Assignment on 30 calendar days written notice if Centra has breached any material provision of this Agreement and such breach is not fully cured within such 30-day period.
- c. Upon termination by Centra as specified above in 5.b.i Customer's right to use and/or possess the affected Software and other related Proprietary Information shall immediately cease. Customer shall immediately stop using all such Proprietary Information (including Software) and shall return all copies to Centra, except that Customer may instead choose to delete all installed copies off of any and all storage media possessed by Customer. Customer shall provide Centra with written certification signed by an officer of Customer that all copies of the Software have been returned or destroyed and that Customer has retained no copies.
- d. Any incomplete Engagement(s) shall be terminated concurrently with this Agreement. Customer shall pay a pro-rata portion of any Engagement that is incomplete at the time of termination and for which payments have not been made and Centra shall deliver to Customer copies of all such incomplete work for which payment has been made, unless any applicable license for such work has been terminated.
- e. Termination of this Agreement, any Engagement or any license granted hereunder shall not limit the remedies otherwise available to either party, including injunctive relief.
- 6. **WARRANTIES**
 - a. Centra warrants that for the first 180 days following delivery of the Software to Customer (the "Warranty Period"), (i) the Software as delivered will perform substantially in conformance with the applicable Documentation, and (ii) that the digital or electronic media on which the Software and the Documentation are distributed are free from defects in materials and workmanship. Centra does not warrant that the Software will operate in combinations except as specified in the Documentation. Notwithstanding any other provision of this Agreement, Centra and Customer acknowledge that Customer's use of the Software or other deliverables provided hereunder may not be uninterrupted or error-free.
 - b. Centra warrants that its Services provided hereunder shall be performed consistent with generally accepted industry standards. This warranty shall be valid for 180 days from the date of performance of the relevant service.
 - c. Centra warrants to Customer that Centra has the right to enter into this Agreement and to grant the rights and licenses herein and, that to the best of Centra's knowledge, the Software does not infringe any patent or copyright or violate any other proprietary rights of a third party. Centra's sole and exclusive obligation, and Customer's sole and exclusive remedy, for breach of this warranty with respect to intellectual property or proprietary rights of any kind, is Centra's indemnification of Customer as set forth in Section 7 below.
 - d. Provided that all date data provided to the Software is in full 4 digit year format, Centra warrants that the Software as delivered to Customer by Centra will accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations. The Software is compliant with:
 - Federal Acquisition Regulation FAR 97-01; FAR Case 96-607; Item XVII (commonly referred to as the FAR Final Ruling)

- Federal Acquisition Regulation FAR Part 39 Section 39.002
- the definitions of Y2K readiness as defined in the "Year 2000 Information and Disclosure Act" passed by the 105th Congress on 10/1/98, located on the following URL: <http://www.y2k.gov/new/y2kact.html>

The foregoing warranty shall not apply to (i) third party software that is or may be used in conjunction with the Software, including database and operating systems vendors, (ii) any non-compliance to the extent caused by hardware, third party software or applications and content developed with or operating with the Software as delivered, or (iii) Customer's use of other than a current unaltered release of the Software if use of a current, unaltered release of the Software would avoid the nonconformance. Customer is solely responsible for all system integration and testing of the Software in a fully Year 2000-compliant operating environment, including all hardware, systems software, databases, network environment, and other interoperating components.

- e. Centra warrants that it will use commercially reasonable efforts to ensure the Software as delivered by Centra does not contain viruses, worms, Trojan horses or other unintended malicious or destructive code ("Malicious Code"). If Malicious Code is discovered in Software as delivered by Centra, Centra shall provide Customer with a clean copy that does not contain such Malicious Code within 30 days following Customer's notice to Centra of a breach of this warranty. However, Customer is hereby notified that the Software will contain license keys intended to ensure that the simultaneous use limits of a particular license will not be exceeded.
- f. Except as set forth in this Section 6, CENTRA PROVIDES THE SOFTWARE AND THE DOCUMENTATION WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES OF QUALITY OR PERFORMANCE. Except for Centra's indemnification of Customer as set forth in Section 7, Customer's exclusive remedy with respect to the Software, and the Documentation will be limited to, at Centra's option, (a) the replacement of any defective Software or Documentation, or (b) refund of a pro-rata, unamortized portion of the license fees paid for the Software.

7. CENTRA INDEMNITIES

- a. Centra will defend or settle, at its expense, any action brought or allegation made against Customer to the extent that it is based upon a claim that the Software, as provided by Centra to Customer under this Agreement and used within the scope of this Agreement, infringes any copyright, trade secret, patent or other proprietary right, and will pay all costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Customer. Centra's obligations hereunder are contingent on the following conditions:
 - i. Customer must notify Centra in writing promptly after Customer becomes aware of a claim or the possibility thereof; and
 - ii. Customer must grant Centra the sole control of the settlement, compromise, negotiation, and defense of any such action; and
 - iii. Customer must provide Centra with all information related to the action that is reasonably requested by Centra; and

iv Centra may, at its option, (a) obtain the right for Customer to continue using the Software; or (b) replace or modify the Software so it is no longer infringing; or (c) terminate the applicable license(s) and remove the Software. If Centra so terminates the applicable license(s) and removes the Software, Centra shall refund to Customer a pro-rata, unamortized portion of the license fees paid for such license(s) based on applying straight-line amortization over a 60-month period following the relevant delivery date(s).

- b. The foregoing indemnity shall not apply to any infringement claim to the extent arising from (i) Software that has been modified by anyone other than Centra; and/or (ii) Customer's use of the Software in conjunction with Customer data where use with such data gave rise to the infringement claim; and/or (iii) Customer's use of the Software with other software or hardware, where use with such other software or hardware gave rise to the infringement claim; and/or (iv) use of other than the most current, unaltered Update to the Software if such claim would have been avoided by the use of such Update and/or (v) compliance by Centra with designs, plans or specifications furnished by or on behalf of Customer.
- c. Centra shall not be liable hereunder for any settlement made by Customer without Centra's advance written approval or for any award from any action in which Centra was not granted control of the defense.
- d. The parties agree to cooperate in good faith in the defense of any legal action or suit that causes one party to invoke an indemnity hereunder.
- e. **THIS SECTION 7 STATES CENTRA'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.**

8. LIMITATIONS OF LIABILITY

- a. "AS BETWEEN THE PARTIES, EACH PARTY WILL BE SOLELY RESPONSIBLE FOR LIABILITY ARISING FROM PERSONAL INJURY, INCLUDING DEATH OR DAMAGE TO PROPERTY ARISING FROM THE NEGLIGENT ACT OR FAILURE TO ACT OF THE RESPECTIVE PARTY OR OF ITS OFFICIALS, AGENTS, AND EMPLOYEES PURSUANT TO THIS AGREEMENT. THE LIABILITY OF THE REGENTS OF NEW MEXICO STATE UNIVERSITY SHALL BE SUBJECT TO THE IMMUNITIES AND LIMITATION OF THE TORT CLAIMS ACT, SECTIONS 41-40-1 et. Seq. NMSA 1978, AND OF ANY AMENDMENTS THERETO."
- b. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT WITH RESPECT TO CENTRA'S OBLIGATIONS UNDER SECTION 7, AND PARAGRAPH 8. a, NOTWITHSTANDING THE FORM (E.G., CONTRACT, TORT (INCLUDING NEGLIGENCE) STATUTORY LIABILITY OR OTHERWISE) IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT AGAINST CENTRA, CENTRA SHALL NOT BE LIABLE HEREUNDER FOR DAMAGES WHICH EXCEED, IN THE AGGREGATE, THE FEES PAID BY CUSTOMER FOR THE SPECIFIC SOFTWARE OR SERVICES WHICH GAVE RISE TO SUCH DAMAGES OR \$1,000,000, WHICHEVER IS GREATER.
- c. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL CENTRA BE LIABLE FOR LOSS (WHETHER DIRECT OR INDIRECT) OF PROFITS, BUSINESS OR ANTICIPATED SAVINGS OR FOR ANY

SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE LOSS OR DAMAGES, OR FOR ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGES, EVEN IF CENTRA HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE AND WHETHER ARISING FROM TORT (INCLUDING NEGLIGENCE), BREACH OR CONTRACT OR OTHERWISE.

- d. CENTRA SHALL NOT BE LIABLE FOR ANY LOSS ARISING OUT OF ANY FAILURE BY CUSTOMER TO KEEP FULL AND UP-TO-DATE COPIES OF ITS DATA AND THE COMPUTER PROGRAMS IT USES IN ACCORDANCE WITH BEST COMPUTING PRACTICE.

NOTHING IN THIS AGREEMENT SHALL LIMIT EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY A PARTY'S NEGLIGENCE OR LIABILITY FOR FRAUD.

- e. The provisions of this Agreement allocate the risks between Customer and Centra. Centra's pricing reflects this allocation of risk and the limitations of liability specified herein.

9. MISCELLANEOUS

- a. This paragraph left blank intentionally.
- b. Customer shall comply with all then current export and import laws and regulations of the United States and such other governments as are applicable to the Software. Customer hereby certifies that it will not directly or indirectly, export, re-export, or transship the Software or related information, media, or products in violation of United States laws and regulations.
- c. Customer may not assign this Agreement or any license granted or created hereunder whether by operation of law, change of control, or in any other manner, without the prior written consent of Centra, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, except in the case of an enterprise-wide license for the Software, Customer may assign this Agreement to any Affiliate of Customer, provided that (i) the assignee agrees in writing to be bound by the terms and conditions of this Agreement, (ii) neither Customer nor the assignee are in default hereunder, (iii) the assignee is not a competitor of Centra, and (iv) Customer provides reasonable, written notice of any such assignment. ("Affiliate" of a party shall mean such party's parent corporation, an entity under the control of such party's parent corporation at any tier, or an entity controlled by such party at any tier. "Control" shall mean the power to direct or cause the direction of the management and policies of the entity through the ownership of more than 50% of the outstanding voting interests in such entity.)
- d. The parties are independent contractors and nothing in this Agreement shall be deemed to make either party an agent, employee, partner or joint venturer of the other party. Neither party shall have the authority to bind, commit, or otherwise obligate the other party in any manner whatsoever. Centra may use Customer's plain text name to list Customer as a customer of Centra.
- e. During the term of this Agreement and for six months thereafter, both parties agree not to solicit or to offer employment to any employees of the other party without the other party's prior written consent.
- f. Any notice required under this Agreement shall be given in writing and shall be deemed effective upon mailing by certified mail, properly addressed and postage prepaid, or delivery by courier service to the address specified on the face page hereof or to such other address as the parties may designate in writing.

- g. If any portion of this Agreement is determined to be or becomes unenforceable or illegal, such portion shall be deemed eliminated and the remainder of this Agreement shall remain in effect in accordance with its terms as modified by such deletion.
- h. Definitions set forth in any part of this Agreement shall apply to all parts of this Agreement. In the event of a conflict between the terms of different parts of this Agreement, the following order of priority shall apply: first, the relevant Sales Order(s); second, the relevant Engagement(s); third the Exhibits; and fourth, the Agreement.
- i. The obligations of the parties under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive termination, cancellation, or expiration of this Agreement.
- j. Neither party shall be considered in default in performance of its obligations hereunder if performance of such obligations is prevented or delayed by force majeure or any cause beyond its reasonable control.
- k. If Customer is the United States Government or any contractor thereof, all licenses granted hereunder are subject to the following: (i) for acquisition by or on behalf of civilian agencies, as necessary to obtain protection as "commercial computer software" and related documentation in accordance

with the terms of this Commercial Software Agreement as specified in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors; (ii) for acquisition by or on behalf of units of the Department of Defense ("DOD") as necessary to obtain protection as "commercial computer software" and related documentation in accordance with the terms of this commercial computer software license as specified in 48 C.F.R. 227-7202-2 of the DOD F.A.R. Supplement and its successors.

- l. This Agreement (including the attached Sales Orders, Engagement of Work(s) Exhibits and referenced attachments) constitute the entire agreement between the parties regarding the subject matter hereof and supersede all proposals and prior discussions and writings between the parties with respect thereto. The parties agree that this Agreement cannot be altered, amended or modified, except in writing that is signed by an authorized representative of both parties. It is expressly agreed that the terms of any Customer purchase order or other ordering document (except for mutually executed license Sales Orders and Assignments) shall be without force and effect.
- m. This Agreement shall be governed by and interpreted in accordance with the laws of the United States and the state of New Mexico, excluding its choice of law rules.

Addendums:

Addendum #1

New Mexico State University is allowed to use Centra to operate an Electronic Conferencing Center for educational programs involving public agencies and non-profit organizations including collecting fees from co-sponsors to help recover event facilitation costs. The events will be coordinated through the Center and hosted and conducted by New Mexico State University, with the proviso that New Mexico State University will not rent, lease or sublicense the software to any entities outside New Mexico State University.

Addendum #2:

New Mexico State University is allowed to use Centra to offer environmental courses and conferences developed and offered by partner institutions involved in the WERC program. WERC (Waste-management Education and Research Consortium) is a consortium for education and technology development administratively located at New Mexico State University whose partners include the University of New Mexico, New Mexico Institute of Mining and Technology, Dine College, and Sandia and Los Alamos National Laboratories. The programs will be offered to public agencies, non-profit organizations, and private businesses, which may involve collecting of fees from co-sponsors to help recover event facilitation costs. The events will be coordinated through the WERC administrative office and hosted by New Mexico State University, with the proviso that New Mexico State University will not rent, lease or sublicense the software to any entities outside New Mexico State University.

Agreed to by:

Centra Software, Inc.

By: Michelle M. Caggiano
(Signature)
Michelle M. Caggiano
(Name typed or printed)
Director of Finance
(Title)
3/15/02
(Date)

The Regents of New Mexico State University
(Customer)

By: Lynne Blackman
(Signature)
Lynne Blackman
(Name typed or printed)
Purchasing Systems Coordinator
(Title)
3/15/02
(Date)



Centra Sales Order Form

COPY

Centra Software, Inc.

430 Bedford Street, Lexington, MA 02420

Tel: 781-994-1066

Fax: 781-994-9066

ORDER DATE: Feb 19, 02**Account Manager: Joyce Bokuniewicz****Ship Via: Optima****Bill To Company:**New Mexico State University
Brian Ormand

Las Cruces, NM

UNITED STATES

Phone: +1 (505) 646-1949

Email: bormand@nmsu.edu

Ship To:New Mexico State University
Brian Ormand

Las Cruces, NM

UNITED STATES

Phone: +1 (505) 646-1949

Email: bormand@nmsu.edu

Product Code	Product	Unit Price	Qty Order	List	Discount	Extension
SSS-150	5.0 CentraOne Base Server License for Symposium	35,000.00	1.0	35,000.00	100.0%	0.00
CSC-051	5.0 Symposium Concurrent License for CentraOne	2,500.00	125.0	312,500.00	60.0%	125,000.00
CPS-006	Maintenance & Support	22,500.00	1.0			22,500.00
License Type: Perpetual				Total Ordered		\$147,500.00

Special Instructions

These terms and pricing are valid through March 11, 2002.

Additional seats can be purchased at the same prices through September 2002.

TERMS:

All terms are subject to credit approval. Prices are in U.S. dollars and are exclusive of all excise, value-added, sales, use, transfer and other taxes and duties. If you are tax exempt, please provide a copy of your certificate with this order. Total amount due NET 30 DAYS from Invoice Date. Overdue amounts will bear interest at the rate of 1 1/2% per month or such lower rate as is the highest legal rate permitted.

Customer acknowledges that reasonable travel charges and expenses will be billed in addition to the charges contracted for professional services. The terms and conditions of any accompanying customer purchase order do not apply.

Customer Purchase Order Number if required for invoice reference: _____.

This order is subject to the terms of an executed Centra Master License Agreement

Purchaser Name: _____
Purchaser Signature: _____
Title: _____ Date: _____
Phone Number: _____

Centra Approval: _____ **Date:** _____
Contracts: _____
Finance: _____

CENTRA MASTER LICENSE AGREEMENT

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Deleted: 7

Deleted: 1

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"Client Software" provides an individual with the ability to access the Server Software's functionality.

- b. Centra grants to Customer a non-exclusive, world-wide and (subject to the provisions of section 9 (c)) non-transferable license to install and use the number of copies of the object code version of the Software pursuant to the terms and conditions herein and in the fully executed Sales Orders. Unless otherwise designated on a Sales Order, all licenses granted hereunder shall (subject to the provisions of section 5) be perpetual. Each Centra Software Server license restricts the Server Software to a single server machine under the control of Customer. Each Centra Software Client license (either Named or Concurrent) is restricted to users authorized by the Customer under the terms of this Agreement to access the Centra Software Server. Simultaneous use access is limited to the number of user licenses (either Concurrent or Named) acquired and is controlled by a key issued by Centra and installed in the Server Software. Each Named User Client license is further restricted to use by the individual named by the Customer in the Server Software and may not be renamed until such named user no longer requires access to the software.
- c. Customer shall not except to the extent required to be permitted by law (and shall not permit any employee or other third party to) copy, use, analyze, reverse engineer, decompile, disassemble, translate, convert, or apply any procedure or process to the Software in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Software or any trade secret information or process contained in the Software. Any third party software imbedded in the Software may be used only in conjunction with the Software and may not be used separately.
- d. Customer shall not alter or remove any notices, graphics or text contained on or in the Software or the Documentation; or modify the Software in any form, without express written permission from Centra.
- e. Customer may keep a reasonable number of copies of the Server Software, solely for back-up or archival purposes for no additional fees or costs. Customer may copy the Documentation, as needed, for Customer's use as specified in this Agreement and in any Attachments hereto. Customer agrees that any copies of the Software or Documentation that it makes under this Agreement will bear all copyright, trademark and other proprietary notices included therein by Centra.

- f. Customer may not rent, lease or sublicense the Software to others not bound by this Agreement, in any way whatever (including without limitation, using the Software for the purpose of operating a bureau service or application service provider, or other revenue generating purposes.
- g. Customer's rights in the Software will be limited to those expressly granted in this Agreement. Centra reserves all rights and licenses in and to the Software not expressly granted to Customer under this Agreement.

2. FEES

- a. Customer shall pay Centra the license fees and the Maintenance fees for the Software specified on the applicable Sales Order within 30 days after receipt of Centra's invoice. Fees for subsequent Annual Maintenance Periods (as the term is defined in Section 3) are due and payable at the beginning of each Annual Maintenance Period. All license fees paid hereunder are nonrefundable, except as provided in Section 6.a. below.
- b. Customer shall pay any other fees and prices specified on a Sales Order within 30 days after receipt of Centra's applicable invoice.
- c. All prices and fees are in U.S. dollars unless otherwise specified. All amounts payable under this Agreement are exclusive of all sales, use, value-added, excise, property, withholding, and other taxes and duties. Customer will pay all taxes and duties assessed by any authority in connection with this Agreement and with Customer's performance hereunder. Customer will promptly reimburse Centra for any and all taxes or duties that Centra may be required to pay in connection with this Agreement or its performance. This provision does not apply to franchise taxes, taxes based on Centra's income, or any taxes for which Customer is exempt, provided Customer has furnished Centra with a valid tax exemption certificate.

3. MAINTENANCE & SUPPORT AND OTHER SERVICES

- a. Provided Customer elects to obtain maintenance & support services ("Maintenance") for the Software and pays all applicable Maintenance fees, Centra shall provide Customer with the following Maintenance services, for the then current and immediately preceding version of the Software, for the period commencing on the date Centra delivers the relevant Software to Customer through the period ending one anniversary year thereafter (the "Initial Maintenance Period"):
- i Updates to the Software. An Update shall mean a subsequent release of the Software that Centra makes generally available to its current Maintenance customers for the Software. Updates include changes and corrections to the Software as are required to keep the Software in substantial conformance with the applicable Documentation and that are created by Centra as corrections for defects in the Software. Updates include linear improvements in functionality, but shall not include any release, option or future product that Centra licenses separately; and
 - ii Web-based support, consisting of information on the most current release of the Software through Centra's web site; and
 - iii Phone Support in the form of advice and counsel via telephone regarding Customer's use of the Software. Phone Support shall be provided from 8:00 AM to 8:00 PM (Eastern Time), Monday through Friday, exclusive of holidays observed by Centra which are available on Centra's Support & Maintenance website.

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b. Upon expiration of the Initial Maintenance Period, Maintenance shall automatically renew for successive annual periods (each an "Annual Maintenance Period"), provided (i) Centra continues to offer Maintenance to its general Customer base; (ii) Customer pays the Maintenance fees applicable for the relevant Annual Maintenance Period, and (iii) Customer does not terminate Maintenance by providing Centra with at least 30 days written notice prior to the expiration of the applicable Initial or Annual Maintenance Period. Fees for the Initial and subsequent Annual Maintenance Periods shall be based on the then current Centra price list for Maintenance. Customer may reinstate terminated Maintenance at any time during the term of this Agreement. If Customer requests such reinstatement, Customer shall pay a reinstatement fee equal to the actual Maintenance fees which would have been paid by Customer during the suspension period had it not suspended Maintenance.

c. Customer agrees to provide Centra with all reasonable information and materials requested by Centra for use in replicating, diagnosing and correcting an error or other Software problem reported by Customer. Customer acknowledges that all Updates provided by Centra will be cumulative in nature, and therefore Customer agrees to install all Updates provided by Centra. Customer further acknowledges that Centra's ability to provide satisfactory Maintenance is dependent on Customer (i) installing all Updates; (ii) providing Centra with the information necessary to replicate Software problems; (iii) maintaining the correct operating environment in accordance with any specified requirements; (iv) designating a single service contact per location; and (v) allowing Centra reasonable access to Customer's computer system and necessary data.

d. Centra shall provide consulting and training Services (each an "Engagement"), under the terms of this Agreement, agreed to by the parties and specified on one or more separately executed Sales Order(s). In the event of any conflict between this Agreement and an Engagement, the provisions of the Engagement shall prevail. All Engagements shall be billed at the rates specified on a Sales Order. Customer agrees to use the number of consulting days specified on a Sales Order within six months of the effective date of such Sales Order. Any days or time not used within the six-month period shall be forfeited by Customer and no credit or refund will be given for these unused days or time. Provided Centra remains responsible for performance, Centra shall have the right to use third parties in performance of Engagements hereunder and, for purposes of this Agreement, all references to Centra or its employees shall be deemed to include such third parties. Customer shall provide Centra access to its equipment, systems and other facilities to the extent reasonably required by Centra for the performance of Engagements hereunder. For any on-site services requested by Customer, Customer agrees to reimburse Centra for its actual, reasonable travel and other out-of-pocket expenses incurred in connection therewith.

4. CONFIDENTIALITY

a. To the maximum extent allowed by law, any written, oral or visual, business, operational or technical information provided to Customer by Centra hereunder that is marked or otherwise identified as confidential or proprietary, or that Customer knows or should know is confidential or proprietary, the Software and other deliverables furnished by Centra, and the terms of and pricing under this Agreement (collectively Centra's "Proprietary Information") contain valuable and confidential information that is proprietary to Centra and to third parties from whom Centra has obtained marketing rights (the "Third Party Licensors"), and which includes and constitutes trade secrets and unpublished copyrighted material of Centra and the Third Party Licensors.

Customer agrees to maintain the confidentiality of Centra's Proprietary Information and to only use it in carrying out its rights and obligations under this Agreement. Nothing in this Agreement shall be construed to convey any title or ownership rights to the Software or Proprietary Information to Customer. Customer shall not sublicense, rent, assign, transfer or disclose the Proprietary Information to any third party and shall not reproduce, perform, display, prepare derivative works of, or distribute the Proprietary Information except as expressly permitted in this Agreement. Customer shall not disclose the results of any benchmark tests of the Software to any third party without Centra's prior written approval. Customer shall make commercially reasonable efforts to prevent the theft of any Proprietary Information and/or the disclosure, copying, reproduction, performance, display, distribution and preparation of derivative works of the Proprietary Information except as expressly authorized herein.

b. Centra agrees to maintain the confidentiality of business, operational and other information provided by Customer to Centra hereunder, provided such information is marked or otherwise identified by Customer as confidential or proprietary or is of a nature that Centra knows or should know is confidential or proprietary (also referred to herein as "Proprietary Information"), and will only use it in carrying out its rights and obligations under this Agreement.

c. Both parties agree to restrict access to the Proprietary Information of the other only to employees who (i) require access in the course of their assigned duties and responsibilities in connection with this Agreement, and (ii) have agreed in writing to be bound by provisions no less restrictive than those set forth in this Section 4.

d. The confidentiality obligations of the parties regarding the Proprietary Information of the other shall not apply to any material or information that (i) is or becomes a part of the public domain through no act or omission by the receiving party, (ii) is independently developed by employees of the receiving party without use or reference to the Proprietary Information of the other party, (iii) is disclosed to the receiving party by a third party that, to the receiving party's knowledge, was not bound by a confidentiality obligation to the other party, or (iv) is demanded by a lawful order from any court or any body empowered to issue such an order. Each party agrees to notify the other promptly of the receipt of any such order, and to provide the other with a copy of such order.

e. The provisions of this section 4 shall remain in full force and effect despite termination of this Agreement for whatever reason.

5. TERM AND TERMINATION

a. This Agreement shall continue in force and effect perpetually unless terminated pursuant to its provisions.

b. This Agreement, any Assignment, and/or any license granted hereunder may be terminated in accordance with the following:

i Centra may terminate this Agreement, any Assignment and/or any licenses granted herein:

a) Upon 15 calendar days notice if Customer uses, transfers or discloses any of the Software or other Proprietary Information, or any copy or modification thereof, in violation of this Agreement, unless Customer has fully cured such breach within such 15 day period;

b) Upon 30 calendar days written notice if Customer has breached any other material provision of this Agreement, including failure to make payments

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when due, and such breach is not fully cured within such 30 day period.

- Federal Acquisition Regulation FAR Part 39 Section 39.002
- the definitions of Y2K readiness as defined in the "Year 2000 Information and Disclosure Act" passed by the 105th Congress on 10/1/98, located on the following URL:<http://www.y2k.gov/new/y2kact.html>

The foregoing warranty shall not apply to (i) third party software that is or may be used in conjunction with the Software, including database and operating systems vendors, (ii) any non-compliance to the extent caused by hardware, third party software or applications and content developed with or operating with the Software as delivered, or (iii) Customer's use of other than a current unaltered release of the Software if use of a current, unaltered release of the Software would avoid the nonconformance. Customer is solely responsible for all system integration and testing of the Software in a fully Year 2000-compliant operating environment, including all hardware, systems software, databases, network environment, and other interoperating components.

- ii Customer may terminate this Agreement or any Assignment on 30 calendar days written notice if Centra has breached any material provision of this Agreement and such breach is not fully cured within such 30-day period.
- c. Upon termination by Centra as specified above in 5.b.i Customer's right to use and/or possess the affected Software and other related Proprietary Information shall immediately cease. Customer shall immediately stop using all such Proprietary Information (including Software) and shall return all copies to Centra, except that Customer may instead choose to delete all installed copies off of any and all storage media possessed by Customer. Customer shall provide Centra with written certification signed by an officer of Customer that all copies of the Software have been returned or destroyed and that Customer has retained no copies.
- d. Any incomplete Engagement(s) shall be terminated concurrently with this Agreement. Customer shall pay a pro-rata portion of any Engagement that is incomplete at the time of termination and for which payments have not been made and Centra shall deliver to Customer copies of all such incomplete work for which payment has been made, unless any applicable license for such work has been terminated.
- e. Termination of this Agreement, any Engagement or any license granted hereunder shall not limit the remedies otherwise available to either party, including injunctive relief.

6. WARRANTIES

- e. Centra warrants that it will use commercially reasonable efforts to ensure the Software as delivered by Centra does not contain viruses, worms, Trojan horses or other unintended malicious or destructive code ("Malicious Code"). If Malicious Code is discovered in Software as delivered by Centra, Centra shall provide Customer with a clean copy that does not contain such Malicious Code within 30 days following Customer's notice to Centra of a breach of this warranty. However, Customer is hereby notified that the Software will contain license keys intended to ensure that the simultaneous use limits of a particular license will not be exceeded.

- a. Centra warrants that for the first 90 days following delivery of the Software to Customer (the "Warranty Period"), (i) the Software as delivered will perform substantially in conformance with the applicable Documentation, and (ii) that the digital or electronic media on which the Software and the Documentation are distributed are free from defects in materials and workmanship. Centra does not warrant that the Software will operate in combinations except as specified in the Documentation. Notwithstanding any other provision of this Agreement, Centra and Customer acknowledge that Customer's use of the Software or other deliverables provided hereunder may not be uninterrupted or error-free.
- b. Centra warrants that its Services provided hereunder shall be performed consistent with generally accepted industry standards. This warranty shall be valid for 60 days from the date of performance of the relevant service.
- c. Centra warrants to Customer that Centra has the right to enter into this Agreement and to grant the rights and licenses herein and, that to the best of Centra's knowledge, the Software does not infringe any patent or copyright or violate any other proprietary rights of a third party. Centra's sole and exclusive obligation, and Customer's sole and exclusive remedy, for breach of this warranty with respect to intellectual property or proprietary rights of any kind, is Centra's indemnification of Customer as set forth in Section 7 below.
- d. Provided that all date data provided to the Software is in full 4 digit year format, Centra warrants that the Software as delivered to Customer by Centra: will accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations. The Software is compliant with:
 - Federal Acquisition Regulation FAC 97-01; FAR Case 96-607; Item XVII (commonly referred to as the FAR Final Ruling)

- f. Except as set forth in this Section 6, CENTRA PROVIDES THE SOFTWARE AND THE DOCUMENTATION WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES OF QUALITY OR PERFORMANCE. Except for Centra's indemnification of Customer as set forth in Section 7, Customer's exclusive remedy with respect to the Software, and the Documentation will be limited to, at Centra's option, (a) the replacement of any defective Software or Documentation, or (b) refund of a pro-rata, unamortized portion of the license fees paid for the Software.

7. CENTRA INDEMNITIES

- a. Centra will defend or settle, at its expense, any action brought or allegation made against Customer to the extent that it is based upon a claim that the Software, as provided by Centra to Customer under this Agreement and used within the scope of this Agreement, infringes any copyright, trade secret, patent or other proprietary right, and will pay all costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Customer. Centra's obligations hereunder are contingent on the following conditions:
 - i Customer must notify Centra in writing promptly after Customer becomes aware of a claim or the possibility thereof; and
 - ii Customer must grant Centra the sole control of the settlement, compromise, negotiation, and defense of any such action; and
 - iii Customer must provide Centra with all information related to the action that is reasonably requested by Centra; and

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- iv Centra may, at its option, (a) obtain the right for Customer to continue using the Software; or (b) replace or modify the Software so it is no longer infringing, or (c) terminate the applicable license(s) and remove the Software. If Centra so terminates the applicable license(s) and removes the Software, Centra shall refund to Customer a pro-rata, unamortized portion of the license fees paid for such license(s) based on applying straight-line amortization over a 60-month period following the relevant delivery date(s).
- b. The foregoing indemnity shall not apply to any infringement claim to the extent arising from (i) Software that has been modified by anyone other than Centra; and/or (ii) Customer's use of the Software in conjunction with Customer data where use with such data gave rise to the infringement claim; and/or (iii) Customer's use of the Software with other software or hardware, where use with such other software or hardware gave rise to the infringement claim; and/or (iv) use of other than the most current, unaltered Update to the Software if such claim would have been avoided by the use of such Update and/or (v) compliance by Centra with designs, plans or specifications furnished by or on behalf of Customer.
- c. Centra shall not be liable hereunder for any settlement made by Customer without Centra's advance written approval or for any award from any action in which Centra was not granted control of the defense.
- d. The parties agree to cooperate in good faith in the defense of any legal action or suit that causes one party to invoke an indemnity hereunder.
- e. **THIS SECTION 7 STATES CENTRA'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.**
8. **LIMITATIONS OF LIABILITY**
- a. "AS BETWEEN THE PARTIES, EACH PARTY WILL BE SOLELY RESPONSIBLE FOR LIABILITY ARISING FROM PERSONAL INJURY, INCLUDING DEATH OR DAMAGE TO PROPERTY ARISING FROM THE NEGLIGENT ACT OR FAILURE TO ACT OF THE RESPECTIVE PARTY OR OF ITS OFFICIALS, AGENTS, AND EMPLOYEES PURSUANT TO THIS AGREEMENT. THE LIABILITY OF THE REGENTS OF NEW MEXICO STATE UNIVERSITY SHALL BE SUBJECT TO THE IMMUNITIES AND LIMITATION OF THE TORT CLAIMS ACT, SECTIONS 41-40-1 et. Seq. NMSA 1978, AND OF ANY AMENDMENTS THERETO."
- b. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT WITH RESPECT TO CENTRA'S OBLIGATIONS UNDER SECTION 7, AND PARAGRAPH 8. a, NOTWITHSTANDING THE FORM (E.G., CONTRACT, TORT (INCLUDING NEGLIGENCE) STATUTORY LIABILITY OR OTHERWISE) IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT AGAINST CENTRA, CENTRA SHALL NOT BE LIABLE HEREUNDER FOR DAMAGES WHICH EXCEED, IN THE AGGREGATE, THE FEES PAID BY CUSTOMER FOR THE SPECIFIC SOFTWARE OR SERVICES WHICH GAVE RISE TO SUCH DAMAGES.
- c. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL CENTRA BE LIABLE FOR LOSS (WHETHER DIRECT OR INDIRECT) OF PROFITS, BUSINESS OR ANTICIPATED SAVINGS OR FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE LOSS OR DAMAGES, OR FOR ANY INDIRECT

OR CONSEQUENTIAL LOSS OR DAMAGES, EVEN IF CENTRA HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE AND WHETHER ARISING FROM TORT (INCLUDING NEGLIGENCE), BREACH OR CONTRACT OR OTHERWISE.

- d. CENTRA SHALL NOT BE LIABLE FOR ANY LOSS ARISING OUT OF ANY FAILURE BY CUSTOMER TO KEEP FULL AND UP-TO-DATE COPIES OF ITS DATA AND THE COMPUTER PROGRAMS IT USES IN ACCORDANCE WITH BEST COMPUTING PRACTICE.

NOTHING IN THIS AGREEMENT SHALL LIMIT EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY A PARTY'S NEGLIGENCE OR LIABILITY FOR FRAUD.

- e. The provisions of this Agreement allocate the risks between Customer and Centra. Centra's pricing reflects this allocation of risk and the limitations of liability specified herein.

9. **MISCELLANEOUS**

- a. In the event any action is brought to enforce any provision of this Agreement or to declare a breach of this Agreement, the prevailing party shall be entitled to recover, in addition to any other amounts awarded, reasonable legal and other related costs and expenses, including attorney's fees, incurred thereby.
- b. Customer shall comply with all then current export and import laws and regulations of the United States and such other governments as are applicable to the Software. Customer hereby certifies that it will not directly or indirectly, export, re-export, or transship the Software or related information, media, or products in violation of United States laws and regulations.
- c. Customer may not assign this Agreement or any license granted or created hereunder whether by operation of law, change of control, or in any other manner, without the prior written consent of Centra, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, except in the case of an enterprise-wide license for the Software, Customer may assign this Agreement to any Affiliate of Customer, provided that (i) the assignee agrees in writing to be bound by the terms and conditions of this Agreement, (ii) neither Customer nor the assignee are in default hereunder, (iii) the assignee is not a competitor of Centra, and (iv) Customer provides reasonable, written notice of any such assignment. ("Affiliate" of a party shall mean such party's parent corporation, an entity under the control of such party's parent corporation at any tier, or an entity controlled by such party at any tier. "Control" shall mean the power to direct or cause the direction of the management and policies of the entity through the ownership of more than 50% of the outstanding voting interests in such entity.)
- d. The parties are independent contractors and nothing in this Agreement shall be deemed to make either party an agent, employee, partner or joint venturer of the other party. Neither party shall have the authority to bind, commit, or otherwise obligate the other party in any manner whatsoever. Centra may use Customer's plain text name to list Customer as a customer of Centra.
- e. During the term of this Agreement and for six months thereafter, both parties agree not to solicit or to offer employment to any employees of the other party without the other party's prior written consent.
- f. Any notice required under this Agreement shall be given in writing and shall be deemed effective upon mailing by certified mail, properly addressed and postage prepaid, or delivery by

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courier service to the address specified on the face page hereof or to such other address as the parties may designate in writing.

- g. If any portion of this Agreement is determined to be or becomes unenforceable or illegal, such portion shall be deemed eliminated and the remainder of this Agreement shall remain in effect in accordance with its terms as modified by such deletion.
- h. Definitions set forth in any part of this Agreement shall apply to all parts of this Agreement. In the event of a conflict between the terms of different parts of this Agreement, the following order of priority shall apply: first, the relevant Sales Order(s); second, the relevant Engagement(s); third the Exhibits; and fourth, the Agreement.
- i. The obligations of the parties under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive termination, cancellation, or expiration of this Agreement.
- j. Neither party shall be considered in default in performance of its obligations hereunder if performance of such obligations is prevented or delayed by force majeure or any cause beyond its reasonable control.
- k. If Customer is the United States Government or any contractor thereof, all licenses granted hereunder are subject to the following: (i) for acquisition by or on behalf of civilian

agencies, as necessary to obtain protection as "commercial computer software" and related documentation in accordance with the terms of this Commercial Software Agreement as specified in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors; (ii) for acquisition by or on behalf of units of the Department of Defense ("DOD") as necessary to obtain protection as "commercial computer software" and related documentation in accordance with the terms of this commercial computer software license as specified in 48 C.F.R. 227-7202-2 of the DOD F.A.R. Supplement and its successors.

- l. This Agreement (including the attached Sales Orders, Engagement of Work(s) Exhibits and referenced attachments) constitute the entire agreement between the parties regarding the subject matter hereof and supersede all proposals and prior discussions and writings between the parties with respect thereto. The parties agree that this Agreement cannot be altered, amended or modified, except in writing that is signed by an authorized representative of both parties. It is expressly agreed that the terms of any Customer purchase order or other ordering document (except for mutually executed license Sales Orders and Assignments) shall be without force and effect.
- m. This Agreement shall be governed by and interpreted in accordance with the laws of the United States and the state of New Mexico, excluding its choice of law rules.

Addendums:

Addendum #1

New Mexico State University is allowed to use Centra to operate an Electronic Conferencing Center for educational programs involving public agencies and non-profit organizations including collecting fees from co-sponsors to help recover event facilitation costs. The events will be coordinated through the Center and hosted and conducted by New Mexico State University, with the proviso that New Mexico State University will not rent, lease or sublicense the software to any entities outside New Mexico State University.

Addendum #2:

New Mexico State University is allowed to use Centra to offer environmental courses and conferences developed and offered by partner institutions involved in the WERC program. WERC (Waste-management Education and Research Consortium) is a consortium for education and technology development administratively located at New Mexico State University whose partners include the University of New Mexico, New Mexico Institute of Mining and Technology, Dine College, and Sandia and Los Alamos National Laboratories. The programs will be offered to public agencies, non-profit organizations, and private businesses, which may involve collecting of fees from co-sponsors to help recover event facilitation costs. The events will be coordinated through the WERC administrative office and hosted by New Mexico State University, with the proviso that New Mexico State University will not rent, lease or sublicense the software to any entities outside New Mexico State University.

Agreed to by:

Centra Software, Inc.

By: _____
(Signature)

(Name typed or printed)

(Title)

(Date)

(Customer)

By: _____
(Signature)

(Name typed or printed)

(Title)

(Date)

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