

SOFTWARE LICENSE AGREEMENT

This Software License Agreement (the "Agreement") is made as of the _____ day of _____, 2015 ("Effective Date"), by and between _____ ("Company"), located at _____ and _____ ("Subscriber"), located at _____.

Both parties are sometimes referred to herein separately as a "Party" or collectively as the "Parties."

1. Service

- a. Company agrees to provide to Subscriber access, support services, program updates, system administration, system management, and system monitoring activities for Company's software program, _____[insert your software name here]_____.
- b. For the duration of the services Term, Subscriber has the nonexclusive, non-assignable, worldwide limited right to use the services solely for Subscriber's internal business operations and subject to the terms of this Agreement. Subscriber is responsible for Subscriber's end users' compliance with this Agreement.
- c. Subscriber agrees that Subscriber does not acquire any resale rights under this Agreement. Upon the end of this Agreement, Subscriber's right to access or use the Company program and the services shall terminate.

2. Payment

- a. Subscriber shall pay Company:
 - i. A one-time account activation fee of \$_____;
 - ii. A periodic annual fee of \$_____ per year (includes one authorized computer);
 - iii. A fee of \$_____ per month for each authorized computer.
- b. Periodic annual fees are due in advance annually. Monthly fees are due in advance every month. Service will not start until the payment is received in full. All overdue payments are subject to a late charge of one and one-half percent (1.5%) per month. Company reserves the right to discontinue service at any time for payments more than 21 days overdue after serving a 7 days notice via email or fax.
- c. All references to dollars, money and payment shall mean United States Dollars (USD).

3. Intellectual Property

- a. Subscriber retains all ownership and intellectual property rights in and to Subscriber's data. Company or its licensors retain all ownership and intellectual property rights to the services and Company program.
- b. Third party technology that may be appropriate for use with the Company program is specified in the program documentation as applicable. Subscriber's right to use such third party technology is governed by the terms of the third party technology license agreement and not under this

Agreement.

- c. Subscriber may not:
 - i. Remove or modify any program markings or any notice of Company's or its licensors' proprietary rights;
 - ii. Make the program or materials resulting from the services available in any manner to any unauthorized third party;
 - iii. Modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), or access or use the services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to Company;
 - iv. Disclose results of any services or program benchmark tests without Company's prior written consent;
 - v. License, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the services, Company program or materials available, to any third party other than, as expressly permitted under the terms of this Agreement;
 - vi. Except as expressly provided herein, copy, reproduce, distribute, republish, download, display or transmit in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means.

4. **Disclaimer of Warranties**

- a. COMPANY SOFTWARE AND SERVICES ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS, TO BE USED AT SUBSCRIBER'S OWN RISK. COMPANY DOES NOT GUARANTEE THAT THE SOFTWARE OR ANY SERVICE WILL BE ERROR-FREE OR UNINTERRUPTED, OR THAT COMPANY WILL CORRECT ALL ERRORS. SUBSCRIBER ACKNOWLEDGES THAT COMPANY DOES NOT CONTROL THE TRANSFER OF SUBSCRIBER'S DATA AND THAT THE SERVICE MAY BE SUBJECT TO LOSS OF DATA, HACKING, VIRUSES, LIMITATIONS, DELAYS AND OTHER PROBLEMS. **COMPANY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, LOSS OF DATA OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.** SUBSCRIBER IS ADVISED TO INDEPENDENTLY BACK UP ITS DATA REGULARLY.
- b. TO THE EXTENT NOT PROHIBITED BY LAW, **COMPANY HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES** OR CONDITIONS INCLUDING FOR HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

5. **Limitation of Liability**

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS, DATA, OR DATA USE. COMPANY'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS SOFTWARE AS A SERVICE AGREEMENT OR SUBSCRIBER'S ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN

NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO COMPANY FOR THE SERVICES UNDER THE ORDER THAT IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. ANY DAMAGE IN SUBSCRIBER'S FAVOR AGAINST COMPANY SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY SUBSCRIBER UNDER THE AGREEMENT AND ANY SUCH REFUND AND CREDIT SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY.

6. Indemnification

Subscriber shall indemnify and hold harmless, the Company, its agents, affiliates and employees from and against any loss, cost, claim, liability, damage, or expense (including reasonable attorneys' fees) to third parties, relating to or arising from the use of the service by Subscriber, its users or any personnel, whether or not Subscriber has knowledge of or has authorized such access or use, including, without limitation, claims for an invasion of privacy, breach of confidentiality, libel, slander, infringement of copyright, patent infringement (where Subscriber or its users or personnel has used, connected, or combined the service with the products or services of others), negligence, breach of security, or tortious behavior. Subscriber agrees to indemnify the Company along with any parties from whom the Company obtains network services, and to hold them harmless from any claims resulting from the use of the service by Subscriber or its users that damage another party or that violates the law.

7. Term and Termination

- a. This Agreement commences on the Effective Date and continues for the initial Term one year. This Agreement shall automatically renew for additional terms of one year each unless either Party shall give notice of cancellation, for any reason or no reason at all, at least thirty (30) days prior to the expiration of the then current Term.
- b. Subscriber agrees and acknowledges that Company has no obligation to retain Subscriber's data and that Subscriber's data may be irretrievably deleted within three (3) days following the termination.
- c. Provisions that survive termination or expiration of the Agreement are those relating to the absence of warranty, limitation of liability, indemnity, payment, and others which by their nature are intended to survive.

8. Confidentiality

- a. By virtue of the Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). Parties agree to disclose only information that is required for the performance of obligations under this Agreement. Confidential Information shall be limited to the terms and pricing under the Agreement, Subscriber's data residing in the services environment, and all information clearly identified as confidential at the time of disclosure.
- b. A Party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other Party; (b) is independently developed by the other Party; (c) is lawfully disclosed to the other Party by a third party without restriction on the disclosure; or (d) was in the other Party's lawful possession prior to the disclosure and had not been obtained by the other Party either directly or indirectly from the disclosing Party.
- c. Parties agree to hold each other's Confidential Information in confidence for a period of three years

from the date of disclosure. Also, Parties agree to disclose Confidential Information only to those employees or agents who are required to protect it against unauthorized disclosure in a manner no less protective than under this Agreement.

9. Severability

If any term of the Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of the Agreement. The Agreement may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or expressly accepted via email by authorized representatives of Subscriber and of Company.

10. Force Majeure

Neither Party shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of the obligated party. Parties will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either Party may cancel unperformed services upon written notice. This section does not excuse either Party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Subscriber's obligation to pay for the services.

11. Subscriber Reference

Subscriber agrees that Company may identify Subscriber as a recipient of services and use Subscriber's logo in sales presentations, marketing materials and press releases.

12. Miscellaneous

- a. Company is an independent contractor and Parties agree that no partnership, joint venture, or agency relationship exists between them. Each Party will be responsible for paying its own employees, including employment related taxes and insurance.
- b. Company reserves the right to provide the services from locations, and/or through use of subcontractors, worldwide.
- c. The Agreement is governed by the substantive and procedural laws of _____[INSERT STATE]_____, and Subscriber and Company agree to submit to the exclusive jurisdiction of, and venue in, the courts located in INSERT STATE in any dispute arising out of or relating to the Agreement.
- d. Subscriber may not assign the Agreement or give or transfer the services or an interest in them to another individual or entity. If Subscriber grants a security interest in any portion of the services, the secured party has no right to use or transfer the services or any deliverables.
- e. Company may audit Subscriber's use of the services. Subscriber agrees to cooperate with Company's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Subscriber's normal business operations. Subscriber agrees to pay within 30 days of written notification any fees applicable to Subscriber's use of the services in excess of Subscriber's rights. If Subscriber does not pay, Company can end

Subscriber's services and/or the Agreement with or without a prorated refund. Subscriber agrees that Company shall not be responsible for any of Subscriber's costs incurred in cooperating with the audit.

- f. Company may compile statistical information related to the performance of the services, and may make such information publicly available, provided that such information does not incorporate Subscriber's data and/or identify Subscriber's Confidential Information or include Subscriber's company's name. Company retains all intellectual property rights in such information.
- g. Except for actions for nonpayment or breach of Company's proprietary rights, no action, regardless of form, arising out of or relating to the Agreement may be brought by either party more than one year after the cause of action has accrued.

13. Entire Agreement

Subscriber agrees that the Agreement (including the information which is incorporated into the Agreement by written reference, is the complete agreement for the services ordered by Subscriber, and that the Agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such services.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

COMPANY:

By: _____

Name/Title: _____

Date: _____

SUBSCRIBER:

By: _____

Name/Title: _____

Date: _____