

SOFTWARE LICENSE AGREEMENT

(Source Code)

THIS SOFTWARE LICENSE AGREEMENT (this "**Agreement**") is made and entered into as of _____, 2008 ("**Effective Date**"), by and between _____, a _____ corporation ("**Licensor**"), and **YOUR ORGANIZATION NAME**, a **YOUR STATE** corporation ("**Licensee**").

WHEREAS, Licensor owns or has the right to grant license rights to certain computer software more fully described Exhibit A to this Agreement; and

WHEREAS, Licensee desires to obtain from Licensor a non-exclusive license to use said software in both source code and object code formats.

NOW THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the parties hereby agree as follows:

1. **Definitions.**

1.1 "**Affiliate**" shall mean, with respect to Licensee, any entity, whether incorporated or not and whether now existing or hereafter created or acquired, that, directly or indirectly, controls, is controlled by or under common control with Licensee.

1.2 "**Confidential Information**" shall mean non-public information regarding a party, its products and/or business, and all items defined as "confidential information" in any other agreement between Licensee and Licensor whether executed prior to or after the date of this Agreement. The term "Confidential Information" specifically includes, the Licensed Software (both in object code and source code formats), the Documentation, information regarding Licensee's unique systems and technology environment, and any information relating to Licensee's customers or policy holders. Confidential Information shall not include (i) any information or data now or later in the public domain other than as a result of a breach of this Agreement, (ii) any information or data received from a third party not under an obligation of confidentiality to the other party hereto or (iii) information or data independently developed without use of or reliance upon Confidential Information of the other party.

1.3 "**Date of Delivery**" shall mean the date the Licensed Software (defined below) is delivered to Licensee.

1.4 "**Documentation**" shall mean, collectively, (i) the documentation and other written materials related to or associated with the Licensed Software which Licensor typically provides to its other commercial licensees, including, without limitation, any user manuals, operating guides and release notes, (ii) the technical documentation and other written materials related to or associated with the Licensed Software which would allow a reasonably competent software programmer to understand, use, support and modify the Source Code (as defined below), including design documentation, software tools and information regarding applicable compilers, assemblers and interpreters, (iii) Licensee's Request for Proposal dated January __, 2008, relating to a **YOUR SYSTEM NAME** (the "RFP"), Licensor's Response to the RFP, dated February __, 2008, and any documents which purport to update or revise either the RFP or Licensor's Response to the RFP, (iv) the results of any Licensor "Use Cases Presentation," "Proof of Concept" or similar type presentations or tests provided by Licensor to Licensee, and

(v) any marketing materials, "White Papers" or similar materials provided by Licensor to Licensee. All of the foregoing Documentation is hereby incorporated into this Agreement.

1.5 **"Licensed Software"** shall mean, the computer software described in Exhibit A hereto, in both object code and source code formats, and any modifications, updates, enhancements, revisions or similar changes to said software provided to Licensee by Licensor.

1.6 **"Primary Licensee Location"** shall mean **YOUR PRIMARY ADDRESS – SERVER LOCATION**.

1.7 **"Recommended Operating Environment"** shall mean a recommended configuration for the Licensed Software as set forth in the Exhibit B hereto.

1.8 **"Licensee Permitted Sites"** shall mean (i) Licensee owned or operated United States locations as of the Effective Date at which Licensee elects at any time to install copies of the Licensed Software in connection with its exercise of the Permitted Uses (as defined in Section 2.1) and (ii) any location which becomes owned or operated by Licensee after the Effective Date at which the Licensed Software is installed and used which replaces a location described in (i) above (**"New Replacement Location"**), and any further replacement of a New Replacement Location. For the avoidance of doubt, any location which becomes owned or operated by Licensee after the Effective Date where the installation and use of the Licensed Software is in addition to, and does not replace, a location described in (i) above or New Replacement Location, shall not be a Licensee Permitted Site.

1.9 **"Source Code,"** whether used as a capitalized term or in lower case, shall mean the programmer- written computer code, statements and instructions for the Licensed Software.

1.10 **"Specifications"** shall mean the specifications for the Licensed Software and its performance as set forth in Exhibit C hereto, and the descriptions set forth in the Documentation.

2. **Grant of License.**

2.1 Licensor hereby grants to Licensee a perpetual, irrevocable (except for Licensee's rights herein), nontransferable (except as provided in Section 15.5 hereto), non-exclusive right and license to (i) use, for its own internal and administrative purposes, at Licensee Permitted Sites, the Licensed Software and the Documentation and (ii) compile, link, copy, incorporate, imbed, modify and create derivative works of the Licensed Software and Documentation in connection with the use permitted by (i) above (collectively, the "Permitted Uses"). For purposes of this Agreement, Licensee's "own internal and administrative purposes" shall include use for (A) internal development, testing, quality assurance, training and support and maintenance purposes and (B) the processing of information for Licensee's Affiliates. In addition to the foregoing, with respect to any Licensee Affiliate or any business unit of Licensee or a Licensee Affiliate whose information was being processed by Licensee using the Licensed Software, but which Affiliate or business unit ceases to be a Licensee Affiliate or a part of Licensee through a sale or other divestiture thereof (as applicable, "Former Affiliate or Former Business Unit"), Licensor grants Licensee the right to process information for any Former Affiliate or Former Business Unit, and to provide access to the Licensed Software to such Former Affiliate or Former Business Unit as necessary or appropriate for such information processing, for a period not to exceed twelve (12) months following such sale or divestiture.

2.2 Licensee may make and use a reasonable number of copies of the Licensed Software and Documentation for the Permitted Uses and for back-up, disaster recovery/use, and archival purposes. Licensee will reproduce and include any trademark, copyright and/or patent notices and other restrictive and proprietary legends shown on the original copy of the Licensed Software and Documentation, on all copies of the Licensed Software and Documentation, all of which copies will be subject to the provisions of this Agreement.

2.3 Licensee shall give Licensor reasonably prompt notice of each Licensee Permitted Site, other than the Primary Licensee Location. Notwithstanding anything to the contrary in Sections 2.1 and 2.2 above, (i) Licensee may access the Licensed Software by remote access from locations within the United States other than Licensee Permitted Sites, (ii) if the Licensed Software contains portions (such as a "client" piece) to be installed on remote terminals or computers ("**Client Licensed Software**"), Licensee shall have the right and license to do so, even if such terminals or computers are not at Licensee Permitted Sites and (iii) backup, disaster recovery/use and archival copies of the Licensed Software and Documentation can be kept at Licensee Permitted Sites and/or at a third party disaster or data recovery site. If, other than with respect to Client Licensed Software, Licensee wishes to use the Licensed Software in a production mode at a location other than a Licensee Permitted Site, Licensee shall notify Licensor in writing and pay any additional license fee for such additional location as set forth on Exhibit E or, if no license fee is specifically set forth in such Exhibit for such an additional location, Licensor may impose a reasonable license fee.

2.4 Licensee is not authorized to grant sublicenses to other Persons, except as incidental to the Permitted Uses of the Licensed Software hereunder.

3. License Restrictions.

Licensee understands and agrees that, except as permitted by this Agreement, it may not: (i) sell, assign, lease, license, sub-license, encumber or otherwise distribute the Licensed Software or the Documentation, (ii) use the Licensed Software for the purposes of providing data processing services to others, such as commercial use in a service bureau, timesharing, remote batch, or other similar commercial operation and (iii) permit any copy of the Licensed Software to be transmitted to or located outside of the United States, except with (A) Licensor's prior written consent, and (B) Licensee's submission to Licensor of evidence that Licensee has satisfied any applicable export or import requirements.

4. Title.

4.1 Licensee acknowledges that the Licensed Software and Documentation are proprietary to Licensor and/or its third party licensors and includes trade secrets and may include inventions for which a patent has been or may be applied for or issued. All right, title and interest in all copyrights, patents, trade secrets and other intellectual property rights related to the Licensed Software shall remain in Licensor or its third party licensors. Nothing in this Agreement shall be construed to convey any title or ownership rights to Licensee.

4.2 In the event that Licensee develops any enhancements, modifications, improvements, expansions, revisions and derivative works of or to the Licensed Software (collectively, the "**Licensee Modifications**"), all right, title and interest in and to such Licensee Modifications, as well as all related copyright, patent, trade secret, and other related proprietary rights therein, shall rest with Licensee; provided that Licensee agrees that it will only use such Licensee Modifications for the Permitted Uses. Licensee shall have no obligations to make such

Licensee Modifications available to Licensor, but to the extent that Licensee Modifications are provided to Licensor, they will be provided AS IS, WITHOUT WARRANTY OF ANY KIND, AND LICENSEE SPECIFICALLY DISCLAIMS IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

5. **Delivery.**

5.1 Within ___ days of the Effective Date, Licensor shall deliver to Licensee, at the Primary Licensee Location, one (1) copy of the Licensed Software in each of object code and source code formats, as well as one (1) copy of the Documentation (on CD-ROM or other agreed upon format(s)).

5.2 On the Date of Delivery, Licensee shall assume the risk of loss and damage to the same. Licensor agrees to promptly replace any lost or damaged Licensed Software or Documentation at Licensee's expense. Licensee's liability for such risk of loss and/or damage shall, however, be limited to and Licensee shall only be responsible for: (i) the cost of the media (e.g., disks and tapes) which contains the Licensed Software or Documentation, (ii) the shipping expense, (iii) the reasonable labor cost of replacing the Licensed Software or Documentation (e.g, the time spent creating the replacement tape or CD-ROM), (iv) if Licensee requests assistance in the training and/or installing of the replacement system, Licensor's time and materials charges, including reasonable out-of-pocket expenses, regarding the same, and (v) any taxes required to be charged by a governmental taxing authority on any of the above described costs or charges; and Licensee shall not be required to pay any additional license or comparable fee related to the damage to the Licensed Software or Documentation or the delivery of a replacement thereof.

6. **Installation and Training.**

6.1 Within a reasonable period of time (not to exceed ___ days) after the Date of Delivery, Licensor shall, at its own expense, provide ___ qualified individual(s) to Licensee at the Primary Licensee Location for a period of ___ days to (i) install the Licensed Software ("**Installation Services**") and (ii) assist in testing of the Licensed Software as set forth in Section 7.2. The parties develop a mutually agreeable installation plan and schedule for the assistance provided for above.

6.2 Licensee agrees (i) to have the Primary Licensee Location prepared in accordance with applicable Licensor requirements prior to the Date of Delivery and (ii) to maintain Primary Licensee Location at its own expense in accordance therewith.

6.3 In connection with the Licensor's Installation Services, Licensee will provide information, data, computer access and time, work space, forms, data entry and telephone service and personnel reasonably necessary to assist Licensor.

6.4 Licensor shall provide Licensee the training set forth on Exhibit D for purposes of understanding, using, supporting and modifying the Licensed Software ("**Training Services**"). Training Services will be provided by Licensor on a time and materials basis at Licensor's established rates for such Training Services as set forth on such Exhibit. Training Services will be provided at a mutually agreeable time at the Primary Licensee Location but not later than ___ days following the Date of Delivery.

7. **Acceptance of Licensed Software**

Within five (5) days of the completion of the installation of the Licensed Software, and for a period of thirty (30) days thereafter ("**Testing Period**"), Licensee shall (with Licensor's assistance as provided in Section 6.1) test the Licensed Software in a non-production environment in such manner as it shall determine ("**Accepting Testing**"), in order to (i) verify that the Source Code and Documentation provided are sufficient to enable Licensee to create and compile a complete and accurate copy of the object code of the Licensed Software and (ii) determine whether the Licensed Software performs in accordance with the Specifications. Within five (5) days after the end of the Testing Period ("**Decision Period**"), Licensee shall notify Licensor in writing whether it accepts or rejects the Licensed Software; any such decision to be at the sole discretion of Licensee and regardless of the results of the Acceptance Testing. If Licensee does not notify Licensor within the Decision Period, Licensee will be deemed to have accepted the Licensed Software. Notwithstanding the foregoing, in the event that during the Testing Period Licensee detected errors or defects in the Licensed Software and/or Documentation, Licensee may in writing within said Decision Period (or at any time before) elect to postpone its decision to accept or reject the Licensed Software and require Licensor to use its best efforts to correct such errors or defects. If Licensee elects to postpone its decision, upon correction of the Licensed Software and/or Documentation to the satisfaction of Licensee (after 30 days of testing), Licensee will accept the License Software; provided that, Licensee may elect to reject the Licensed Software at any time prior to the delivery of any such correction unless the parties have agreed that Licensor shall have a set period of time to deliver a correction before Licensee may exercise its rights to reject. Upon any rejection hereunder, Licensor shall return the License Fee previously paid and this Agreement and the licenses granted hereunder shall automatically be terminated.

8. **License Fees; Taxes.**

8.1 In consideration of the rights granted to Licensee pursuant to this Agreement, Licensee agrees to pay Licensor a one-time license fee of \$_____ (the "**License Fee**"), in the manner set forth in Exhibit E.

8.2 Licensee shall pay any and all sales, use, value added, and other taxes of similar nature assessed upon the license and other transactions provided for in this Agreement, not including any taxes based on Licensor's net income ("**Taxes**"). In the event that Licensor is required to pay any such Taxes, Licensee shall promptly reimburse Licensor for the same. Licensor will provide Licensee with written documentation, including but not limited to copies of receipts, of any and all such Taxes for which Licensee will reimburse Licensor.

9. **No Other Services.**

Except as provided in Sections 6.1 and 7.2, Licensor shall not be required to provide any implementation, maintenance or support services to Licensee under this Agreement with respect to the Licensed Software. Licensor may, in its sole discretion, make certain Licensed Software upgrades available to Licensee, but Licensor is not obligated to provide updated versions of the Licensed Software to Licensee, and the parties acknowledge and agree that such updated version of the Licensed Software shall be subject to the license terms and restrictions set forth herein and considered as or as part of the Licensed Software in any other agreement between the parties relating to the Licensed Software.

10. **Representation and Warranties.**

10.1 Licensor represents, warrants and agrees that: (i) it has the right, power and authority to grant the license rights with respect to the Licensed Software and Documentation as provided in this Agreement, its performance of this Agreement will not violate any other agreement, covenant or obligation of Licensor with or to any third party, and Licensee's use of the Licensed Software and Documentation as permitted by this Agreement will not infringe or constitute misappropriation of any United States copyright, patent, trade secret or other proprietary right (ii) the Licensed Software (configured and implemented) is currently operated in one or more unaffiliated third party production environments, and the copy of the Licensed Software delivered to Licensee pursuant to Section 5.1 herein will be a true and complete copy of the most recently released commercial version of the Licensed Software as of the Effective Date, (iii) the Documentation is sufficient to allow a reasonably competent software programmer to understand, use, support and modify the Source Code, (iv) the Licensed Software is free and clear of any software or hardware locks, disabling code, restrictive access devices, time or date triggered metering devices or code, (v) any services provided by Licensor hereunder will be performed in a professional and workmanlike manner, in accordance with the highest applicable industry standards and in compliance with all applicable laws and regulations, and (vi) Licensor has no knowledge of any pending or threatened litigation, dispute or controversy arising from or related to the Licensed Software.

10.2 Licensor further warrants that the Licensed Software as delivered by Licensor to Licensee hereunder, and when running in the Recommended Operating Environment, shall perform substantially in accordance with the Specifications (the "**Conformance Warranty**"). In the event of a breach of the Conformance Warranty which is reported to Licensor in writing within sixty (60) days after the Acceptance Date (the "**Warranty Period**"), Licensor shall use its best efforts, at its own expense, to correct or replace that portion of the Licensed Software which fails to conform to such warranty. If Licensor is unable to correct any such breach in the Conformance Warranty by the date which is thirty (30) days after the end of the Warranty Period, then Licensee may, in its sole discretion, either extend the time for Licensor to cure the breach or terminate this Agreement and receive a full refund of the License Fee paid to Licensor under this Agreement.

10.3 THE WARRANTIES SET FORTH IN THIS SECTION 10 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE LICENSED SOFTWARE PURSUANT TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11. Limitation of Liability.

Except for any liability pursuant to Licensor's obligations under Section 12 or 13 hereto, or breach thereof, Licensor will not be liable for any indirect, incidental, special, or consequential damages, or damages resulting from lost data or lost profits, arising from this Agreement, even if it has been advised of the possibility of such damages. Nothing in this Section is intended to effect any obligation of Licensor to refund any amounts paid under this Agreement or any rights or remedies under any other agreement between the parties hereto.

12. Confidential Information

12.1 Each party ("receiving party") acknowledges that the Confidential Information of the other party ("disclosing party") constitutes valuable properties of the disclosing party, and further acknowledges that the value of such Confidential Information would be substantially damaged by disclosure to the public or by use contrary to the provisions of this Agreement. Accordingly,

the receiving party agrees (i) to hold all Confidential Information it obtains from or about the disclosing party in the confidence, (ii) not to use or disclose such Confidential Information of the disclosing party other than as necessary for performance of or otherwise pursuant to this Agreement, and (iii) to cause all of its employees or agents, or Contractors (as defined below) to whom such Confidential Information is transmitted to be bound to the same obligation of confidentiality to which it is bound. Except when actually being utilized for its Permitted Use, the Source Code will be kept in a restricted, limited access area with access thereto limited to designated personnel (including Contractors) who have a need to use the Source Code for the Permitted Use. Nothing herein will prevent routine discussions by Licensee that normally take place in a “user group” context.

12.2 Notwithstanding anything to the contrary above, copies of the Licensed Software (including the Source Code) may be kept at a third party disaster or data recovery center and may be disclosed to subcontractors of Licensee engaged by Licensee for the purpose of assisting Licensee with its Permitted Use of the Licensed Software (“Contractors”), provided that such Contractors execute a nondisclosure agreement with Licensee which is at least as protective as the terms hereof

12.3 Since unauthorized disclosure, use or transfer of Confidential Information will substantially damage and diminish its value to the disclosing party, it is agreed by the parties that the disclosing party shall be entitled to equitable relief to protect its interests therein, including but not limited to injunctive relief, as well as money damages. The rights and remedies of the disclosing party set forth in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

13. **Indemnification**

13.1 Licensors agree to defend Licensee, Licensee Affiliates and their respective directors, officers, employees, agents, Contractors and assigns (collectively, the “**Licensee Parties**”), from and against any and all third party (including employees of Licensee Parties) claims, suits, actions, demands or proceedings, threatened, asserted or filed against any Licensee Party alleging that the use of the Licensed Software or Documentation constitutes an infringement or misappropriation of any United States copyright, patent, trade secret or other proprietary right (collectively, “**Indemnification Claims**”), and to indemnify and hold harmless such Licensee Party from and against any and all expenses, penalties assessed by government entities, expenses, liabilities and/or damages of any kind awarded or paid in settlement or incurred in the defense of such Indemnification Claims (including but not limited to reasonable attorneys' fees incurred and/or those necessary to successfully establish the right to indemnification).

13.2 If, in Licensors' opinion, the Licensed Software is likely to become, or does become, the subject of a claim or proceeding for infringement or misappropriation of a United States copyright, patent, trade secret or other proprietary right, Licensors shall, at its expense, in addition to the defense and indemnification obligations set forth above and other rights of Licensee, perform one of the following, at its discretion:

- (a) Procure for Licensee the right to continue to use the Licensed Software;
- (b) Replace the Licensed Software with a compatible, functionally equivalent non-infringing product;

(c) Modify the Licensed Software to make it non-infringing without impairing Licensee's ability to use the Licensed Software as intended, with the modifications to be subject to Licensee's approval, which approval shall not be unreasonably withheld;

or, if the actions set forth in (a), (b) or (c) cannot be accomplished or attained, then

(d) Return to Licensee the License Fees paid hereunder.

13.3 The Licensee Party(ies) bringing a claim for indemnification pursuant to Section 13.1 ("**Indemnified Party**") shall: (i) provide Licensor reasonably prompt notice in writing of any Indemnification Claim and permit Licensor, through counsel mutually acceptable to both parties, to answer and defend such Indemnification Claim (provided that Licensee's failure to give Licensor timely notification of said Indemnification Claim shall not effect Licensor's indemnification obligation unless such failure materially prejudices Licensor's ability to defend the Indemnification Claim), and (ii) provide Licensor information and reasonable assistance, at Licensor's expense, to help Licensor to defend or settle such Indemnification Claim. The Indemnified Party shall have the right to employ separate counsel and participate in the defense of any Indemnification Claim, at its own expense. Licensor may not settle or compromise any Indemnification Claim on the Indemnified Party's behalf without first obtaining the Indemnified Party's written permission, which permission will not be unreasonably withheld, unless such settlement or compromise requires only the payment of money damages to the claimant which is paid in full by Licensor. If Licensor does not notify the Indemnified Party in writing within ten (10) days of notice referred to in (i) above, that it will defend the Indemnification Claim, or thereafter does not diligently defend and/or take action to settle the Indemnification Claim, the Indemnified Party may defend the Indemnification Claim with its own attorneys and/or act to settle or compromise the Indemnification Claim, subject to the indemnification provided for in Section 13.1 and Licensee's other rights and remedies.

14. **Term and Termination**

14.1 This Agreement shall become effective on the Effective Date, and shall continue in perpetuity, and may only be terminated in the event that Licensee elects to exercise its rights to do so as set forth in Sections 7, 10.2 or 14.2.

14.2 Licensor acknowledges that Licensee is engaging Licensor under a Professional Services Agreement of even date herewith to perform services in connection with an "Elaboration Phase," the purpose of which is, among other things, to confirm the assumptions which Licensee made internally with respect to the **YOUR SYSTEM** which is the subject of the RFP ("**YOUR SYSTEM ACRONYM**") and the various representations made in the Documentation. The services to be performed by Licensor in the Elaboration Phase will be set forth in a Statement of Work (SOW) under the Professional Services Agreement. If at any time following completion of said SOW, Licensee elects, in its sole discretion for any reason, not to enter into a further SOW with Licensor for services relating to full **YOUR SYSTEM ACRONYM** implementation, Licensee may elect, by written notice to Licensor, to terminate this Agreement, whereupon Licensor shall immediately refund to the License Fee (or any portion thereof which had been paid then to date).

14.3 In the event of any termination of this Agreement, Licensee shall immediately cease all productive use of the Software, and within ten (10) business days of such termination:

(a) Deliver to Licensor all Confidential Information of Licensor furnished to Licensee;

(b) Purge all information and data relating to the Licensed Software (not including any Licensee data or reports generated using the Licensed Software) stored in any central processing unit or other storage medium or facility which for any reason cannot be delivered to Licensor; and

(c) Certify to Licensor in writing that, to the best of its knowledge, it has returned or destroyed the original and all copies of the Licensed Software, including any parts thereof which have been modified or merged with other software.

14.3 The following Sections shall survive any termination of this Agreement: Sections 4, 11, 12, 13, 14.3, 14.4, 15.5, 15.6 15.7, and 15.9.

15. **General.**

15.1 All notices, requests, consents, approvals, or authorizations in connection with this Agreement (collectively, "Notices") must be given in writing, sent by messenger, overnight delivery service, facsimile transmission to the fax number set forth below, or the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed (or sent to the facsimile number) as follows:

NOTICES TO LICENSOR:

Attn:
Address:

Telephone:
Fax:

Copy to:

Fax:

NOTICES TO LICENSEE:

Attn: General Counsel
Address:

Telephone:
Fax:

Separate Copies to: [the name of Project Manager], at the address set forth above.

All Notices sent in accordance with the foregoing shall be deemed received by the intended recipient (a) upon personal delivery, (b) one (1) business day following deposit with an overnight courier services, (c) upon sending of the facsimile (but only if (i) the fax is sent during the business hours of a business day of the recipient, (ii) the receiving fax device immediately generates a message, printed by the sending fax device, that confirms successful transmission, and (iii) a copy of the notice is contemporaneously sent by regular mail) or (d) two (2) business days after deposit in the U.S. mails in the manner provided above.

15.2 The parties hereto are independent of each other, with the relationship of Licensor and Licensee being one of vendor-vendee. Nothing in this Agreement will be construed to mean that any party is appointed or in any way authorized to act as an agent of the other party, and without limiting the generality of the foregoing, neither party will make any representation or warranty to third parties on the other party's behalf. This Agreement does not create any employer-employee relationship, joint venture, partnership or formal business entity or organization of any kind.

15.3 Nothing in this Agreement will be construed as restricting Licensee's ability to acquire, license, or develop for itself, or have others acquire, license, or develop for Licensee, any products or services that are similar to and/or that perform the same or similar functions as Licensed Software.

15.4 If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect for the same purpose. Wherever the words "include," "includes," or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." Failure by either party to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision. No waiver of any provision of this Agreement shall be effective unless it is in a signed writing, and no such waiver constitute a waiver of any other provision(s) or of the same provision on another occasion.

15.5 Except for disputes concerning breaches of Section 12 (Confidential Information) or Section 13 (Indemnification) (which disputes shall be resolved pursuant to either subsection (ii) or (iii) hereof), material disputes between the parties that may arise under this Agreement will be resolved as follows: Each party will designate a representative who will negotiate in good faith to resolve such dispute. If the matter is not resolved within two (2) business days, it will be escalated to a "higher level" representative of each party with appropriate authority to resolve such matter. If these representatives are unable to resolve the matter within five (5) business days, then (i) the parties may mutually agree to extend the dispute resolution negotiations, (ii) the parties may mutually agree to submit the matter to binding arbitration under the rules of the American Arbitration Association, which arbitration shall be conducted by a panel of three arbitrators and held in Portage County, Wisconsin; or (iii) either party may take any action or no action or exercise any or all rights and remedies set forth herein or provided by law and in equity, and any negotiations undertaken pursuant to this Section 15.5 will be without prejudice to either party.

15.6 This Agreement will be governed by and construed in accordance with the laws of the State of **YOUR STATE**, without giving effect to the conflict of law principles thereof. Except as the parties may otherwise mutually agree in writing, any dispute arising under this Agreement or concerning its interpretation will be resolved exclusively in the state or federal courts located in or serving Wisconsin, and Licensor irrevocably consents to the exercise of jurisdiction by said courts over Licensor. In such a dispute, legal process may be served upon Licensee or Licensor in the same manner as provided in this Agreement for delivery of non-electronic notices (i.e. no service by facsimile).

15.7 Except as expressly provided otherwise in this Agreement, if either party employs attorneys to enforce any rights arising out of or relating to this Agreement in any suit or other action to enforce any right or remedy under this Agreement, the party which prevails or substantially prevails in such suit or action shall be entitled to recover reasonable attorneys' fees and costs.

15.8 Licensee may not assign or transfer this Agreement without the prior written consent of Licensor, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, Licensee may assign or transfer this Agreement, and the licenses and rights of Licensee herein, without Licensor's consent (but with written notice) to (i) any Licensee Affiliate or (ii) any successor-in-interest to Licensee or to a Licensee Affiliate or a successor-in-interest

to that portion of Licensee's or its Affiliate's business which uses the Licensed Software, whether by way of asset sale, merger or otherwise; provided that any such successor-in-interest agrees in a writing to Licensor that it is accepting the obligations and limitations set forth herein, whereupon Licensee shall thereafter be relieved of all its rights and obligations hereunder. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of each party hereto.

15.9 The rights granted under the Agreement, as amended hereby, shall be deemed a license of "intellectual property" for purposes of the United States Code, Title 11 ("Bankruptcy Code"), Section 365(n). In the event of the bankruptcy of Licensor and a subsequent rejection of this Agreement pursuant to Section 365(a) of the Bankruptcy Code, or in the event of a similar action under applicable law, Licensee may elect to retain its license rights, subject to and in accordance with the provisions of the Section 365(n) of the Bankruptcy Code or other applicable law.

15.10 The Exhibits attached hereto or referencing this Agreement, as amended from time to time, are incorporated into this Agreement by this reference. All references to the "Agreement" are references to this Agreement and all such Exhibits, as amended from time to time. To the extent that any provision contained in any Exhibit is inconsistent or conflicts with this Agreement exclusive of the Exhibits, the provisions of this Agreement (exclusive of the Exhibits) shall control.

15.11 Headings used in this Agreement are intended for convenience and shall not be deemed to supersede or modify any provisions.

15.12 Except as set forth in Section 13, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties hereto.

15.13 This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute one and the same instrument. Each party shall receive a duplicate original of the counterpart copy or copies executed by it. For purposes hereof, a facsimile copy of this Agreement, including the signature pages hereto, shall be deemed to be an original, and each party agrees that it will not contest the validity of the execution of this Agreement solely on the basis of any signature being a facsimile transmission. Notwithstanding the foregoing, the parties shall each deliver original execution copies of this Agreement to one another as soon as practicable following execution thereof.

15.14 This Agreement shall not be effective until signed by both parties. This Agreement (together with the Exhibits attached hereto or referencing this Agreement) constitutes the entire agreement between the parties with respect to the subject matter hereof and merges and supercedes all prior and contemporaneous communications. This Agreement shall not be modified except by a written agreement dated subsequent to the date hereof and signed on behalf of Licensor and Licensee by their respective duly authorized representatives.

IN WITNESS WHEREOF, Licensor and Licensee have caused this Software License Agreement to be executed in multiple counterparts by their duly authorized and empowered officers or representatives as of the Effective Date, defined above.

LICENSEE

LICENSOR

By (Sign):

By (Sign):

Name (Please print):

Name (Please print):

Title:

Title:

EXHIBIT A

DESCRIPTION OF LICENSED SOFTWARE

EXHIBIT B

RECOMMENDED OPERATING ENVIRONMENT

EXHIBIT C
SPECIFICATIONS

EXHIBIT D
TRAINING SERVICES

EXHIBIT E

PAYMENT OF THE LICENSE FEE