

**MASTER LICENSE AGREEMENT**

This Master License Agreement ("Agreement"), deemed effective \_\_\_<1>\_\_\_, 200\_\_<2>\_\_\_, is by and between **Vendor** (**"Vndor"**) a \_\_\_\_\_ corporation with principal offices at \_\_\_\_\_, and \_\_\_<3>\_\_\_ ("Customer"), a corporation having its principal place of business at \_\_\_<4>\_\_\_.

1. **DEFINITIONS:** The following terms shall have the following meanings:
  - 1.1 Attachment: A document so named which by its terms is part of and incorporated by reference into this Agreement. Each Attachment will designate any System licensed and additional terms applicable to such System. This Agreement is not complete without at least one Attachment.
  - 1.2 Authorized Company: Any company listed in an Attachment for so long as it is wholly-owned by Customer.
  - 1.3 Authorized Lines of Business: All lines of business, for the type of insurance as specified in an Attachment, underwritten in the United States except any specifically excluded lines.
  - 1.4 Authorized Location: The primary data center location listed in an Attachment and owned and operated by Customer or an Authorized Company. Vendor is only obligated to provide Maintenance and Enhancements at the Authorized Location.
  - 1.5 Documentation: Written materials and manuals (and machine-readable text subject to display and printout) describing the functional processes, assumptions, specifications and principles of operation of the computer programs to a System and designated as the official documentation to such System by Vendor.
  - 1.6 Initial License Charge ("ILC"): The amount of money to be paid to Vendor by Customer for the original grant of the right to use the System as available on the effective date hereof.
  - 1.7 MESA: The collective reference to Maintenance, Enhancements and Services Available.
    - 1.7.1 Maintenance: The correction of a Nonconformity, at Vendor's expense, in the most current Release of a System for those parts of such System which have not been modified or affected by any modification.
    - 1.7.2 Nonconformity: A failure of the computer programs of a "System" to (i) operate in accordance with such System's manuals designated by Vendor and provided to Customer as Documentation to such programs, and (ii) operate in accordance with the Year 2000 Warranty set forth in Section 6.2 of this Agreement.
    - 1.7.3 Enhancements: Any addition to, change in or modification of the most current Release of a System which Vendor makes generally available to licensees of the System, if and when such development is completed.
    - 1.7.4 Services Available: Services other than Maintenance and Enhancements which are available during the MESA Term at Vendor's then current charges and conditions.
    - 1.7.5 MESA Term: The period during which Vendor shall be obligated to provide MESA for a System as set forth in an Attachment.
  - 1.8 Monthly License Charge ("MLC"): The amount of money to be paid monthly to Vendor by Customer for the continuing right to use a System and, during the MESA Term, to receive MESA.
  - 1.9 Release: An edition of the entire System which is made generally available to licensees of the System with MESA in force and which is the most current edition of the System at the time of such general availability.
  - 1.10 Remote Location: A place of business of Customer where object code copies of a Workstation System may be used by employees of Customer or an Authorized Company.
  - 1.11 System: The collection(s) of computer software programs named in an Attachment. A System includes all materials related thereto supplied to Customer under this Agreement, which may include, without limitation, Documentation, flow charts, logic diagrams, source codes, object codes, and materials of any type whatsoever (tangible or intangible and machine or human readable) which incorporate or reflect the design, specifications, or workings of such programs and any changes, additions or modifications provided through Maintenance or Enhancements. System may refer to more than one System, despite the use of the singular. System, or components thereof, may operate on a mainframe/host platform (AHost System  $\cong$ ) or a microprocessor workstation platform (AWorkstation System  $\cong$ ) or both.

## 2. TITLE AND SCOPE OF LICENSE

- 2.1 Upon execution of an Attachment therefor, Vendor grants Customer a personal, nontransferable, nonassignable and nonexclusive license to use each System set forth in such Attachment, which license shall continue until terminated.

- 2.2 An Attachment grants Customer only a license to use a System and does not grant or assign to Customer any legal or equitable title or other right in such System or any modifications of such System. Customer may not sell, assign, pledge, lease, transfer, license, sublicense or in any way encumber a System or an Attachment.
- 2.3 A System licensed pursuant to an Attachment is licensed for use on the hardware and operating system platform set forth in the System manuals provided as documentation. The license shall be limited to the use of a System for the processing of data at the Authorized Location and Remote Locations arising from the Authorized Lines of Business underwritten in the United States of America by Customer and any Authorized Company.

### **3. DELIVERY, INSTALLATION AND USE**

- 3.1 Vendor shall deliver to Customer one copy of the most current Release of a System available for distribution to licensees on or promptly after the effective date of an Attachment specifying such System. Installation of a System shall be Customer's responsibility. Customer may separately contract with Vendor for implementation assistance if Customer so desires. Initial delivery of a System shall constitute fulfillment of Vendor's obligation under this paragraph.
- 3.2 A System licensed to Customer shall be the United States of America version of the System, unless otherwise expressly provided in an Attachment.
- 3.3 Customer acknowledges that a licensed System (and the components thereof) contains unique, confidential and secret information and is the trade secret and confidential proprietary product of Vendor. Customer shall not allow any person or entity to copy a System in whole or in part in any manner except as expressly permitted in this Agreement. Customer shall not disclose or otherwise make a System available to any person or entity other than employees of Customer and employees of an Authorized Company required to have such knowledge for normal use of such System. Customer agrees to obligate each such employee and each Authorized Company to a level of care sufficient to protect a System from unauthorized use or disclosure. These obligations are independent covenants and shall continue after the Agreement is terminated.
- 3.4 Customer may copy a System as reasonably necessary for testing and back-up purposes and Customer may make object code copies for use at Remote Locations, however, Customer may only use one copy of a Host System, if any, at any time to process production data. If the computer facility at the Authorized Location is unusable, Customer may transfer a System to a back-up computer facility which is owned and operated solely by Customer or an Authorized Company. If Customer's anticipated back-up facility is not owned and operated by Customer or an Authorized Company, Customer shall obtain Vendor's prior written approval for such use of such facility. Customer shall not operate a Host System, if any, at more than one facility at any time. Customer shall have the right, at no additional charge, to reproduce solely for its and the Authorized Companies' internal use, all original manuals and Documentation furnished by Vendor to this Agreement. All copies of manuals or Documentation made by Customer shall include any proprietary notice or stamp that has been affixed by Vendor.
- 3.5 The above described rights to copy a System are subject to the following conditions: (i) all such additional copies shall be made at Customer's cost and expense; (ii) all such copies shall reproduce any copyright, proprietary and confidentiality legends (whether printed or machine readable) placed upon or contained in a System; (iii) all such additional copies shall be the property of Vendor; (iv) Customer shall maintain appropriate written records of the number and location of all such copies, and shall furnish such information to Vendor upon request; and (v) except as provided herein, all terms and conditions of this Agreement shall apply to all such copies except, Vendor shall have no obligation or responsibility to render or provide any MESA or warranty services for such additional copies.
- 3.6 Customer has sole responsibility for Customer's use and operation of a System, including monitoring and verifying input and output data, back-up of input and output data, providing data for any files or tables of such System, and for maintaining the required System operating environment. Customer shall establish and maintain a System in the library structure, if any, described in the System Documentation.
- 3.7 Customer may modify the System however any modified System shall remain subject to the provisions of Sections 2 and 3 hereof. Customer may not reverse engineer, reverse assemble or reverse compile any object code components of a System.

### **4. MESA**

- 4.1 Vendor shall provide MESA to Customer at the Authorized Location for one copy of a System during the MESA Term subject to the conditions set forth below.
- 4.2 In order to receive Maintenance, Customer shall advise Vendor of a suspected Nonconformity and shall submit

all necessary Documentation for Nonconformity determination by Vendor. If the Nonconformity prevents Customer's processing of substantially all of its data, Vendor shall provide immediate Maintenance services at the Authorized Location. In the event that it is determined that the problem is not a Nonconformity, Customer shall pay Vendor for the reasonable efforts of Vendor's personnel on Vendor's standard time and materials basis, including reasonable travel, living and out-of-pocket expenses, if any. Maintenance will normally be performed at Vendor's offices and the materials and instructions necessary to correct the Nonconformity shall be delivered to Customer.

- 4.3 The cost associated with installing Maintenance and with shipping and installing Enhancements is Customer's responsibility.
- 4.4 Services made available to Customer should be subject to separate written agreements. If Vendor furnishes any services beyond Maintenance and Enhancements at Customer's request without a separate written agreement, such additional services shall be provided at Vendor's then current rates on an "AS IS" BASIS WITHOUT EXPRESS OR IMPLIED WARRANTY and Customer agrees to pay all reasonable travel, living and out-of-pocket expenses incurred by Vendor's personnel providing such services.

## **5. LICENSE CHARGES**

- 5.1 Customer recognizes that the ILC and MLC do not include the hardware or the third party software products which may be required to be licensed by Customer for Customer to utilize the various capabilities of the System and that Customer is responsible for the costs and licenses to obtain such hardware or third party software.
- 5.2 Customer shall pay all amounts set forth in this Agreement or in an Attachment in the manner specified. All amounts are stated and payable in United States dollars. Customer shall pay a late charge on any amount which remains unpaid 30 days after its due date. The late charge shall be compounded and computed daily at the lesser of (i) 1.5% per month, or (ii) the highest rate permitted by law.
- 5.3 Customer shall pay all tariffs and taxes assessed or levied by any governmental entity that are now or may become applicable to this Agreement or measured by payments made under it or are required to be collected by Vendor or paid by Vendor to tax authorities. Customers shall also pay any interest or penalties on such tax; provided, however, Customer shall not be responsible for any interest or penalties resulting from Vendor's failure to forward tax funds received from Customers to the applicable tax authority. This provision includes, but is not limited to, sales, use, excise, gross receipt and personal property taxes, but does not include taxes based upon the net income of Vendor.

### **[Language for a Foreign Customer, clear changes with Tax Department]**

Customer shall pay all taxes, levies or similar governmental charges assessed or levied by any governmental entity that are now or may become applicable to this Agreement or measured by payments made under it or are required to be collected by or paid by Vendor to tax authorities. This includes, but is not limited to, withholding, remittance, sales, use, excise, stamp, value added, personal property taxes, and custom/excise duties (hereinafter **Reimbursable Tax**), but does not include taxes based upon Vendor's net income. If, under any laws or regulations governing this Agreement, Customer is required to withhold any **Reimbursable Tax** on such payments, or Vendor is required to directly pay such tax, then the amount of payment by Customer will be automatically increased to totally offset such tax, so that the amount actually remitted to Vendor, net of all taxes (including interest and penalties calculated thereon, if applicable), equals the amounts as set forth in this Agreement.

Customer will furnish Vendor with a receipt from the taxing authority acknowledging that any applicable taxes withheld and paid on behalf of Vendor have actually been paid to the taxing authority. Such receipts shall be forwarded to Vendor within 30 days of payment of such tax.

### **5.4 [Optional: Use when a Vendor subsidiary licenses a Vendor System.]**

Customer acknowledges that Subsidiary is required to pay Vendor, as consideration for Vendor's licensing the System to Subsidiary, a royalty fee pursuant to the terms of the Master License between Subsidiary and Vendor dated \_\_\_\_\_. Such fee is a percentage of the licensing fees paid by Customer hereunder. Customer agrees that for purposes of this Agreement **Reimbursable Tax** shall also include any withholding tax measured by such royalty fee that Subsidiary is required to pay.

## **6. WARRANTIES**

- 6.1 Vendor warrants that Vendor has the right to license a System to Customer and agrees to defend Customer against

all claims arising from the actual or alleged infringement by such System of the rights of third parties, provided that Customer notifies Vendor in writing within 72 hours of the receipt by Customer of any such claim or notice of any such claim and permits Vendor upon request, and at Vendor's cost and expense, to assume and control the defense or settlement thereof. Customer agrees to cooperate with Vendor in every reasonable manner in the defense of such claim. In defending or settling any such claim Vendor may elect to (i) obtain the right of continued use of such System or part thereof, which is alleged to be infringing or (ii) replace or modify such System, or part thereof, so as to avoid such claim of infringement and Customer will cease use of the Release of the System, or part thereof, which was replaced or modified. Vendor will not be obligated to defend or settle any claim of infringement (i) asserted by a parent, subsidiary or affiliate of Customer, (ii) resulting from Customer's additions to, changes in, or modification of a System, or (iii) resulting from Customer's use of the System in combination with non-Vendor Systems.

- 6.2 Vendor warrants the System when used in accordance with its associated documentation will be capable upon installation of accurately processing, providing, and/or receiving date data from, into and between the twentieth and twenty-first centuries, including the years 1999 and 2000 along with any leap year calculations, provided that all other products [e.g. hardware, software and firmware] used in combination with the System properly exchange date data with it.
- 6.3 Customer acknowledges that the programs of a System may contain Nonconformities. Vendor warrants that it will correct, at Vendor's sole cost and expense, the computer programs of the most current Release of a System if they fail to operate in accordance with their manuals designated as Documentation to such programs so long as Customer is entitled to Maintenance for the System and has provided Vendor with notice of the Nonconformity.

## **7. DISCLAIMER OF OTHER WARRANTIES AND LIMITATION OF REMEDY**

- 7.1 **THE WARRANTIES SET FORTH IN 6.1, 6.2 AND 6.3 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS AND FITNESS FOR A PARTICULAR PURPOSE.**
- 7.2 **CUSTOMER'S REMEDIES AND Vendor'S LIABILITY UNDER THIS AGREEMENT ARE LIMITED TO THE REMEDIES AND LIABILITIES SET FORTH IN PARAGRAPHS 6.1, 6.2, 6.3 AND 9.2 OF THIS AGREEMENT. IF NOTWITHSTANDING THE ABOVE CUSTOMER IS ENTITLED TO RECOVER DAMAGES FROM Vendor FOR ANY REASON, THEN IN THE AGGREGATE Vendor SHALL ONLY BE LIABLE FOR (i) PAYMENTS MADE IN DEFENSE OF ANY INFRINGEMENT CLAIM UNDER PARAGRAPH 6.1 ABOVE AND (ii) THE AMOUNT OF ANY OTHER ACTUAL LOSS OR DAMAGE WHICH IS NOT IN EXCESS OF THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO Vendor UNDER THIS AGREEMENT DURING THE 6 MONTH PERIOD PRIOR TO CUSTOMER'S WRITTEN NOTICE TO Vendor OF ITS CLAIM.**
- 7.3 **EVEN IF CUSTOMER=S EXCLUSIVE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSES, Vendor SHALL NEVER BE LIABLE UNDER THIS AGREEMENT TO CUSTOMER OR OTHERS FOR ANY ECONOMIC LOSS OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR SAVINGS) OR INCIDENTAL OR SPECIAL DAMAGES ARISING OUT OF THIS AGREEMENT REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT OR TORT (INCLUDING Vendor'S OWN NEGLIGENCE), LAW OR EQUITY AND REGARDLESS WHETHER Vendor IS INFORMED OF THEIR POSSIBILITY.**

## **8. FORCE MAJEURE**

Vendor shall not be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of service resulting, directly or indirectly, from acts of God, civil or military authority, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond Vendor=s reasonable control.

## **9. TERM AND TERMINATION**

- 9.1 The term of this Agreement commences on its effective date and will continue so long as there is an Attachment in force as part of this Agreement. The term of each Attachment which is made a part of this Agreement shall begin upon its effective date and shall continue until terminated.
- 9.2 Either party may terminate an Attachment upon a material breach by the other party of any one or more of the terms and conditions of such Attachment or this Agreement, provided the party in breach is notified in writing by the other party of the material breach and such breach is not cured or a satisfactory resolution agreed upon in writing within 30 days of such notice. Notwithstanding anything contained in this Agreement or any Attachment,

Vendor shall have the right to terminate this Agreement without notice if Customer breaches Section 2 or Section 3.

- 9.3 In the event a party makes a general assignment for the benefit of creditors or files a voluntary petition in bankruptcy or petitions for reorganization or arrangement under the bankruptcy laws, or if a petition in bankruptcy is filed against a party, or if a receiver or trustee is appointed for all or any part of the property and assets of a party, the other party may terminate any one or more of the Attachments.
- 9.4 The termination of an Attachment shall have no effect on any other Attachment that may be in force and effect as part of this Agreement.
- 9.5 Upon expiration of the MESA Term of an Attachment, Customer may elect any of the following options by 6 months prior written notice to Vendor:
  - 9.5.1 Retain a right- to-use only license for the System specified in an Attachment and pay a reduced MLC equal to 40% of the MLC provided for in the Attachment as of the date of expiration of the MESA Term and as adjusted thereafter for changes in DWP and CPI.
  - 9.5.2 Enter into a new agreement to retain the System license and extend the MESA provisions for a fixed term beginning upon the first day of the first month following expiration of the MESA Term based upon Vendor's then current standard rates, terms and conditions in effect for its new licensees as of the date of expiration of the MESA Term, however, Customer shall not be obligated to pay any additional ILC for such extension.
  - 9.5.3 Terminate the license and return the System to Vendor pursuant to the terms of Paragraph 9.6.

Customer acknowledges that Paragraph 9.5.1 shall automatically apply if no notice is provided to Vendor and that option in Paragraph 9.5.2 shall not be available after the expiration of the initial MESA Term.

- 9.6 Customer agrees that upon termination of an Attachment, Customer shall not use a System designated therein and shall return to Vendor, within 30 days after such termination, the original and all copies of such System. Due to the nature of such System and the need for its protection as a trade secret and confidential proprietary information, time is of the essence in its return, and in the event of Customer's failure to do so within the time provided herein, Customer agrees that Vendor shall be entitled to obtain injunctive relief to require such return, reasonable attorneys fees and costs incurred in obtaining such injunctive relief and such damages as a court of competent jurisdiction shall award. If the System has been modified or merged with other computer programs and it is impractical to separate and return such System, Customer shall destroy the System and all copies thereof in its modified or merged state and within 30 days of termination of this Agreement an officer of Customer shall certify to Vendor in writing that the System and all copies thereof have been destroyed. Timely certification of destruction shall fulfill Customer's obligation to return the System. Failure to so certify destruction shall constitute failure to return the System. Customer shall remain liable for all charges required under the Attachment, which are unpaid as of the date of termination.

## **10. GENERAL**

- 10.1 All notices which are required to be given pursuant to this Agreement shall be in writing and shall be delivered by certified mail, return receipt requested, first class postage prepaid, or sent by overnight express or similarly recognized overnight delivery with receipt acknowledged or by facsimile, with a copy thereof sent by one of the other means. Notices shall be deemed to have been given at the time delivered and shall be addressed as follows or to such other address as a party may designate by proper notice hereunder:

If to Vendor:

One Vendor Center  
Blythewood, South Carolina 29016  
Attn: General Counsel  
Facsimile: (803) 333-5560

If to Customer:

"Electronic Notices

For purposes of providing notices required or permitted by this Agreement, waiving any right under this Agreement, or amending any term of this Agreement and notwithstanding any law recognizing electronic signatures or records, "a writing signed," "in writing" and words of similar meaning, shall mean only a writing in a tangible form bearing an actual "wet" signature in ink manually applied by the person authorized by the respective party, unless both parties agree otherwise by making a specific reference to this section."

- 10.2 Customer promises not to disclose the terms and conditions of this Agreement to any third party, except as required in the normal conduct of Customer=s business or as agreed to by Vendor.
- 10.3 Vendor will have the right to disclose publicly through a news release the full name of the Customer, the location of the Customer, and the product/outsourcing service licensed by the Customer without the Customer=s prior approval. Any additional details of the business agreement(s) between Vendor and Customer will not be publicized without the Customer=s prior written approval.
- 10.4 This Agreement and any Attachment made a part hereof: (i) constitute a fully integrated contract and state the entire agreement between the parties and supersede and merge any and all prior discussions, representations, demonstrations, negotiations, correspondence, writings and other agreements and together state the entire understanding and agreement upon which Vendor and Customer rely respecting the subject matter of this Agreement; (ii) may be amended or modified only in a writing agreed to and signed by the authorized representatives of the parties and (iii) shall be deemed to have been entered into and executed in the State of South Carolina and shall be construed, performed and enforced in all respects in accordance with the laws of that State. Notwithstanding any acknowledgment by Vendor of a purchase order submitted by Customer, any condition or provision in any such purchase order or other memorandum of Customer which is in any way inconsistent with, or which adds to the provisions of this Agreement, is null and void.
- 10.5 Neither Vendor nor Customer will (i) attempt to induce an employee of the other to terminate his or her employment or (ii) offer employment to a former employee of the other during the 6 month period immediately following the former employee's termination. For purposes of this paragraph, "employee" shall mean only the personnel of either party who are substantially involved in the development, marketing, servicing, distribution or use of a System.
- 10.6 Neither party hereto shall be deemed to have waived any rights or remedies hereunder unless such waiver is in writing and signed by the authorized representative of the party. No delay or omission by either party hereto in exercising any right shall operate as a waiver of such right. A waiver of a right on any one occasion shall not be construed as a waiver of such right on any future occasion. All rights and remedies hereunder shall be cumulative and may be exercised singularly or concurrently. Notwithstanding the foregoing, no action, with the exception of an action for breach of the confidentiality obligations delineated in this Agreement, arising out of breach of this Agreement or transactions related to this Agreement may be brought by either party more than 1 year after the cause of action has accrued, regardless of the form.
- 10.7 The descriptive headings of this Agreement are intended for reference only and shall not affect the construction or interpretation of the Agreement. References to this Agreement are inclusive of Attachments which are specifically made applicable to this Agreement by their terms.
- 10.8 If any provision of this Agreement or the application thereof to any party or circumstances shall, to any extent, now or hereafter be or become invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Vendor and Customer certify by their undersigned authorized representatives that they have read this Agreement and agree to be bound by its terms and conditions.

**Vendor**

**Vendor Corporation**

By:

(Authorized Signature)  
(in non-black ink, please)

(Name)

(Title)

(Execution Date)

**Customer**

By:

(Authorized Signature)  
(in non-black ink, please)

(Name)

(Title)

(Execution Date)

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