

## SOFTWARE INTEGRATION LICENCE

THIS AGREEMENT made effective as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BETWEEN:

\_\_\_\_\_ (insert legal name of Licensor)  
\_\_\_\_\_ (insert complete address)  
(the 'Licensor')

OF THE FIRST PART

- and -

\_\_\_\_\_ (insert legal name of Licensee)  
\_\_\_\_\_ (insert complete address)  
(the 'Licensee')

OF THE SECOND PART

WHEREAS:

- A. Licensor has expended a great deal of time, effort and money designing, developing and producing certain software and documentation associated therewith, as more particularly described in Schedule 'A' annexed hereto (collectively, the 'Licensed Products');
- B. Licensor is the owner of the entire right, title and interest in and to the Licensed Products;
- C. Licensor has also designed, developed and produced and continues to develop, use and control certain trade marks, trade names, service marks and logos used in connection with the Licensed Products (the 'Marks') for the exclusive use and benefit of Licensor and its Licensees in order to identify the source of the Licensed Products with the public;
- D. Licensee desires to obtain from Licensor, and Licensor desires to grant to Licensee, a non-exclusive, non-transferable, non-assignable Licence to merge or embed the Licensed Products into proprietary software products developed or licensed by Licensee (such combined products hereinafter referred to as the 'Integrated Product'), and to thereafter market, demonstrate, sell, sub-license and distribute the Integrated Product to end users for use solely within the Territory, as hereinafter defined.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereby agree as follows:

### 1. Definitions

Wherever used in this Agreement, the following words and phrases shall have the meanings set out below:

- (a) 'Affiliate', when used with respect to any Person, shall mean any Person controlling, controlled by or under common control with such Person;
- (b) 'Agreement' shall mean this Software Integration , together with any amendments, modifications, or replacements hereof;
- (c) 'Business Day' shall mean any day which is not a Saturday, Sunday or holiday under the laws of \_\_\_\_\_ (insert state);
- (d) 'Conformity Specifications' shall mean Coding and Design Specifications as defined by \_\_\_\_\_.
- (e) 'Databases' shall mean the directories and other files set out in Schedule 'A' hereto, as the same exist on the Effective Date, together with any updates thereto (the 'Database Updates');

- (f) 'Documentation' shall mean the user manuals or other documentation, whether in printed or electronic form, related to the Licensed Products, as more particularly described in Schedule 'A' hereto, developed by Licensor for use in connection with merging or embedding the Licensed Products into Licensee's proprietary software products, and any subsequent versions thereof;
- (g) 'Effective Date' shall mean the date first written above;
- (h) 'End User' shall mean any third party which obtains the Integrated Product, directly or indirectly, from Licensee or any Sub-distributor;
- (i) 'End User Agreement' shall mean the agreement between Licensee and an End User granting a sub-licence to such End User, which shall be substantially in the form set out in Schedule 'B' annexed hereto;
- (j) 'Integrated Product' shall mean any software product and associated documentation, whether in printed or electronic form, and all updates, enhancements and upgrades thereof, developed by Licensee which incorporate, rely on or are derived directly or indirectly from the Licensed Products;
- (k) 'Integration' shall mean the licence granted to Licensee by Licensor;
- (l) 'Licensed Products' shall mean the Software, Databases and Documentation;
- (m) 'Licensee' shall mean \_\_\_\_\_ ;(insert legal name of Licensee)
- (n) 'Licensor' shall mean \_\_\_\_\_ ;(insert legal name of Licensor)
- (o) 'Losses' shall mean any and all claims, demands, costs, losses, damages, liabilities, fines, penalties and expenses of any kind or nature whatsoever, whether imposed, incurred or assessed, including without limitation reasonable legal fees;
- (p) 'Marks' shall mean all of Licensor's trade marks, trade names, service marks and logos used in connection with the Licensed Products;
- (q) 'Net Revenues' shall mean any and all revenues, fees or other compensation received by Licensee with respect to the sale, sublicensing or maintenance of the Integrated Product, net of any taxes, shipping and handling charges charged to End Users and any amounts refunded for returned items;
- (r) 'Person' shall mean any corporation, body corporate, association, firm, partnership, joint venture, trust, organisation, business, sole proprietorship, individual, government, governmental agency or political subdivision thereof, or any other entity or institution whatsoever;
- (s) 'Royalty Period' shall mean the period commencing when an Integrated Product is first shipped by Licensee to a Sub-distributor or End User and ending when the last Integrated Product is shipped by Licensee and payment is received therefor;
- (t) 'Software' shall mean the machine-readable version of the object code of Licensor's computer software program as set out in Schedule 'A' hereto, and any and all Updates and Upgrades thereto, but specifically shall **NOT** include the source code version;
- (u) 'Sub-Distributor' shall mean any third party distributor, reseller, value added reseller, dealer or sales representative that distributes the Integrated Product to End Users for or on behalf of Licensee;
- (v) 'Support Services' shall mean the maintenance and support to be provided by Licensor to Licensee under this Agreement with respect to the Licensed Products;
- (w) 'Territory' shall mean \_\_\_\_\_ (insert description of geographic area);
- (x) 'Update' shall mean any change, modification, alteration or other update of the Licensed Products made to correct an error, defect or other problem and/or to maintain the operational quality of the Licensed Products, and which is not an Upgrade;

- (y) 'Upgrade' shall mean a new release of the Licensed Products or any part thereof, which adds major new functionality or features which were not available in the previous version of the Licensed Products.

## 2. Integration Licence

2.1 *Grant of Licence:* Subject to the terms and conditions set forth in this Agreement, including the full payment of all amounts owing to Licensor, Licensor grants to Licensee a non-exclusive, non-transferable, non-assignable licence for the following purposes:

- (a) to merge or embed the Licensed Products and the Databases into proprietary software products developed or licensed by Licensee in order to create the Integrated Product;
- (b) to thereafter market, demonstrate, sell, sub-license and distribute the Integrated Product within the Territory to End Users for use solely within the Territory; and
- (c) to use the Marks in connection therewith;

provided that the licence granted hereunder shall be subject to the restrictions set forth in Schedule 'C' annexed hereto (collectively referred to as the 'Restrictions on Use').

2.2 *Sub-Distributors:* Licensee may distribute the Integrated Product either directly or through Sub-distributors provided that each such Sub-distributor agrees in writing to be bound by the restrictions on Licensee contained in this Agreement. Licensee agrees that it is exclusively responsible for supporting all of its Sub-distributors and performing under all agreements between Licensee and its Sub-distributors and that such relationships shall have no effect on Licensee's obligations hereunder.

2.3 *End User Licence Agreement:* Licensee shall, and shall cause each of its Sub-distributors to, ensure that each End User who purchases an Integrated Product executes the End User Licence Agreement. Licensee may, in its sole discretion, revise the End User Licence Agreement from time to time, provided that Licensee obtains Licensor's prior approval of such revisions. Each sub-licence granted by Licensee or any Sub-distributor shall authorise the End User to use the Integrated Product for its internal use on a single computer only, and shall contain provisions regarding confidentiality, proprietary rights, limitation and disclaimer of warranties, limitations on remedies, and limitations on and exclusions of liability, all of which must be substantially similar to those contained in this Agreement. End User Agreements and the sub-licences granted thereunder prior to the termination or expiry of this Agreement shall survive the termination or expiry for the duration of the term set forth in the applicable End User Licence Agreement, provided such End Users comply with the terms of the applicable End User Licence Agreements.

2.4 *Transfer of Integration Licence:* Except for a sub-licence to an End User pursuant to clause 2.3 hereof, Licensee may not, directly or indirectly, sell, assign, sub-license, lease, rent, distribute or otherwise transfer the Integration Licence, the Licensed Products or any rights therein to any other Person, without the prior written consent of Licensor.

2.5 *Licence Not Exclusive:* Licensee acknowledges and agrees that the Integration Licence granted hereunder and the relationship between the parties is non-exclusive. Licensee further acknowledges and agrees that Licensor retains the right to grant similar licences to use the Licensed Products to other Persons and that Licensor may make direct sales to any End User within Licensee's Territory.

2.6 *No Purchase, Sale or Lease:* Notwithstanding anything to the contrary contained in this Agreement, the parties agree that this transaction is not a purchase, sale or lease of the Licensed Products.

## 3. Fees, Levies & Charges

3.1 *Payment and Interest on Overdue Accounts:* Unless otherwise specifically provided for herein, all fees, charges and expenses to be paid by Licensee to Licensor are due and payable on the date of the invoice therefor. Any amounts not paid when due shall bear interest at the rate of \_\_\_\_\_ (insert number in words) (\_\_\_%) (insert number) per annum (\_\_\_% per month) (insert number) or at the highest contract rate allowed by law, whichever is less, from the due date until paid in full. Interest shall be added to the unpaid amount due and owing by Licensee to Licensor and shall

form part of the principal account balance, and shall accrue interest at the same rate. Subject to the right to cure set forth in Section 19 hereof, the failure of Licensee to pay any amount when due shall constitute sufficient cause for Licensor to suspend or terminate this Agreement, including Licensor's obligation to provide Support Services, Updates and Upgrades, Database Updates and all express warranties of Licensor pursuant to Section 13 hereof. In addition, Licensee agrees to pay all costs incurred by Licensor with respect to collection of overdue accounts, including reasonable legal fees.

3.2 *Taxes:* In addition to the fees and charges due and payable under this Agreement, Licensee shall be liable for all local, state and federal sales, goods and services, use, withholding, excise, personal property, value-added or other similar taxes, assessments or duties which may now or hereafter be imposed or which are based on or in any way relating to this Agreement, the Licensed Products, the Integrated Product or any services related thereto, but excluding taxes assessed on Licensor's income. Licensee shall pay or reimburse Licensor for any such taxes and Licensor shall be at liberty to add the amount of such taxes to the invoices it renders to Licensee hereunder. Licensee agrees to indemnify Licensor as to all such taxes.

3.3 *No Right of Set-Off:* Licensee shall have no right of set-off against any payments due and owing to Licensor, whether on account of any claims or alleged claims against Licensor hereunder or otherwise.

#### **4. Royalty Fees**

4.1 *Payment of Royalty Fees:* In consideration of the Integration Licence and other rights granted by Licensor to Licensee, Licensee shall pay to Licensor royalty fees as set forth in Schedule 'D' annexed hereto (the 'Royalty Fees'). Royalty Fees shall be paid within \_\_\_\_ (*insert number*) days of the end of each calendar quarter during the Royalty Period, calculated on the Net Revenues for such calendar quarter.

4.2 *Sales Reports:* Payment of the Royalty Fees for each calendar quarter shall be accompanied with a sales report for the quarter, in substantially the form set out in Schedule 'E' annexed hereto, setting out the number of Integrated Products sold or sub-licensed to End Users during such quarter, the Net Revenues for such quarter and other relevant information in sufficient detail to substantiate the calculation of the Royalty Fees. Sales reports must be submitted by Licensee for each quarter whether or not any Royalty Fees are due for such quarter.

4.3 *Record-keeping & Audits:* During the term of this Agreement and for a period of \_\_\_\_ (*insert number*) years following the termination or expiry of this Agreement, Licensee agrees to make available and maintain complete and accurate books, records and accounts with respect to the sale, sublicensing or distribution of the Integrated Product including invoices, purchase orders and other documents with respect to the same. Licensor shall have the right, at its sole expense, to audit such books, records and accounts for purposes of verifying Licensee's compliance with this Agreement. Any such audit:

- (a) shall be conducted by Licensor or its representative on no less than \_\_\_\_ (*insert number*) days prior written notice;
- (b) shall occur during normal business hours;
- (c) shall not unreasonably interfere with Licensee's normal business; and
- (d) shall be subject to reasonable confidentiality restrictions imposed by Licensee.

Licensee shall reasonably co-operate with Licensor or its representative in any such audit. If the audit discloses any understatement of the amounts due, Licensor shall be entitled to collect the underpaid amount together with interest at the rate set forth in Section 3.5 hereof on all such amounts from and after the date such payment became due. In the event any deficiency is in excess of five percent (5%), Licensee shall also reimburse Licensor for all costs incurred with respect to the audit.

**THIS IS A 14-PAGE CONTRACT WITH 7 PAGES OF SCHEDULES.**