

## LICENSE AGREEMENT

This License Agreement (this "Agreement") is made as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"), between \_\_\_\_\_, Inc., a \_\_\_\_\_ corporation ("Licensor") and \_\_\_\_\_ (the "Licensee").

### RECITALS

A. [Licensor] has developed an application software system known as the "[PROGRAM]"™ (the "Program"). The Program, which is for use in conjunction with various existing computer-aided design drafting programs, is identified with more particularity on attached Exhibit "A".

B. Licensee desires to obtain a license to use the Program. [Licensor] is willing to provide Licensee with a license to use the Program, upon the terms of this Agreement.

### ARTICLE 1 LICENSE

1.1 License Grant. Subject to the terms and conditions set forth in this Agreement, [Licensor] grants Licensee a nonexclusive, revocable license (the "License") to use the object code form (and no other form) of the Program, for the sole purpose of processing Licensee's internal information and not for processing the information of any other individual or entity, whether or not affiliated in any way with Licensee (the "Permitted Use"). Licensee may use the Program solely on those central processing units (the "Permitted Hardware") specifically identified on attached and incorporated Exhibit "B", which are located at the addresses identified on Exhibit "B" (the "Permitted Locations"). The Program, and all associated software, documentation, manuals, materials, data, codes, tool-kits, copyrights, trademarks, specifications and all other information, consultations and materials which [Licensor] (in its sole discretion) licenses to Licensee under this Agreement shall be referred to collectively as "Licensed Material".

1.2 Certain License Restrictions. Licensee shall keep all the Licensed Material free of any liens, claims or encumbrances of any type. Licensee is authorized to use the Licensed Material solely in strict accordance with the Permitted Use. Licensee shall obtain [Licensor]' prior, written permission before: (i) using any Licensed Material for any purpose not specifically authorized as a Permitted Use; (ii) using any Licensed Material on any processing unit, computer or hardware other than the Permitted Hardware; or (iii) using the Program at or moving the Permitted Hardware to any location other than the Permitted Location. Licensee shall notify [Licensor] immediately if Licensee upgrades or changes the Permitted Hardware or its current systems software, and shall pay an upgrade fee to [Licensor], in accordance with [Licensor]' then applicable rates.

1.3 Retention of Rights. [Licensor] reserves the right to use all or any portion of the Licensed Material in any manner, and/or license, assign, convey, transfer, sell or otherwise alienate any portion of or all the Licensed Material to any third party, whether or not such use by

[Licensor] or such third party is in direct competition with the business of Licensee.

1.4 Reproductions. [Licensor] agrees to allow Licensee to make one (1) copy of the object code of the Program, but solely for use as back-up, and for no other purpose. Except as aforesaid, Licensee shall not reproduce, copy, duplicate or distribute the Licensed Material, or any component of the Licensed Material, without first obtaining [Licensor]' express written consent. If Licensee damages or loses the Program during the term of this Agreement, [Licensor] will provide Licensee with one (1) new copy of the Program, at the material cost of providing the same, plus fifteen percent (15%).

1.5 Fee and Taxes. In consideration of [Licensor] granting the License to Licensee, Licensee shall pay [Licensor] a fee in the amount set forth on Exhibit "B" (the "Fee"). Licensee shall pay fifty percent (50%) of the Fee to [Licensor] in advance, upon the signing of this Agreement. Licensee shall pay the remaining fifty percent (50%) balance of the Fee to [Licensor] upon the delivery of the Program. Licensee also shall pay all taxes (service, sales, use or otherwise) that are associated with the License of the Program, except for income taxes of [Licensor] on the Fee.

1.6 Term. The term of the License shall commence on the Effective Date and shall continue for \_\_\_\_ (\_\_\_\_) years (the "Agreement Period"), unless terminated earlier under this Agreement.

1.7 Status. The status of Licensee under this Agreement is that of an independent contractor and not an agent or employee of [Licensor] for all purposes, including without limitation payment of all taxes and assessments which any state, federal, municipal or other taxing authority may impose.

## **ARTICLE 2 OWNERSHIP RIGHTS**

2.1 Exclusive Rights in [Licensor]. Licensee acknowledges that [Licensor] has the exclusive proprietary, ownership and (except for the License) use rights to all the Licensed Material, as well as to the following: (i) all technical data or written material concerning the Licensed Material, including all designs, plans, illustrations, specifications, flow charts, diagrams, manuals, documentation, trademarks, trade names, service marks, patents and copyrights (if any, whether or not registered); (ii) all know-how or techniques concerning the Licensed Material; and (iii) all inventions, discoveries, integrations, object codes, source codes, software and future modifications, enhancements or improvements of, in or to the application, programming or use of any Licensed Material, including those which Licensee may conceive or originate either on its own or jointly with the assistance of others. [Licensor], in its sole discretion, shall determine which (if any) of the foregoing items it will deliver and/or make available to Licensee.

2.2 Modifications. Licensee agrees that [Licensor] shall have sole and exclusive title (both legal and equitable) to all adaptations, enhancements, modifications, improvements or

other changes in or to the Program or Licensed Material which either [Licensor] or Licensee invent, create or make (collectively referred to as "Product Modifications"). Licensee shall provide [Licensor] complete copies of all Product Modifications Licensee develops within three (3) days of developing the same. However, Licensee shall have a royalty free, perpetual license to utilize any Product Modification which Licensee solely develops. Except for the preceding royalty free license, Licensee shall not have any right, title, ownership or other interest to any Product Modification, and shall not obtain any copyright, patent, trademark, service mark or other proprietary or registered rights in or to any Product Modification. By executing this Agreement, Licensee irrevocably assigns to [Licensor], all rights, titles and interests Licensee has or may claim in or to any Product Modification Licensee develops or assists in developing, including but not limited to all copyright, patent, trademark, trade secret, service mark or other proprietary or registered rights of any type or nature. Licensee shall execute such documents and shall take such actions as [Licensor] may designate to consummate the preceding assignment and/or to effectuate any such registration in any such Product Modification in the sole name of [Licensor]. All Product Modifications which [Licensor] permits Licensee to use shall be included in the rubric of "Licensed Material", as defined in this Agreement.

2.3 Third Party Access. Licensee shall not permit any individual or entity who is not in its employment (a "Third Party") to modify, maintain, alter, service or in any way have access to any Licensed Material or to create any Product Modification, unless Licensee first discloses the identity of such Third Party to [Licensor], second receives [Licensor]' written approval of such Third Party and third requires such Third Party to execute a confidentiality agreement in favor of [Licensor] which contains all the provisions set forth in Article 3 and Sections 2.1, 2.2 and 2.4 of this Agreement. Licensee shall deliver to [Licensor] an executed, original version of all such agreements with Third Parties, within three (3) days of the execution of the same.

2.4 Acknowledgments. Licensee acknowledges that: (i) all information, know-how and data which it acquires from [Licensor] concerning the software, programming, application, development, technical specifications or use of the Licensed Material, as well as the other items concerning the Licensed Material that are identified in Sections 2.1 and 2.2 above (other than those which are in the public domain), are highly confidential and constitute trade secrets of [Licensor] within the meaning of the Uniform Trade Secrets Act (the "Trade Secrets"); (ii) [Licensor] has a proprietary interest in, has invested substantial amounts of money to develop and will continue to invest substantial amounts of money to maintain the Trade Secrets; (iii) [Licensor] has implemented procedures to maintain the confidentiality of the Trade Secrets; (iv) [Licensor]' competitors would obtain unfair economic and competitive advantages if the Trade Secrets were divulged; (v) [Licensor] would suffer irreparable and continuing injury if the Trade Secrets were disclosed; and (vi) the Trade Secrets form an integral part of [Licensor]' business. Licensee agrees that the inclusion of [Licensor]' copyright notice on any Licensed Material in no way diminishes or alters the trade secret status of such Licensed Material, said copyright notice serving the sole purpose of identifying [Licensor]' copyright in the underlying material.

### **ARTICLE 3 CONFIDENTIALITY**

3.1 Duties. Due to the importance and sensitivity of the Trade Secrets, Licensee agrees that during the term of this Agreement and following the termination of this Agreement or the License for any reason, Licensee shall: (i) hold the Trade Secrets in trust solely for the benefit and use of [Licensor]; (ii) not directly or indirectly sell, alienate, transfer, assign, disclose or divulge Trade Secrets to any person or entity, nor permit any Third Party to do so, without [Licensor]' prior, written permission; (iii) not permit any individual who is not in its employment to operate, maintain or have access to the Licensed Material so that such individual could receive access to Trade Secrets, except for those Third Parties who execute confidentiality agreements in accordance with Section 2.3 above; (iv) keep all documents and information which it receives from [Licensor] concerning the Licensed Material segregated in a retention area designated solely for such Licensed Material and restricted in access to those of Licensee's employees with a specific need to know or use the Licensed Material; and (v) not directly or indirectly use Trade Secrets or any information relating to Trade Secrets in or for the benefit of any individual, business, profession, association, partnership, corporation, limited liability company, joint venture or other endeavor, other than as [Licensor] specifically authorizes in writing.

3.2 Duty to Disclose. Licensee immediately shall notify [Licensor] of any information which comes to Licensee's attention which does or might indicate that there has been any loss of confidentiality concerning Trade Secrets. In such event Licensee shall take all steps within its power to limit the spread of such information, including but not limited to taking whatever legal action necessary to terminate such spread. [Licensor], in its sole discretion, shall have the right to take over and assume control of any such litigation, by providing Licensee with written notice of its decision to do so, and Licensee shall cooperate fully with [Licensor] in such litigation.

3.3 Title Protection. Licensee covenants that it shall not claim, attack, compromise, file suit against or commit or fail to take any action which could impair any of [Licensor]' rights, titles or interests in the Licensed Material. Licensee shall not attempt to develop any software similar to the Program or any Licensed Material through reverse engineering, disassembly or any other method.

3.4 Stipulated Damages. If Licensee, any of its employees or any Third Party breaches any covenants contained in Article 3 of this Agreement, Licensee shall pay [Licensor]' actual, direct, indirect and consequential damages which arise from or are associated with such breach. In determining the damages identified in this Agreement, the parties considered: (i) the value, type and quality of the Trade Secrets; (ii) the substantial amount of time, effort and cost which [Licensor] invested to develop and will continue to invest to maintain the Trade Secrets; and (iii) the confidential and unique nature of the Trade Secrets. In addition to the aforesaid money damages, if [Licensor] prevails in any action or claim based upon Licensee's breach of this Agreement, Licensee shall pay [Licensor]' reasonable attorneys' fees, court costs and investigation costs which arise from or are associated with either Licensee's breach of any covenants contained in or [Licensor]' attempts to enforce any provisions of this Article 3. Licensee agrees that the aforesaid stipulated damages solely constitute a component of [Licensor]' monetary damages, and are not to the exclusion of any other damages [Licensor]

may suffer. Licensee's right to License and use the Licensed Material shall terminate immediately upon [Licensor] transmitting a written notice to Licensee which both states that the License is terminated and identifies in general terms Licensee's breach under this Article 3.

3.5 Injunctive and Other Relief. Licensee acknowledges that if it breaches any of its obligations under Article 3 of this Agreement, it shall cause damage of an irreparable and continuing nature to [Licensor], for which money damages will not provide adequate relief. Therefore, in addition to any money damages to which [Licensor] is entitled, [Licensor] also is entitled to obtain injunctive relief (including but not limited to immediate entry of a temporary restraining order) to prohibit Licensee's continuing breach of the applicable covenant. [Licensor] shall have the right to obtain such relief without having to prove any damages or post any bond.

3.6 Survival of Covenants. Licensee's obligations under this Article 3 shall survive the termination of this Agreement or any of this Agreement's provisions, for any reason.

#### **ARTICLE 4 WARRANTIES**

4.1 [Licensor]' Warranties. [Licensor] warrants that: (i) the Program currently is and for a period of sixty (60) days after delivery (the "Warranty Period") shall remain free from material defects in material and workmanship if used in accordance with all applicable manuals, in a normal and reasonable fashion, by Licensee's authorized employees; (ii) it will use its best efforts to correct any errors it has knowledge of in the Licensed Material during the Warranty Period; and (iii) it has the right to enter into this Agreement and deliver the Licensed Material to Licensee. The foregoing warranty is for the sole benefit of Licensee, and not for any third party. [Licensor] does not warrant that the Licensed Material will satisfy Licensee's specific desires or will meet Licensee's intended requirements. [Licensor] shall not be liable for any problems which arise due to interfacing any Licensed Material with the Permitted Hardware, any other hardware or software. [Licensor] shall not be liable for damages which result from the improper or incorrect use or operation of the Licensed Material.

#### 4.2 Warranty Limits and Disclaimers.

(a) Warranty Exclusion and Waiver. THE WARRANTIES SET FORTH IN SECTION 4.1 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OF [LICENSOR] UNDER THIS AGREEMENT. [LICENSOR] SPECIFICALLY DISCLAIMS AND LICENSEE SPECIFICALLY WAIVES ALL WARRANTIES WHICH ARE NOT CONTAINED IN SECTION 4.1 ABOVE, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN OR ARISING BY TRADE USAGE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO EXPRESS OR IMPLIED WARRANTIES: OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; THAT ANY LICENSED MATERIAL WILL OPERATE ERROR FREE; THAT ANY PERCEIVED DEFECTS IN THE LICENSED MATERIAL WILL BE CORRECTED; OR THAT THE USE OF THE LICENSED MATERIAL WILL NOT BE INTERRUPTED DUE TO DEFECT OR THE FAULT OF ANY PERSON OR ENTITY.

(b) Termination of Warranties. The warranties which [Licensor] provides to Licensee in Section 4.1 above shall expire on the final day of the Warranty Period. During the Warranty Period, all repairs [Licensor] makes to the Licensed Material shall be free of charge. [Licensor]' warranties shall expire prior to the expiration of the Warranty Period and immediately if any of the following occur: (i) Licensee modifies or allows any Third Party to modify any Licensed Material; (ii) Licensee changes the hardware or configuration of the Permitted Hardware; (iii) the structural environment in which Licensee utilizes the Permitted Hardware or Licensed Material is inadequate for any reason, such as but not limited to insufficient electrical power, faulty wiring, air conditioning problems, high humidity content or the negligence of Licensee in maintaining said area; (iv) Licensee utilizes supplies which do not satisfy [Licensor]' specifications; (v) Licensee uses software which [Licensor] did not develop in conjunction with the Program; (vi) Licensee fails to implement a software correction that [Licensor] provides; (vii) Licensee does not allow [Licensor] to implement any changes or make any modifications [Licensor] desires to make to the Licensed Material; (viii) Licensee does not utilize the Licensed Material in accordance with all applicable manuals and documentation; or (ix) any other reason not attributable to [Licensor]. If [Licensor] does approve the use of any attachment, feature or device, such approval shall not constitute a representation, warranty or agreement of [Licensor] that any such attachment, feature or device will perform in conjunction with the Licensed Material. If Licensee desires, Licensee may execute a separate agreement with [Licensor] to cover modification of the Licensed Material and additional training following the expiration of the Warranty Period.

(c) Warranty Period Repairs. Licensee must provide [Licensor] with written notice of any claimed defect in the Program which occurs during the Warranty Period, immediately upon Licensee's discovery of such defect, and in no event after the expiration of the Warranty Period. [Licensor] has the right to inspect the Licensed Material while in a claimed defective condition. During the Warranty Period, [Licensor] will furnish replacements for components of the Licensed Material which [Licensor] finds to be defective during its inspection, free of charge, shipped F.O.B. [Licensor]' facilities in Marblehead, Massachusetts. Licensee acknowledges that the Program is of such complexity that minor errors may not be correctable and that [Licensor] shall have no liability or obligation under this Agreement (or implied at law) if [Licensor] does not correct such errors, so long as the Program is functional and materially conforms to its documented specifications.

## **ARTICLE 5 INDEMNIFICATION**

5.1 [Licensor]' Obligations. Subject to the limitations set forth in Article 6 below, [Licensor] defends, indemnifies and holds harmless Licensee from all liabilities and reasonable expenses (including but not limited to attorneys' fees) judgments, fines or penalties which Licensee incurs that result from any claim, action, suit or proceeding (whether civil, criminal or administrative, including any associated appeals) the material allegation of which avers that the Licensed Material, as used within the scope of the Permitted Use, constitutes an infringement of a United States registered copyright, trademark, service mark or existing patent, provided that

Licensee both notifies [Licensor] in writing within thirty (30) days of receipt of notice of such claim, action, suit or proceeding; and (ii) provides [Licensor] with all information within Licensee's possession that is required for the defense of such suit. In lieu of indemnification, [Licensor], at its sole option, may: (i) obtain for Licensee the right to utilize any such allegedly infringing Licensed Material; (ii) make such Licensed Material non-infringing, if possible; or (iii) repurchase the Licensed Material from Licensee, for an amount equal to the Fee, reduced by three percent (3%) for each full month during which Licensee had the use of the Program.

5.2 Licensee's Obligations. Licensee defends, indemnifies and holds harmless [Licensor] from all liabilities and reasonable expenses (including but not limited to attorneys' fees) judgments, fines or penalties which [Licensor] may incur that result from any claims, actions, suits or proceedings which arise due to actions of Licensee which constitute a breach of Licensee's representations, warranties or obligations under this Agreement, whether such actions are civil, criminal, administrative or investigative, including any associated appeals.

5.3 Notice of Claims. No later than three (3) business days from receipt of notice of a suit or claim which involves the indemnification obligations of the other party, each party to this Agreement shall provide written notice to the other party of the indemnifiable suit or claim in question. The party with the indemnification obligation (the "Indemnifying Party"), shall select a representative and/or counsel to assume primary responsibility for such claim or suit, at its sole cost and expense.

5.4 Settlement Offers. The Indemnifying Party, at its sole expense, shall assume control of the negotiation of any settlement offer to or from a third party, if such settlement is due to a claim or suit which involves the Indemnifying Party's indemnification obligations under this Agreement. The party being indemnified reasonably shall assist the Indemnifying Party in any such settlement, suit or proceeding, provided that such assistance shall be a the sole cost and expense of the Indemnifying Party.

## **ARTICLE 6 REMEDY LIMITATIONS**

6.1 Waiver of Damages and Remedies. [LICENSOR] DISCLAIMS AND SHALL NOT BE LIABLE FOR, AND LICENSEE WAIVES ANY CLAIMS OR REMEDIES LICENSEE MAY HAVE AGAINST [LICENSOR] FOR DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES OF LICENSEE OR ANY OTHER INDIVIDUAL OR ENTITY, INCLUDING BUT NOT LIMITED TO DAMAGE ARISING FROM LOST PROFITS, CUSTOMER CLAIMS, LOSS OF USE OF ANY OR ALL LICENSED MATERIAL OR ANY EQUIPMENT, SOFTWARE, SYSTEM OR FACILITY, LOSS OF DATA, LACK OR LOSS OF PRODUCTIVITY, COST OF SUBSTITUTE EQUIPMENT, SOFTWARE, SYSTEMS OR SERVICES, OR DOWNTIME COSTS WHICH ARISE OUT OF ANY BREACH OF THIS AGREEMENT BY [LICENSOR] OR ANY OBLIGATIONS [LICENSOR] OWED TO LICENSEE OR [LICENSOR]' BREACH OF WARRANTY, OR WHICH ARISE PURSUANT TO ANY TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY, BUT EXCLUDING GROSS NEGLIGENCE OR

WILLFUL MISCONDUCT) OR OTHER CLAIM, OR FOR ANY CLAIM MADE AGAINST LICENSEE BY ANY OTHER PARTY, EVEN IF [LICENSOR] HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM IN ADVANCE, EXCEPT AS SECTION 6.4 BELOW SPECIFICALLY PROVIDES FOR DAMAGES ASSOCIATED WITH INFRINGEMENT INDEMNIFICATION.

6.2 Delays. [LICENSOR] SHALL NOT BE LIABLE FOR AND LICENSEE WAIVES ANY DAMAGES CAUSED BY DELAY IN DELIVERY, INSTALLATION OR FURNISHING OF LICENSED MATERIAL OR SERVICES UNDER THIS AGREEMENT.

6.3 Obligation to Repair. If the Licensed Material contains any material program errors, Licensee's sole remedy and [Licensor]' sole obligation is for [Licensor] to provide programming support to correct the defect, if such support is technically feasible, in accordance with Section 4.2© above. [Licensor] shall have ninety (90) days from the date of notification to repair any such problem. If [Licensor] cannot repair the Licensed Material in said ninety (90) day period, Licensee may terminate this Agreement. [Licensor] shall not be liable for and Licensee waives any money damages for any such problems with the Licensed Material. The money damages referenced in Section 6.4 below shall pertain only if [Licensor] becomes liable to indemnify Licensee under Section 5.1 above.

6.4 Exclusive Remedies. [LICENSOR]' TOTAL LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR LOSS OR DAMAGES RELATING TO OR ARISING OUT OF THE PERFORMANCE OF [LICENSOR] UNDER THIS AGREEMENT AND/OR ARISING UNDER ANY THEORY AT LAW OR EQUITY (WHETHER TORT, NEGLIGENCE OR OTHERWISE) IS LIMITED TO AND SHALL NOT EXCEED THE AMOUNT LICENSEE PAID TO [LICENSOR] UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTHS WHICH IMMEDIATELY PRECEDE THE DATE THE APPLICABLE CLAIM ACCRUES. EXCEPT AS ARTICLE 6 OF THIS AGREEMENT EXPLICITLY PROVIDES, LICENSEE SPECIFICALLY WAIVES ALL OTHER REMEDIES AVAILABLE TO IT AT LAW, IN EQUITY OR OTHERWISE, WHETHER FOR BREACH OF CONTRACT, TORT, OR OTHERWISE.

## **ARTICLE 7 CERTAIN USE OBLIGATIONS OF LICENSEE**

Licensee shall keep accurate records concerning its use and modification of the Licensed Material, and shall provide copies of such records to [Licensor] upon [Licensor]' request, and/or shall allow [Licensor] to examine Licensee's records at its premises and to copy or make abstracts of such records, upon [Licensor] providing five (5) days advance notice of its intention to do so. Licensee shall not change the location for its use or maintenance of the Licensed Material without obtaining [Licensor]' prior, written consent. Licensee's president (or other chief executive officer) shall execute and deliver to [Licensor] an officer's certificate (the "Certification") upon written request from [Licensor] at any time during the term of this Agreement. The Certification shall state that: (i) Licensee has utilized the Program and Licensed Materials solely for the Permitted Use, solely on the Permitted Hardware and solely at the



Permitted Location; (ii) Licensee has not used the Program or any Licensed Material to process the data or otherwise service any individual or entity other than Licensee; (iii) Licensee has not sublicensed, assigned, transferred, sold or otherwise alienated the Licensed Material; (iv) there has been no breach of Articles 2 or 3 of this Agreement by Licensee or any of its employees; (v) Licensee has not copied and has not allowed any individual or entity to copy, any of the Licensed Material, and Licensee is not utilizing any unauthorized copies of the Licensed Material; and (vi) there has been no change in ownership of Licensee nor transfer of its assets outside the ordinary course of business.

## **ARTICLE 8 TERMINATION**

8.1 Expiration of Agreement Period. The License shall terminate in its entirety and Licensee immediately shall stop using all Licensed Material without any action by [Licensor] or Licensee, upon the expiration of the Agreement Period, unless the License is continued pursuant to the prior, written consent of both [Licensor] and Licensee.

8.2 Other Causes. The License shall terminate prior to the expiration of the Agreement Period and immediately, upon the occurrence of any of the following: (i) Licensee discontinues its active use of the Licensed Material; (ii) Licensee commits a material default under this Agreement (including but not limited to its failure to make a payment of any amounts owing to [Licensor] when and as the same become due); (iii) Licensee attempts to reproduce, sell, mortgage, lease, assign, convey, transfer or sublicense any Licensed Material; (iv) Licensee voluntarily or involuntarily becomes subject to a bankruptcy proceeding, makes an assignment for the benefit of creditors, marshals its assets, becomes insolvent, otherwise becomes subject to any proceeding for relief from or protection of creditors; (v) Licensee discontinues its active conduct of business, dissolves or liquidates, merges or consolidates with or into any other entity or sells substantially all its assets or thirty percent (30%) or more of its voting stock (or other voting interests), in one or a series of transactions, whether or not related, to any individual or entity other than a stockholder or other owner of Licensee as of the Effective Date; (vi) a termination under Section 3.4 above; (vii) a termination under section 6.3 above; or (viii) Licensee removes the Program from the Permitted Hardware and/or utilizes any Licensed Material on, or in conjunction with any equipment other than the Permitted Hardware, or Licensee moves the Permitted Hardware to any location other than the Permitted Location or Licensee makes excess or unauthorized copies of any Licensed Material.

8.3 Effect of Termination. Immediately upon a termination of the License as identified in Section 8.2 above, all rights of Licensee to use the Licensed Material shall terminate in their entirety. The termination of this Agreement or the License, however, shall not affect or impair any obligations or rights which arose prior to the date of such termination or out of the facts or occurrences which cause such termination. The parties respective indemnification obligations under Article 5 above shall survive the termination of this Agreement or the License for any reason.

8.4 Return of Data. Upon the termination of this Agreement for any reason, Licensee

immediately shall return to [Licensor] all the Licensed Material and all notes, data, reference material, specifications, manuals, documentation, software, integration, depictions, memoranda, programs, documents, instruments, records, copies of any of the foregoing and all other information which in any way relates to the Licensed Material. Licensee shall not retain any copies of the foregoing items.

## **ARTICLE 9 PRODUCT CHANGES**

9.1 Right to Implement from Time to Time. [Licensor] may change the specifications and/or design of any Licensed Material from time to time. [Licensor] will advise Licensee of any material changes in specifications or designs before delivering any Licensed Material incorporating such changes to Licensee. Although [Licensor] has the right to modify the Licensed Material from time to time, Licensee acknowledges and agrees that [Licensor] shall have no obligation whatsoever to update and/or provide any enhanced, modified or updated versions of the Program or any Licensed Material to Licensee, unless [Licensor] undertakes the contractual obligation to do so pursuant to a separate agreement.

9.2 Discontinuance. [Licensor] shall have the right, at its sole option, to discontinue the Program and the Licensed Material at any time or from time to time. [Licensor] has no obligation whatsoever to maintain any version of the Program of the Licensed Material in its files. Any such discontinuance by [Licensor] shall not constitute a breach by [Licensor] under this Agreement.

## **ARTICLE 10 GENERAL**

10.1 No Agency or Partnership. This Agreement does not make Licensee the agent, legal representative, partner or joint venturer of [Licensor] for any purpose whatsoever. Licensee has no right to create any obligation or responsibility, express or implied, on behalf of or in the name of [Licensor], or to bind [Licensor] in any manner or concerning any matter.

10.2 Notices. All notices which concern this Agreement shall be given in writing, as follows: (i) by actual delivery of the notice into the hands of the party entitled to receive it or by facsimile to such party, in which case the notice shall be deemed given on the date it is sent; (ii) by Federal Express or any other overnight carrier, in which case the notice shall be deemed given on the day following the date it is deposited with such carrier; or (iii) by mailing such notice by registered or certified mail, return receipt requested, in which case the notice shall be deemed given four (4) days following the date it is deposited in the mail. All notices provided under this Agreement shall be to the last known address of the party entitled to receive it. Any party to this Agreement may change its address for notice purposes, by providing written notice of the change of address to each of the other parties. All notices under this Agreement shall be addressed as set forth on Exhibit "B".

10.3 Rate Changes. The Fee set forth in Exhibit "B" is the initial cost of the Program and Licensed Material which [Licensor] will deliver following the execution of this Agreement. However, any future prices for [Licensor]' materials which [Licensor] provides shall be charged at [Licensor]' then applicable rates, which rates [Licensor] may increase or decrease at any time or from time to time, in its sole discretion.

10.4 Applicable Law. The laws of the State of Massachusetts shall govern the interpretation of this Agreement, irrespective of the fact that the one of the parties now is or may become a resident of a different state. The parties shall submit all disputes which arise under this Agreement to state or federal courts located in the City of Boston, Massachusetts for resolution. The parties acknowledge that the aforesaid courts shall have exclusive jurisdiction over this Agreement, and specifically waive any claims they may have which involve jurisdiction or venue, including but not limited to forum nonconveniens. Service of process for any claim which arises under this Agreement shall be valid if made in accordance with the notice provisions set forth in Section 10.2 of this Agreement. If service of process is made as aforesaid, the party served agrees that such service shall constitute valid service, and specifically waives any objections the party served may have under any state or federal law or rule concerning service of process. Service of process in accordance with this Section shall be in addition to and not to the exclusion of any other service of process method legally available.

10.5 Contractual Statute of Limitations. Licensee agrees that it shall have the right to bring any actions or claims relating to this Agreement, whether contractual or sounding in tort, solely for a period of not more than one (1) year after the event occurs which gives rise to such action or claim, irrespective of any contrary statutes of limitation available at law or in equity.

10.6 Construction. This Agreement has been prepared and negotiations have occurred in connection with such preparation pursuant to the joint efforts of the parties to this Agreement. This Agreement therefore shall be construed simply and fairly and not strictly for or against any party to this Agreement.

10.7 Compliance with Laws. Each party to this Agreement shall comply with all applicable laws and regulations.

10.8 No Assignment. Licensee shall not have the right to assign, transfer, sublicense, lease, or in any manner convey all or any of its rights under this Agreement. [Licensor], however does have the right to assign all or any part of this Agreement.

10.9 Binding Effect. This Agreement shall be binding upon and inure to the benefit of [Licensor] and Licensee as well as their respective successors and permitted assigns (in the case of [Licensor]).

10.10 Complete Understanding. This Agreement constitutes the complete understanding between the parties. No modification of any of this Agreement's provisions shall be valid unless made in a written instrument which both parties sign.

10.11 Descriptive Headings. All section headings, titles and subtitles are in this Agreement for convenience of reference only, and are to be ignored in any construction of this Agreement's provisions.

10.12 Severability. If a court of competent jurisdiction rules that any one or more of this Agreement's provisions are invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any of this Agreement's other provisions, and this Agreement shall be construed as if it had never contained such invalid, illegal or unenforceable provision. Without limiting other provisions of this Agreement, the parties expressly intend and agree that each and every limitation of liability, disclaimer of warranties or exclusion of damages in this Agreement be severable and independent of any other provision and be enforced as such. Further, the parties expressly intend and agree that if any remedy in this Agreement is determined to have failed of its essential purpose, all limitations of liability and exclusions of damages set forth in this Agreement shall continue to remain in effect.

10.13 Prior Agreements Superseded and Priority of this Agreement. This Agreement supersedes any prior understandings, written agreements, or oral arrangements between the parties respecting the subject matter which this Agreement addresses. The terms of this Agreement shall govern if there is any conflict between this Agreement and: (i) any purchase order of Licensee; and (ii) any other written instrument which concerns or affects the subject matter of this Agreement including but not limited to correspondence and promotional materials. Each of the parties has relied specifically on the preceding as a material condition to entering into this Agreement.

10.14 Waiver. A party's attempted waiver, consent, or authorization of any kind

whatsoever, whether required under this Agreement, or granted pursuant to any breach or default of any term of this Agreement, shall not be effective or binding upon such party unless the same is in writing and signed by such party. Any such waiver, consent or authorization shall be valid only to the extent specifically set forth in such writing. No failure or delay on the part of either party to this Agreement to exercise any right, remedy, power or privilege in connection with this Agreement shall preclude or limit any other or further exercise of such right or the exercise of any other right, remedy, power or privilege.

10.15 Specific Performance. The parties agree that the breach of any provision of this Agreement will cause irreparable harm to the nonbreaching party. Accordingly, each party to this Agreement shall have the remedies which are available to it for the violation of any of the terms of this Agreement with regard to the Licensed Material, including but not limited to the equitable remedy of specific performance.

**LICENSEE:**

\_\_\_\_\_, a  
\_\_\_\_\_ corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Licensor**

\_\_\_\_\_, a  
\_\_\_\_\_ corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT "A"**  
**PROGRAM DESCRIPTION**

(TO BE ATTACHED)

**EXHIBIT "B"**  
DEFINED TERMS

1. The **"Permitted Hardware"** shall mean the following machine(s) and/or connected terminals located at Licensee's address indicated on line 3 of this **Exhibit "B"**, which location shall be the **"Permitted Location"**:

(a) \_\_\_\_\_ (c) \_\_\_\_\_

(b) \_\_\_\_\_ (d) \_\_\_\_\_

(e) \_\_\_\_\_

2. The **"Fee"** shall mean \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

3. All notices which concern this Agreement shall be addressed as follows:

If to Licensee:

If to [Licensor]: