

## SOFTWARE LICENSE AND MAINTENANCE SUPPORT AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SOFTWARE IDENTIFIED BELOW. BY USING THE SOFTWARE, YOU ARE CONSENTING TO BE BOUND TO THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT.

1. **Grant of License.** Amcom Software, Inc ("Amcom") hereby grants to Licensee (referred to herein as "End User", "Licensee" or "You"), and Licensee accepts, a non-exclusive and non-transferable license (the "License") to use the Amcom computer programs modules (collectively, the "Software") described in the purchase orders that the customer delivered to Amcom. The Software may only be used by End User in its own computer systems at its premises and for the number of licenses and addresses indicated in the purchased order. The License is a non-exclusive and non-transferable right to use the Software. In no way does the License grant End User the right to grant sub-licenses or authorizations, whether exclusive or non-exclusive, to third parties for use or exploitation of the Software.

2. **Limitations on Using the Software.** In no way does the License permit End User to do any of the following: (i) adapt the Software or create derivative versions of the Software; (ii) transmit, distribute or supply, whether by rental, sale, licensure, loan, or any other mechanism, partially or in full, the Software to any third party; (iii) rework, for the purpose of correcting deficiencies, additions, or improvements in the Software; (iv) allow any third party to reverse engineer the Software; (v) alter or modify the technical documentation or User's Manual of the Software; (vi) use the software to provide support to any third party entity or (vii) copy the Software for any reason (including in a virtual environment, creating a test environment, redundant environment or replication of the software), except to the extent Amcom has given prior written consent to End User to copy the Software or the customer has licensed additional copies of the software for the above purposes. The customer may create an archive copy of the software for disaster recovery purposes. In the event that Amcom has authorized End User to make copies of the Software for any purpose, End User hereby agrees to ensure that any notices regarding the proprietary and confidential nature of the Software are not disturbed or omitted from any backup copies. (vii) Licensee is prohibited from removing or altering any of the Intellectual Property Rights notice(s) embedded in or that Amcom otherwise provides with the Licensed Software.

The License is a temporary license subject to full payment of any invoices issued by Amcom for the Software, upon payment of which the License shall become a permanent license. In the event that any payment for the Software is not received in a timely manner, End User shall discontinue its use of the Software immediately.

### 3. **Limited Warranty, Disclaimer of Warranty and Election of Remedies.**

(a) **Limited Software Warranty by Amcom and Remedy For Breach.** Amcom warrants to Licensee that, during the Warranty Period, each Licensed Software, as used by Licensee on the Equipment for its own internal computing operations, will operate without Documented Defects. "Warranty Period" means the period beginning on the day the Licensee begins using the Licensed Software and ending on the ninety (90) day anniversary thereof. For each Documented Defect, Amcom, as soon as reasonably practicable and at its own expense, will provide Licensee with an avoidance procedure for, or a correction of the Documented Defect. Documented Defect means a material deviation between the Software and its Documentation (defined as the then current Amcom provided operating and technical documentation relating to the features, functions and operation of the Software), for which Documented Defect Licensee has given Amcom enough information to replicate on a computer configuration which is both substantially similar to Amcom's recommended computer configuration and is under Amcom's control. If despite its reasonable efforts, Amcom is unable to provide Licensee with an avoidance procedure for, or a correction of a Documented Defect, then, subject to the limitations set forth in Section 11 of this Agreement, Licensee may pursue its remedy at law to recover direct damages resulting from the breach of this limited warranty. These remedies are exclusive and are in lieu of all other remedies, and Amcom's sole obligations for breach of this limited warranty are contained in this Section 3(a).

(b) **Disclaimer of Software Warranty.** The limited warranties in this Section 3 are made to Licensee exclusively and are in lieu of all other warranties. **AMCOM MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE LICENSED SOFTWARE, IN WHOLE OR IN PART, OR ANY OTHER MATTER UNDER THIS AGREEMENT. AMCOM EXPLICITLY DISCLAIMS ALL WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. AMCOM EXPRESSLY DOES NOT WARRANT THAT THE LICENSED SOFTWARE, IN WHOLE OR IN PART, WILL BE ERROR FREE.**

(c) **Abrogation of Limited Warranty.** The limited warranties in this Section 3 will be null and void to the extent that a Documented Defect is caused by Licensee not implementing changes that Amcom provides to correct or improve the Licensed Software.

(d) **FAILURE OF ESSENTIAL PURPOSE. THE PARTIES HAVE AGREED THAT THE LIMITATIONS SPECIFIED IN SECTIONS 3 AND 11 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, AND REGARDLESS OF WHETHER LICENSEE HAS ACCEPTED ANY LICENSED SOFTWARE OR SERVICE UNDER THIS AGREEMENT.**

4. **Indemnity by Amcom.** Amcom will defend, indemnify and hold Licensee harmless from and against any loss, cost and expense that Licensee incurs because of a claim that use of the Software infringes any copyright of others. Amcom's obligations under this indemnification are expressly conditioned on the following: (i) Licensee must promptly notify Amcom of any such claim; (ii) Licensee must in writing grant Amcom sole control of the defense of any such claim and of all negotiations for its settlement or compromise (if Licensee chooses to represent its own interests in any such action, Licensee may do so at its own expense, but such representation must not prejudice Amcom's right to control the defense of the claim and negotiate its settlement or compromise); (iii) Licensee must cooperate with Amcom to facilitate the settlement or defense of the claim; (iv) the claim must not arise from modifications or (with the express exception of other licensed Software and third party hardware and software specified by Amcom in writing as necessary for use with the Licensed Software) from the use or combination of products provided by Amcom with items provided by Licensee or others. If any Software is, or in Amcom's opinion is likely to become, the subject of a copyright infringement claim, then Amcom, at its sole option and expense, will either: (A) obtain for Licensee the right to continue using the Software under the terms of this Agreement; or (B) replace the Software with products that are substantially equivalent in function, or modify the Software so that it becomes non-infringing and substantially equivalent in function; or (C) refund to Licensee the portion of the license fee paid to Amcom for the Software giving rise to the infringement claim, less a charge for use by Licensee based on straight-line amortization assuming a three year life, provided that Licensee has returned or destroyed and discontinued its use of the Software. **(THE FOREGOING SETS FORTH AMCOM'S EXCLUSIVE OBLIGATION AND LIABILITY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.**

### 5. **Term and Termination.**

(a) **Right of Termination.** A party has the right to terminate this Agreement if the other party breaches a material provision of this Agreement or such Order Form. To terminate this Agreement, the party seeking termination must give the other party notice that describes the event or condition of termination in reasonable detail. From the date of its receipt of that notice, the other party will have thirty (30) days to cure the breach to the reasonable satisfaction of the party desiring termination. If the event or condition giving rise to the right of termination is not cured within that period, the party desiring termination can terminate this Agreement upon written notice to the other party. Notwithstanding the foregoing, to the extent a material breach

of this Agreement cannot be cured through efforts of the breaching party, the non-breaching party has the right to terminate upon written notice this Agreement (including all Order Forms hereunder) at any time while an event or condition giving rise to the right of termination exists. However, notice to Amcom of a suspected Documented Defect will not constitute a notice of termination of this Agreement.

(b) **Effect of Termination.** Upon termination of this Agreement by either party, Licensee will discontinue further use of the Licensed Software, and will promptly return to Amcom or (at Amcom's request) will destroy all copies of the Licensed Software, and will certify to Amcom in writing, over the signature of a duly authorized representative of Licensee, that it has done so. Termination of this Agreement will not relieve either party from making payments which may be owing to the other party under the terms of this Agreement.

(c) **Survival of Obligations.** All obligations relating to non-use and non-disclosure of Confidential Information, indemnity, limitation of liability, and such other terms which by their nature survive termination, will survive termination of this Agreement.

(d) **Termination Without Prejudice to Other Rights and Remedies.** Termination of this Agreement will be without prejudice to the terminating party's other rights and remedies pursuant to this Agreement.

**6. Notices.** All notices and other communications required or permitted under the Agreement must be in writing and will be deemed given when delivered personally, sent by registered or certified mail, return receipt requested, transmitted by facsimile confirmed by first class mail, or sent by overnight courier. Notices must be sent to a party at its address shown on the signature page of this agreement, or to such other place as the party may subsequently designate for its receipt of notices in accordance with this Section. Licensee must promptly send copies of any notice of material breach and/or termination of the Agreement to Amcom, Attention: VP-Finance, Amcom Software, Inc., 10400 Yellow Circle Drive, Eden Prairie, Minnesota 55343 or to such other place as Amcom may subsequently designate for its receipt of notices.

**7. Force Majeure.** Neither party will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, including Acts of God, acts of war, terrorist acts, accident, labor disruption, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance, or the threat of any of the foregoing.

**8. Assignment.** Licensee may not assign or otherwise transfer any of its rights or obligations under this Agreement, and any attempt at such assignment will be void without the prior written consent of Amcom. For purposes of this Agreement, "assignment" shall include use of the Licensed Software for benefit of any third party to a merger, acquisition and/or other consolidation by, with or of Licensee, including any new or surviving entity that results from such merger, acquisition and/or other consolidation.

**9. No Waiver.** A party's failure to enforce its rights with respect to any single or continuing breach of this Agreement will not act as a waiver of the right of that party to later enforce any such rights or to enforce any other or any subsequent breach.

**10. Choice of Law; Severability.** This Agreement will be governed by and construed under the laws of the State of Minnesota, as applicable to agreements executed and wholly performed therein, but without regard to the choice of law provisions thereof. This Agreement is originally written in the English language and the English language version shall control over any translations. If any provision of this Agreement is illegal or unenforceable, it will be deemed stricken from the Agreement and the remaining provisions of the Agreement will remain in full force and effect. The United Nations Convention on the International Sale of Goods (CISG) shall not apply to the interpretation or enforcement of this Agreement.

## **11. LIMITATIONS OF LIABILITY.**

(a) **LIMITED LIABILITY OF AMCOM.** AMCOM'S LIABILITY IN CONNECTION WITH THE LICENSED SOFTWARE, THIS LICENSE OR ANY OTHER MATTER RELATING TO THIS AGREEMENT (WHATEVER THE BASIS FOR THE CAUSE OF ACTION) WILL NOT EXCEED THE FEE THAT LICENSEE ACTUALLY PAID TO AMCOM (OR, IF NO DISCRETE FEE IS IDENTIFIED IN THE APPLICABLE ORDER FORM, THE FEE REASONABLY ASCRIBED BY AMCOM) FOR THE COMPONENT SYSTEM GIVING RISE TO THE LIABILITY.

(b) **EXCLUSION OF DAMAGES.** IN NO EVENT WILL AMCOM BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT AMCOM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**12. Compliance With Laws.** Licensee will comply with all laws, rules and regulations applicable to the use of the Licensed Software. Licensee acknowledges that Amcom is not providing any electronic communications service and that Licensee is solely responsible for complying with any legal requirements applicable to its provision or use of electronic communications services in connection with the Software.

**13. Audit Rights.** Amcom may audit the records of Licensee to ensure compliance with the terms of this Agreement and each applicable Order Form(s). Amcom will notify Licensee in writing at least ten (10) business days prior to any such audit. Any such audit will be conducted during Licensee's regular business hours at Licensee's offices and will not interfere unreasonably with Licensee's business activities. Amcom may audit Licensee no more than once in any six (6) month period. If an audit reveals that Licensee is using a Component System beyond the scope of the license granted herein (such as for example, for a number of users greater than those that Licensee licensed pursuant to this Agreement), then Licensee will promptly reimburse Amcom for the cost of such audit and pay Amcom the underpaid license fees therefore and associated fees for Maintenance and Support (as defined in the Maintenance Agreement), based on Amcom's then-current list rates, as well as any applicable late charges.

**14. HIPAA.** To the extent that the regulations implementing the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as and when effective, apply to any products or services provided under this Agreement, Amcom will conduct its activities in such a manner as to facilitate Customer's compliance with HIPAA. If an amendment to this Agreement is necessary to comply with HIPAA, Amcom and Customer will negotiate such amendment in good faith prior to the applicable enforcement date. If Amcom and Customer cannot agree upon such an Amendment, Customer may terminate this Agreement upon 30 days' written notice, provided that Customer immediately returns to Amcom or destroys all copies of the Software as required under paragraph 5b. Customer shall not be entitled to a refund of any license fees paid to Amcom in the event of termination pursuant to this paragraph 14.

## **15. Maintenance Services.**

(a) **Types of Services.** Amcom will provide Licensee with Maintenance and Support for such Licensed Software to the extent Licensee pays Amcom the applicable fees as set forth on the Purchase Order. Maintenance means updates, enhancements or modifications to the Licensed Software which Amcom incorporates into the Licensed Software and does not separately price or market, together with using reasonable efforts to provide Licensee with avoidance procedures for or correction of Documented Defects.

(b) **Limitations.** All Maintenance will be part of the applicable Licensed Software and will be subject to all of the terms and conditions of the License

Agreement and this Maintenance Agreement. Amcom's obligation to provide Licensee with Maintenance and Support for Licensed Software owned by parties other than Amcom is limited to providing Licensee with the Maintenance and Support that the applicable third party owner provides to Amcom for that Licensed Software. In this regard, to the extent that an agreement authorizing Amcom to resell or sublicense a third party's Licensed Software is terminated or expires prior to the expiration of the term, for that Licensed Software, then Amcom's obligation to provide Maintenance and Support to Licensee for that Licensed Software, and Licensee's obligation to pay Amcom for such Maintenance and Support for that Licensed Software, shall automatically terminate simultaneously with the termination or expiration of the relevant agreement. Licensee must provide Amcom with such facilities, equipment and support as are reasonably necessary for Amcom to perform its obligations under this Maintenance Agreement, including remote access to the Equipment.

**16. Licensee Responsibilities.** Throughout the term of this Agreement Licensee shall:

- (a) Follow all Amcom installation, operation and maintenance instructions.
- (b) Provide the Amcom-specified environment and electrical and telecommunication connections.
- (c) Provide Amcom access to the products to enable Amcom to perform maintenance.
- (d) Have a representative available during any on-site Amcom maintenance activity.
- (e) Maintain a procedure external to the software program(s) and host computer for reconstruction of lost or altered files, data or programs to the extent Licensee deems necessary.

**17. Equipment / Software Relocation, Modification, and Improper Use**

(a) Licensee shall advise Amcom promptly of any change in location or modification to any Licensed Software covered by this Agreement. If such change, in Amcom's opinion, increases the cost of testing or repairs, Amcom reserves the right to increase your maintenance charge. If the change creates a safety hazard or is likely to cause product malfunctions, Amcom may, with Licensee's concurrence and at Licensee's expense, correct the condition and continue to perform maintenance. If the condition cannot be corrected to Amcom's satisfaction, Amcom reserves the right to terminate maintenance under this Agreement.

(b) Amcom shall be under no obligation to provide maintenance service of software if:

- (1) The Licensed Software has been modified or moved without Amcom's prior written approval;
- (2) The Licensed Software identification marks have been removed or altered;
- (3) Amcom does not support the Licensed Software (i.e., core operating system, system utilities and libraries, drivers, etc.);
- (4) The host computer does not conform to the update level necessary to support the Licensed Software or has been modified, other than by Amcom personnel, so as not to conform to the specifications for which the Licensed Software was designed;
- (5) Licensee's Licensed Software does not conform to the Licensed Software currently listed as subject to maintenance support; or
- (6) Licensee is using the Licensed Software in violation of its license

**18. Payment and Taxes.**

(a) Maintenance and Support Fees. For Maintenance and Support for the Software, Licensee will pay Amcom: (i) for the first Contract Year (defined as the initial twelve month period commencing at the end of the Warranty Period), the amount provided for in the applicable Order Form as the "Payment Amount"; and (ii) for each Contract Year subsequent to the first Contract Year, an amount invoiced by Amcom, which amount will not increase by more than the "Annual Escalation Percentage Cap" provided for in the applicable Order Form over the fee that Licensee was obligated to pay to Amcom for Maintenance and Support for the applicable Software in the immediately preceding Contract Year. On subsequent orders, fees for partial Contract Years will be prorated. Payment of all fees for Maintenance and Support for the Software is due within thirty (30) days of the date of invoice and is non-refundable. For subsequent Contract Years, Amcom will use good faith efforts to invoice Licensee thirty (30) days in advance of the Contract Year anniversary date or upon reasonable request of Licensee with payment due by the first day of the subsequent Contract Year.

(b) Additional Costs. Licensee will also reimburse Amcom for actual travel and living expenses that Amcom incurs in providing Licensee with Maintenance and Support, with reimbursement to be on an as-incurred basis. Licensee will also reimburse Amcom for all charges incurred in connection with accessing Equipment, if any.

(c) Taxes. Licensee is responsible for paying all taxes (except for taxes based on Amcom's net income or capital stock) relating to this Maintenance Agreement, Maintenance and Support, any services provided and payments made under this Maintenance Agreement. Applicable tax amounts (if any) are NOT included in the fees set forth in this Maintenance Agreement. Amcom will invoice Licensee for applicable tax amounts and such invoices are due upon Licensee's receipt thereof.

(d) Invoices and Late Charges. Licensee will pay each Amcom invoice within thirty (30) days of the date of invoice and in any event, on or before the dates specified in this Maintenance Agreement or the applicable Order Form. Late payments are subject to a late charge equal to the lesser of: (i) one and one-half percent (1½%) per month; and (ii) the highest rate permitted by applicable law.

**19. Term.** The term of this Maintenance Support Agreement for each Licensed Software shall be as set forth in the Purchase Order. For each Licensed Software, this Maintenance Support Agreement will automatically renew for consecutive Contract Years beyond the initial term on a year-to-year basis unless either party notifies the other in writing of its election to terminate Maintenance and Support under this Maintenance Agreement for any particular Licensed Software at least ninety (90) days prior to the initial term expiration date.

**20. Disclaimer of Maintenance and Support Warranty.** Licensee acknowledges and agrees that **AMCOM MAKES NO WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, WITH REGARD TO ANY MAINTENANCE, SUPPORT AND/OR ANY OTHER MATTER RELATING TO THIS AGREEMENT, AND THAT AMCOM EXPLICITLY DISCLAIMS ALL WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FURTHER, AMCOM EXPRESSLY DOES NOT WARRANT THAT A COMPONENT SYSTEM OR ANY MAINTENANCE AND SUPPORT WILL BE USABLE BY LICENSEE IF THE COMPONENT SYSTEM HAS BEEN MODIFIED BY ANYONE OTHER THAN AMCOM, OR WILL BE ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION OR WILL BE COMPATIBLE WITH ANY HARDWARE OR SOFTWARE OTHER THAN THE EQUIPMENT.**

**21. Entire Agreement.** This Agreement contains the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications between the parties about its subject matter. Any purchase order or similar document, which may be issued by Licensee in connection with this Agreement does not modify this Agreement. No modification of this Agreement will be effective unless it is in writing, is signed by each party, and expressly provides that it amends this Agreement.