**SOFTWARE AGREEMENT**

**between**

**SOFTWARE LICENSOR**

**and**

**SOFTWARE LICENSEE**

Effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Relating to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, [Name of SOFTWARE LICENSOR], a \_\_\_\_\_\_\_\_\_\_\_\_\_(State) corporation (“SOFTWARE LICENSOR”), having an office at [Address of SOFTWARE LICENSOR] and [Name of SOFTWARE LICENSEE] having an office at [Address of SOFTWARE LICENSEE] for itself and its SUBSIDIARIES\* (collectively referred to herein as “SOFTWARE LICENSEE”), agree as follows:

**ARTICLE I**

**RIGHT TO USE LICENSED SOFTWARE**

1.01 Grant of Right

(a) SOFTWARE LICENSOR, at the request of SOFTWARE LICENSEE, grants to SOFTWARE LICENSEE a personal, nontransferable and nonexclusive right to use LICENSED SOFTWARE solely for internal business purposes and solely on DESIGNATED CPUs. Such right to use includes the right to prepare ADAPTATIONS and ENHANCEMENTS, provided that any ADAPTATION is used and otherwise treated the same as LICENSED SOFTWARE hereunder.

(b) A single back-up CPU may be used as a substitute for a DESIGNATED CPU without notice to SOFTWARE LICENSOR during any time when such DESIGNATED CPU is inoperative because it is malfunctioning or undergoing repair, maintenance or other modifications.

(c) SOFTWARE LICENSEE may at any time notify SOFTWARE LICENSOR in writing of its designation by location, type and serial number of any replacing or additional CPU that is to become a DESIGNATED CPU and any CPU to be replaced. Any such designation shall become effective on agreement thereto in writing by SOFTWARE LICENSOR and, for any additional CPU, receipt by SOFTWARE LICENSOR of the fee for such additional CPU specified in Section 2.01(b).

(d) No right is granted for the use of LICENSED SOFTWARE directly for any third person, or for any use by any third person of LICENSED SOFTWARE.

\* Terms in capital letters defined in the Definitions Appendix shall have the meanings specified therein.

(e) SOFTWARE LICENSEE may make those copies of LICENSED SOFTWARE necessary to the use by SOFTWARE LICENSEE for which rights are granted hereunder.

(f) SOFTWARE LICENSEE agrees that it will not use or copy LICENSED SOFTWARE except as authorized herein.

1.02 Furnishing of LICENSED SOFTWARE

Subject to receipt by SOFTWARE LICENSOR of the initial fee specified in Section 2.01(a), within a reasonable time after such receipt, SOFTWARE LICENSOR shall furnish LICENSED SOFTWARE to SOFTWARE LICENSEE in the form specified in the attached Schedule.

1.03 Ownership

No ownership interest in LICENSED SOFTWARE is transferred to SOFTWARE LICENSEE hereunder. SOFTWARE LICENSEE’s interest in ADAPTATIONS is subject to SOFTWARE LICENSOR’s intellectual property rights. Nothing herein requires SOFTWARE LICENSEE to furnish or license ADAPTATIONS or ENHANCEMENTS to SOFTWARE LICENSOR.

1.04 Non-Transmission

SOFTWARE LICENSEE agrees that it will not, without the prior written consent of SOFTWARE LICENSOR, transmit, directly or indirectly, LICENSED SOFTWARE to any country outside of the United States.

1.05 U.S. Export Control

(a) SOFTWARE LICENSEE hereby assures SOFTWARE LICENSOR that it does not intend to and will not knowingly, without the prior written consent, if required, of the Office of Export Licensing of the U.S. Department of Commerce, P. O. Box 273, Washington, D. C. 20044, transmit directly or indirectly:

(i) LICENSED SOFTWARE; or

(ii) any immediate product (including processes and services) produced directly by the use of LICENSED SOFTWARE; or

(iii) any commodity produced by such immediate product if the immediate product of LICENSED SOFTWARE is a plant or a major component of a plant;

to (1) Afghanistan, the People’s Republic of China, Iraq, Kuwait or any Group Q, S, W, Y or Z country specified in Supplement No. 1 to Part 370 of the Export Administration Regulations issued by the U.S. Department of Commerce or (2) any national or resident of the foregoing countries.

(b) If the immediate product of LICENSED SOFTWARE is a plant or a major component of a plant, SOFTWARE LICENSEE hereby assures SOFTWARE LICENSOR that any and all requirements of the Export Administration Regulations (including obtaining necessary assurances or licenses) will be satisfied with respect to any controlled commodity produced by such plant.

**ARTICLE II**

**FEES**

2.01 Initial and Additional Fees

(a) SOFTWARE LICENSEE shall, within sixty (60) days after execution of this agreement by both parties, pay to SOFTWARE LICENSOR an initial fee of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_U.S. dollars ($\_\_\_\_.00),

representing \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_U.S. dollars ($\_\_\_\_.00),

for the first CPU listed in the attached “List of DESIGNATED CPUs” \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_U.S. dollars ($\_\_\_\_.00) for each additional CPU so listed. On receipt of such payment by SOFTWARE LICENSOR, such CPU(s) shall become DESIGNATED CPU(s) for such software.

(b) For each additional CPU that becomes a DESIGNATED CPU pursuant to Section 1.01(c), SOFTWARE LICENSEE shall pay to SOFTWARE LICENSOR an additional fee of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_U.S. dollars ($\_\_\_\_.00). Such additional fee is subject to change without notice.

2.02 Payments

Payments to SOFTWARE LICENSOR shall be made in United States dollars to the address specified in Section 4.09.

2.03 Taxes

SOFTWARE LICENSEE shall pay any tax (and any related interest and penalties), however designated, imposed as a result of the existence or operation of this agreement, including any tax which SOFTWARE LICENSEE is required to withhold or deduct from payments to SOFTWARE LICENSOR, except (i) any such tax constituting an income tax imposed upon SOFTWARE LICENSOR by any governmental entity within the United States proper (the fifty (50) states and the District of Columbia), and (ii), if the aforesaid office of SOFTWARE LICENSEE is located in a jurisdiction outside of the United States proper, any such tax imposed on SOFTWARE LICENSOR or any of its SUBSIDIARIES if such tax is allowable as a credit against United States federal income taxes of any of such companies. In the case of (ii), SOFTWARE LICENSEE shall furnish SOFTWARE LICENSOR with any evidence required by United States taxing authorities to establish that any such tax has been paid. Fees specified in this agreement do not include taxes.

**ARTICLE III**

**TERMINATION**

3.01 Termination for Breach

If SOFTWARE LICENSEE shall fail to fulfill one or more of its obligations under this agreement, SOFTWARE LICENSOR may, upon its election and in addition to any other remedies that it may have, at any time terminate all the rights granted by it hereunder by not less than two (2) months’ written notice to SOFTWARE LICENSEE specifying any such breach, unless within the period of such notice all breaches specified therein shall have been remedied. Upon such termination SOFTWARE LICENSEE shall destroy all copies of LICENSED SOFTWARE in its possession and certify such destruction in writing to SOFTWARE LICENSOR within thirty (30) days. In the event of termination SOFTWARE LICENSOR shall have no obligation to refund any amounts paid it pursuant to Section 2.01.

3.02 Change in SUBSIDIARY’s Relationship

SOFTWARE LICENSEE agrees that when a SUBSIDIARY’s relationship to SOFTWARE LICENSEE changes so that it is no longer a SUBSIDIARY of SOFTWARE LICENSEE, (i) all rights of such former SUBSIDIARY to use LICENSED SOFTWARE subject to this agreement shall immediately cease, and (ii) such former SUBSIDIARY shall immediately discontinue use of and return to SOFTWARE LICENSEE or destroy all copies of LICENSED SOFTWARE. No fees paid to SOFTWARE LICENSOR for use of LICENSED SOFTWARE on DESIGNATED CPUs of such former SUBSIDIARIES shall be refunded; however, SOFTWARE LICENSEE may substitute other CPUs for such DESIGNATED CPUs in accordance with Section 1.01(c).

3.03 Survival

The obligations of SOFTWARE LICENSEE and its SUBSIDIARIES under Sections 1.04, 1.05 and 4.04 shall survive and continue after any termination of rights under this agreement.

**ARTICLE IV**

**MISCELLANEOUS PROVISIONS**

4.01 Agreement Prevails

This agreement shall prevail notwithstanding any conflicting terms or legends which may appear in LICENSED SOFTWARE.

4.02 Disclaimer

SOFTWARE LICENSOR and its affiliates make no representations or warranties, expressly or impliedly. By way of example but not of limitation, SOFTWARE LICENSOR and its affiliates make no representations or warranties of merchantability or fitness for any particular purpose, or that the use of LICENSED SOFTWARE will not infringe any patent, copyright or trademark. SOFTWARE LICENSOR and its affiliates shall not be held to any liability with respect to any claim by SOFTWARE LICENSEE, or a third party on account of, or arising from, the use of LICENSED SOFTWARE.

4.03 Nothing Construed

Nothing contained herein shall be construed as:

(i) conferring by implication, estoppel or otherwise, any license or right to use any name, trade name, trademark, service mark, symbol or any other identification or any abbreviation, contraction or simulation thereof;

(ii) an obligation upon SOFTWARE LICENSOR or any of its affiliates to furnish any person, including SOFTWARE LICENSEE, any assistance of any kind whatsoever, or any information or documentation other than LICENSED SOFTWARE to be furnished pursuant to Section 1.02; or

(iii) a grant to SOFTWARE LICENSEE to sell, lease, sublicense or otherwise transfer or dispose of LICENSED SOFTWARE, in whole or in part, except as provided in Section 4.05.

4.04 Confidentiality

(a) SOFTWARE LICENSEE agrees to hold all parts of LICENSED SOFTWARE in confidence for SOFTWARE LICENSOR. SOFTWARE LICENSEE further agrees not to make any disclosure of LICENSED SOFTWARE (including methods or concepts utilized therein) to anyone, except to employees of SOFTWARE LICENSEE to whom such disclosure is necessary to the use for which rights are granted hereunder.

(b) SOFTWARE LICENSEE shall appropriately notify all employees to whom any such disclosure is made that such disclosure is made in confidence and shall be kept in confidence by them.

(c) SOFTWARE LICENSEE’s obligations under this Section 4.04 shall not apply to any information relating to LICENSED SOFTWARE (including any method or concept utilized therein) that:

(i) is or becomes available without restriction to the general public by acts not attributable to SOFTWARE LICENSEE or its employees,

(ii) was rightfully in SOFTWARE LICENSEE’s possession without limitation on disclosure before disclosure hereunder to SOFTWARE LICENSEE,

(iii) is rightfully disclosed to SOFTWARE LICENSEE by a third party without restrictions on disclosure, or

(iv) is developed independently by SOFTWARE LICENSEE without reference to LICENSED SOFTWARE.

4.05 Distribution

Notwithstanding the provisions of Section 4.04(a), SOFTWARE LICENSEE may distribute copies of ADAPTATIONS to SOFTWARE LICENSOR and its affiliates and to third parties having licenses of equivalent scope herewith from SOFTWARE LICENSOR or an affiliate thereof for LICENSED SOFTWARE, provided that SOFTWARE LICENSEE first verifies the status of any such third party with SOFTWARE LICENSOR. SOFTWARE LICENSEE may also obtain ADAPTATIONS prepared by such a third party, provided such ADAPTATIONS are used and otherwise treated the same as LICENSED SOFTWARE hereunder.

4.06 Statements

On SOFTWARE LICENSOR’s request, but not more frequently than annually, SOFTWARE LICENSEE shall furnish to SOFTWARE LICENSOR a statement, certified by an authorized representative of SOFTWARE LICENSEE, that the use of LICENSED SOFTWARE by SOFTWARE LICENSEE has been reviewed and that LICENSED SOFTWARE is being used solely on DESIGNATED CPUs (or temporarily on a back-up CPU in place of any inoperative DESIGNATED CPU) only for SOFTWARE LICENSEE’s internal business purposes in full compliance with the provisions of this agreement.

4.07 Publicity

SOFTWARE LICENSEE agrees that it will not, without the prior written permission of SOFTWARE LICENSOR:

(i) use in advertising, publicity, packaging, labeling or otherwise any trade name, trademark, trade device, service mark, symbol or any other identification or any abbreviation, contraction or simulation thereof owned by SOFTWARE LICENSOR or any of its affiliates or used by SOFTWARE LICENSOR or any of its affiliates to identify any of its or their products or services or;

(ii) represent, directly or indirectly, that any product or service of SOFTWARE LICENSEE is a product or service of SOFTWARE LICENSOR or any of its affiliates or is made in accordance with or utilizes any information of documentation of SOFTWARE LICENSOR or any of its affiliates.

4.08 Non-assignability

The parties hereto have entered into this agreement in contemplation of personal performance by SOFTWARE LICENSEE and intend that the rights granted to SOFTWARE LICENSEE hereunder not extend to other entities without SOFTWARE LICENSOR’s express written consent. All of SOFTWARE LICENSOR’s rights in this agreement may be assigned to any direct or indirect successor to the business of SOFTWARE LICENSOR, which successor shall thereafter be deemed substituted for SOFTWARE LICENSOR as the party hereto, mutatis mutandis, effective upon such assignment; but neither this agreement nor any rights hereunder shall be otherwise assignable or transferable (in insolvency proceedings or otherwise) by either party without the express written consent of the other party.

4.09 Addresses

Any statement, notice, request or other communication hereunder shall be deemed to be sufficiently given to the addressee and any delivery hereunder deemed made when sent by certified mail addressed to SOFTWARE LICENSEE at its office above specified.

[Address]

4.10 Integration

This agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof and merges all prior discussions between them. Neither of the parties shall be bound by any warranties, understandings or representations with respect to such subject matter other than as expressly provided herein, in prior written agreements, or in a writing executed with or subsequent to the execution of this agreement by an authorized representative of the party to be bound thereby.

4.11 Applicable Law

The construction and performance of this agreement shall be governed by the law of the State of New York.

IN WITNESS WHEREOF, each of the parties has caused this agreement to be executed in duplicate originals by its duly authorized representatives on the respective dates entered below.

SOFTWARE LICENSOR

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

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SOFTWARE LICENSEE

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

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**DEFINITIONS APPENDIX**

**ADAPTATION** means any work incorporating any of LICENSED SOFTWARE directly or any work incorporating material covered by any of SOFTWARE LICENSOR’s intellectual property rights in LICENSED SOFTWARE, including but not limited to any modified version of LICENSED SOFTWARE or derivative work based on LICENSED SOFTWARE (such as any COMPUTER PROGRAM from LICENSED SOFTWARE rewritten in a different computer language or converted to operate on a different type of CPU) or any work utilizing a method or concept from LICENSED SOFTWARE that SOFTWARE LICENSEE is obligated to keep in confidence hereunder.

CPU means central processing unit.

**COMPUTER PROGRAM** means any source-code of object-code instruction or plurality of such instructions for controlling the operation of a CPU.

**ENHANCEMENT** means software designed to operate in conjunction with LICENSED SOFTWARE, but the term does not mean nor does such software include any ADAPTATION.

**LICENSED SOFTWARE** means all or any portion of the COMPUTER PROGRAMS, other information and documentation specifically listed in the attached “Schedule for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”.

**SUBSIDIARY of a company** means a corporation or other legal entity (i) the majority of whose shares or other securities entitled to vote for election of directors (or other managing authority) is now or hereafter controlled by such company either directly or indirectly; or (ii) the majority of the equity interest in which is now or hereafter owned and controlled by such company either directly or indirectly; but any such corporation or other legal entity shall be deemed to be a SUBSIDIARY of such company only as long as such control or ownership and control exists.

**DESIGNATED CPU** means a CPU on which the COMPUTER PROGRAMS in LICENSED SOFTWARE may be used pursuant to this agreement. DESIGNATED CPUs are listed in the attached “List of DESIGNATED CPUs” and in agreements in writing pursuant to Section 1.01(c).

List of DESIGNATED CPUs

Location Type Serial Number