

END USER LICENSE AGREEMENT

1. Definitions

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“Agreement” means these terms and conditions;

“Documentation” means the user manuals and other documentation provided by DMI to Licensee pertaining to the Software.

“Licensee” means the person to whom the license to use this copy of the Software was originally granted;

“Intellectual Property Rights” means patents, trademarks, service marks, registered designs, applications for any of the foregoing, copyright, design rights, know-how, confidential information, trade and business names and any other similar protected rights in any country;

“License Fee” means the fee for the License and the services to be provided under this Agreement;

“License” means the license granted by DMI pursuant to Clause 2.1;

“Materials” means the Software and the Media;

“Media” means the media on which the Software is recorded or printed as provided to the Licensee;

“Permitted Number” means the number of licenses recorded on the reseller purchase order for the applicable client, or total number of licensees from multiple reseller purchase orders if supplied in batches.

“DMI” means Data Management Internationale’, Inc., a company incorporated in the State of Delaware;

“Software” means the computer programs that accompany this Agreement, but for the avoidance of doubt excludes the Source materials;

“Source Materials” means all logic, logic diagrams, flowcharts, algorithms, routines, sub-routines, utilities, modules, file structures, coding sheets, coding, source codes, functional specifications, program specifications and all other materials and documents necessary to enable a reasonably skilled programmer to maintain, amend and enhance the software in question without reference to any other person or documentation and whether in eye-readable or machine-readable form;

“Specification” means the functional specification for the Software issued by DMI;

“Use the Materials” means to use the Software, to read and possess the Documentation in conjunction with the use of the Software and to possess the Media;

“Use the Software” means to load the Software into and store and run them on equipment in accordance with the terms of this Agreement;

2. License

2.1 DMI hereby grants to the Licensee a non-exclusive license to Use the Materials subject to the terms and conditions hereinafter set forth.

2.2 The License shall commence on delivery of the Software to the Licensee and shall continue until terminated in accordance with this Agreement.

2.3 The Licensee may Use the Materials (or allow others to Use the Materials) for processing the Licensee's own data for its own internal business purposes only. Save as provided above the Licensee shall not permit any third party to use the Materials nor use the Materials on behalf of or for the benefit of any third party in any way whatever (including, without limitation, using the Materials for the purpose of operating a service bureau).

2.4 The Licensee may install and use the Software on a single file server.

2.5 The Licensee shall not amend or modify the Source Materials for any purpose. If Licensee does amend or modify the Source Materials, or any part thereof, in derogation of this Agreement, the Licensee shall indemnify DMI against any claim that any such amendment or modification infringes the Intellectual Property Rights of any third party. Licensor shall not be responsible for any error in the Software or Source Materials or failure of the Software or Source Materials to fulfill the Specification insofar as such error or failure occurs in or is caused by the Licensee.

2.6 No copy of the Source Materials or any part thereof shall be made available to any third party by, through, or on behalf of, the Licensee and the Licensee shall indemnify DMI against all losses, costs, expenses, claims, actions, liabilities or damages which DMI may sustain or incur as a result of a breach of this obligation.

2.7 The Licensee may make only so many copies of the Software or the Source Materials as are reasonably necessary for operational security and use as permitted hereby. Such copies and the media on which they are stored shall be the property of DMI and the Licensee shall ensure that all such copies bear DMI's proprietary notices. The License shall apply to all such copies as it applies to the Software. No copies may be made of the Documentation without the prior written consent of DMI.

2.8 The Licensee hereby acknowledges that it is licensed to use the Materials and the Source Materials only in accordance with the express terms of this Agreement and not further or otherwise.

3. Payment

3.1 DMI has appointed [Reseller name here] ("**Reseller**") as DMI's authorized agent for the invoicing and collection of the License Fee, and all other additional payments and charges payable under this Agreement on behalf of DMI. The Licensee shall pay the License Fee to **Reseller** on the date hereof. The License Fee and any additional charges payable under this Agreement are exclusive of any and all sales/use, gross receipts, value added, GST personal pricing or other taxes (including interest and penalties imposed thereon) arising from the transactions contemplated herein, except for any income taxes levied on DMI. The Licensee of each Reseller invoice shall pay any charges payable by the Licensee hereunder in addition to the License Fee to Reseller within 30 days after the receipt.

3.2 If any sum payable under this Agreement is not paid within 7 days after the due date then (without prejudice to DMI's other rights and remedies) **Reseller** reserves the right to charge interest on such sum on a day to day basis (as well after as before any judgment) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of 18% per annum. Reseller shall pay such interest on demand.

3.3 Licensee expressly acknowledges and agrees that **Reseller** is not a party to this Agreement, and that Licensee shall have no rights or claims against **Reseller** (including without limitation, any express or

implied warranty claims, such as implied warranty of merchantability or fitness for a particular purpose) relating to the products and services to be provided by DMI to Licensee under this Agreement.

4. Delivery

4.1 On delivery the Software shall consist of one copy of the object code of the Software in machine-readable form only.

4.2 Risk in the Media shall pass to the Licensee on delivery. If any part of the Media shall thereafter be lost, destroyed or damaged DMI shall at the request of the Licensee replace the same promptly (embodying the relevant part of the Software or Documentation) subject to the Licensee paying the cost of such replacement. DMI shall not make any further or additional charge for such replacement.

5. Limited Warranty

5.1 DMI warrants that, for a period of one (1) year after delivery (the "**Warranty Period**"), the Software will provide the facilities and functions set out in the Specification when properly used on the equipment in connection with which it was supplied. A failure of the Software to conform in any material respect with the Specification is referred to herein as an "Error" or "Defect".

5.2 DMI's sole obligations under the warranty set forth in Section 5.1 shall be to use its commercially reasonable efforts to correct or cause to be corrected any reproducible Error or Defect found in the Software during the applicable Warranty Period, provided that DMI shall have no obligations or liability hereunder unless Licensee provides DMI with written notice providing a documented example of the Error or Defect in question no later than the expiration of the Warranty Period. Licensee shall cooperate in providing detailed information concerning any such Error or Defect.

5.3 The warranty made by DMI hereunder is, and all obligations of DMI under this Section shall be, contingent upon Licensee's use of the Software in accordance with the Documentation, the provisions of this Agreement, and specific instructions relating thereto furnished by DMI consistent with the terms of the Agreement. To the extent that any of the following cause an Error or Defect, no such warranties or obligations shall apply to DMI: (i) Licensee has used the Materials in a manner inconsistent with the provisions of this Agreement; (ii) the Materials have been damaged by negligence or misuse by Licensee or by accident, fire, casualty, or other external causes; (iii) the Error or Defect is determined to be caused by third party products, the Licensee hardware or operating system software, or Licensee's failure to maintain the proper operating environment; or (iv) the Error or Defect is determined to be caused by Licensee data or Licensee's method of data input.

5.4 DMI DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, THAT ALL DEFICIENCIES, ERRORS, DEFECTS OR NONCONFORMITIES WILL BE CORRECTED, OR THAT THE SOFTWARE WILL MEET LICENSEE'S SPECIFIC REQUIREMENTS. EXCEPT TO THE EXTENT EXPRESSLY PROVIDED IN THIS ARTICLE, THERE ARE NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, QUALITY, ORIGINALITY OR FITNESS FOR A PARTICULAR PURPOSE.

5.5 The Licensee acknowledges that the Software has not been prepared to meet the Licensee's individual requirements and that it is therefore the responsibility of the Licensee to ensure that the facilities and functions described in the Specification meet its requirements. DMI shall not be liable for any failure of the Software to provide any facility or function not specified in the Specification.

5.6 The Licensee hereby warrants to DMI that the Licensee has not been induced to enter into this Agreement by any prior representations or warranties, whether oral or in writing, except as specifically contained in this Agreement and the Licensee hereby irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation not contained in this Agreement or for breach of

any warranty not contained herein (unless such misrepresentation or warranty was made fraudulently) and/or to rescind this Agreement.

5.7 The Licensee expressly agrees and acknowledges that no condition, warranty or representation of any kind is or has been given by or on behalf of DMI in respect of the Software or the Source materials except as set out in this Agreement and accordingly the Licensee confirms that it has not, in entering into this Agreement, relied on any condition, warranty or representation by DMI or any person on DMI's behalf, express or implied, whether arising by law or otherwise in relation to the Materials or the Source materials, including, without limitation, conditions, warranties or representations as to the description, quality or fitness for any purpose, of the Materials or the Source materials and the benefit of any such condition, warranty or representation by DMI is hereby irrevocably and unconditionally waived by the Licensee. To the extent permissible under applicable law, the Licensee hereby also waives any rights which it may have in tort in respect of any of the matters referred to above and irrevocably agrees that DMI shall have no greater liability in tort in respect of any such matter than it would have in contract after taking account of all of the foregoing exclusions. No third party making any representation or warranty relating to the Materials or the Source materials is the agent of DMI nor has any such third party authority to bind DMI thereby.

6. Proprietary Rights

6.1 The Materials, the Source Materials, the Documentation, and all other work product, materials, or information related, in any way, which has, or will, come into possession or knowledge of the Licensee in connection with, or related to, this Agreement (collectively, the "**Proprietary Information**"), remains the sole and exclusive property of DMI or its licensors. DMI reserves the right to grant licenses to use the Materials and Source Materials to third parties.

6.2 DMI owns the exclusive right, title, and interest in and to the Proprietary Information and any Intellectual Property Rights embodied or represented in the Proprietary Information or associated therewith. To the extent that title to any of the Proprietary Information or Intellectual Property Rights may not, by operation of law, vest in DMI, all right, title, and interest therein is hereby irrevocably assigned to DMI by Licensee without further consideration. Licensee expressly acknowledges that the Software shall not be construed as a work made for hire for purposes of Section 102 of the United States Copyright Act (Title 17 U.S.C. § 102).

6.3 Licensee shall not: (a) alter, modify, translate, reverse engineer, decompile, disassemble, or adapt, in whole or in part, the Software or Source Materials; (b) take any other steps intended to produce a source language statement of the Software or Source Materials; (c) assist others in developing, improving, or enhancing any software based in whole or in part on the rules, training, support materials, data collection techniques, screen layouts, reports, or other proprietary aspects of the Software or Source Materials; (d) direct or knowingly permit the copying of any of the Software or Source Materials except as permitted under this Agreement; (e) disclose, display, publish, loan, transfer possession of (whether by sale, exchange, or gift), assign, sublicense, or otherwise make available all or any part of the Software or Source Materials, except with the prior written consent of DMI, which may be withheld at DMI's sole discretion; or (f) prepare any derivative works of the Software or Source Materials. If Licensee breaches this Section, DMI shall own exclusively all right, title, and interest in and to any copies, modifications, or derivative works prepared by Licensee or its agents.

7. Confidentiality

7.1 The Licensee undertakes to treat as confidential and keep secret the Proprietary Information

7.2 The Licensee shall not without the prior written consent of DMI divulge any part of the Proprietary Information to any person except:

(a) the Licensee's own employees and then only to those employees who need to know the same;

(b) the Licensee's auditors or as otherwise required by law;

(c) any person who is from time to time appointed by the Licensee to maintain any equipment on which the Software is being used (in accordance with the terms of the License) and then only to the extent necessary to enable such person properly to maintain such equipment.

7.3 The Licensee undertakes to ensure that any person to whom the Proprietary Information is disclosed does not use it or disclose it except as permitted by this Agreement and the Licensee shall indemnify DMI against all losses, costs, expenses, claims, actions, liabilities or damages which DMI may sustain or incur as a result of a breach of this obligation.

8. Indemnification

8.1 Licensee agrees to defend, indemnify, and hold harmless DMI and its subsidiaries, affiliated companies, and their directors, officers, employees, agents and members, against all actions, proceedings, losses, costs, damages, expenses, claims and demands, including, but not limited to, any and all attorneys' fees and costs, arising from any breach of this Agreement by Licensee or by any of Licensee's agents or employees, or in connection with the use of the Software by Licensee or any of its agents or employees in a manner which is inconsistent with the Documentation, whether or not such use was authorized by Licensee. DMI reserves the right to approve Licensee's counsel to defend any such claims, which approval will not be unreasonably withheld, and to approve any settlement agreement. DMI also reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Licensee hereunder.

8.2 DMI agrees to defend, indemnify, and hold harmless Licensee and its subsidiaries, affiliated companies, and their directors, officers, employees, agents and members, against any damages awarded against, and costs payable by, the Licensee in connection a successful claim or settlement that the normal use or possession of the Materials or the Source Materials (other than any Licensee Modifications or the Source Materials relating thereto) infringes the Intellectual Property Rights of any third party; provided that DMI is given immediate and complete record of such claim, that the Licensee does not prejudice DMI's defense of such claim, that the Licensee gives DMI all reasonable assistance with such claim and that the claim does not arise as a result of the use of the Materials in combination with any equipment or programs not supplied or approved by DMI or any Licensee modifications or the Source Materials relating thereto. DMI shall have the right to replace or change all or any part of the Materials in order to avoid any infringement. The foregoing states the entire liability of DMI to the Licensee in respect of the infringement of the Intellectual Property Rights of any third party.

9. Termination

9.1 Either party may terminate this Agreement and the License herein at any time by giving at least 30 days' prior written notice to the other party.

9.2 DMI may terminate the License forthwith on giving notice in writing to the Licensee if:

(a) the Licensee commits any breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from DMI so to do, to remedy the breach;

(b) the Licensee permanently discontinues the use of the Material; or

(c) the Licensee shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the Licensee shall enter into any voluntary arrangement with its creditors or shall become subject to an administration order or shall cease to carry on business.

9.3 Forthwith upon the termination or expiry of the License the Licensee shall return to DMI the Materials and any Source Code including any modifications thereof made by the Licensee and all copies of the whole or any part thereof or, if requested by DMI, shall destroy the same (in the case of the Software and the Source Code by erasing them from the magnetic media on which they are stored) and certify in writing to DMI that they have been destroyed. The Licensee shall also cause the Software to be erased from the Equipment and shall certify to DMI that the same has been done.

9.4 Any termination of the License or this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

10. Limitation of Liability

10.1 NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THIS AGREEMENT, THE LIABILITY OF DMI TO LICENSEE FOR ANY ACTION IN CONTRACT OR IN TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY, FOR ANY LOSS OR INJURY ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE PERFORMANCE OR BREACH OF THIS AGREEMENT OR THE USE, PERFORMANCE OR NONPERFORMANCE OF THE SOFTWARE SHALL NOT EXCEED THE AMOUNT OF THE FEES ACTUALLY PAID TO DMI HEREUNDER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE LOSS OR INJURY.

10.2. IN NO EVENT SHALL DMI BE LIABLE TO LICENSEE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, COVER, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING FROM THE PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR THE USE, PERFORMANCE, OR NONPERFORMANCE OF THE SOFTWARE INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS OR ECONOMIC OPPORTUNITY, LOSS OF PROFITS, LOSS OF DATA, OR LOSS OF GOODWILL. DMI shall not be liable to the Licensee for any loss arising out of any failure by the Licensee to keep full and up-to-date security copies of the computer programs and data it uses in accordance with best computing practice.

10.3 The parties' respective obligations under this Agreement are the sole and exclusive remedies for any breach or default under this Agreement and for any other claims related to the Software. The parties hereto each agree and understand that the exclusive remedies provided in this Agreement allocate risks of the Software's nonconformity between the parties as authorized by the Uniform Commercial Code and other applicable law. The license fees hereunder reflect this allocation of risk and the limitation on liability, including the exclusion of consequential damages from this Agreement.

11. Miscellaneous

11.1 The Licensee shall not be entitled to assign, sublicense or otherwise transfer the License whether in whole or in part, without the prior written consent of DMI.

11.2 Notwithstanding anything else contained in this Agreement, neither party shall be liable for any delay in performing its obligations hereunder if such delay is caused by circumstances beyond its reasonable control (including without limitation any delay caused by any act or omission of the other party).

11.3 No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

11.4 This Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorized representative of each of the parties.

11.5 Notwithstanding that the whole or any part of any provision of this Agreement may prove to be illegal or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall remain in full force and effect.

11.6 All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address as the recipient may designate by notice given in accordance with the provisions of this clause. Any such notice may be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when dispatched.

11.7 This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. Any dispute, which may arise between the parties concerning this Agreement, shall be determined by the State of Delaware courts and the parties hereby submit to the exclusive jurisdiction of the State of Delaware courts for such purpose.