

SOFTWARE LICENCE AND SUPPORT SERVICES AGREEMENT

This Software License, Support and Services Agreement ("Agreement") is made as of the date of last signing herein ("Effective Date") between IBM Corporation whose address for the purposes of this Agreement is at 13800 Coppermine Road, Suite 410, Herndon, VA 20135 ("IBM") and the State of Minnesota, acting through its Commissioner of Commerce whose address for the purposes of this Agreement is at 85 7th Place East, Suite 500, St. Paul, MN 55101-2198 (the "Licensee").

WHEREAS:

- (A) IBM hereby licenses the Software to the Licensee in relation only to the Purpose (as defined in each applicable Order Form) subject to the terms of this Agreement.
- (B) IBM has agreed to provide Software Support Services to the Licensee in relation to the Software.

NOW IT IS HEREBY AGREED AS FOLLOWS:

Definitions:

- A. "Current Version" means the latest generally available version of the Software at any particular time and shall be denoted by number 'x.y' where x is greater than zero and y is equal to or greater than zero; Examples: v3.0 or v4.0 or v4.1.
- B. "Documentation" means the complete set of manuals (e.g. release notes, user, installation, instruction or diagnostic manuals) in electronic format provided with the Software at the time of licensing or subsequently made available.
- C. "Emergency Patch" means a defect fix or change to the Software denominated by a suffix EPnn onto the version that it may be applied to, which is immediately required by the Licensee to rectify a production Severity 0 or Severity 1 problem, and is issued to the affected Licensee only and is provided as-is without warranty.
- D. "Enterprise" includes any legal entity that, by more than 50%, owns, is owned by, or is under common ownership with IBM.
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- F. "Minor Version" means a minor change to the Current Version of the Software adding minor new features and/or minor improvements to existing features and shall be denoted by number 'x.y' where x and y are greater than zero. Example: V 4.5.
- G. "New Version" means a major change to the Current Version of the Software adding significant new features and/or improvements to existing features and shall be denoted by number 'x.0' where x is greater than zero; Example: V 4.0.
- H. "Order Form(s)" means each Software product and/or associated Software Support Services and/or training services Order Form executed by the parties which references and is governed by this Agreement. Each Order Form shall constitute a separate and independent contractual obligation from any other Order Form.
- I. "Purpose"
Licensee is limited to using the Software for a particular Purpose as set out in an applicable Order Form.
- J. "Service Pack" means a release that contains all Emergency Patches since the previous Service Pack. It is a general release to all customers who have an active support agreement and shall be denoted by number 'x.y_SPz' where x and z are greater than zero and y is equal to or

greater than zero; Example: V 4.0_SP03 and is provided as-is, without warranty.

K. "Specified Operating Environment" means the hardware and software platform specified in the applicable Order Form upon which the Software is licensed to be used under this Agreement. A description of the Specified Operating Environment will be provided by IBM in electronic format on licensing of the Software.

L. "Software" means the software specified in each applicable Order Form and, as appropriate, subsequent Updates within the terms of this Agreement. Unless specifically stated otherwise, all Software is delivered to Licensee only if and when generally commercially available.

M. "Software Support Services"

Standard annual Support fees are calculated at 20% per year of the net License Fee as set out in each applicable Order Form and includes Software support and Updates. At Licensee's option, Licensee may upgrade to out of hours Software Support Services or IBM Platinum Care or may subscribe to additional Software Support Services as described in the IBM Support Policy Document. In the event Licensee elects to purchase such additional Support Services, this shall be indicated in an Order Form and additional fees shall be due based on IBM's then current prices for such services. All annual Software Support fees are due and payable in advance and non-refundable.

N. "Scope of Use" means the right of Licensee to use the Software up to the total number of Users, Permitted Internal Users, Permitted External Users, Professional Workspace Users and Public Access Users (collectively "Authorized Users") on the Specified Operating Environment, or other restrictions on Licensee's use of the Software as specified in an applicable Order Form. Any extension of the licensed Scope of Use shall be subject to payment of additional license fee(s).

O. "Update" means any published and commercially released (i) New Version of the Software which is not designated by IBM as a new product for which it charges separately; (ii) a Service Pack and/or (iii) Minor Version.

P. User Definitions

"User" means an individual occupant of a single workstation (comprising a visual display unit and keyboard, with or without other input/output devices) accessing the Software who is an employee, sub-contractor, or agent of Licensee and is engaged on work in connection with the Purpose.

"Permitted Internal Users" means, to the extent agreed between the parties and set out herein, an officer, director, employee, executive, agent or adviser ("Personnel") of the Licensee and/or sub-contractor(s) who may, by password identification, directly or indirectly access and/or use the Software in connection with the Purpose.

"Permitted External Users" means, to the extent agreed between the parties and set out in the Order Form; (a) Personnel of named third parties such as employers,

lawyers and/or healthcare authorities who may use the Software for accessing general information held on the Licensee's computer system and/or have been authorized by individual clients/customers of the Licensee to use the Software to access their personal records using their individual password identification; and (b) Personnel of named external service providers engaged by Licensee who may, by password identification, directly or indirectly access and/or use the Software to provide services to and/or on behalf of the Licensee in connection with the Purpose.

"Professional Workspace Users" means limited role-based access to the Software by non-agency users, such as lawyers, teachers or law enforcement officers (the required professional class shall be specified in an Order Form) who are part of the delivery of services to citizens. Professional Workspace Users shall: (a) be limited to the professional class set out in an Order Form; (b) support specific role-based functionality, user workflows, and security required for a pre-determined user class such as service providers, and employers; and (b) shall be confined solely to the functionality necessary to their limited role.

"Public Access Users" means, to the extent agreed between the parties and set out in the Order Form, persons other than Permitted Internal Users or Permitted External Users who may have access through an Internet web connection or future synonymous technology: (a) to general information held on the Licensee's computer system without individual password identification and/or; (b) to their own personal records held on such system with individual password identification.

Q. "Territory" means the geographical area of the State of Minnesota

1. License

A. Rights Granted:

(i) IBM has the right, power and authority to and, subject to the terms of this Agreement, hereby grants the Licensee a non-exclusive, non-transferable, non-sub licensable license to (a) use the Software solely in connection with the Purpose and only for the Scope of Use as agreed in each applicable Order Form and in accordance with the Documentation and (b) use the Documentation solely in connection with Licensee's authorized use of the Software.

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Licensee's liability may governed by the Minnesota Tort Claims Act, Minn. Stat. § 3.736.

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(i) copy the Software (except for back-up or archival purposes); (ii) modify, translate, reverse assemble, reverse compile or otherwise reverse engineer, de-compile or disassemble the whole or any part of the Software (except to the extent applicable laws specifically prohibit such restriction); (iii) assign, transfer, sell, lease, lend, sublicense, rent, charge or otherwise deal in or encumber the Software or use the Software on behalf of any third party, or make available the same to any third party without the prior written consent of IBM; or (iv) remove or alter any copyright or other proprietary notice from the Software or any authorized copy thereof; (v) use run-time versions of third party products embedded in the Software, if any, for use other than the intended use of the Software under this Agreement; (vi) permit other persons or entities to use the Software, except pursuant to the terms of this Agreement; (vii) exceed the licensed Scope of Use for which fees have been paid without written notice and the payment of the required additional fees; (viii) transfer the Software to a different software database platform without providing prior written notice to IBM and payment of any additional fees that may be due; (ix) use the Software in any way not expressly provided for in this Agreement.

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Verification Process

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Upon reasonable notice, IBM may verify Licensee's compliance with the Agreement at all sites and for all environments in which Licensee uses (for any purpose) Programs subject to the Agreement terms. Such verification will be conducted in a manner that minimizes disruption to Licensee's business, and may be conducted on Licensee's premises, during normal business hours. IBM may use an independent auditor to assist with such verification, provided I IBM has a written confidentiality agreement in place with such auditor.

Resolution

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D. Nothing in this Agreement shall confer on either party any rights in any trade name, business name, trade mark or other proprietary name or mark of the other party.

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C. Response Times.

-Run-time/Operational Environment

Severity	Definition	Response Time
Severity 0	Business stopping outage; Total enterprise-wide or mission-critical application failure.	1 hr
Severity 1	Application shows severe uncharacteristic behaviour or is frequently unavailable. Corruption / loss of data	4 hrs
Severity 2	Documented functionality cannot be used or is behaving incorrectly	12 hrs
Severity 3	Non-critical: business function is operable with workarounds.	40 hrs

- Development Environment

Severity	Definition	Response Time
Severity 0	Critical: Specifically the Software cannot be installed. The Software Build Process fails; development function is operable but substantially degraded; affected area(s) of development can operate but with heavy reliance on workarounds.	4 hrs
Severity 1	Critical: development function is operable but substantially degraded; long-term exposure to workarounds may impact progress; interruptions and delays to schedule likely.	8 hrs
Severity 2	Non-critical: development function is operable with workarounds.	24 hrs
Severity 3	General usage questions, recommendations for enhancements. A workaround	40 hrs

	or partial solution exists.	
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D. Technical Support/ IBM Care. IBM allows Licensee to report an unlimited number of cases and access to its technical support group ("IBM Care") by Licensee's support contacts. Licensee's who elect to acquire Platinum support may appoint, six (6) IBM support contacts, four of which are read-only. Licensee shall ensure that all IBM support contacts are IBM certified following training in the use of IBM products. The hours of operation for the technical support group service are from 9:00 a.m. until 5:30 p.m. local time *Monday* through *Friday* excluding local holidays. The technical support desk can be reached via telephone, twenty-four (24) hours a day for Severity 0 errors.

E. Updates. IBM will, from time to time, provide to Licensee Updates to the Software which are released by IBM during the term of this Agreement. IBM shall determine, in its sole discretion, when Updates shall be made available to Licensee. Licensee is responsible for the installation of Updates from one release to the next of the Software.

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G. Licensee's Responsibilities. As a condition to the provision of workarounds and error corrections, Licensee will (i) appoint two (2) IBM certified employees to serve as primary contacts between Licensee and IBM, and will ensure that Licensee's support inquiries are initialized and handled through these contacts; (ii) provide IBM with reasonable access to all necessary personnel to provide information regarding errors or problems reported by Licensee; and (iii) provide IBM with remote access to the Software. If appropriate, IBM will provide on-site support personnel. In such event, Licensee shall reimburse IBM for such support personnel on a time and materials basis, including reasonable and actual travel and incidental expenses as agreed to by the parties in writing prior to travel. Such reimbursement shall be due and payable immediately upon receipt of invoice. The Licensee will provide or procure the provision of Level 1 and Level 2 support as described in the IBM Support Policy handbook.

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- promptly notifies IBM in writing of the claim;
- allows IBM to control, and cooperate with IBM in, the defense and any related settlement negotiations; and
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B. Remedies

If such a claim is made or appears likely to be made, Licensee agrees to permit IBM, in IBM's discretion, to: i) enable Licensee to continue to use the Software; ii) modify it; or iii) replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, Licensee agrees to immediately discontinue use of the Software and return it and all copies to IBM on IBM's written request. IBM will then give Licensee a credit equal to the amount Licensee paid for the returned Software.

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- Software use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of the Software, when a claim could have been avoided or the risk of a claim reduced by using the current version or release;
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8. Termination

A. The license term shall commence upon the Effective Date of this Agreement and, subject to Licensee's payment of the requisite Software license fee set out in and in accordance with the applicable Order Form, shall continue in perpetuity unless terminated in accordance with the terms of this Agreement or as otherwise agreed between the parties.

B. IBM may terminate this Agreement or an Order Form upon any material breach of this Agreement by Licensee that, if capable of cure, is not cured within 30 days following written notice thereof. Failure by Licensee to pay uncontested license fees for the Software under the payment terms specified in this Agreement or as stated on IBM's invoice for such Software shall be a material breach to the extent Licensee has received notice of such non-payment of uncontested fees and did not make payment within 30 days of receiving such notice. Except as otherwise specifically stated herein, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy.

C. Expiration of the provision of Software Support Services at the end of any given annual period shall not affect the continuation of the remainder of this Agreement nor the Licensee's right to use the Software.

D. Upon termination of this Agreement, all licenses granted hereunder terminate and Licensee will cease using and shall immediately return or destroy the Software and Documentation and all copies in any form. Termination of this Agreement or of an applicable Order Form based on Licensee's material default or for Licensee's convenience shall not relieve Licensee's obligation to pay all fees that are due and payable under any Order Form accrued up to and including the effective date of such termination.

9. Confidentiality

All information exchanged is non-confidential to the extent such information is not classified as non public, private, or confidential pursuant to the Minnesota Data Practices Act, Minnesota Statutes Chapter 13. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement or data sharing agreement consistent with the Minnesota Data Practices Act, Minnesota Statutes Chapter 13, or other applicable law.

10. General

A. Assignment. Except as otherwise stated in this Agreement, the Licensee shall not be entitled to assign or otherwise transfer this Agreement nor any of its rights or obligations hereunder without the prior written consent of IBM. IBM may assign its rights to payments under this Agreement without obtaining Licensee's consent. IBM shall be entitled to assign or transfer this Agreement or any of its rights or obligations hereunder upon the giving of thirty (30) days prior written notice to the Licensee. This Agreement shall be binding upon the parties and enure to the benefit of their respective successors and permitted assigns.

B. Waiver/Amendment. The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party. No amendment of any provision of this Agreement shall be binding on the parties unless made by a written instrument and signed by a duly authorized representative of each of the parties.

C. Force Majeure. If the performance of this Agreement, or any obligation hereunder, except the making of payments, is prevented, restricted, or interfered with by reason of any act or condition beyond the reasonable control of the affected party, the party so affected will be excused from performance to the extent of such prevention, restriction, or interference.

D. Severability. The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect or impact the continuation in force and effect of the remainder of this Agreement.

E. Independent Contractors. Nothing in this Agreement shall be construed as creating a partnership or joint venture of any kind between the parties or as constituting either party as the agent of the other party for any purpose whatsoever and neither party shall have the authority or power to bind the other party or to contract in the name of or create a liability against the other party in any way or for any purpose.

F. Notice. Any notice, request, instruction or other document to be given under this Agreement shall be given only in English and shall be delivered or sent by hand, post, facsimile transmission or email, such facsimile transmission or email notice to be confirmed by letter posted within 12 hours to the postal address of the other party set out in this Agreement or such other addresses as may have been notified. Any such notice or other document shall be deemed to have been served: (i) if delivered or sent by hand, at the time of delivery; (ii) if sent by post, upon the expiration of 48 hours after posting

and (iii) if sent by facsimile transmission or email, upon the expiration of 12 hours after dispatch.

G. Disputes/Law. (i) Except for Intellectual Property matters where an injunction or other equitable relief may be necessary, prior to the commencement of any formal proceedings, the parties to this Agreement shall attempt in good faith to reach a negotiated resolution by each designating an officer of appropriate authority to work together to resolve the dispute and by recourse (if and for so long as both parties agree) to whatever means they deem appropriate, including the use of technical, legal, accounting or other experts, each party to bear its own costs in relation to such expertise as applicable; (ii) This Agreement shall in all respects be governed by and construed in accordance with the laws of Minnesota; (iii) Each party irrevocably agrees that the courts of the Minnesota have non-exclusive jurisdiction to hear and decide such suit, action or proceedings and to settle such disputes which may arise out of or are in connection with this Agreement and, for these purposes, irrevocably submits to the jurisdiction of the courts of the Minnesota.. The parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods, if applicable.

H. Consumer Rights. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

I. Compliance with Laws Import/Export. Licensee agrees to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

Licensee represents and warrants and that Licensee is neither a Prohibited Person nor owned or controlled by a Prohibited Person. "Prohibited Persons" shall mean a person or entity appearing on the lists published on the Internet website of the U.S. Department of Commerce, Bureau of Industry and Security, under the section "Lists to Check (<http://www.bis.doc.gov/ComplianceAndEnforcement/ListsToCheck.htm>) as amended from time to time, that is prohibited from acquiring ownership or control of items under this Agreement, or with which Licensee is prohibited from doing business.

J. Business Contact Info. Licensee authorizes IBM, an IBM Company and its parent company International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use Licensee's business contact information wherever they do business, in connection with IBM products and services, or in furtherance of Licensor's business relationship with Licensee.

K. Statute of Limitations. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation: 1) neither party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two years after the cause of action became known or should reasonably have been known; and 2) upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.

L. No Third Party Rights. No right or cause of action for any third party is created by this Agreement, nor is IBM responsible for any third party claims against Licensee, except as permitted in Section 6 (Items for Which IBM May Be Liable) above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.

M. State audits. Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract.

N. Entire Agreement. This Agreement and its Order Form(s), attachments or schedules, constitutes the complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes all prior oral or written communications between the parties with respect to the subject matter hereof. Each of the parties acknowledges and agrees that in entering into this Agreement, and the Order Form(s) referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty, understanding, promise or assurance (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement as a warranty. Nothing in this Section shall operate to limit or exclude any liability for fraud. The terms of this Agreement shall prevail notwithstanding any different, conflicting, or additional terms that may appear in any purchase order or other Licensee document. In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision in any Order Form, attachment or schedule, the provision in the Order Form, attachment or schedule shall take precedence provided such Order Form, attachment or schedule has been executed by both parties.

If Customer is not in the US, remove the following clause.

IBM is an Equal Employment Opportunity employer. As such, 41 CFR 60-1.4(a), 60-250.5 and/or 60-300, & 60-741.5 of the Code of Federal Regulations Pertaining to U.S. Department of Labor are herein incorporated by reference

JUL 10. 2012 2:11PM

IN WITNESS WHEREOF, the parties hereto have entered into this Attachment as of the date of last signature below

Accepted and agreed by Licensees:

Steven E. Carlson
(Signature)

Steven E. Carlson
(Printed Name)

Deputy Commissioner
(Title in Company)

Date: July 13, 2012

Accepted and agreed by IBM

Meenakshi Indaran ✓
(Signature)

Pam Woehle
(Printed Name)

Vice President, SWG Industry Solutions
(Title in Company)

Date: July 13, 2012

Department of Administration

(Pursuant to Mhu. Stat. § 16C.05, subd. 2)

By: [Signature]
Negotiations Manager

Date: 7/14/12