

**SAMPLE SOFTWARE LICENSE AGREEMENT**

THE EFFECTIVE DATE, LICENSEE'S NAME AND ADDRESS, TAXPAYER IDENTIFICATION NUMBER, E-MAIL ADDRESS, SERIAL NUMBER, SOFTWARE DESCRIPTION, ADDRESS OF THE DESIGNATED LOCATION, LICENSE MODEL, TOTAL NUMBER OF COMPUTERS ARE UNIQUE TO EACH LICENSEE AND REMAIN AS SET FORTH IN THE MOST RECENT SOFTWARE LICENSE AGREEMENT PROVIDED TO YOU BY APPLIED BUSINESS SOFTWARE, INC., HOWEVER OTHER TERMS AND CONDITIONS MAY DIFFER.

**APPLIED BUSINESS SOFTWARE, INC.  
SOFTWARE LICENSE AGREEMENT**

This agreement (the "Agreement") with an effective date of \_\_\_\_\_, (the "Effective Date") is entered between Applied Business Software, Inc., a California corporation with a place of business at 2847 Gundry Avenue, Long Beach, California 90755 ("Licensor"), and \_\_\_\_\_, having a taxpayer identification number \_\_\_\_\_ and on the date of this Agreement a place of business at \_\_\_\_\_ and an e-mail address of \_\_\_\_\_ ("Licensee").

**RECITALS**

- A. Licensee desires to obtain a license from Licensor for the Software described herein, having serial number \_\_\_\_\_ (collectively the "Software").
- B. Licensor is willing to grant a license to Licensee for the Software, pursuant and subject to the terms and conditions of this Agreement including the General Terms and Conditions ("GTC") attached hereto as exhibit "A" and made a part of this Agreement.

In consideration of these premises, and the mutual promises and conditions in the Agreement the parties agree as follows:

- 1. Software Description: \_\_\_\_\_.
- 2. Designated Location: \_\_\_\_\_.
- 3. License Model: \_\_\_\_\_.
- 4. Total Number of Computers: \_\_\_\_\_.
- 5. Counterparts. This Agreement may be executed in counterparts. For purposes hereof, a facsimile copy or a scanned and e-mailed copy of this Agreement, including the signature page hereto, shall be deemed to be an original.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first written above.

**APPLIED BUSINESS SOFTWARE, INC.**

**LICENSEE**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**EXHIBIT "A" TO  
APPLIED BUSINESS SOFTWARE, INC. SOFTWARE LICENSE AGREEMENT**

**GENERAL TERMS AND CONDITIONS**

These General Terms and Conditions ("GTC") is entered into between Applied Business Software, Inc., a California corporation, with a place of business located at 2847 Gundry Avenue, Signal Hill, California 90755 ("Licensor") and ("Licensee") which means you or the legal entity you are executing this GTC on behalf of. By you executing this GTC on behalf of the legal entity, you represent that you have the legal authority to bind that legal entity to this GTC for their use of the software ("Software") as set forth in the latest fully executed Software License Agreement between Licensor and Licensee (the "Agreement"). Please review the terms of this GTC thoroughly. This GTC constitutes a legal agreement between Licensee and Licensor. By clicking "I AGREE" and/or executing a hard copy of this GTC, Licensee is accepting all the terms and conditions of this GTC and the Agreement. By accessing or using the Software, Licensee is accepting all the terms and conditions of this GTC and the Agreement. Do not click the "I AGREE", and do not use the Software unless, you agree to all the terms of this GTC and the Agreement.

**License Model: Perpetual**

The following General Terms and Conditions apply to a Perpetual License as set forth in the Agreement.

1. In consideration of Licensee's agreement to abide by the terms and conditions of the Agreement, and subject to the other restrictions contained in this GTC and the payment by Licensee of Licensor's current license fees for the Software, Licensor hereby grants to Licensee, and Licensee hereby accepts, a non-exclusive, non-transferable license to install the Software, in object code form only, and only in accordance with the terms and conditions of this Agreement. This is a Per Device license and not a Concurrent license.
2. No other Computer may access the Software except that if the Total Number of Computers as set forth in the Agreement is greater than 1, Licensee may install the Software on a Terminal Server located at the Designated Location for remote use of the Software on individually identifiable Computers located at locations other than the Designated Location, provided that Licensee adheres to all of the other provisions of this GTC and the Agreement and provided the total number of Computers on which the Software is installed or from which it is accessed does not exceed the number set forth in the Agreement. Any Terminal Server that is running the Software counts as one of the Total Number of Computers set forth in the Agreement. Computers at the Designated Location may not access the Software via the Terminal Server. A Terminal Server is any type of Computer on which the Software can be installed, and which may connect with other Computers, terminals, workstations, servers and/or routers to allow use of the Software by any such Computer. Licensee may not have the Software hosted by a third-party hosting service other than any third-party hosting service that may be offered by Licensor to Licensee.
3. If a Computer on which the Software is installed is replaced for any reason, and the Software is permanently deleted from such Computer, Licensee may install the Software on another Computer which will become the new assigned Computer for the Software. If a Computer that remotely accesses the Software is replaced for any reason and will never again access the Software, an individually identifiable remote replacement Computer may access the Software in place of the replaced remote Computer.
4. Term and Termination. The term of the Agreement and the license granted thereunder shall begin as of the Effective Date and shall remain in force until terminated by either party as provided herein. The Agreement and the license granted therein shall automatically terminate upon the breach by Licensee of any of the provisions of the Agreement. Licensor may suspend Licensee's rights to utilize the Software during any time Licensee is delinquent in its payments to Licensor pursuant to any agreements between Licensee and Licensor, whether written or oral, including, but not limited to, any Software Maintenance and Support Agreement between Licensee and Licensor or any such agreements have not been executed by Licensee and received by Licensor within 30 days of their being mailed by Licensor

to Licensee. Licensee may terminate the Agreement at any time by providing written notice thereof to the Licensor.

5. Effect of Termination. Within ten (10) days after the date of termination of the Agreement for any reason, Licensee shall return all original copies of the Software and give Licensor written notice certifying that the original copies of the Software and any other material received from Licensor in connection with this Agreement have been returned to Licensor, and that the Software has been erased from all computer memories and storage devices within Licensee's control and that Licensee has not retained any copies of the Software. In addition to all other remedies available to Licensor under the Agreement, Licensor shall be entitled to specific performance of Licensee's obligations to return and erase the Software and other materials licensed under the Agreement.
6. Entire Agreement. The Agreement (including this GTC) is the complete and exclusive statement of the agreement between the parties with respect to the subject matter hereof and supersedes any and all prior written and/or oral contracts, proposals, offers, quotations, marketing presentations and other communications between the parties relating to the subject matter of the Agreement including the license of the Software, and all prior Software License Agreements of any kind between the parties. Licensee agrees that any varying or additional terms contained in any purchase order or other written notification or document issued by Licensee in relation to the Software, hereunder shall be of no effect.
7. Updates and Support. Unless otherwise agreed in writing between the parties pursuant to a separate Maintenance and Support Agreement, Licensee will not be entitled to use any Web services provided by Licensor including, but not limited to LendersViewCentral, BorrowersViewCentral, PartnersViewCentral, HoldersViewCentral, ACH Payment Processing, Electronic Filing of IRS forms 1098, 1099-INT and 1099-MISC, or receive any enhancements, updates or new versions of the Software ("Upgrades"), and Licensor shall not be obligated to maintain or support the Software in any way. Any Upgrades furnished pursuant to Maintenance and Support Agreement between the parties shall be considered "Software" under this Agreement and shall be licensed to Licensee subject to the terms and conditions of this Agreement. Licensor providing Upgrades or maintenance or support for the Software and/or billing for such services and/or receiving compensation for such services shall not waive any of Licensor's rights or estop Licensor from enforcing its rights under this Agreement.
8. Licensee agrees that Licensor may conduct on-site audits of Licensee's use of the Software at Licensee's premises for compliance with the terms of this Agreement at any time, upon reasonable notice and during business hours.

**License Model: Hosted**

The following General Terms and Conditions apply to Hosted as set forth in the Agreement.

9. Licensee must have a Perpetual License to have Hosted.
10. The Software as set forth in the Agreement will be hosted exclusively by Licensor or its designated third-party vendor.
11. The Total Number of Computers as set forth in the Agreement shall be Concurrent instead of Per Computer so long as the Software is exclusively hosted by Licensor or its designated third-party vendor.
12. Control and Location of the Hosted. The method and means of providing the Hosted shall be under the exclusive control of Licensor.
13. Other Internet Based Services. Licensor may provide other Internet based services (the "Other Services") to be used in conjunction with the Hosted services. Licensor may charge an additional fee or fees to Licensee for Licensees' use of any of these Other Services. Licensor may change or cancel these Other Services at any time.

14. Support; Maintenance. To receive the Hosted, Licensee must have a current, valid and enforceable Software Maintenance Agreement (the “SMA”) with Licensor for the Software.

**License Model: SaaS**

The following General Terms and Conditions apply to a SaaS License as set forth in the Agreement.

15. Licensor grants Licensee a renewable, nonexclusive, royalty-free, and worldwide right as set forth in the Agreement and subject to the other restrictions contained in this GTC to access the Software Concurrently on the Total Number of Computers as set forth in the Agreement via the SaaS. This is a Concurrent license. Licensor may change, discontinue or deprecate any of the Software or SaaS (including the Software and SaaS as a whole) or change or remove features or functionality of the Software or SaaS from time to time.
16. Control and Location of SaaS. The method and means of providing the SaaS shall be under the exclusive control of Licensor.
17. Click-Through Terms and Conditions. Where an employee of Licensee is required to “click through” or otherwise accept or made subject to these or any other online terms and conditions in accessing or using the SaaS, such terms and conditions are binding and shall have full force and effect as to the SaaS, and this GTC.
18. Other Internet Based Services. Licensor may provide other Internet based services (the “Other Services”) to be used in conjunction with the SaaS services. Licensor may charge an additional fee or fees to Licensee for Licensees’ use of any of these Other Services. Licensor may change or cancel these Other Services at any time.
19. Support; Maintenance.
  - 19.1. Services Covered by the SaaS license (“Services”).
    - (a) Telephone Consultation. Licensor shall provide to Licensee telephone consultation with respect to the use and operation of the Software, Monday through Friday between the hours of 9:00 AM and 6:00 PM (Pacific time zone), excluding all Licensor holidays (“Business Hours”). If support personnel are unavailable at the time Licensee calls during Business Hours, Licensor will use commercially reasonable efforts to return the call no later than the end of the next business day following the business day in which the call was received. Licensor is obligated to provide a maximum of eight (8) hours of telephone consultation per month. If Licensor agrees, in its sole discretion, to provide additional hours of telephone consultation in any given month, Licensee will be charged and agrees to pay Licensor’s then current hourly rate for such telephone consultation.
    - (b) Provision of Upgrades. Licensor shall provide Licensee with enhancements, updates and new versions of the Software (collectively, “Upgrades”), if any, generally released by Licensor during the term of this Agreement. Such Upgrades will be provided at no additional charge to Licensee. Any Upgrades furnished pursuant to this Agreement shall be considered “Software” under this Agreement and shall be licensed to Licensee pursuant and subject to the terms and conditions of this Agreement.

19.2. Services Not Covered by the SaaS license.

- (a) Exclusions. Licensor shall have no obligation to provide Services for any hardware used by Licensee in connection with use of the Software or for any request for services caused by:

(i) the improper use, alteration, or damage of the Software; (ii) modifications to the Software not made by Licensor; (iii) application or other software not provided or approved by Licensor; (iv) use of the Software on hardware that has not been approved by Licensor for use with the Software; (v) failure to meet the system requirements for the then current version of the Software; or (v) hardware failures.

(b) Scope of Services. This GTC and the Agreement only covers the Services described in this GTC and Agreement and does not include other services, including without limitation: (a) Software customization; (b) custom development of software; or (c) training of Licensee's personnel in the use of the Software. Licensor may agree, in its sole discretion, to provide such other services pursuant to a separate written agreement between the parties, and for a separate charge.

(c) Back Version Support. Licensor shall only be obligated to provide Services for Software corresponding to the most recent Upgrade; provided, however, Licensor may provide back version support for a limited period of time, in its sole discretion.

19.3. Licensee Obligations. Licensor agrees to provide the Services hereunder only if Licensee meets all of the following conditions and obligations: (a) the Software is used in the form in which Licensor originally supplied it, plus all Upgrades delivered by Licensor to Licensee; (b) the Software is and has been at all times used in a proper manner and in accordance with the instructions and documentation supplied by Licensor; (c) Licensee has agreed to and is in compliance with the GTC and Agreement; and (d) Licensee is in compliance with all of the terms and conditions of this GTC and Agreement.

#### **License Model: Hosted and SaaS**

The following General Terms and Conditions apply to Hosted and SaaS Licenses as set forth in the Agreement.

#### **20. Term and Termination; Renewals.**

20.1. Term. This GTC and Agreement are legally binding as of the Effective Date and shall continue until terminated as provided for herein. Unless this GTC and Agreement are terminated earlier in accordance with the terms set forth herein, (the "Initial Term") shall commence on the Effective Date and continue until twelve months after the Effective Date. Following the Initial Term and unless otherwise terminated as provided for in this GTC and Agreement, this GTC and Agreement shall automatically renew for successive one (1) year terms (each, a "Renewal Term") until such time as a party provides the other party with written notice of termination; provided, however, that: (a) such notice be given no fewer than thirty (30) calendar days prior to the last day of the then-current term; and, (b) any such termination shall be effective as of the date that would have been the first day of the next Renewal Term. This GTC and Agreement shall automatically terminate upon the breach by Licensee of any of the provisions of this GTC or Agreement.

20.2. Payments upon Termination. Upon the termination of this GTC or Agreement, Licensee shall immediately pay to Licensor all amounts due and payable under this GTC and Agreement, if any, through the end of the then current Term.

20.3. Return of Licensee Data. Within 24 hours of the termination of this GTC or Agreement, Licensee must contact Licensor and advise Licensor in writing to either disable the Licensee's account and then irretrievably delete and remove the Licensee's data or retain the Licensee's data in a limited function account for at least 60 days after termination of this GTC (the "Retention Period") so that the Licensee may extract its data. At the end of the Retention Period, Licensor may disable Licensee's account and irretrievably delete and remove Licensee's data.

21. The latest Quote executed by the parties contains the prices and services to be provided by Licensor to Licensee herein.
22. Fees; Renewals; Billing.
  - 22.1. Fees. Licensee shall be responsible for, and shall pay to Licensor, the fees as described in the latest executed quote between Licensor and Licensee (the “Quote”) subject to the terms and conditions contained in this GTC, the Agreement, and the Quote.
  - 22.2. Renewals. Should the SaaS or Hosted continue beyond the then-current Term, the SaaS and/or Hosted Fees for the Renewal Term may be increased by notice from Licensor to Licensee no later than thirty (30) calendar days from the expiration of the then Initial Term or the then Renewal Term.
  - 22.3. Billing. Any sum due Licensor for the SaaS and/or Hosted for which payment is not otherwise specified shall be due and payable in full without any deduction or offset within fifteen (15) calendar days after the date of the invoice from Licensor to Licensee.
23. Entire Agreement. The Agreement (including this GTC and Quote) is the complete and exclusive statement of the agreement between the parties with respect to the subject matter hereof, and supersedes any and all prior written and/or oral contracts, proposals, offers, quotations, marketing presentations and other communications between the parties relating to the subject matter of the Agreement including the license of the Software, the Hosted and SaaS and all prior Software License Agreements of any kind between the parties. Licensee agrees that any varying or additional terms contained in any purchase order or other written notification or document issued by Licensee in relation to the Software, Hosted or SaaS licensed hereunder shall be of no effect.

**License Model: Perpetual, Hosted and SaaS**

The following General Terms and Conditions apply to The Perpetual License, Hosted and The SaaS License as set forth in the Agreement.

24. A “Computer” means a virtual or physical electronic device that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions.
25. A “Per Device” license is based on the total number of Computers that have access to the Software.
26. A “Concurrent” license is based on the number of simultaneous Computers accessing the Software.
27. The “Effective Date” is the date of the latest fully executed Agreement between Licensor and Licensee.
28. For the purposes of 11 U.S.C. 365(n), the parties acknowledge and agree that this GTC constitutes a license grant of intellectual property in software from Licensor to Licensee.
29. The license granted under this Agreement only covers the Software modules listed in the Agreement. Any additional modules currently available from Licensor, or made available in the future, are not covered by this Agreement.
30. All Licensee Computers authorized to install and access the Software pursuant to this GTC and the Agreement must have Internet access for registration and periodic license validation.
31. Suspension of Services. Licensor may suspend any SaaS or Hosted services or disconnect SaaS services to Licensee until all payments due including all interest accrued have been paid and satisfied in full. Licensor may suspend or terminate Licensee’s right to access or use any portion or all of the Software or SaaS immediately and without notice if Licensor determines, in its sole discretion, that (a) Licensee’s use of the Software or SaaS (i) poses a security risk to the Software or SaaS or any third party, (ii) may

adversely impact the Software or SaaS or the systems or content of any other Software or SaaS Licensor customer, (iii) may subject Licensor, its affiliates, or any third party to liability, or (iv) may be fraudulent; (b) Licensee has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of Licensee's assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding. Licensor may suspend Licensee's rights to utilize the Software during any time Licensee is delinquent in its payments to Licensor pursuant to any agreements between Licensee and Licensor, whether written or oral, including, but not limited to, any software maintenance agreement between Licensee and Licensor or any agreements, including but not limited to this GTC, the Agreement, have not been executed with an original signature by Licensee and received by Licensor within 30 days of their being delivered by Licensor to Licensee.

32. Taxes. Licensee represents and warrants that it is an independent contractor for purposes of federal, state, and local taxes. Licensee agrees that Licensor is not responsible to collect or withhold any such taxes, including income tax withholding and social security contributions, and sales tax for Licensee.

33. Warranty Exclusion and Limitation of Liability.

33.1. THE SOFTWARE, WHETHER PERPETUAL, HOSTED OR SaaS IS PROVIDED BY LICENSOR "AS-IS" AND LICENSOR MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO THE SOFTWARE, WHETHER PERPETUAL HOSTED OR SaaS EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. Without limiting the generality of the foregoing, Licensor makes no warranty with respect to, and Licensee accepts sole responsibility for, the selection of the Software, whether Perpetual, Hosted or SaaS to achieve Licensee's intended results, any results obtained from such use, and the selection, use of and results obtained from any other program, programming equipment or services operated or applied in connection with the Software, whether Perpetual, Hosted or SaaS. Without limiting the generality of the foregoing, Licensor also makes no warranty that the Software, the Hosted or SaaS will meet Licensee's technical, legal or other requirements, that any of the documents, including but not limited to notices, letters or forms, comply with current law, or that the operation of the Software, the Hosted or SaaS will be uninterrupted or error-free.

33.2. IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SOFTWARE, THE HOSTED AND SaaS, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO THE SHORTEST PERIOD OF TIME REQUIRED BY LAW.

33.3. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR, ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.

33.4. Limitation of Liability. NEITHER LICENSOR, NOR ANY PERSON INVOLVED IN THE CREATION, PRODUCTION, DELIVERY OR INSTALLATION OF THE SOFTWARE, THE HOSTED OR SaaS SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE OR SaaS, OR OTHERWISE OUT OF OR CONNECTED WITH ITS PERFORMANCE HEREUNDER EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL LICENSOR'S ENTIRE LIABILITY UNDER THIS GTC EXCEED THE AMOUNTS PAID BY LICENSEE TO LICENSOR HEREUNDER.

34. License and Copy Restrictions.

- 34.1. This license is not a sale of the original or any copy of the Software. Licensor holds the copyright and other rights in the Software.
- 34.2. Only employees of Licensee are authorized to access the Software and only from a licensed Computer.
- 34.3. Licensee may maintain copies of the Software in machine readable form for backup and archival purposes only. Documentation for the Software is included in the Software in electronic format. Licensee may use the documentation for the Software to assist in Licensee's use of the Software. Licensee may print one (1) copy of the documentation for each computer for which Licensee has obtained a license to use the Software under this Agreement.
- 34.4. Except as otherwise provided in this Agreement, unauthorized copying, modification and distribution of the Software and associated documentation is expressly forbidden and constitutes a material breach of this Agreement.
- 34.5. Other than as set forth in the Agreement, Licensee may not make or distribute copies of the Software, or electronically transfer the Software from one computer to another or over a network.
- 34.6. Any file which contains data, tables, queries, indexes and other information assembled into an organized format suitable for access by Software ("Database") may only be accessed by the Software and only by computers licensed by this Agreement. The Database may not be modified, disassembled, decompiled, reverse engineered, distributed or otherwise transferred to a third party. The Database may be copied in machine readable form for backup and archival purposes only. The Database may be accessed by programs not including the Software provided such access is for Licensee's internal use only and is not used to produce a product that is provided to a third party for a fee. Any third-party desiring to access the Database and/or the Software must execute Licensor's then current Vendor Non-Disclosure Agreement which must also include the agreement and execution of Licensee and Licensor.

35. Installation. At Licensee's request, Licensor shall provide a reasonable amount of remote assistance with respect to the installation of the Software; however, responsibility for proper installation remains with Licensee. If Licensee requests, Licensor shall provide on-site installation assistance at Licensor's then current time and materials rates and in accordance with Licensor's then current terms and conditions covering installation services.

36. License Metering and Auditing.

- 36.1. Licensee acknowledges and understands that the Software has a built-in license metering module. The Software may periodically prompt the user to validate the copies of the Software installed on each computer. Licensee will have fifteen (15) days to respond to a validation prompt. If Licensor does not receive a response to the validation prompt within this 15-day period, the Software will disable itself and will become inoperable.
- 36.2. Licensee acknowledges that: (i) the Software may use Licensee's internal network for license metering of installed versions of the Software; (ii) the Software may use Licensee's internal network and Internet connections for the purpose of transmitting license-related data to Licensor. Licensee further acknowledges that such information may be used by Licensor for validating the authenticity of the license and monitoring the license-related data, in order to protect the Software against unlicensed or illegal use of the Software. Licensee further acknowledges that license

auditing and Software activation is based on the exchange of license related data between Licensee's computers and Licensor's server. Licensee must have an active Internet connection to receive the necessary Installation, Upgrade or License Update codes.

36.3. Licensee acknowledges and agrees that Licensor will automatically receive license metering and compliance information from the built-in metering module set forth in this Section 36. Licensee agrees to follow any applicable requirements of this Agreement related to its use of the Software.

36.4. Licensee acknowledges and agrees that notwithstanding any metering module or other measures put in place by Licensor, Licensee is solely responsible and liable for any and all violations and breaches of this Agreement, whether intentional or unintentional.

36.5. Licensee acknowledges and agrees that Licensee shall not take any action to circumvent the license metering module or to delete, modify or configure any data so as to prevent the accurate reporting from the license metering module.

37. Ownership and Confidentiality. The Software is the valuable, confidential, and proprietary property of Licensor, and unless otherwise agreed in writing between the parties, Licensor shall retain exclusive title to this property both during the term and after the termination of this Agreement. Without limitation, Licensee acknowledges and agrees that all patent rights, copyrights and trade secret rights in and to the Software shall remain the exclusive property of Licensor at all times. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, LICENSEE SHALL NOT, IN WHOLE OR IN PART, AT ANY TIME DURING THE TERM OF OR AFTER THE TERMINATION OF THIS AGREEMENT: (i) SELL, ASSIGN, LEASE, DISTRIBUTE, OR OTHERWISE TRANSFER THE SOFTWARE TO ANY THIRD PARTY; (ii) COPY OR REPRODUCE THE SOFTWARE IN ANY MANNER; (iii) DISCLOSE THE SOFTWARE TO ANY PARTY, EXCEPT TO LICENSEE'S EMPLOYEES AND CONTRACTORS WHO REQUIRE ACCESS TO THE SOFTWARE FOR THE PURPOSES OF THIS AGREEMENT; CONTRACTORS MAY ONLY ACCESS THE SOFTWARE ON A LICENSED COMPUTER AND MUST EXECUTE LICENSOR'S THEN CURRENT VENDOR NON DISCLOSURE AGREEMENT WHICH MUST ALSO INCLUDE THE AGREEMENT AND EXECUTION OF LICENSEE AND LICENSOR.; (iv) MODIFY, DISASSEMBLE, DECOMPILE, REVERSE ENGINEER OR TRANSLATE THE SOFTWARE; OR (v) ALLOW ANY PERSON OR ENTITY TO COMMIT ANY OF THE ACTIONS DESCRIBED IN (i) THROUGH (iv) ABOVE. Licensee shall take appropriate action, by instruction, agreement, or otherwise, with respect to its employees and contractors permitted under this Agreement to have access to the Software, to ensure that all of Licensee's obligations under this Section shall be satisfied.

38. General.

38.1. Governing Law/Class Action Limitation. This GTC, Quote and Agreement shall be governed by the laws of the State of California without regard to conflicts of law principles, and shall benefit Licensor, its successors and assigns. Licensee hereby consents to the exclusive jurisdiction of and venue of the state courts sitting in Los Angeles County, California or the federal courts in the Central District of California to resolve any disputes under this GTC, Quote and Agreement. The Licensor and Licensee agree that no class action lawsuits, private attorney-general actions and/or any other proceedings whereby someone or some entity acts in a representative capacity are allowed under this GTC, Quote and Agreement. Any joinder of separate individual proceedings is prohibited.

38.2. Waiver and Amendment. This GTC, Quote and Agreement may be amended and rights under this GTC, Quote and Agreement may be waived only by a written document signed by an authorized

officer of Licensee and Licensor. Failure at any time of either party to require performance of any obligation of the other under this GTC, Quote or Agreement shall not affect the right at a later time to require such performance. No waiver of the breach of any provision of this GTC, Quote or Agreement shall be deemed a further or continuing waiver of any such breach or a waiver of the breach of any other provision of this GTC, Quote or Agreement. No Licensor dealer, agent or employee is authorized to make any amendments to this GTC, Quote or Agreement. If this GTC is modified by the parties and original signatures are affixed to this GTC as modified (the "Modified GTC") then the Modified GTC will take precedence over this GTC.

- 38.3. Attorneys' Fees. If either party commences any action or proceeding to enforce this GTC, Quote or Agreement or any right arising under this GTC, Quote or Agreement, the prevailing party shall be entitled to recover from the other party the actual attorneys' fees, costs and expenses (and all related fees, costs and expenses) incurred by it in connection with such action or proceeding and in connection with the enforcement of any judgment thereby obtained.
- 38.4. Assignment. Licensee may not assign any of its rights, nor delegate any of its obligations, under this GTC, Quote or Agreement without Licensor's prior, written consent, which consent Licensor may withhold in its sole discretion. Licensee understands and agrees that the license granted hereunder the Agreement and the Agreement are not transferable, assignable, subject to sale, rental, lease, resale or sublicense of any kind.
- 38.5. Parties Bound. This GTC, Quote and Agreement shall be binding on and inure to the benefit of Licensor and its successors and assigns and to Licensee.
- 38.6. Injunctive Relief. Licensee acknowledges that any breach of Licensee's obligations under this GTC, Quote or Agreement may result in irreparable injury for which Licensor shall not have an adequate remedy at law. Accordingly, if Licensee breaches or threatens to breach any of Licensee's obligations under this GTC, Quote or Agreement, Licensor shall be entitled, without showing or proving any actual damage sustained, to a temporary restraining order, preliminary injunction, permanent injunction, and/or order compelling specific performance, to prevent the breach of Licensee's obligations under this GTC, Quote and Agreement. Nothing in this GTC, Quote or Agreement shall be interpreted as prohibiting Licensor from pursuing or obtaining any other remedies otherwise available to it for such actual or threatened breach, including recovery of damages.
- 38.7. Severability. Whenever possible, each provision of this GTC, Quote and Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this GTC, Quote or Agreement is invalid under applicable law, that provision will be ineffective to the extent of the invalidity, without affecting the remainder of that provision or the remaining provisions of this GTC, Quote and Agreement.
- 38.8. Notices. Any notices or reports required by this GTC, Quote or Agreement to be given by one party to the other party shall be made in writing to that party at the physical address or e-mail address as shown on the Agreement or any other address that may be designated in writing from time to time by the party. All notices to be given by either party to the other under this GTC, Quote or Agreement shall be deemed given: (i) upon receipt, in the case of Personal delivery; (ii) on the third day following deposit in the mail if the notice is sent by prepaid certified mail, return receipt requested; (iii) on the date of delivery to a nationally recognized overnight courier service by the party giving notice if the notice is sent via an overnight delivery service; or (iv) on the date e-mailed to the party at the e-mail address set forth in the Agreement.

38.9. Survival. Sections 5, 20.2, 20.3, 33, 36, 37 and 38, of this GTC and any other provisions of this GTC, Quote and the Agreement that may be reasonably interpreted to survive termination of this GTC, Quote and the Agreement, shall survive termination of this GTC, Quote and the Agreement.

38.10. Neutral Interpretation. This GTC, Quote and the Agreement shall be construed in accordance with its intent and without regard to any presumption or any other rule requiring construction against the party causing the same to be drafted and any rules of construction to the contrary, including, without limitation, California Civil Code Section 1654, are hereby specifically waived.

38.11. Export. Licensee shall comply with all applicable provisions of the Export Administration Regulations of the United States Department of Commerce, and all similar laws and regulations, in effect from time to time with respect to the Software and shall provide Licensor with all documentation and data necessary or desirable in monitoring such compliance. Licensee agrees to defend, indemnify and hold Licensor harmless against any liability arising from the failure of Licensee or Licensee's Licensees to comply with such regulations.

38.12. U.S. Government Restricted Rights. If Licensee is a U.S. Government user then the Software is provided with "RESTRICTED RIGHTS" as set forth in subparagraphs (c)(1) and (2) of the Commercial Computer Software Restricted Rights clause at FAR 52.227 19 or subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause DFARS 252.277 7013, or any other successor or similar regulation or statute, as applicable. Manufacturer: Applied Business Software, 2847 Gundry Avenue, Long Beach, California 90755.

**APPLIED BUSINESS SOFTWARE, INC.**

**LICENSEE**

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Date

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Date

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Signature

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Signature

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Print Name

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