

EM-Assist End User License Agreement (Installed)

This End User License Agreement (this "Agreement") is made as of the _____ day of _____ 200_, (the "Effective Date"), by and between EM-Assist, Inc., a _____ corporation having its principal place of business at _____ ("Company"), and _____, a _____ having its principal place of business at _____ ("you").

1. Definitions

1.1 "Documentation" means the software documentation associated with the Software.

1.2 "License Fee" means the fees specified in Exhibit A for the license rights subject to this Agreement.

1.3 "Software" means all or any portion of the _____TM software in binary (object code) form together with any other machine readable materials (including, but not limited to, libraries, header files, and data files), together with any updates thereto provided by Company to you.

2. License and Protection

2.1 License Grant. Company hereby grants to you, subject to the terms and conditions of this Agreement, a non-exclusive, nontransferable, limited right and license to use the Software and Documentation for your internal business use. Company will install the Software at your location at a date and time to be mutual agreed by you and Company.

2.2 Protection of Software. You agree to take all reasonable steps to protect the Software from unauthorized copying or use. You may make one (1) backup or archival copy of the Software to protect yourself from equipment malfunctions and other such failures. You will reproduce the copyright notice and any other legends of ownership on such copy.

2.3 Ownership. Ownership of, and title to, the Software and Documentation (including any copies or adaptations) shall be held by Company. All rights not expressly granted to you in this Agreement are reserved to Company. No right, title, interest or license to any trademark, service mark or logo of Company is granted to you by this Agreement.

2.4 Restrictions. You agree not to disassemble, decompile, or reverse engineer the Software or otherwise attempt to discover the source code and/or other trade secrets of Company. No license is granted to you for any purpose other than as described in this Agreement. Except as expressly authorized in this Agreement, you agree not to sell, rent, lease, encumber, transfer, sublicense, distribute, copy, reproduce, display, modify or share the Software or Documentation. You agree not to obscure or remove proprietary markings on the Software or Documentation. You shall not use or allow the use of the Software or Documentation in contravention of any federal, state, local, foreign or other applicable laws, rules or regulations.

2.5 Benchmark Data. You may not publish or provide the results of any benchmark or comparison tests run on the Software to any third party without Company's prior written consent.

3. Term

3.1 Term of License. Your right to use the Software and Documentation shall begin on the date that the Software is installed by Company and shall continue until terminated in accordance with this Section 3.

3.2 Company's Right to Terminate. Company may terminate this Agreement and your right to use the Software and Documentation by delivery of written notice of termination to you if: (i) you breach any material provision of this Agreement and such breach is not cured within thirty (30) days after written notice from Company describing the breach; (ii) you become the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (iii) you become the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors and such petition or proceeding is not dismissed within sixty (60) days after filing.

3.3 Your Right to Terminate. You may terminate this Agreement at any time by ceasing use of the Software and Documentation and giving notice of termination to Company. Upon termination, all license rights under this Agreement shall terminate, and you shall immediately cease using the Software and Documentation, remove all copies of the Software from your computer(s) and/or server(s) and return to Company any and all copies thereof.

3.4 Infringement Remedies. Should any Software become, or in Company's opinion be likely to become, the subject of a claim of intellectual property infringement or trade secret misappropriation, Company may, at its sole option and expense, either: (i) procure for you the right to continue using the Software; (ii) replace or modify the Software as Company deems necessary; or (iii) terminate this Agreement and refund to you a portion of the License Fee paid by you, calculated on the basis of straight-line depreciation over a period of three (3) years from the Effective Date. The provisions of this Section 3.4 are your sole and exclusive remedy with respect to any claim or potential claim of infringement brought by any third party.

3.5 Effect of Termination. The provisions of Sections 1, 2.2, 2.3, 2.4, 2.5, 3.4, 3.5, 6.3, 6.4, 7, 8 and 9 of this Agreement shall survive any expiration or termination.

4. Support Services. Any maintenance, support and other services to be provided by Company will be provided pursuant to a separate, written agreement signed by both parties.

5. Fees and Taxes. You will pay the License Fee to Company no later than the date of execution of this Agreement by both parties. You will be responsible for, and will promptly pay, all sales and use taxes and other taxes of any nature associated with this Agreement or your receipt or use of the Software and Documentation, except taxes based on Company's net income.

6. Limited Warranty

6.1 Warranty. Company warrants to you that the Software will operate as described in the Documentation for a period of ninety (90) days after delivery, provided that the Software is used as described in the Documentation. THIS IS YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE OF THE SOFTWARE OR DOCUMENTATION. THIS LIMITED WARRANTY IS VOID IF FAILURE OF THE SOFTWARE HAS RESULTED FROM ACCIDENT, ABUSE OR MISAPPLICATION BY YOU.

6.2 Representations and Warranties. You represent and warrant to Company that you have sufficient permission, capacity, consent and authority to enter into this Agreement without conflicting with any other agreement to which you are a party.

6.3 DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF QUALITY, PERFORMANCE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, COMPANY MAKES NO REPRESENTATION OR WARRANTY THAT THE SOFTWARE WILL OPERATE ERROR-FREE OR WITHOUT INTERRUPTION OR THAT ALL ERRORS WILL BE CORRECTED. Some states do not allow the exclusion of implied warranties or limitations on how long an implied warranty may last, so the above limitations may not apply to you.

6.4 LIMITATION OF LIABILITY. COMPANY'S AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL OF ALL PAYMENTS MADE BY OR FOR YOU FOR THE LICENSE FEES. COMPANY SHALL IN NO EVENT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR DOCUMENTATION, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUE, LOSS OF USE OF THE SOFTWARE, LOSS OF DATA, OR COSTS OF RECREATING LOST DATA, OR THE COST OF ANY SUBSTITUTE PROGRAM. YOU SHALL HAVE THE SOLE RESPONSIBILITY TO PROTECT ADEQUATELY AND BACKUP YOUR DATA AND/OR EQUIPMENT USED IN CONNECTION WITH THE SOFTWARE. Some states do not allow the exclusion or limitation of incidental, consequential or special damages, so the above limitations may not apply to you.

7. Indemnification. You agree to indemnify, hold harmless and defend Company and its successors and assigns, at your expense, from and against any and all liabilities, damages, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees and other litigation expenses), for third party claims, actions proceedings, and suits against Company arising out of or relating to your violation or breach of any term of this Agreement or misuse of the Software.

8. Federal Government Purchases

8.1 Applicability. This section applies to all acquisitions of the Software by or on behalf of the federal government, including purchases by prime contractors or subcontractors at any tier under any contract, grant, cooperative agreement, cooperative research and development agreement ("CRADA"), other transaction ("OT"), or other similar activity of the federal government.

8.2 Commercial Item. With your acceptance of delivery of the Software, you agree that the Software qualifies as a "commercial item" or "commercial computer software" within the meaning of the acquisition regulation that applies to this procurement.

9. Miscellaneous

9.1 Governing Law and General Provisions. This Agreement will be governed by the laws of the State of Utah, U.S.A., excluding the application of its conflicts of law rules. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. Venue for any action or proceeding under this Agreement shall be in a federal or state court of competent jurisdiction located in Salt Lake County, Utah.

9.2 Priority of Documents. The terms of this Agreement will prevail over any provisions set forth in any request for proposals, purchase order or other document submitted by you to Company.

9.3 Injunctive Relief. You agree that Company is entitled, in addition to any other remedy available to it at law or in equity, to apply to any court of competent jurisdiction, without the need for posting any bond or other security, for an immediate order to restrain or enjoin any breach and otherwise specifically to enforce the provisions of this Agreement.

9.4 Notices. All notices under this Agreement shall be in writing, and shall be deemed given when personally delivered, or three (3) days after being sent by prepaid certified or registered U.S. mail to the address of a party set forth above or otherwise provided by notice hereunder.

9.5 Amendment. This Agreement may only be amended by a written instrument executed by a duly authorized representative of each party.

9.6 Transfer. Company may assign this Agreement at any time without your consent, but you may not assign this Agreement without the prior written consent of Company.

9.7 Waiver. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.

9.8 Captions. Headings herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.

9.9 Currency. All amounts stated in this Agreement are in U.S. Dollars unless otherwise expressly stated in this Agreement.

9.10 Severability. If any part of this Agreement is found void and enforceable, it will not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms.

9.11 Counterparts. This Agreement may be signed in two or more counterparts, each of which will be considered an original, but all of which together will constitute one instrument.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

EM-Assist, Inc.

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A

License Fees: