

# Appendix D to DIR-TSO-2565

## SOFTWARE LICENSE AND SUPPORT AGREEMENT

Software License Agreement No:

Agular Systems, Inc.  
6611 Hillcrest Suite 416  
Dallas, TX 75205

Customer:

### SOFTWARE LICENSE TERMS AND CONDITIONS

#### 1. Terms of Software License Agreement

Agular and Customer hereby agree that Agular shall provide to Customer the software, software support and documentation as described in Software License Schedule (herein "Schedule") pursuant to the terms and conditions set forth in this Software License Agreement (herein "License"). This License shall become effective when accepted (by execution hereof) by an authorized Agular representative and shall continue in effect until terminated pursuant to DIR Contract DIR-TSO-2565, Appendix A Section 11B ("Termination"). This License, DIR Contract DIR-TSO-2565 and the applicable Schedule constitute the entire agreement of the parties with respect to software, software support and documentation, and are a complete and exclusive statement of the agreement, and any previous agreements relating thereto between Agular and Customer are hereby superseded in their entirety. The following entities will also have the right to license Software from Agular pursuant to the terms of this License: Customer's departments, subsidiaries, affiliates and/or entities directly or indirectly controlling or controlled by or under direct or indirect common control with Customer or any successor thereto. Each such related entity shall be independently liable for its own obligations under each applicable Schedule.

#### 2. Definitions

"Software" shall mean an individual software program, consisting of a series of instructions to be used directly and any revisions or updates to the Software provided to Customer. "Documentation" shall mean the documents and other supporting materials which Agular provides to Customer to support Customer's use of the associated Software.

IN WITNESS WHEREOF, the parties hereto have duly executed the License as of the dates set forth below. For all purposes hereof, the date of the License shall be the date of Agular's acceptance as set forth below.

By execution hereof, the signer certifies that (s)he has read the entire License, that Agular or its representatives have made no agreements or representations except as set forth herein or in the Schedule and that (s)he is duly authorized to execute the License on behalf of Customer.

**Agular:** Agular Systems, Inc.

**Customer:**

**Signed:** \_\_\_\_\_

**Signed:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

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

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

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

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

**State of Organization:** \_\_\_\_\_

**Organization number:** \_\_\_\_\_

### **3. Grant of License**

Agular grants to Customer a personal, non-exclusive, non-transferable, limited license to use the Software in compiled object code form in the United States solely for internal use of Customer and its affiliates and subsidiaries and to use the Documentation in support of Customer's authorized use of the Software until this License is terminated in accordance with its terms or until Customer ceases using Software at which time the Software, Documentation and all copies shall be returned to Agular or certified as destroyed., subject to such destruction being authorized by applicable records retentions laws and policies.

### **4. Software Support; Modifications**

(a) Provided no undisputed, uncured default has occurred under this agreement between Customer and Agular, Agular will use reasonable efforts to correct errors in any current, unaltered release of the Software caused by a defect or malfunction which prevents Customer from operating such Software in a manner consistent with Agular's then current published specifications. Agular, in its sole discretion, shall choose the method to correct or replace any applicable portion of the Software, with no impairment of performance. These methods may include, but are not limited to, telephone, remote and on-site support. Support of any Software modified by Customer or any third party not authorized in writing by Agular, is not covered by this License. If either Customer or a third party makes any modification to Software and, in Agular's sole reasonable opinion, such modification affects the performance of the Software, Customer shall pay Agular in accordance with DIR Contract DIR-TSO-2565, Appendix C Pricing Index, for all resulting support services provided by Agular.

(b) Provided no undisputed, uncured default has occurred under this agreement between Customer and Agular, Agular will make Software revisions available to Customer at no charge for Software deemed by Agular as "current" release Software versions. Software revisions shall be defined as those enhancements, modifications, updates, and improvements to the Software that Agular classifies as "dot releases", meaning the software revision code changes only in the fractional portion of the program level (i.e. v1.20 >v1.25> v1.41, etc)

(c) Provided no undisputed, uncured default has occurred under this agreement between Customer and Agular, Agular will make "new" Software releases available to Customer at reasonable upgrade prices minus applicable customer discounts as specified in DIR Contract DIR-TSO-2565, Appendix C. New Software releases are defined as those "significant" enhancements, modifications, updates, and improvements to Software that Agular classifies as a "version release", meaning the whole number portion of the software version changes (i.e. v1.xx >2.xx>3.xx etc.)

(d) Support does not include (i) administration of servers or database products; (ii) support of Software installed on equipment using "beta" or operating systems not supported by Agular; (iii) resolution of network errors not directly related to Software; or (iv) the installation, setup or support of third party products not supported by Agular or software not acquired from Agular. Maintenance does not include updates, upgrades and new releases or versions of third party products sold with or used in conjunction with Software. Software support shall terminate if Agular declares end of life for such Software, and then only with at least ninety (90) days prior written notice: provided however that in all events Agular will continue support through the then current term of the contract.

(e) It is the responsibility of Customer to make and maintain adequate backups of data and configuration of Software.

### **5. Software License Fee; Software Support Fee; Payment; Taxes**

(a) Software License Fee (as shown on applicable Order Form). Such payment is due according to payment terms specified in DIR Contract DIR-TSO-2565, Appendix A, Section 8.J.

(b) Software Support Fee (as shown on applicable Order Form)

Software Support Fee payments are billed monthly and due according to payment terms specified in DIR Contract DIR-TSO-2565, Appendix A, Section 8.J. All payments shall be payable at the office of Agular set forth above, or at any other place designated by Agular.

(c) As per Section 151.309, Texas Tax Code, government Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, government Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

## **6. Warranty; Disclaimer of Warranty; Intellectual Property Infringement**

(a) Agular warrants that upon installation the Software will conform to Agular's then current published specifications, provided the Software is properly installed and used. Agular does not warrant that (i) Software will meet Customer's requirements or that operation of the Software will be uninterrupted or error-free or (ii) that any technical services rendered hereunder will result in improvements in Customer's software or in the solution to any problems Customer may encounter in the use of the Software. The sole liability of Agular, and the sole remedy of Customer, for the breach of any warranty in this Section 6 (a) shall be, at Agular's option, (i) Agular's use of all reasonable efforts to correct or replace the non-conforming portion of the Software within a reasonable period of time (not to exceed 30 days) after receiving written notice from Customer, or (ii) refund of the Software License Fee, paid by Customer to Agular, less a reasonable fee for the period of use (based on depreciation deducted over a five year straight line basis), provided Customer ceases all use of and returns the Software to Agular.

(b) Agular warrants that it has the right to license the Software according to the terms of this License and that to the best of Agular's knowledge the Software does not infringe on any copyright, patent or trade secret.

Indemnification under this agreement is controlled by DIR Contract DIR-TSO-2565, Appendix A, Section 10.A.

(c) Agular warrants that prior to shipment, (i) Agular has tested the Software using commercially available virus detection programs and no viruses were found and (ii) the Software contains no "time bombs" or other disabling devices except as noted herein. Agular has implemented machine/software disabling code to protect its Software and hardware against unlicensed use. When using a properly licensed system, Customer may expect full use of the Agular product. Improperly or non-licensed systems will operate for a limited time, typically 30 days, or will operate in some diminished capacity.

(d) Except as expressly provided in this License, Customer licenses all Software and receives all support services on an "AS IS" basis. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **7. Technical Services**

During the term of this License, Agular may provide software services to Customer as either "Implementation Services" or "Technical Services". Implementation Services are rendered at or about the time of installation and may include but shall not be limited to review of print applications, validation of hosts and network paths, validate system configuration(s), and overview the printer/server operation. The cost of such Implementation Services shall be set forth on the applicable Schedule reflecting applicable customer discounts as specified in DIR Contract DIR-TSO-2565, Appendix C Pricing Index and is due thirty (30) days from the date invoiced. Payment is due according to payment terms specified in DIR Contract DIR-TSO-2565, Appendix A, Section 8.J.

Technical Services are offered by Agular and available upon request by Customer. Customer and Agular shall negotiate the scope of services to be provided and the cost to Customer, which shall be set forth in a Schedule (or statement of work attached thereto). The Schedule shall include the completion date (if applicable), total cost and applicable customer discounts as specified in DIR Contract DIR-TSO-2565, Appendix C Pricing Index, a description of the work product Agular is to provide and acceptance criteria (if applicable). Payment is due according to payment terms specified in DIR Contract DIR-TSO-2565, Appendix A, Section 8.J.

## **8. Ownership**

Subject to specific terms defined by DIR Contract DIR-TSO-2565, Appendix A, Section 5.B at Customer's request, Agular will make available to Customer all information created as a result of Technical Services provided under Section 7 ("Technical Services") above and affixed in a tangible medium of expression

during the performance of such Technical Services. Customer retains sole ownership of any customization performed by Agulaa Technical Services and shall be delivered to customer in a tangible media.

### **9. Proprietary Rights; Non-disclosure**

Customer shall not sell, transfer or otherwise make available the Software or Documentation and subject to the requirements of the Texas Public Information Act, shall secure and protect them and their contents from disclosure and shall take such action as is necessary with its employees (including contractors and temporary help) and other persons who are permitted access to them to satisfy Customer's obligations hereunder. Customer may disclose the Software and Documentation to its employees (including contractors and temporary help) to the extent such disclosure is necessary to enable Customer to use the Software within the scope of the license granted herein. Customer may copy the Software in machine-readable form for backup and archival purposes only as is necessary to support Customer's internal use of the Software which use is licensed. Customer shall not modify, use other than for purposes of this License, reverse engineer, disassemble or decompile any Software in whole or in part.

Subject to the requirements of the Texas Public Information Act, neither party will use for any purpose, other than performing this License, or disclose to any third party any trade secrets or non-public information of the other party or its affiliates including, but not limited to, marketing information and strategy, marketing models, , customer lists, test results, and all other proprietary information, trade secrets and non-public information (hereinafter referred to collectively as "Confidential Information"). Subject to the requirements of the Texas Public Information Act or other applicable law the parties agree to restrict circulation of all Confidential Information within their own organization, except to the extent necessary to perform its obligations, and in no case will any disclosure be made to any third party, unless such disclosure is requested or required in any judicial or administrative proceeding or otherwise required by law.

Confidential Information shall not include information known to a party prior to disclosure hereunder; which is or becomes publicly known through no wrongful act of the other party; or which is disclosed to the other party by a third party without any breach of obligations of confidentiality; or which is required to be disclosed pursuant to the Texas Public Information Act or other applicable law.

### **10. Termination**

This License may be terminated (i) by mutual written agreement of Agular and Customer, or; (ii) by either party in accordance with the DIR Contract, Appendix A 11.B. for a material breach of the covenants or other terms of this License that remains undisputed or uncured thirty (30) days after the date of written notice of such breach. Upon termination of this License or termination of the use of Software identified on any Schedule hereto, Customer shall either (i) to the extent authorized by applicable records retention laws and policies return the Software and Documentation, and all copies thereof, to Agular or (ii) to the extent authorized by applicable records retention laws and policies, certify to Agular in writing that the Software and Documentation, and all copies thereof, have been destroyed.

### **11. Notices**

Notices, requests or other communications required hereunder to be sent to the other party shall be (a) by United States first class mail, postage prepaid, and addressed to the other party at the address set forth on the face of this License (or to such address as such party shall have designated by proper notice) or (b) by personal delivery, or (c) by commercial overnight delivery service or (d) by facsimile or (e) by electronic mail. Both parties consent to service of process by certified mail at its address above (or to such other address as such party shall have designated by proper notice) in connection with any legal action.

### **12. Miscellaneous**

Any variance from or addition to the terms and conditions of this License in any purchase order or other written notification from Customer will be of no effect except as may be agreed to by the parties. Subject to the requirements of DIR Contract DIR-TSO-2565, Appendix A, Section 12.A., this License may not be assigned by Customer without the written consent of Agular and the payment of an additional license fee by the assignee (or subsequent licensee) to Agular and, in the event of such an assignment or license, shall be binding upon and inure to the benefit of the parties hereto, their legal representatives, permitted successors and assigns.

Subject to the requirements of DIR Contract DIR-TSO-2565, Appendix A, Section 12.A. The assignee (or subsequent licensee) shall execute such related documents or agreements as Agular shall reasonably require in connection therewith and such additional license fee shall not exceed the published license fees minus applicable customer discounts as specified in DIR Contract DIR-TSO-2565, Appendix C Pricing Index in effect at the time of such assignment. Notwithstanding the foregoing, Customer may, upon written notice to Agular, assign its right and duties under this License and/or any Schedule hereto to any (i) parent, subsidiary or affiliate, or (ii) successor pursuant to a legislative mandate, merger, consolidation or sale of all or substantially all of its assets, or all or a substantial portion of the business to which the Software relates. Any assignment in violation of this Section 12 shall be void and of no effect. No amendment hereunder shall be effective unless in writing signed by the parties hereto and no waiver hereunder shall be effective unless in writing, signed by the party to be charged. Any provision of this License which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof. No action regardless of form arising out of this License may be brought by any party more than four (4) years after the cause of action has arisen. The captions in this License are for convenience only and shall not define or limit any of the terms hereof.

13. Limitation of Liability is controlled by DIR Contract DIR-TSO-2565, Appendix A, Section 10.K.

## Supplier Software Support

**1. Maintenance & Support Packages.** During an applicable Maintenance & Technical Support period, an End-User Customer shall be entitled to subsequent minor Enhancements of the version of the Product licensed by End-User, updated documentation, and technical support as described herein.

**a. Initial Support.** At no additional charge Agular shall provide an End-User with Maintenance & Technical Support for a purchased Licensed Software product for the period commencing on the End-User Customer's purchase date and expiring one (1) year from that date.

**b. Extended Annual Support.** Agular shall make available, offer, promote and sell to its End-User Customers annual one (1) year contracts for extended Maintenance & Technical Support on End-User Customer's currently-licensed Licensed Software products. Upon End-User Customer's purchase of extended support, Agular shall provide an End-User Customer with extended Maintenance & Technical Support on a licensed Product for a one year period expiring on the date one (1) year from the purchase date for the Extended Support.

**c. Expiration of Maintenance & Support Obligations.**

**(i) Three Years Maximum on any Release.** Though Agular may in its discretion elect to continue to independently support the Licensed Software for an extended periods for its End-User Customers, Supplier shall have no obligation to support any Licensed Software or fulfill any Maintenance & Technical Support obligations beyond three (3) years from the initial release date of the particular Major Software Release contained in such product; provided however, that in all events Agular will continue to support all licensed software and fulfill all maintenance and technical support obligations through the term of any purchase order

**(ii) Upon Termination of the Agreement.** Each Party's Maintenance & Technical Support obligations to eligible End-User Customers shall continue following termination of the Agreement. However, unless Agular has negotiated and purchased Extend Product Support and complied with any related obligations, subsequent to the termination date Agular shall have no further obligation to renew any Maintenance & Technical Support agreement, issue new Updates, maintain Compatibility of the Agular Software or provide technical assistance on matters or questions related to changes or enhancements that Agular may have made to Agular Software or Agular Hardware following termination.

To eliminate any confusion, Supplier shall not be obligated to provide Maintenance & Technical Support relating to any Agular Software developed or released subsequent to the earlier of the termination date or the date of a notice of non-renewal, if applicable.

**2. Support Obligations.** Agular shall provide to End-User Customers all Maintenance & Technical Support that may arise.

**3. Maintenance and Technical Support.** "Maintenance and Technical Support" shall mean providing and/or making available to an eligible End-User Customer: (i) subsequent minor Enhancements to the version of the Software in the product licensed/purchased by End-User Customer; (ii) any relevant End-User Documentation related thereto that at such time Agular generally provides to any of its end-users; (iii) consultation with End-User Customers and assistance to End-User Customers with respect to technical questions and suspected errors reported by End-User Customers that End-User Customer is unable to timely resolve; (iv) resolution of confirmed errors in the Software or portions of product developed by or for Agular, including delivery of such error corrections; and (v) consultation regarding End-User Customer's use and implementation of the Licensed Software and customer support in connection with the Licensed Software. The Maintenance & Technical Support specified in (i) and (ii) may be made available by via web access, on-line download, embedded help-screens, CD-ROM or any other reasonably accepted industry method. The Maintenance & Technical Support specified in (iii), (iv) and (v) above shall be provided in the form of on-line, web, e-mail and/or fax communication twenty-four hours/day and seven days/week ("24/7") and in the form of "live" telephone support Monday through Friday, 8:00 a.m.-5:00 p.m. C.S.T. time, excluding holidays.

First-level customer maintenance and support shall be provided by Agular during the term of any Maintenance & Technical Support period. "First-level" maintenance and support will consist of help-desk (hot-line) intake of End-User Customer questions regarding the features and functionality of the Products, (ii) help-desk (hot-line) intake of End-User Customer reported problems and the identification and classification of such problems related to the Licensed Software.

First-level support includes responding to End-User Customer questions regarding product installation, normal usage, explaining the Licensed Software's displayed and printed guidance, warning, and error messages, answers to routine questions, technical assistance, advice in the installation and day-to-day use and application of the Licensed Software, assisting the End-User Customer's recovery from generally-agreed-upon common and ordinary problems caused by End-User Customers, the software, and/or the software's operating environment and the distribution of minor Enhancements to the End-User.

Problems that cannot be directly attributable to generally-agreed to common and ordinary known causes nor caused by anomalies documented (along with recommended corrective or work-around procedures) by Supplier are defined as Second Level conditions. Any of Agular's technical staff can nominate a problem for Second Level status; however, Agular's Technical Services Manager must approve the declaration that the problem is a Second Level condition. Supplier Agular will respond to reported problems in accordance with severity levels and response times contained in Schedule G(1) (hereto "Severity Levels").

All Second Level conditions and remedial actions are to be formally logged and time/date stamped within Agular online Issue Manager Application. To the extent an End User Customer has made Agular aware of such a problem, Agular will supply all details, including all available information relating to actions carried out as part of the Level One response. Unless otherwise contractually stipulated in the End User's contract, Agular will establish a Severity Level within two (2) business hours. In all cases Agular will document the problem and issues, identify the appropriate Severity Level, and provide the End-User Customer with a work-around if possible or an estimated corrective solution. The Severity Levels and the time available for Agular to provide the correction, repair, or customer-acceptable work-around (response times) are:

Severity Levels

Severity Level	Definition	Response Time
Problematic	The problem is an annoyance or user is requesting an enhancement or modification	Next minor Enhancement
Important	The problem needs to be repaired or a work around provided before the customer becomes dissatisfied with the product	3 business days for plan 2 weeks for solution
Severe	A customer's application/project is adversely affected by the problem	1 business days for plan 3 business days for solution
Critical	The problem is adversely affecting the completion of a customer's project/user's time-sensitive task	4 hours response 1 day for solution