

Appendix D to DIR-TSO-2577

CUSTOMER AGREEMENT **For Licensing, Installing and Supporting** **Application Software**

The parties to this Customer Agreement are STW, Inc. (STW), a Texas corporation and _____ Customer. This Customer Agreement sets forth the terms and conditions under which STW will furnish Licensed Products and provide certain services described herein to Customer, and Customer will pay therefore.

Exhibits attached which are a part of this Customer Agreement are:

Appendix A

For and in consideration of the mutual undertakings herein set forth, the parties hereto agree as follows:

1. DEFINITIONS. The following terms as defined below are used throughout this Customer Agreement.

(a) "Licensed Software." The machine-readable object code version of the software that STW makes generally available and described in Appendix A, whether embedded on disc, tape or other media.

(b) "Licensed Documentation." The published user manuals and documentation that STW makes generally available for the Software.

(c) "Updates." Any enhanced and/or improved versions of the Software provided under Appendix A of this Customer Agreement and released to the Customer after execution of this Customer Agreement.

(d) "Licensed Products." (1) The Licensed Software, (2) Licensed Documentation, (3) Updates, and (4) Licensed Custom Software provided under this Customer Agreement, or (5) any copy of items (1) - (4).

(e) "Licensed Custom Software." Any software programs (or portions of programs) developed by STW specifically for Customer's own use.

(f) "Authorized Copies." The only authorized copies of the Licensed Software and Licensed Documentation are the copies of each application software package defined as follows:

(1) the single copy of the Licensed Software and the related Licensed Documentation delivered by STW under this Customer Agreement; and

(2) any additional copies made by the Customer, as authorized in Section 3(c) and 3(d).

(g) "Designated System." The hardware and software as specified, listed in Appendix A, and installed at _____.

2. PRIMARY CONTACTS AND REPRESENTATIVES.

The primary contact for STW during the term of this Customer Agreement shall be:

Mr. David Johnson
212 East Franklin Street
Grapevine, Texas 76051
Telephone: (817) 329-1711
Facsimile: (817) 421-0206

The primary contact for Customer during the term of this Customer Agreement shall be:

Telephone: _____
Facsimile: _____

Customer shall notify STW in writing of any change in the primary contact.

3. LIMITED USE LICENSE.

(a) In consideration of annual software rental fees and other charges, if any, and the applicable custom software fees, if any, as provided in Appendix A, STW hereby grants Customer and Customer hereby accepts from STW a non-transferable and non-exclusive right to use the Licensed Software only on the Designated System and only for its internal processing needs, subject to the terms and conditions specified herein for a term as provided by Section 18 herein.

(b) Once Customer has paid the annual software rental fees for Licensed Software, Customer shall have the right and license to use, enhance, or modify the Licensed Software only for the Customer's own use and only on the Designated System for the term of the license.

(c) In order to assist Customer in the event of an emergency, Customer is permitted to make up to two (2) backup copies on magnetic media of each application of the Licensed Software and one backup copy of the related Licensed Documentation. These Authorized Copies may be stored off-site away from Customer's premises (as specified in the Definitions Section) so long as they are kept in a location secure from unauthorized use. Customer or anyone obtaining access through Customer shall not copy, distribute, disseminate, or otherwise disclose to any third party the Licensed Products or copies thereof in whole or in part, in any form or media. This restriction on making and distributing the Licensed Products or copies of any Licensed Product includes, without limitation, copies of the following:

- (1) program libraries, both source or object code;
- (2) operating control language;
- (3) test data, sample files, or file lay outs;
- (4) program listings; and
- (5) licensed documentation.

(d) Upon written request by Customer, and with written permission by STW, additional Authorized Copies may be made for Customer's internal use only.

(e) Customer may use the Licensed Products on the Designated System only while it possesses and operates the Designated System, and only during the term of the license.

(f) If Designated System becomes temporarily inoperable, Customer may load and use the Software on another System until the original Designated System becomes operable.

(g) Any other use or transfer of the Software will require STW's prior approval, which may be subject to additional charges.

(h) Customer may use Licensed Products only in and for the Customer's own internal purposes and business operations. Customer will not permit any other person to use Licensed Products, whether on a time-sharing, remote job entry or other multiple-user arrangement. Customer may make back-up archival copies of the Software and any related Updates. Customer will reproduce all confidentiality and proprietary notices on each of these copies and maintain an accurate record of the location of each of these copies. Customer will not otherwise attempt to copy, translate, modify, adapt, decompile, disassemble or reverse engineer Licensed Products.

4. PAYMENT.

Customer agrees to pay STW the amounts specified in Appendix C in U.S. dollars. Payment terms under this Customer Agreement shall be in accordance with DIR Contract No. DIR-TSO-2577, Appendix A, Section 8.I.

5. LICENSED SOFTWARE UPDATES, CUSTOMER SUPPORT.

(a) STW agrees to provide Customer, at no additional charge, with the Updates that STW may make generally available during the Customer Agreement period. Customer agrees to install the Updates only on the Designated System. If an Update replaces the prior version of the Software, Customer agrees to destroy such prior version upon installing the Update. This Paragraph will not be interpreted to require STW to either:

- (1) develop and/or release Updates; or
- (2) customize Updates to satisfy Customer's particular requirements.

(b) Updates will not include any new Products that STW decides, in its sole discretion, to make generally available as a separately priced Update or option.

(c) Updates will provide full data compatibility with prior versions or will include programs and/or utilities to automatically convert prior data files to structures required by the Update.

(d) The following services shall also be included as Support, and provided under this Section:

- (1) Temporary fixes to Licensed Products;
- (2) Revisions to Licensed Documentation to reflect new software functions, features and operations;
- (3) Reasonable telephone and/or remote (dial-in) support for Licensed Products, Monday through Friday from 8:00 a.m. to 5:00 p.m., local time; and

(4) Invitations to and participation in user group meetings, if any.

(e) Additional support for other services is available as requested by Customer, using the hourly rates as provided in the Addendum to this Customer Agreement. These additional services include, but are not limited to, the following:

- (1) Designing, programming and supporting Licensed Custom Software;
- (2) Maintaining modified Licensed Software and/or Licensed Custom Software;
- (3) File conversion assistance; and
- (4) Installation of Licensed Software updates.

6. LIMITED WARRANTIES.

The following provisions are subject to the terms of DIR Contract No. DIR-TSO-2577, Appendix A, Section 7.C:

(a) **Warranty.** STW warrants that Licensed Products and Updates will (1) conform to STW published product manuals in effect on the date of delivery; and (2) perform substantially as described in the accompanying Licensed Documentation after delivery for 90 calendar days. STW does not warranty that the Licensed Products will satisfy or may be customized to satisfy all of Customer's requirements.

(b) **Remedies.** In case of breach of warranty or any other duty related to the quality of the Licensed Products, STW or its representative will correct or replace any defective Licensed Product or, if not practicable, STW will accept the return of the defective Licensed Product and refund to Customer the amount actually paid to STW for the defective Licensed Product, less depreciation based on a five-year straight-line depreciation schedule, and a pro-rata share of any maintenance fees that Customer actually paid to STW for the period that such Licensed Product was not usable. Customer acknowledges that this Paragraph sets forth Customer's exclusive remedy, and STW's exclusive liability, for any breach of warranty or other duty related to the quality of the Licensed Products.

(c) **Disclaimer.** Except as expressly provided in this Customer Agreement, all warranties, conditions, representations, indemnities and guarantees with respect to the Licensed Products whether expressed or imputed, arising by law, custom, prior oral or written statements by STW or its licensors or representatives or otherwise, including, but not limited to, any warranty or merchantability or fitness for particular purpose, are hereby overridden, and excluded and disclaimed.

(d) The foregoing warranties do not apply if the Licensed Products have been modified by any party other than STW or its authorized licensors or representatives.

7. INDEMNITY. Indemnity under this Customer Agreement shall be in accordance with DIR Contract No. DIR-TSO-2577, Appendix A, Section 10.A.

8. NO CONSEQUENTIAL DAMAGES. Limitation of Liability shall be in accordance with DIR Contract No. DIR-TSO-2577, Appendix A, Section 10.K.

9. OWNERSHIP.

(a) All trademarks, service marks, patents, copyrights, trade secrets and other proprietary rights in or related to the Licensed Products are and will remain the exclusive property of STW or its licensors, whether or not specifically recognized or perfected under applicable law. Customer shall obtain no right, title or interest in the Licensed Products by virtue of this Customer Agreement other than the non-exclusive, nontransferable license to use the Licensed Products as restricted herein. Customer will not take any action that jeopardizes STW's or its licensor's proprietary rights or acquire any right in the Licensed Products, except the limited use rights specified in Section 4.

(b) STW or its licensor will own all rights in any copy, translation, modification, adaptation or derivation of the Licensed Products, including any improvement or development thereof; however, for any modification made specifically for customer and at customer's expense, customer has a perpetual, fully-paid, irrevocable license to those modifications (but not to the underlying licensed products).

(c) Customer will obtain, at STW's request, the execution of any instrument that may be appropriate to assign these rights to STW or its licensor or perfect these rights in STW's or its licensor's name.

(d) STW hereby warrants that STW has exclusive ownership of the Licensed Software. Customer agrees that STW claims exclusive ownership of the Licensed Software.

10. CONFIDENTIAL INFORMATION AND NON-DISCLOSURE.

(a) Customer acknowledges that Licensed Products incorporate confidential and proprietary information developed or acquired by or licensed to STW. Customer will take all reasonable precautions necessary to safeguard confidentiality or proprietary notice placed on Licensed Products. The placement of copyright notices on these items will not constitute publication or otherwise impair their confidential nature.

(b) Subject to requirements of the Freedom of Information Act (FOIA) and the Texas Public Information Act, each party shall hold all confidential information in trust and confidence for the party claiming confidentiality and not use such confidential information other than for the benefit of that party. Subject to the requirements of the Texas Public Information Act, the other party agrees not to disclose any such confidential information by publication or otherwise, to any other person or organization.

(c) To the extent authorized under the Texas Public Information Act, Customer hereby acknowledges and agrees that all Licensed Products are confidential information and proprietary to STW. In addition to other restrictions set forth elsewhere in this Customer Agreement or otherwise agreed to in writing, Customer agrees to implement all reasonable measures to safeguard STW's proprietary rights in Licensed Products, including without limitation the following measures:

(1) Customer shall permit access to Licensed Products only to those employees who require access and only to the extent necessary to perform Customer's internal processing needs.

(2) With respect to agents or third parties, Customer shall permit access to Licensed Products only after STW has approved and returned a written non-disclosure statement to Customer. STW reserves the right to reasonably refuse access to a third party after it has evaluated the request. Customer agrees to provide information reasonably requested by STW to assist STW in evaluating Customer's request to permit third party access to Licensed Products. In addition to any other remedies, STW may recover all damages and legal fees incurred in the enforcement of this provision on third party access.

(3) Customer shall cooperate with STW in the enforcement of the conditions set forth in the non-disclosure statement, or any other reasonable restrictions STW may specify in writing in order to permit or restrict access.

(4) Customer shall not permit removal of copyright or confidentiality labels or notifications from its proprietary materials.

11. TERMINATION.

(a) By Customer: If STW fails to provide the Licensed Software as warranted in accordance with the terms of this Customer Agreement, Customer may at its option, for prorated refund, terminate this Customer Agreement with thirty (30) days written notice as follows:

(1) The termination notice shall provide a detailed description (with examples) of any warranty defects claimed;

(2) STW shall have thirty (30) days from receipt of said notice to correct any warranty defects in order to satisfy the terms of this Customer Agreement;

(3) At the end of thirty (30) days unless the termination has been revoked in writing by Customer, the Customer Agreement terminates.

Termination shall be in accordance with DIR Contract No. DIR-TSO-2577, Appendix A, Section 11.A. and 11. B

(b) Upon termination of this Customer Agreement for any reason, to the extent authorized by applicable record retention laws and policies, Customer shall return or destroy all copies of the previously licensed software and shall cease all use of the software.

(c) This Customer Agreement shall endure to the benefit of and bind parties hereto, their successors and assigns.

(d) The provisions of Sections 6, 7, 8, 9 and 10 and any others relevant to any dispute between the parties, will survive the termination of this Customer Agreement.

12. RIGHT TO INSPECTION.

During the term of this Customer Agreement, STW or its representative may, upon fifteen (15) days prior written notice to Customer, inspect the files, computer processors, equipment and facilities of Customer during normal working hours to verify Customer's compliance with this Customer Agreement.

13. MISCELLANEOUS.

(a) All notices or approvals required or permitted under this Customer Agreement must be given in writing. Any waiver or modification of this Customer Agreement will not be effective unless executed in writing and signed by STW.

(b) This Customer Agreement will bind both the Customer's and STW's successors-in-interest. This Customer Agreement will be governed by and interpreted in accordance with the laws of the State of Texas, U.S.A. If any provision of this Customer Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other provisions of this Customer Agreement.

(c) DIR Contract No. DIR-TSO-2577 and this Customer Agreement constitute the complete and entire statement of all conditions and representations of the agreement between STW and Customer with respect to its subject matter.

(d) This Customer Agreement may be amended or modified only in writing by both parties.

(e) Source code for the application Software will be resident on Customer's Designated System, during the term of the Customer Agreement.

(f) During the term of this Customer Agreement and for a period of twelve (12) months after termination of this Customer Agreement, the Customer and STW may not solicit any of the employees of the other party or persons who have been employed by either party within the immediate past twelve (12) months without the prior written consent of the other party. General advertisements of employment by either party do not violate this provision.

14. INSTALLATION AND TRAINING.

(a) STW shall make available to Customer qualified representative(s) who will provide installation and training support services for each application of the Licensed Software delivered. Customer and STW will develop a mutually agreeable training schedule. Costs for hourly services are described in Appendix C, Pricing Index.

(b) Installation and training support services will be performed at Customer's premises, unless otherwise stated.

(c) Training shall consist of both operational and administrative information.

(d) Training will also include hardware and data communications systems, as applicable, including, but not limited to, system configuration, back-up and recovery training, standards for system management and general operations training for Customer personnel.

(e) Each software application training shall be provided by STW. Each program shall be demonstrated step-by-step, practicing each menu, each screen, and each entry as well as explaining how to use the written and/or on-line documentation.

15. INDEPENDENT CONTRACTOR.

STW is an independent Contractor. The personnel of one party shall not in any way be considered agents or employees of the other. To the extent provided for by law, each party shall be responsible for the acts of its own employees. STW does not own or lease automobiles and Customer shall not have any authority over STW personnel as to how or when they use their automobiles and thus Customer bears neither responsibility nor liability for vehicular accidents involving STW personnel.

16. INSURANCE REQUIREMENTS.

Each party shall be responsible for Worker Compensation coverage for its own personnel. STW shall not commence work under this Customer Agreement until it has obtained Worker Compensation Insurance. STW shall procure and maintain, during the term of this Customer Agreement, Worker Compensation Insurance for all of its employees or representatives who engage in the work to be performed. Other required insurance provisions are contained in DIR Contract No. DIR-TSO-2577, Appendix A, Section 10.N, as applicable. As of the date of the Contract, STW does not own or lease or rented automobiles and

Customer shall not have any authority over STW personnel as to how or when they use their automobiles and thus Customer bears neither responsibility nor liability for vehicular accidents involving STW personnel. STW shall not be required to carry business automobile liability insurance. In the event STW changes its policies about company owned or leased, or rented automobiles, then STW will comply with the automobile insurance requirements of DIR Contract No. DIR-TSO-2577.

17. NOTICES

Notices to STW shall be mailed certified mail, return receipt requested to:
Mr. David Johnson, 212 East Franklin Street, Grapevine, TX 76051.

Notices to Customer shall be mailed certified mail, return receipt requested to:

18. TERM OF LICENSE AND SOFTWARE SUPPORT

The initial term of this Customer Agreement is one year from the date of the authorized signatures provided below, and may be renewed annually upon written notice from Customer. Reasonable price increases are applicable after the first year of the Customer Agreement.

DIR Contract No. DIR-TSO-2577 and this Customer Agreement contain the complete and exclusive statement of the Agreement between the parties concerning the matters referred to herein and replace any prior oral or written representations or communications between the parties. In the event of conflict among provisions, the DIR contract controls. Each individual signing below represents that they have the requisite authority to execute this Customer Agreement on behalf of the organization for which they represent and that all necessary formalities have been met.

This Customer Agreement is effective upon the last date shown on this page.

AGREED TO BY:

STW, INC.

CUSTOMER: _____

By: _____

By: _____
Authorized signature

David Johnson, President

Name & Title

Date: _____

Date: _____

Appendix A

1. Installation Time. STW agrees to complete installation of all software modules within one year.
2. Licensed Products and Charges: The following charges contain the customer discounts as specified in DIR Contract No. DIR-TSO-2577, Appendix C Pricing Index.

Application	One Time License Fee	Annual Maintenance & Software Lease	Total Cost
Totals:			

3. Payment Schedule: Payments under this Customer Agreement shall be in accordance with DIR Contract No. DIR-TSO-2577, Appendix A, Section 7.C.

4. Miscellaneous:

(a) System Conversion. STW agrees to be responsible for system conversion to Designated System. Acceptable conversion shall require that prior Customer data files are operational and "in balance" under the Customer's current application software environment. The cost of the conversion is based upon the hourly charges as specified in 4(c).

(b) Use of Independent Contractors. STW may engage independent contractors to perform all or part of STW's obligations under this Customer Agreement. If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

(c) Hourly Charges. Charges for services performed, such as charges for Software customization, installation, training, and conversion are shall be in accordance with DIR Contract No. DIR-TSO-2577, Appendix C. minus applicable discounts as specified by DIR Contract No. DIR-TSO-2577, plus allowable travel costs which are defined by DIR Contract No. DIR-TSO-2577, Section 4.G.