

Appendix D

SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement, dated _____, is made and entered into by and between TAB PRODUCTS CO. LLC, A Delaware limited liability company (“TAB”), and _____ (“Licensee”).

RECITALS

- A. TAB has developed and is the owner of software products relating to the archiving and retrieval of computer information and provides professional and maintenance services with respect to such software; and
- B. Licensee desires to license certain software from TAB, purchase certain hardware products through TAB, and engage TAB to provide professional services and maintenance services with respect to such software, and TAB is willing to provide all of the foregoing to Licensee in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, TAB and Licensee agree as follows:

1. DEFINITIONS

As used in this Agreement, the following definitions shall apply:

- a) “Agreement” means this Software License and Services Agreement, as the same may be amended from time to time in accordance with the terms of DIR Contract DIR-TSO-2606.
- b) “Application Program(s)” means the Software Product(s) modified by TAB or TAB’s subcontractors pursuant to a Statement of Works.
- c) “Confidential Information” means any information relating to or disclosed in the course of this Agreement that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, is or should be reasonably understood by the receiving party to be confidential or proprietary. Without limiting the generality of the foregoing, TAB’s “Confidential Information” shall include but not be limited to the Software Products, the Documentation, trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, schematics, software source code, product specifications, methods, designs, new products, developmental work whether or not such information is

identified as confidential. "Confidential Information" shall not include any information that the receiving party can establish: (i) is now, or hereafter becomes widely and generally known by or available to the public, through no act or omission by the receiving party or its representatives; (ii) is hereafter furnished to the receiving party by a third party without solicitation by the receiving party, without breach of this Agreement, and without otherwise violating any of the disclosing party's rights or any other confidentiality obligation; or (iii) was already known to or in the possession of the receiving party before any disclosure made by the disclosing party to the receiving party.

- d) "Commencement Date" of each Software License shall mean the date on which a Software Product is installed by TAB or its authorized third party provider.
- e) "Documentation" means written or printed materials or materials in non-software media prepared by or on behalf of TAB that are intended for use with a Software Product.
- f) "Effective Date" means the date of this Agreement as set forth above.
- g) "Hardware" means the hardware products purchased by Licensee through TAB as set forth in **Exhibit A** attached hereto.
- h) "Maintenance Services" shall mean the support and maintenance services to be provided by TAB for the Software Products pursuant to the terms and conditions set forth in **Exhibit C** attached hereto.
- i) "Professional Services" shall mean the project management, systems analysis, systems configuration, systems design, installation, testing, knowledge transfer, training and/or other services to be provided by TAB with respect to the Software Products as set forth in the Statement of Works attached hereto as **Exhibit B**.
- j) "Software Product(s)" means those software products, including one or more modules thereof, related to archiving and retrieval of computer information developed by or for TAB, and any Application Program, all as set forth in **Exhibit A** attached hereto.
- k) "Software License(s)" shall mean each license granted to Licensee for a User to use a Software Product.
- l) "User(s)" shall mean the concurrent individuals authorized by Licensee to use a Software Product, regardless of whether the individual is actively using the Software Product at any given time. Licensee may replace authorized Users as necessary to reflect personnel changes. The maximum number of Users that may use or access a Software Product at any one time is specified in **Exhibit A**. Licensee agrees that it is responsible for ensuring that any usage by its employees and any such third parties is in accordance with the terms and conditions of this Agreement.

2. GENERAL

The terms of this Agreement and Exhibits shall apply to each Software Product, Software License, and to all Professional Services and Maintenance Services provided by TAB and in accordance with the DIR Contract DIR-TSO-2606. The terms and conditions set forth in this Agreement and Exhibits shall control in the event that there are, conflicting terms set forth in any purchase order submitted by Licensee or acceptance form or invoice issued by TAB.

3. PRODUCTS AND SERVICES

- a) Software Licenses. Licensee hereby licenses from TAB the Software Products set forth in **Exhibit A** at the prices set forth in the DIR Contract DIR-TSO-2606 Appendix C Pricing Index. Licensee's license of the Software Products includes the related Documentation. The terms and conditions of the Licensed Software are set forth in Section 4 below.
- b) Professional Services. Licensee hereby purchases from and engages TAB to provide the Professional Services in accordance with the DIR Contract DIR-TSO-2606 Appendix C Pricing Index.
- c) Annual Maintenance Services. Licensee hereby purchases from and engages TAB to provide the Maintenance Services for a one (1) year period commencing on the Commencement Date, at the prices set forth in the DIR Contract DIR-TSO-2606 Appendix C Pricing Index. Thereafter, Maintenance Services may be renewed on an annual basis. Fees for Maintenance Services shall be payable annually in advance and may be increased prior to the commencement of any annual renewal period by giving sixty (60) days advance written notice. Maintenance Services entitles Licensee to updates and technical support for the Software Products pursuant to the terms and conditions set forth in **Exhibit C**. TAB reserves the right to alter its standard Maintenance Services policy from time to time using reasonable discretion but in no event shall such alterations result in diminished support from the level of support then currently being provided. TAB shall provide Licensee with sixty (60) days prior written notice of any material change to the Maintenance Services.

4. SOFTWARE LICENSE

- a) Software License Grant. Subject to the terms and conditions of this Agreement, including the payment of applicable undisputed fees, TAB hereby grants Licensee the nonexclusive, non-transferable, non-assignable, perpetual right and license (i) to use the Software Products for their intended purposes and solely for Licensee's own internal business operations; (ii) to use the Documentation solely for purposes of supporting Licensee's use of the Software Products and in accordance with the terms of the Documentation; (iii) to make additional copies of a Software Product solely for archival, emergency back-up, testing, or disaster recovery purposes; and (iv) to copy the Documentation only as necessary to support Users. In addition to other remedies, if Licensee makes unauthorized copies of the Software Products or the Documentation, TAB shall be entitled to recover the full amount of any license fees that would relate to such copies.

- b) Software License Restrictions. The rights granted in this Section 4 are subject to the following restrictions: Licensee may not (i) disassemble, reverse engineer or decompile the object or binary code of any Software Product or attempt to do so, and shall prohibit its employees, contractors and agents from doing so or attempting to do so; (ii) modify or reproduce any Software Product or Documentation or prepare any adaptations derivative works thereof, and shall prohibit its employees, contractors and agents from doing so or attempting to do so; (iii) sell, assign, rent, lease, transfer, sublicense, dispose of, or otherwise make available a Software Product, or any portion thereof, to any other party, or use the Software Products for commercial time-sharing, rental, outsourcing, or service bureau use, or to train persons other than named Users; (iv) use the Software Products that are development tools for general application development purposes; and (v) with regard to any and all permitted copies of the Software Products and Documentation, Licensee shall only make exact copies of the versions as originally delivered by TAB. Licensee shall ensure that each copy contains all titles, trademarks, and copyright and restricted rights notices as in the original, and all such copies shall be subject to the terms and conditions of this Agreement. No custom software allowed under this contract.
- c) Retention of Rights. TAB reserves all rights not expressly granted to Licensee in this Agreement. Licensee acknowledges and agrees that: (i) except as specifically set forth in this Agreement, TAB retains all rights, title and interest in and to the Software Products and Documentation; (ii) any configuration or deployment of the Software Products shall not affect or diminish TAB's rights, title, and interest in and to the Software Products; and (iii) if Licensee suggests any new features, functionality, or performance for the Software Products that TAB subsequently incorporates into the Software Products, Licensee hereby grants TAB a worldwide, non-exclusive, royalty-free, perpetual right and license to use and incorporate such suggestions into the Software Products. Licensee acknowledges that the Software Products incorporating such new features, functionality, or performance shall be the sole and exclusive property of TAB and all such suggestions shall be free from any confidentiality restrictions that might otherwise be imposed upon TAB under this Agreement.
- d) Verification. At TAB's written request, Licensee shall furnish TAB with a certified document listing (i) the number of Users; and (ii) the locations and types of the systems on which the Software Products operate or are installed. TAB reserves the right to audit Licensee's use of the Software Products on a semi-annual basis at TAB's expense. TAB shall schedule any audit at least thirty (30) days in advance. Any such audit shall be conducted during regular business hours at Licensee's facilities and shall not unreasonably interfere with Licensee's business activities. If such audit reveals that Licensee has underpaid fees to TAB, and if Licensee does not dispute such audit, then Licensee shall promptly pay to TAB such fees.

5. PAYMENT

All payments hereunder shall be in accordance with the DIR Contract DIR-TSO-2606.

6. TAXES

All taxes shall be in accordance with the DIR Contract DIR-TSO-2606.

7. CONFIDENTIALITY

- a) TAB and Licensee acknowledge that each may receive Confidential Information of the other party. Each party understands that any Confidential Information of the other party (the “disclosing party”) received from the disclosing party is regarded by the disclosing party as being confidential, valuable and proprietary. The parties agree, unless required by law, not to make each other’s Confidential Information available in any form to any third party (except third parties who are Users as defined hereunder) or to use each other’s Confidential Information for any purpose other than in the performance of this Agreement.
- b) Each party agrees to take all reasonable precautions to maintain the confidentiality of the Confidential Information of the disclosing party using at least the same degree of care as the receiving party employs with respect to its own Confidential Information, and to take appropriate action by instruction, agreement or otherwise, with respect to any person permitted access to the Confidential Information of the disclosing party.
- c) If the receiving party is required to disclose all or any part of the Confidential Information of the disclosing party pursuant to the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, or regulatory or administrative body that has power to compel the disclosure of such information, (or, for DIR or customer, pursuant to a Public Information Act request), the receiving party agrees to (i) promptly notify the disclosing party of the existence, terms and circumstances surrounding such event; and (ii) only disclose Confidential Information of the disclosing party to the minimum extent required; The receiving party agrees to fully cooperate with the disclosing party in the event of a required disclosure as herein described.

8. OWNERSHIP

Licensee acknowledges and agrees that the Software Products and Documentation, and all copies thereof, constitute valuable trade secrets of TAB and/or proprietary and confidential information of TAB. All aspects of the Software Products and Documentation, including programs, methods of processing, design and structure of individual programs and their interaction and programming techniques employed therein, shall remain the sole and exclusive property of TAB and title thereto remains in TAB. Ownership of all applicable copyrights, trade secrets, patents and other intellectual property rights in the Software Products and Documentation are and shall remain vested in TAB.

9. INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT

The Intellectual Property Rights Infringement shall be in accordance with the DIR Contract DIR-TSO-2606.

10. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

- a) Software Product Warranty. TAB warrants for ninety (90) days from the Commencement Date that each Software Product for which Licensee has a Software License will perform in all material respects in accordance with the functions described in the Documentation when operated on a supported operating system as set forth in the Documentation.
- b) Media Warranty. TAB warrants for ninety (90) days from the Commencement Date that the tapes, diskettes or other media upon which TAB delivers each Software Product will be free of defects in materials and workmanship under normal use.
- c) Services Warranty. TAB warrants for ninety (90) days from the performance of any Professional Services or Maintenance Services, that such services shall be performed in a professional manner with the level of skill exercised by other professionals in performing services of a similar nature under similar circumstances.
- d) Disclaimers. TAB does not warrant that (i) the Software Products will meet Licensee's requirements; (ii) the Software Products will operate in combination with other hardware, software, systems or data not recommended by TAB in the Documentation; (iii) the operation of the Software Products will be uninterrupted, error-free, virus free or secure; or (iv) all Software Product errors will be corrected. TAB does not provide a guarantee to resolve a support service request. THE WARRANTIES CONTAINED IN THIS SECTION 10 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, AND QUALITY OF SERVICE. No agreement or oral or written information or advice by TAB, its employees, distributors, dealers or agents, varying or extending any warranties, remedies or limitations contained in this Agreement, shall increase the scope of the above warranties or create any new warranties unless contained in a writing signed by a duly authorized officer of TAB.
- e) Warranty Remedies. Licensee must report in writing any breach of the warranties contained in this Section 10 to TAB during the relevant warranty period, and Licensee's remedy under the warranty and TAB's liability for any breach of such warranties shall be as set forth below:
 - i) Software Product Warranty. TAB shall correct or provide a workaround for reproducible Software Product errors that cause a breach of this warranty.
 - ii) Media Warranty. TAB shall replace any defective media.
 - iii) Services Warranty. TAB shall promptly correct and re-perform any of the Professional Services or Maintenance Services that are not in compliance with this warranty.

The parties acknowledge and agree that the Software Products are not “consumer goods” as defined by the Uniform Commercial Code and that the Software Products are not governed by, or subject to the United Nations Convention on Contracts for the International Sale of Goods.

11. LIMITATION OF LIABILITY

The Limitation of Liability shall be in accordance with the DIR Contract DIR-TSO-2606.

12. TERM; TERMINATION

The Term/Termination shall be in accordance with the DIR Contract DIR-TSO-2606.

- a) Export Controls. Licensee agrees to comply fully with all relevant export laws and regulations of the United States, including but not limited to the U.S. Export Administration Regulations (collectively, “U.S. Export Controls”). Without limiting the generality of the foregoing, Licensee expressly agrees that it shall not, and shall cause its representatives to agree not to, export, directly or indirectly, re-export, divert, or transfer the Software Products, Documentation or any direct product thereof to any destination, company or person restricted or prohibited by U.S. Export Controls.
- b) Relationship of the Parties. Nothing in this Agreement shall be construed in any way as placing either party in the position of being an agent of the other party, and neither party shall have the power to bind the other party, or to contract in the name of, or create a liability against, the other party in any way, for any purpose. Neither party shall be responsible for the acts or defaults of the other party, or any of the other party’s employees, representatives or agents.
- c) Notices. All notices and other communications required hereunder shall be in writing and deemed given if personally delivered or sent by certified or registered mail, postage prepaid, or by overnight delivery service addressed to the parties at the address set forth below, or by facsimile transmission, receipt confirmed. Notices delivered personally, by overnight delivery or facsimile transmission shall be deemed received as of actual receipt; notices sent by registered or certified mail shall be deemed received three (3) days after mailing. Each party may change such party’s address by written notice in accordance with this section.
- d) Severability. If any provision of this Agreement shall be held by any court to be unenforceable or inoperative, the remaining provisions shall be deemed severable and unaffected and shall continue in full force and effect.
- e) Interpretation. The parties have participated jointly in the negotiation and drafting of this Agreement, if any ambiguity or question of intent or proper interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.
- f) Counterparts. This Agreement may be executed in several identical counterparts, each of which is an original, but all of which taken together shall constitute one instrument.

- g) Assignability. This Agreement and the rights granted hereunder may not be assigned, sub-licensed, encumbered by a security interest or otherwise transferred by either party without the prior written consent of the other party.
- h) Governing Law. This Agreement shall be governed by and interpreted in accordance with the internal laws (but not the law of conflicts) of the State of Texas. Exclusive venue for all matters and issues arising under this agreement shall lie in the state district court located in Travis County, Texas. Nothing herein shall be construed to waive the sovereign immunity of the state or any defense of official immunity.
- i) Waiver and Amendment. Any breach of this Agreement may only be waived by a written instrument signed by the party against whom enforcement of the waiver is sought. The failure of either party to exercise any right, or the waiver by either party of any breach, shall not prevent a subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same or any other term of this Agreement. This Agreement and the Exhibits hereto may be amended only by an instrument in writing signed by both parties.
- j) Entire Agreement. This Agreement together with the other documents comprising of DIR Contract DIR-TSO-2606 and the Exhibits hereto set forth the entire agreement between the parties concerning the transactions and arrangements contemplated hereby, and supersede all prior oral or written arrangements or agreements.

INTENDING TO BE LEGALLY BOUND, the parties have executed and delivered this Agreement by their respective duly authorized officers as of the Effective Date.

TAB PRODUCTS CO. LLC

By: _____
(Authorized Signature)

By: _____
(Authorized Signature)

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address for Notice:

Address for Notice

TAB Products Co. LLC
605 Fourth Street
Mayville, Wisconsin 53050
Attention: _____

EXHIBIT A: PRODUCT AND SERVICES SCHEDULE

Software

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Software Maintenance

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Hardware

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EXHIBIT B: STATEMENT OF WORKS

EXHIBIT C: TAB MAINTENANCE SERVICES TERMS AND CONDITIONS

TAB's Maintenance Services terms and conditions for all Software Products consist of the following (capitalized terms used herein shall have the same meaning as set forth in the Agreement between the parties to which this Exhibit is attached):

1. **Standard Maintenance Services.** So long as undisputed maintenance fees are timely paid, TAB shall provide the following standard Maintenance Services with respect to the Software Products:
 - a) **Correction of Reproducible Failures/Errors.** Upon notification to TAB that the Software Products fail to operate, in any material respect, in conformance with the then-current Documentation when properly used, TAB shall use commercially reasonable efforts to correct any reproducible failure or error, or provide a workaround to the problem as soon as reasonably possible.
 - b) **Telephone Support.** TAB will provide phone support Monday through Friday from 8:00 AM to 5:00 PM nationwide, except for established TAB holidays, via the technical support contact information posted on TAB's website at www.tab.com, to answer general questions on the use and operation of a Software Product. Such service may include providing file transfers through the TAB internet web site. Response time: Service will be provided on a priority basis, in accordance with standard industry practices.
 - c) **General Updates.** TAB shall make available to Licensee updates to the Software Products which are "updateable products" (i.e., subscription products) and licensed as such. Updates shall include "Major Releases" which consists of changes to an existing execution program that offers extended capabilities or enhanced performance. Error corrections and minor changes may be included as part of the "Major Release." Updates will include Documentation which describes the nature of an Update. Unless otherwise agreed to in writing between TAB and Licensee, TAB shall be responsible for the installation of Updates and Licensee shall pay for such services in accordance with the DIR Contract DIR-TSO-2606.
 - d) **Non-Updateable Products.** If a Software Product is not an updateable product, it is either custom in nature and developed for a specific application by TAB, or updates are available through a third party (a "Non-updateable Product"). Changes made to a Non-updateable Product developed by TAB will require system engineering and be performed by request and in accordance with the DIR Contract DIR-TSO-2606. Updates for Non-updateable Products manufactured by a third party but distributed by TAB are available only through such third party.
 - e) **Limitations.** Notwithstanding anything to the contrary contained herein, TAB is under no obligation to provide and may cease providing Maintenance Services for a particular Software Product if (i) Licensee's use of a Software Product is in contradiction or violation of the Agreement or the Documentation; (ii) Licensee without authorization modified, enhanced or altered a Software Product; (iii) Licensee's other hardware/software is defective; or (iv) a Software Product or Upgrade was incorrectly installed by a party other than TAB.
2. **Licensee Obligations.** Licensee shall be licensed and registered for all Software Products for which Maintenance Services are requested. Service and or phone support will not be administered until a Software Product is properly licensed. Licensee shall

have written backup procedures that it will abide by and a plan for disaster recovery in the case of a major hardware failure. **LICENSEE IS AT ALL TIMES SOLELY RESPONSIBLE FOR HAVING BACK UP EQUIPMENT SUFFICIENT TO PROTECT THE LOSS OF LICENSEE'S DATA.** Licensee agrees to use reasonable efforts to: (i) designate a representative with diagnostic capabilities and systems knowledge who shall to the maximum extent practicable communicate with TAB; (ii) assist TAB in resolving Licensee requests by providing written explanation of the problem encountered, and/or supporting documentation (such as an error log or messages file); and (iii) provide TAB upon request with a profile of Licensee's hardware/software environmental configuration and a listing of output or other data TAB reasonably believes will assist it in reproducing errors or in otherwise providing the Maintenance Services.

3. Other Services.

- a) The Maintenance Services excludes any service not listed in this Exhibit C including but not limited to, audits, design and configuration services, installation, moves/changes, programming, data conversion, testing, training, or administration of systems all of which shall be separately agreed upon in writing by the parties. All services other than the Maintenance Services shall be billed separately and due upon receipt of invoice.
- b) If TAB determines a service request is not within the scope of Maintenance Services as provided herein, TAB will inform Licensee and provide a written explanation supporting such determination. At Licensee's written request, TAB may undertake work on such a service request at TAB's standard times and materials rates unless otherwise separately agreed upon in writing by the parties. All time during which TAB personnel are on stand-by, and/or at the service site awaiting access to equipment or software will be considered chargeable time.
- c) Configuration Charge: If unauthorized personnel of Licensee change Licensee's system, TAB will bill Licensee for all time and materials required to return the system to functional operation.
- d) Travel Time Charge: In accordance with the DIR Contract DIR-TSO-2606.

4. Subcontractors. Any of the Maintenance Services may be provided by TAB's authorized subcontractors at the election of TAB.

End of Maintenance Services Terms and Conditions