



**EDGESOFT SOFTWARE  
LICENSE AGREEMENT**

**PARTIES:**

**LICENSOR:**

Edgesoft, Inc.,  
6133 Bristol Parkway, Suite 301  
Culver City  
CA 90230  
Email:

**LICENSEE:**

**AGREEMENT**

1. **Definitions.** As used in this Agreement, including the Attachments hereto, the following terms shall have the following meanings.
  - a. “Initial Installation” means the first instance of installation or loading of any portion of the Software onto Licensee's computer, network or system, without regard to completion of modifications or other services to be performed under this Agreement.
  - b. “Licensee Modifications” means any modification, enhancement or addition to the Software developed by or for Licensor especially for Licensee’s use or at Licensee's request.
  - c. “Licensor Modifications” means any modification, enhancement or addition to the Software by or for Licensor, other than Licensee Modifications.
  - d. “Material” as applied to the Software or an application, shall mean a significant or substantial alteration or effect on the function or output thereof, and “cure” as applied to a Material failure shall mean the provision of functional equivalent functions or means.
  - e. “Specifications” mean the written (both hard copy and electronic text files) description of the functions, capacity, performance and features of the



Software as delivered by Licensor to Licensee under this Agreement (including, without limitation, any such description in a response to RFP or RFI delivered by Licensor to Licensee, in a Licensor product brochure provided by Licensor specific to the Software, or in correspondence from Licensor to Licensee).

- f. “Software” means the version of the Edgesoft, Inc. software packages, applications and interfaces selected by Licensee, listed on Attachment A (each an “Application”), current at the time of signing this Agreement, and shall include any Licensee Modifications and Licensor Modifications provided by Licensor to Licensee.
- g. “User Materials” means all written and electronic documentation, manuals and materials provided by Licensor to Licensee for use in connection with the Software.

2. **Grant of License.** Licensor grants Licensee a non-transferable, non-exclusive license to use the Software and User Materials, on the terms and conditions set forth in DIR Contract No. DIR-SDD-1647 and herein.

- a. Scope of License. Under the License granted herein Licensee may use, copy and distribute the Software (in machine-readable, object code form only) and User Materials to: (i) install, use and execute the Software on computers that Licensee owns or leases for purposes of serving Licensee’s internal business needs; (ii) support Licensee’s use of the Software under this Agreement; and (iii) transfer or copy the Software from one of Licensee’s computers to another, store the Software’s machine-readable instructions or data on a temporary basis in main memory, extended memory, or expanded memory of such computers as necessary for such use, and transmit such instructions or data through Licensee’s computers and associated devices.
- b. License Restrictions. Licensee may only use the Software and User Materials within the limited scope set forth herein. In particular, and without limitation, Licensee agrees that Licensee and Licensee’s employees will not: (i) assign, sublicense, transfer, pledge or grant a security interest in, lease, rent or share Licensee’s rights under this License Agreement with any third party; (ii) reverse assemble, reverse compile, cross compile or otherwise adopt, translate or modify the Software; or (iii) refer to or use any portion of the Software or User Materials as part of any effort to develop any other software program.
- c. Source Code. Licensor shall house the latest release of the Software with source code with Iron Mountain Intellectual Property Management in the event of bankruptcy or inability of Licensor to continue providing normal support services to its client base.

3. **Ownership: Proprietary Protection.** This Agreement does not provide Licensee with title to or ownership of the Software, but only a right of limited use, except as provided for in paragraph 2.c. Licensor shall have sole and exclusive ownership of all right, title and interest in and to the Software and User Materials, all copies thereof, all derivative works, and all related material generated from the Software including material displayed on the screen such as icons, screen displays, etc. (including ownership of all copyrights, trademarks and other intellectual property rights pertaining thereto), whether created by Licensor or any other party, subject to the rights of Licensee expressly granted herein.
  
4. **Confidential Information: Non-Disclosure.** Licensee acknowledges that the Software and User Materials, and all underlying ideas, algorithms, concepts, procedures, processes, principles, know-how, and Licensor's methods of business and technical operation (collectively referred to as "Confidential Information") are confidential and contain trade secrets. Licensee shall not use, disclose or cause disclosure of, or distribute any Confidential Information, directly or indirectly, without the prior written consent of Licensor, except that Licensee is authorized to disclose Confidential Information to Licensee's employees or agents as required for Licensee's use of the Software as authorized by this Agreement or as required by the Texas Public Information Act, which obligation shall survive the termination of this License, to the extent allowed by law.
  
5. **Fees.** The fees payable by Licensee to Licensor under this Agreement shall consist of License Fees (as defined in Attachment A), and additional fees for specific services all in accordance with Appendix C, Pricing Index, to DIR Contract No. DIR-SDD-1647.
  - a. **License Fees.** License fees shall be paid by Licensee solely in consideration of the License granted under this Agreement, and shall be invoiced and payable in the amounts and at the times in accordance with the Schedule of Fees set forth in Attachment A in accordance with Sections 7.B. and 7.C. of Appendix A to DIR Contract No. DIR-SDD-1647. License Fees are exclusive of Service Fees, and shall not constitute consideration or payment for set-up, implementation management, training and consulting, data conversion, modifications or maintenance.
  
  - b. **Fees for Services.** Additional fees shall be paid by Licensee in consideration of set-up, implementation management, training and consulting, modifications, and data conversion, and shall be invoiced and payable in the amounts and at the times in accordance with the Schedule of Fees set forth in Attachment A in accordance with Sections 7.B. and 7.C. of Appendix A to DIR Contract No. DIR-SDD-1647.

- c. Maintenance Fees. Maintenance fees shall be paid by Licensee solely in consideration of those maintenance and support services described in a separate Software Maintenance Agreement between Licensor and Licensee.
  - d. Taxes. As per Section 151.309, Texas Tax Code, governmental Licensees under this Agreement are exempt from the assessment of State sales, use and excise taxes. Further, governmental Licensees are exempt from Federal Excise Taxes, 26 United States Code Sections 4253 (i) and (ii). Software will be provided via the Internet – no physical media (including but not limited to CD's, tapes, manuals, etc) will be shipped.
6. Licensee's Cooperation. Licensee acknowledges that successful installation, implementation and use of the Software cannot be accomplished by Licensor's efforts alone, and requires substantial effort and cooperation by Licensee personnel capable of properly using the Software. Both Licensor and Licensee shall at all times use their best efforts to actively participate and cooperate in data conversion, system installation, implementation, training and use, shall provide each other accurate and timely information, and shall afford each other reasonable access to information and facilities. All substantive communication between Licensor and Licensee will take place between Licensee's project manager and Licensor's project manager.
7. Acceptance Testing Period. Upon completion of implementation of each Application, Licensor shall give written notice to Licensee that installation of the Application at the Initial Installation site(s) is completed, and that Licensee has achieved live status as to the Application (such times also referred to as "go live date(s)" in Licensor's project schedule, as shall be determined by the parties promptly after execution of this agreement). Licensee shall be deemed to have accepted the Application thirty (30) days after Licensor's notice, unless, during that thirty (30) day period (the "Acceptance Testing Period"), the Application fails to perform in accordance with the Specifications in some Material respect attributable to a defect in the Application or an act or omission of Licensor, and, by the end of the Acceptance Period, Licensee gives Licensor written notice of non-acceptance describing the failure in reasonable detail. If Licensee gives a proper notice of non-acceptance to Licensor, then:
- a. Investigation. Licensor shall investigate the reported failure. Licensee shall provide to Licensor reasonably detailed documentation and explanation, together with underlying data, to substantiate the failure and to assist Licensor in its efforts to diagnose, reproduce, and if necessary correct the failure.
  - b. Material Failure Found. If there exists a reproducible Material failure to perform in accordance with the Specifications attributable to a defect in the Application or an act or omission of Licensor, Licensor shall, within thirty (30)

days (or such longer period as may be reasonable under the circumstances) after receipt of Licensee's written notice of non-acceptance, correct the failure so that the Application functions in Material conformity with the Specifications. Upon correcting the failure within such period Licensor shall notify Licensee in writing that the failure has been corrected and another Acceptance Testing Period shall begin in accordance with this Section 7.

- c. **No Material Failure Found.** If there was no reproducible Material failure to perform or the failure to perform was not attributable to a defect in the Application or an act or omission of Licensor, then Licensor shall give written notice to Licensee explaining its determination in reasonable detail, and Licensee shall have thirty (30) days to respond with additional documentation or written explanation regarding the failure. If Licensee provides such response, Licensor shall be afforded thirty (30) days to review the response and, if necessary, attempt to correct the failure. If Licensee does not provide such response within thirty (30) days, then Licensee shall be deemed to have accepted the Application as of the date of Licensor's notice.

8. **Terminations.** This Agreement is effective as of the Effective Date and shall continue until terminated. Terminations shall be in accordance with Section 10.B. of Appendix A to DIR Contract No. DIR-SDD-1647.

9. **Support and Maintenance.** Support and maintenance of the Software is not included in this Agreement or the License Fees or Service Fees paid hereunder, but is purchased through a separate Software Maintenance Agreement.

10. **Limited Warranty.** Licensor warrants that it has title to the Software and that it has full authority to grant this license to Licensee. Licensor also warrants that, as to each Application, for a period of ninety (90) days from the date of Licensee's acceptance of the Application, the Application will function in Material conformity with the Specifications. If during this period, Licensee notifies Licensor in writing that the Software is not performing substantially in accordance with the Specifications and Custom Specifications, giving reasons for so claiming, Licensor

will examine the Software within seven working days of receiving notice and, as soon as practicable, not to exceed 15 days, repair or replace the Software such that it complies with the Specifications and Custom Specifications. This warranty does not operate where the substantial non-performance arises in any respect from either the installation of the Software by unauthorized personnel or the use of unauthorized equipment, materials or third party software. Licensor makes no warranty regarding the usability or convertibility of any of Licensee's data, the suitability of the Software for Licensee's needs, or any performance problem, claim of infringement or other matter to the extent attributable to any use or modification of the Software, or combination of the Software with any other software or computer program or communications device, not expressly authorized by Licensor in writing. Determination of breach of the foregoing limited warranty or default under this Section 10 shall be subject to the notice and cure provisions of Section 8, and upon receipt of written notice of breach of warranty Licensor shall be afforded a period of thirty (30) days to cure the reported Material defect, failure or other breach. Licensee agrees that the foregoing limited warranty is in lieu of all other warranties of Licensor and Licensor disclaims all other warranties, express or implied, including without limitation any implied warranty of merchantability, fitness or adequacy for any particular purpose or use, quality, productiveness or capacity, or that the operation of the Software will be error-free.

**11. Limitation of Liability.** Limitation of Liability shall be in accordance with Section 9.K. of Appendix A to DIR Contract No. DIR-SDD-1647.

**12. Venue; Governing Law.** Exclusive venue for any dispute between the parties arising out of or relating to this Agreement shall be in the appropriate state court located in Travis County, Texas. . This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas, as such laws apply to a contract made and performed in such state, without regard to conflicts of law provisions. Dispute Resolution shall be in accordance with Section 10.A. of Appendix A to DIR Contract No. DIR-SDD-1647. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

**13. Entire Agreement; Construction; Licensor and Licensee**

**Representations.** DIR Contract No. DIR-SDD-1647 and this Agreement constitute the complete and exclusive statement of the agreement between Licensor and Licensee and supersede all prior and contemporaneous negotiations, discussions, proposals and understandings, oral, written or implied, including those involving any agent of either party, relating to the subject matter herein. No representations or statements made by either party or either party's agents not expressly set forth or referenced in DIR Contract No. DIR-SDD-1647 and in this Agreement shall be binding on either party. Rights, obligations and warranties under this Agreement extend to Licensee and Licensor only, and no other person shall be considered a third party beneficiary of this Agreement or be otherwise entitled to any rights or remedies under this Agreement. No provision of this Agreement shall be construed in favor of or against any party because one party or its professional advisors participated in the preparation of this Agreement. Licensee represents and warrants that it possesses sufficient mastery of the principles of accounting to use the Software for its intended purpose, and, accordingly, Licensee acknowledges that it is Licensee's responsibility to: develop and institute the use of manual controls to validate the accuracy of the data generated by the system; review proof lists and reports to validate the accuracy of reports and statements; and verify that a functioning archival system is in place, and that the data base is archived to a removable medium on a daily basis. In the event of a conflict between the DIR Contract No. DIR-SDD-1647, the main body of this Agreement, and the Attachments, the order of precedence shall be the DIR Contract, then the main body of this Agreement, and then the Attachments.

**14. Modification; No Waiver.** The terms of this Agreement may only be modified, expanded or added to by a written agreement executed by the parties. No oral communication between the parties or their agents before or after execution of this Agreement shall be binding upon either party unless the parties expressly agree in writing to the terms of such communication. No waiver by either party of any breach of any term or condition hereof shall be effective or enforceable unless made in writing signed by the party, and no waiver shall be interpreted as a continuing waiver or a waiver of any future obligation.

LICENSOR

By:

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

Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_, \_\_\_\_\_

LICENSEE

By:

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

Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_, \_\_\_\_\_

**ATTACHMENT A.1: SCHEDULE OF FEES**

Attachment A contains the price quote issued to Licensee showing the applications and services being licensed and/or purchased, the fees therefore, and the current fees for other services, and a schedule of payment terms all consistent with the governing provisions of DIR Contract No. DIR-SDD-1647. By signing this agreement, Licensee is agreeing to the Schedule of Fees for the duration of the implementation.



**Pricing Proposal for \_\_\_\_\_**

Application/Products	Application License Fees	Training	Implementation Services
eLMS Core Framework Building Permit and Inspection Planning and Planner Update Code Enforcement Business Licenses			
Springbrook Integration First Year Software Maintenance			
<b>Total</b>			
<b>Enterprise License, Unlimited Users.</b>			
<b>Total Estimated Project Costs</b>			
25% Discount on Software License Fees			
75% Special Springbrook Client Discount on Software License Fees			
<b>Total Estimated Net Project Costs</b>			

Training and on-site implementation services do not include travel time or expenses.



## A.2 STANDARD FEE PAYMENT SCHEDULE

eLMS (Enterprise Land Management System) License Fees	\$
Training: (Does not include expenses; A.3 and A.4 for details)	\$
Implementation Services:	\$
Springbrook Integration	\$
First Year Maintenance	\$

Discount:

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**Total Due at Contract Signing and Delivery of Software: \$**

## **A.3 EXPLANATION OF FEE SCHEDULE ITEMS FOR SERVICES**

### **A.3.1 Software Maintenance.**

Maintenance and support of the Software is not provided under this Software License Agreement, but under a separate Software Maintenance Agreement between Licensor and Licensee. In the event of a conflict between this “Explanation” of software maintenance and the Software Maintenance Agreement, the Software Maintenance Agreement shall prevail. First year maintenance is based on 18% of the retail value of the application software and 25% of the then current retail value of the database manager. Maintenance on the Edgesoft applications (eLMS – Enterprise Land Management System) is provided by Edgesoft and includes telephone and Internet support, as well as telephone and Internet support from Edgesoft for standard reports written by Edgesoft and included as part of the standard releases.

### **A.3.2 Implementation Management.**

Implementation Services. Implementation Services are vital to a successful implementation, and are considered technical services rather than training. A Project Manager is assigned to manage your implementation, managing your workload, checklists, task lists and keeping you apprised of the status of your project. This involves on-going telephone and conference calls as well as written documentation. Implementation planning is generally conducted prior to signing contracts. The cost of this line item in your quote may have changed up or down from your original quote as a result of completing the BPS (see below) depending on the complexity of your implementation (will you be using the system(s) and Application(s) as they are provided, will you be implementing all the features contained in the Application(s), will modifications be required, etc. – note: these conditions may also affect the training estimate listed in this quote).

Business Process Study (BPS). Every Customer is unique in the way it conducts business. In addition, other factors need to be considered, such as what, if any, interfaces need to be written to connect eLMS (Enterprise Land Management System) to vendors’ applications, what unique reporting requirements you may have, what type of forms you require, etc. During the BPS we consult with your staff on the best way to set up the new system to meet your organization’s requirements. In summary, we help you maximize the benefits while minimizing any misunderstandings about the functionality or implementation of your new software. Based on the BPS we provide a written document outlining our findings for your review and approval. These findings will include any additional recommended applications as well as advice on not purchasing applications that may not serve your needs, the cost for any requested customization, as well as any other potential costs we have been able to uncover that are relevant to this project. Any associated costs uncovered during this session, including additional recommended training or other implementation services, will be presented for your approval with these written findings.

### **A.3.3 Technical and Training Services.**

The amounts listed in this quote do not include travel time or expenses. In addition, all reimbursable travel-related expenses will be billed in accordance with Section 4.G of DIR Contract No. DIR-SDD-1647. (Variables that could cause the need for *additional* training include, without limitation: employees at your organization that are unfamiliar with their job responsibilities; users who are unfamiliar with Windows; multiple users who need to be trained at separate times and/or locations; or turnover in application software personnel during the implementation period. Training fees will be payable by Licensee whether or not application software personnel are made available for training, and failure to complete required training could result in increased Maintenance Fees or additional training costs. Licensee shall provide users of the Software with eLMS (Enterprise Land Management System) certified Software training; a System Malfunction, failure or error caused by an untrained user shall not be the responsibility of the Licensor.

### **A.3.4 Modifications.**

Modifications are made on a bid basis, based on Edgesoft's current Service Fee schedule which shall be consistent with the discounts provided in DIR Contract No. DIR-SDD-1647. All Modifications and custom programming will be made pursuant to work orders approved in advance by you. These include any and all fees for modifications requested and outlined in the BPS findings, as well as future Modifications requested during and after the project is completed. In order to keep the implementation schedule on track, no modifications other than those outlined during the BPS process will be made to the Software until the base system is installed (and all License Fees have been paid), unless those modifications are essential to your ability to go live on the application(s). No fees for Software modifications shall be billed to you until Edgesoft has received a signed bid for such modifications.

### **A.3.5 System and Communication Requirements.**

Operating Environment.—The eLMS™ software is a Java-based (J2EE Standard) application that is designed to be deployed on a standard J2EE Application Server. The application is accessed via a Web browser and is currently compatible with Internet Explorer 7 and higher. It is architecture on Services Oriented Architecture (SOA). The current application is designed to be compatible with all leading database software.

Telephone/VPN Support. – Licensee shall provide and maintain a telephone line for speaking with the licensor's support staff. Licensee must provide and maintain remote access (such as VPN) for the licensor's support staff to the computer or computers which serve the eLMS database and disseminate the eLMS application. This remote access also requires that the Licensee offer the licensor's support staff access through one of the products listed by the licensor. These currently include: Symantec PCAnywhere, Citrix GoToMyPC, Bomgar, Microsoft Terminal Services, and

Citrix Metaframe. VPN connections are currently supported using the Microsoft client included in Windows 2000 and Windows XP, as well as the Cisco System VPN Client.

**A.4 SERVICE FEES**

**After hours support** \$  
*(Maintenance contract covers support from 5:00am – 6:00pm PST Monday – Thursday and 5:00am – 5:00pm PST Friday.)*

**Onsite Installation** \$

**Network & Operating System Consulting** \$  
*(Answering questions and assisting users and/or their consultants with all aspects of hardware, networks, and operating systems - includes installation, set-up, and troubleshooting.)*

**Training** \$  
*(The training necessary for the average user has been included with the project total above - additional one-on-one training, if requested, shall be billed at \$150/hr.)*

**Travel Expenses** **Billed as Incurred**

**Telephone Training** \$  
*(Working with a trainer or customer support representative on questions other than support related issues (as defined in Maintenance Agreement) where the call exceeds 10 minutes in length is considered training rather than support and may be billed as such,)*

**Weekend/After Hours Training**

Onsite rate \$ Telephone rate \$

**NOTE: Senior Managers/Programmers/CPAs** \$