



MASTER PRODUCT LICENSE AGREEMENT

The GSA Multiple Award Schedule Contractor acting on behalf of RADIANT LOGIC, Inc. ("RADIANT") hereby grants the eligible Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document ("Customer" or "Ordering Activity"), and Customer hereby accepts from RADIANT, a non-exclusive and non-transferable right and license to use the Products specified on one or more separately executed purchase orders (the "Purchase Orders") subject to the terms and conditions specified below.

1. DEFINITIONS

(a) "Products" means (i) the machine-readable object code version of the computer programs described in and specifically identified in one or more separately executed Purchase Order(s) that RADIANT makes available, whether embedded on disc, tape or other media, for use on the computer platform specified in the Purchase Order(s) (the "Software"), (ii) the published user manuals and documentation that RADIANT makes generally available for the Software (the "Documentation"), (iii) the fixes, updates, upgrades or new versions of the Software or Documentation that RADIANT may provide to Customer under this Agreement (the "Enhancements") and (iv) any copy of the Software, Documentation or Enhancements.

(b) "License Metrics" means the type, size, and quantity of servers or quantity of users specified in the Customer Purchase Order.

2. USE

Customer may use the Products only in and for Customer's own internal purposes and business operations for the term specified in the Purchase Order. Customer may use the Products only per the License Metrics described in the Purchase Order. Any other change in License Metrics, (including any increase in the number of licensed servers, CPUs, or users) will require RADIANT's prior approval, which may be subject to additional charges.

Customer will not (a) permit any other person to use the Products directly or indirectly, whether on a time sharing, remote job entry or service bureau arrangement or (b) install the Software or Enhancements on a network or other multi-user computer system unless otherwise specified in the Purchase Order. Customer may make a reasonable number of back-up or archival copies of the Software and Enhancements. 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 copy, translate, modify, adapt, decompile, disassemble or reverse engineer the object code version of the Products, except as and to the extent expressly authorized by applicable law.

3. PAYMENT

Customer will pay to RADIANT the License Fee in the currency specified in the Purchase Order and within thirty (30) days of the invoice receipt date issued after the effective date of the Purchase Order. RADIANT shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. Any amount not paid when due will accrue interest at the rate indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

4. MAINTENANCE AND SUPPORT

(a) **Maintenance and Support.** During the Annual Maintenance Period, if any, specified in the Purchase Order (the "Annual Maintenance Period"), RADIANT will provide Customer, at no additional charge, with (i) the fixes and updates that RADIANT may make generally available as part of its standard maintenance services (the "Updates"), (ii) a replacement copy of the Product if the media becomes damaged or is destroyed to the extent that the Product is unusable, and (iii) advice, consultation and assistance to use the Product and diagnose and correct problems that Customer may encounter (the "Hot-Line Support"). RADIANT will offer the Hot-Line Support remotely by telephone, fax, email, or other electronic communication during its normal business hours unless otherwise specified in the Purchase Order. RADIANT may offer on-site support to Customer at additional charges. Customer may receive Updates and Hot-Line Support for additional 12-month periods after the Annual Maintenance Period by both parties executing a new purchase order in writing. The charge for Updates and Hot-Line Support shall be RADIANT's annual fee in effect at the time of renewal in accordance with the GSA Schedule Pricelist. Customer may reinstate the Updates and Hot-Line Support at any time by paying RADIANT a reinstatement fee equal to amount that would have been paid by the CUSTOMER for the past Agreement period(s) had coverage been maintained continuously.

(b) **Limitation.** The Updates will not include any upgrade or new version of the Products that RADIANT decides, in its sole discretion, to make generally

available as a separately priced item. This Section will not be interpreted to require RADIANT to (i) develop and release Enhancements or (ii) customize the Enhancements to satisfy Customers' particular requirements. If an Enhancement replaces the prior version of the Product, Customer will destroy such prior version upon installing the Enhancement.

5. WARRANTIES AND REMEDIES

(a) **Limited Warranty.** RADIANT warrants that it has the right to (i) enter into this Agreement and (ii) grant the licenses hereunder. RADIANT also warrants that the Software will perform substantially as described in the accompanying Documentation. Customer acknowledges that (i) the Products may not satisfy all of Customer's requirements and (ii) the use of the Products may not be uninterrupted or error-free.

(b) **Remedies.** In case of breach of warranty, RADIANT or its representative will correct or replace any defective Software or, if not practicable, RADIANT will accept the return of the defective Software, terminate the applicable Purchase Order and refund to Customer the License Fee actually paid to RADIANT for the defective Software less depreciation based on a 5 year straight line depreciation schedule. Customer acknowledges that this Paragraph sets forth Customer's exclusive remedy, and RADIANT's exclusive liability, for any breach of warranty or other duty related to the quality of the Products.

(c) **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR REQUIRED BY APPLICABLE LAW, ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO THE PRODUCTS, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY RADIANT, ITS LICENSORS OR REPRESENTATIVES OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, SATISFACTION AND FITNESS FOR A PARTICULAR PURPOSE) ARE HEREBY OVERRIDDEN, EXCLUDED AND DISCLAIMED.

6. INDEMNITY

(a) **Indemnity.** If an action is brought against Customer claiming that a Product infringes a patent, trade secret or copyright, RADIANT will have the right to intervene to defend Customer at RADIANT's expense and, subject to this Section and Section 7, pay the damages and costs finally awarded against Customer in the infringement action, but only if (i) Customer notifies RADIANT promptly upon learning that the claim might be asserted, (ii) RADIANT has control over the defense of the claim and any negotiation for its settlement or compromise, and (iii) Customer takes no action that is contrary to RADIANT's interest. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

(b) **Alternative Remedy.** If a claim described in Section 6(a) may be or has been asserted, Customer will permit RADIANT, at RADIANT's option and expense, to (i) procure the right to continue using the Product, (ii) replace or modify the Product to eliminate the infringement while providing functionally equivalent performance, or (iii) accept the return of the Product and refund to Customer the License Fee actually paid to RADIANT for such Product, less depreciation based on a 5-year straight-line depreciation schedule.

(c) **Limitation.** RADIANT shall have no indemnity obligation to Customer under this Section if the patent or copyright infringement claim results from (i) a correction or modification of the Product not provided by RADIANT, (ii) the failure to promptly install an Update if installation of such Update would have avoided the infringement, or (iii) the combination of the Product with other non-RADIANT software.

7. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES WILL RADIANT OR ITS LICENSORS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CUSTOMER'S CLAIMS OR THOSE OF ITS CUSTOMERS (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, USE OF MONEY OR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, STRICT

LIABILITY IN TORT OR OTHERWISE. IN NO EVENT WILL THE AGGREGATE LIABILITY WHICH RADIANT OR ITS LICENSORS MAY INCUR IN ANY ACTION OR PROCEEDING EXCEED THE LICENSE FEES ACTUALLY PAID BY CUSTOMER FOR THE SPECIFIC PRODUCT THAT DIRECTLY CAUSED THE DAMAGE. THIS SECTION WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY, DESPITE THE FOREGOING EXCLUSION AND LIMITATION. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

8. OWNERSHIP

All trademarks, service marks, patents, copyrights, trade secrets and other proprietary rights in or related to the Products are and will remain the exclusive property of RADIANT or its licensors, whether or not specifically recognized or perfected under local applicable law. Customer will not take any action that jeopardizes RADIANT's or its licensor's proprietary rights or acquire any right in the Products, except the limited use rights specified in Section 2. RADIANT or its licensor will own all rights in any copy, translation, modification, adaptation of the Products, including any improvement or development thereof. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the Ordering Activity shall receive unlimited rights to use such derivative works at no further cost.

9. CONFIDENTIALITY

(a) **Confidentiality.** Customer acknowledges that the Products constitute and incorporate confidential and proprietary information developed or acquired by or licensed to RADIANT. Customer will take all reasonable precautions necessary to safeguard the confidentiality of the Products, including at a minimum those taken by Customer to protect Customer's own confidential information. Customer will not allow the removal or defacement of any confidentiality or proprietary notice placed on the Products. The placement of copyright notices on these items will not constitute publication or otherwise impair their confidential nature.

(b) **Disclosure.** Customer will not disclose, in whole or in part, the Products or any portion thereof or other information that has been designated as confidential to any individual, entity or other person, except to those of Customer's employees or consultants who require access for Customer's authorized use of the Products, provided such consultants agree in writing to comply with the use and non-disclosure restrictions applicable to the Products under this Agreement. Customer acknowledges that any unauthorized use or disclosure of the Products may cause irreparable damage to RADIANT and its licensors. If an unauthorized use or disclosure occurs, Customer will immediately notify RADIANT and take, at Customer's expense, all steps which may be available to recover the Products and to prevent their subsequent unauthorized use or dissemination. RADIANT agrees to take the same action regarding any information designated in writing as proprietary which it receives from Customer ("Customer Information").

(c) **Limitation.** Neither RADIANT nor Customer will have any confidentiality obligation with respect to any portion of the Products or Customer Information that (i) the receiving party knew or independently developed before receiving such Products or Customer Information under this Agreement, (ii) the receiving party lawfully obtained from a third party under no confidentiality obligation, or (iii) became available to the public other than as a result of any act or omission by the receiving party or any of receiving party's employees or consultants. RADIANT recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

10. TERMINATION

When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, RADIANT shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim,

appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

Upon the termination of this Agreement for any reason, all rights granted to Customer hereunder will cease, and Customer will promptly (i) purge the Products from all of Customer's computer systems, storage media and other files, (ii) destroy the Products and all copies thereof, and (iii) deliver to RADIANT an affidavit which certifies that Customer has complied with these termination obligations. The provisions of Sections 7, 8, 9, 10 and 13 will survive the termination of this Agreement.

11. INSPECTION

During the term of this Agreement, RADIANT or its representative may, upon prior notice to Customer, and subject to Government security requirements, inspect the files, computer processors, equipment and facilities of Customer during normal working hours to verify Customer's compliance with this Agreement. While conducting such inspection, RADIANT or its representative will be entitled to copy any item that Customer may possess in violation of this Agreement.

12. ASSIGNMENT

Customer shall not assign, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder without RADIANT's prior approval which shall not be unreasonably withheld. The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts without the Government's prior approval. Procedures for securing such approval are set forth in FAR 42.1204.

13. U.S. EXPORT RESTRICTIONS

Customer acknowledges that the Products and all related technical information, documents and materials, are subject to export controls under the U.S. Export Administration Regulations. Customer will (a) comply strictly with all legal requirements established under these controls, (b) cooperate fully with RADIANT in any official or unofficial audit or inspection that relates to these controls, and (c) not export, re-export, divert or transfer, directly or indirectly, any such item or direct products thereof to Cuba, Iran, Iraq, Libya, North Korea, or any additional country that is embargoed by Executive Order or identified in the Purchase Order, unless Customer has obtained the prior written authorization of RADIANT and the U.S. Commerce Department. Upon notice to Customer, RADIANT may modify this list to conform to changes in the U.S. Export Administration Regulations.

14. RESTRICTED RIGHTS

If Customer is a U.S. government agency, in accordance with section 12.212 of the Federal Acquisition Regulations, Customer acknowledges that its use, duplication and disclosure of the Products are governed by, and subject to, this Agreement. If, for any reason, that section 12.212 is not applicable, Customer acknowledges that its use, duplication and disclosure of the Products are subject to the Rights in Data clause, FAR §52.227.14. RADIANT LOGIC, inc., 1682 Novato Blvd., Novato, California 94947, USA.

15. MISCELLANEOUS

All notices or approvals required or permitted under this Agreement must be given in writing. Any terms and conditions of any unilateral letter, memorandum, purchase order or other writing issued by Customer shall not be binding on RADIANT. Any waiver or modification of this Agreement will not be effective unless executed in writing and signed by an authorized representative of RADIANT and Customer. This Agreement will bind Customer's successors-in-interest. This Agreement will be governed by and interpreted in accordance with the Federal laws of the United States.

If any provision of this Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other provisions of this Agreement, unless RADIANT in good faith deems the unenforceable provision to be essential, in which case RADIANT may terminate this Agreement effective immediately upon notice to Customer.

This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), constitutes the complete and entire statement of all conditions and representations of the agreement between RADIANT and Customer with respect to its subject matter and supersedes all prior writings or understandings. In the event of a conflict between this Agreement and a Negotiated Purchase Order, the Negotiated Purchase Order shall prevail.

THIS AGREEMENT IS NOT EFFECTIVE UNTIL SIGNED ON BEHALF OF BOTH PARTIES

RADIANT LOGIC, Inc. ("RADIANT")

Customer: _____

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____