

BGA LICENSE AGREEMENT

1. Recitals

(a) BGA Partners has developed and owns proprietary software, equipment and documentation; and

(b) BGA Partners desires to provide to the Customer, and the Customer desires to acquire, a limited license to utilize and implement the Licensed Program, all in accordance with the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing promises, the mutual promises, covenants, and representations of the parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

2. Grant of License; Term; Payment

(a) **License.** BGA Partners grants Customer a non-transferable and nonexclusive license (the "License") to access and use the Licensed Program for the Term (as defined in Section 3 of the Certificate of License) subject to and in accordance with the terms and conditions set forth herein. The License will entitle Customer to access and use the Licensed Program from the Customer's location(s) ("Locations"), set forth in the Certificate of License attached hereto and made a part hereof. The Customer will not implement or utilize the Licensed Program at any Location unless and until BGA Partners approves such implementation or utilization of the Licensed Program at such Location. Customer and BGA Partners will mutually determine whether, when and under what circumstances the Licensed Program will be implemented at any additional Location(s). For the purposes of this Agreement, any Location that has been selected by Customer and BGA Partners to become a Location at which the Licensed Program is implemented is referred to as a "Location."

1. **Payment.** As consideration for the License granted hereunder, Customer agrees to pay BGA Partners, as royalties, in accordance with the Certificate of License. Customer's obligation to pay the amounts under this agreement is unconditional and is not subject to any reduction, set-off, defense, or counter claim for any reason whatsoever.

Prior to a sale of Company's assets or any ownership equity change of more than 30%, Customer agrees to immediately pay to company the sum of any unpaid balance(s) and all unbilled services due through the expiration of the current Term. Failure to notify Company of such a change shall be considered a Default.

Customer agrees, accepts, and understands, irrevocably and without exception and without recourse, to waive all actions, rights, claims, or relationships of agency to any chargeback and/or disputed payment procedure or refund, any future payments due by the terms of the agreement whether invoked personally and/or invoked by any financial, banking, and/or any credit card institution personally and/or on its behalf with respect to any purchase initiated.

Customers paying by credit card or ACH agree to all terms/conditions contained herein and further agree to waive all chargeback rights and any rights forwarded them by their financial institution regarding cancellation of payments due to Company.

Should Customer default on any payment, Customer will be subject to a \$25.00 charge plus any additional fees Company may incur as a result of such default. Furthermore, Customer may be subjected to a License Fee adjustment equal to the difference between their current license fee and the license fee being charged at the time of the default. The foregoing price adjustment provided herein shall not in any way affect Customer's continuing obligation to pay any and all additional sums payable under this agreement.

3. License Terms

(a) **Proprietary Rights; Ownership.** Customer acknowledges that BGA Partners may disclose to Customer certain of BGA Partners's confidential, proprietary trade secret information. Customer further acknowledges that the Licensed Program, and any drawings, flow charts, schematics, logic diagrams, object code, source code, documentation and other materials related thereto, including, but not limited to, any and all marketing and promotional materials, training materials, documents, artwork, products, methodologies and processes related to the Licensed Program and all copies thereof (in any form), as well as any of BGA Partners's confidential, proprietary trade secret information, are proprietary to and the sole and exclusive property of BGA Partners. All right, title and interest in and to the Licensed Program, any improvements, changes, modifications or upgrades thereto, and any copyrights, trademarks, patents and trade secrets therein are and will be owned by BGA Partners, and the Customer will not acquire any ownership interest in any of the foregoing except the License expressly contemplated herein. Furthermore, Customer agrees, at Customer's expense, to protect and defend BGA Partners's title or other rights to any of the provided equipment, software or materials to the extent related to the customer's unauthorized use of BGA Partners's equipment, software or materials.

(b) **Use; Copies.** BGA Partners and the Customer, and each of its respective employees and members, and no other persons or entities, will have the right to use the Licensed Program or any portion thereof. Customer may access and utilize the Licensed Program solely for the agreed upon Locations. No right to reprint or copy the Licensed Program, in electronic or other form, in whole or in part, is granted. Under no circumstances will Customer, directly or indirectly decompile, reverse engineer or otherwise attempt to break down the Licensed Program, or permit others to do so.

(c) **Non-Disclosure.** BGA Partners may be materially and irreparably harmed and impaired if Customer makes unauthorized use or disclosure of any of the terms of the License Agreement. Customer agrees to keep all terms of the License agreement confidential. In the event of any dispute relating to the unauthorized use or disclosure of any part of the License Agreement by Customer, Customer agrees that Customer shall have the burden of establishing that the information was not Confidential information or that its disclosure was authorized. Furthermore, Customer will not sell, transfer, publish, disclose, display or otherwise make available the Licensed Program or any document or material related thereto or copies (in any form) thereof to any third parties without the prior written approval of BGA Partners. Customer agrees to secure and protect the Licensed Program and any document or material related thereto and copies (in any form) thereof in a manner consistent with the maintenance of BGA Partners's rights therein. The Customer will take appropriate action by instruction or agreement with employees who are permitted access to the Licensed Program or any document or material related thereto or to copies (in any form) thereof to satisfy Customer's obligations hereunder and to preserve BGA Partners's confidential information and trade secrets, but not less than those precautions employed by Customer to protect its own proprietary information. Customer personnel whom Customer deems appropriate to have access to the Licensed Program will before utilizing such access be informed by Customer of the confidential and proprietary nature of the Licensed Program, and will agree to maintain such confidentiality.

(d) **Modification.** Customer will not make any modifications to the Licensed Program. If any modifications to the Licensed Program are made in violation of this Section, BGA Partners will not be responsible for any such modification or the compatibility of any equipment, software products, future software product releases, test diagnostics and verification routines or engineering change orders with regard to such modifications. Further, to the extent such modifications result in any liability or cost of any kind or nature (including reasonable attorneys' fees) to BGA Partners, Customer will indemnify BGA Partners to the full extent of such liability or cost (including reasonable attorneys' fees).

4. Obligations of the Parties

(a) **Connectivity:** Customer shall be responsible, at its sole expense, for maintaining a broadband Internet connection and accessibility (either wirelessly or wired) to a broadband router. From time-to-time, Company's servers may be unavailable for the purposes of upgrades, repairs and maintenance. Company will make every effort to preform such upgrades, repairs and or maintenance during off-peak hours. Furthermore, Company warrants that the BGA Partners servers will meet a minimum 99% annual up-time. Should Company fail to meet the 99% annual uptime guarantee, Customer may be entitled to a prorated refund in their Annual License Agreement proportional to the time of unavailability beyond the stated guarantee up to 10% of the Customer's total annual licensing fee. Disruptions in service due to third parties external to the BGA Partners network such as issues related Customer's network access, backbone routers, top level DNS domains and other Internet infrastructure or Customer network related problems are outside of the

Company's control and therefore, outside of the up-time guarantee.

(b) Errors, Problems and Support. During the Term, Customer will promptly inform BGA Partners of all errors, difficulties or other problems with the Licensed Program. BGA Partners will make a reasonable effort to (i) fix reported errors and (ii) provide Customer with support and consultation concerning the Licensed Program. Notwithstanding the foregoing, BGA Partners will not be responsible for providing support regarding hardware or other related network or computer problems for equipment not provided by BGA Partners.

In the event that BGA Partners cannot reasonably fix a reported error, BGA Partners will make a reasonable effort to develop "work arounds". The reasonable effort, support and consultation will be such reasonable effort, support and consultation as BGA Partners, in its sole discretion, will determine is necessary or appropriate. Subject only to the foregoing, BGA Partners is not obligated to create and/or implement any upgrades to the Licensed Program.

(c) Enrollment of Members

(i) Customer will be solely responsible for enrolled members in the Licensed Program, and will have sole and absolute discretion in determining whether such members will be permitted to participate in the Licensed Program. The enrollment of a new participant in the Licensed Program is conclusive evidence (to be relied upon solely by BGA Partners) of Customer's determination that (i) such new participant has satisfactorily completed the Customer's health and medical screening process, and completed all documentation required for participation in the Licensed Program (including, but not limited to, the Membership Enrollment Form), and (ii) the new participant has no medical restrictions or other limitations of any kind that would or should prevent such person from participating fully in the Licensed Program.

5. Setup of Licensed Program; Marketing and Promotion; Privacy

(a) Customer will pay to BGA Partners any and all shipping costs for materials and equipment. Additionally, if an onsite visit is required by Company or requested by Customer for inventory, training, or any other purpose, Customer will pay to BGA Partners the prevailing daily onsite visit fees plus any and all costs for travel, meals, & lodging expenses. However, all onsite visits by Company must be pre-approved by Customer. As and when the Licensed Program is implemented at additional Locations, Customer agrees to pay any and all shipping costs and travel, meals, & lodging associated with such additional Locations. Customer may be charged fees for additional materials, shipping and/or training only when requested by Customer.

(b) Customer will be responsible for all marketing and promotion over and above that provided by BGA Partners of the Licensed Program, including any expense related thereto.

(c) BGA Partners acknowledges that it may obtain from Customer certain information related to the Customer's members, and that such information may be of a confidential nature. BGA Partners agrees that such information will be held in confidence per The Company's Privacy Statement located at <http://www.BGAPartners.com/privacystatement.php>. Notwithstanding the foregoing, BGA Partners reserves the right to contact Customer's members directly, via telephone, electronic mail, printed notices, or surveys, for the purposes of evaluating the members' satisfaction with the Licensed Program, or promoting the Licensed Program. The Company's right to contact the Customer's members shall survive the termination of this Agreement.

(d) Customer agrees to include, on its enrollment materials and agreements, a notice to its members of BGA Partners's Privacy Statement and right to contact them as set forth herein.

6. Support

(a) BGA Partners will, during the Term, be available Monday – Friday, between the hours of 8:30 a.m. and 5:30 p.m., eastern time, to provide technical assistance regarding the Licensed Program.

(b) Technical assistance regarding the Licensed Program will be provided at no additional charge. However, Customer agrees and understands that a per incident fee will be charged to Customer for incidents reported that are determined to be no fault of BGA Partners. Such incidents include, but are not limited to, network issues, Internet connectivity, power issues or other non-BGA Partners related incidents.

(c) The Customer will be solely responsible, and will indemnify and hold harmless BGA Partners and its employees and agents regarding the same, for the actions taken by its employees and agents (excluding BGA Partners) in respect of statements made or actions taken by such employees or agents not in accordance with the training and information provided by BGA Partners.

7. Default

If Customer does not pay any fees in their entirety under this agreement within 10-days from the due date, or if Customer fails to comply with any provision of this License Agreement, becomes insolvent, assigns its assets for the benefit of creditors, or enters (voluntarily or involuntarily) into a bankruptcy proceeding, Customer shall be in default.

8. Remedies

If Customer is in default Company may, in its sole discretion, do one or more of the following with respect to all or part of the Licensed Program, concurrently or separately:

(a) Company may suspend access to the Licensed Program. Suspension of access to the Licensed Program does not relieve Customer from its obligation to pay any and all accrued fees, fees incurred during the suspension period, and other charges and costs due to the Company. BGA Partners may resume suspended service upon Customer's compliance with its outstanding obligations.

(b) Terminate the License Agreement and require that Customer pay to the Company the remaining balance of all License Fees due under this License Agreement or under any other obligation Customer may have now or in the future with the Company ("Other Obligations"). Customer also agrees to pay the Company interest on all sums due from the date of default until paid at the rate of two (2%) percent per month, but only to the extent permitted by law;

(c) Proceed by appropriate court action or actions either at law or in equity to enforce performance by the Customer of the applicable covenants of this License Agreement. All of the Company's rights and remedies hereunder and at law and in equity and shall be cumulative; any waiver of the Company's rights or remedies must be in writing, and a waiver of the Company's rights or remedies on one occasion shall not constitute a waiver of any other existing or future right or remedy. If Customer defaults, the Company shall also be entitled to recover all damages caused by the default. The Company can also use any of the remedies available under any law. If the Company refers this License Agreement to an attorney for enforcement or collection, Customer agrees to pay all attorneys' fees as referenced in Section 12(b). If the Company takes possession of the equipment and or materials, Customer agrees to pay the cost of repossession, storing, shipping, repairing and selling such equipment or materials.

In any jurisdiction where such action is permitted by laws, upon Customer's breach of this License Agreement or under any Other Obligation, Customer hereby irrevocably authorizes any attorney of the Company's choosing to appear in any court of record to confess judgment against Customer for all amounts due hereunder, without stay of execution. Customer waives issuance by Company of service of process, all rights, if any, to notice of default, demand, presentment, notice of intent to accelerate, notice of acceleration, notice of protest, notice of dishonor, all rights of appeal and relief from any and all appraisalment, stay or exemption laws then in effect. No remedy given in this paragraph is intended to be

exclusive and each shall be cumulative, but only to the extent to permit the Company to recover the amounts owed.

9. Termination

(a) The License will terminate in accordance with Section 3 of the Certificate of License.

(b) **Termination for Convenience:** Customer may terminate this agreement at any time, solely at its convenience, by providing at least 30-days prior written notice to Company stating the effective date of such termination. Immediately upon notice of termination, Customer agrees to pay the sum of any and all unpaid balances along with any unbilled fees due through the expiration of the current license Term.

(c) **Forego Termination:** Failure to immediately pay all fees due or the continued use of service after the termination date shall constitute Customer's consent to forego termination. Customer understands and acknowledges that failure to provide proper notification and/or payment may result in an automatic renewal of the License Term.

10. Warranty

(a) **Hardware:** During the first 90-days from the Effective Date, BGA Partners will provide replacement parts and cover shipping costs both to and from Customer's location(s) for hardware that fails under normal working conditions.

Hardware failures after the first 90-days but still within the Agreement's Initial Term are also covered. BGA Partners will provide replacement parts and cover shipping costs to Customer's location(s). However, Customer shall be responsible for all shipping costs associated with the defective hardware return.

At no time during the warranty period does BGA Partners warrant any component or part that fails due to customer abuse, neglect or acts of god such as power surges, flooding or other types of related natural disasters. Customer understands and agrees to pay full replacement costs for any/all hardware returned that is determined to have failed due to non-warranted actions.

(b) **Licensed Program:** CUSTOMER UNDERSTANDS THAT CERTAIN CONDITIONS MAY EXIST OR DEVELOP WHICH LEAD TO ERRORS IN THE LICENSED PROGRAM. IF DOCUMENTED ERRORS IN THE LICENSED PROGRAM OCCUR, BGA Partners'S OBLIGATION UNDER THIS WARRANTY WILL BE TO USE ITS REASONABLE EFFORTS TO CORRECT SUCH DOCUMENTED ERRORS OR DEVELOP "WORK AROUNDS." BGA Partners MAY, AT ITS OWN DISCRETION, TEMPORARILY SUSPEND ALL SERVICE FOR THE PURPOSE OF REPAIR, MAINTENANCE OR IMPROVEMENT. THIS WARRANTY WILL REMAIN IN EFFECT AS LONG AS THE LICENSE FEES DUE HEREUNDER WILL HAVE BEEN PAID ON A CURRENT BASIS; PROVIDED, HOWEVER, THAT THIS WARRANTY WILL TERMINATE UPON TERMINATION OR SUSPENSION OF THIS AGREEMENT. IN NO EVENT WILL BGA Partners BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS, ARISING UNDER OR RELATED TO THIS AGREEMENT. The Customer will not have any claim against BGA Partners for damages, lost data, re-run time, inaccurate input, work delays or lost profits resulting from the use of the Licensed Program including, but not limited to, any damage occurring as a result of any unauthorized entry or damage to BGA Partners's web site.

UNLESS PROVIDED IN WRITING OTHERWISE, THERE ARE NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTIES, WHETHER EXPRESSED, IMPLIED, ORAL, OR ARISING BY OPERATION OF LAW OR OTHERWISE, EXCEPT AS EXPRESSLY STATED HEREIN. MOREOVER, THE REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES.

11. Liability

(a) BGA Partners is not liable for any loss or damage in connection with, or arising out of, the interruption or loss of use of the Licensed Program or the furnishing, functioning or use of the Licensed Program or any item or service provided in connection therewith. The aggregate liability of BGA Partners for any and all losses incurred hereunder will not, in any event, exceed three months of the License Fees paid to BGA Partners during the current Agreement Term for the Licensed Program. Under no circumstances will BGA Partners be liable for any special or exemplary damages or for incidental or consequential damages, including, but not limited to, loss of anticipated profits or economic loss, even if BGA Partners has been advised of the possibility of such loss or damages.

BGA Partners will indemnify and hold harmless Customer, Customer's employees, and agents from and against any loss or damage (including reasonable attorneys' fees) arising from personal injury or property damage attributable to the negligence of BGA Partners's employees or agents while on Customer's premises pursuant to the terms hereof, or the breach of any of its obligations hereunder.

Customer will indemnify and hold harmless BGA Partners, BGA Partners's employees, and agents from and against any loss or damage (including reasonable attorneys' fees) arising from any damages attributable to any loss arising from Customer's breach of any of its obligations hereunder, including, but not limited to, statements made or actions taken by such employees or agents not in accordance with the training and information provided by BGA Partners.

12. General

(a) **Injunctive Relief.** Customer acknowledges that any breach of its obligations under this Agreement with respect to the proprietary rights or confidential information of Company will cause Company irreparable injury for which there are inadequate remedies at law, and, therefore, Company will be entitled to equitable relief in addition to all other remedies provided by this Agreement or available at law or in equity.

(b) **Attorneys' Fees.** In addition to any other relief awarded, Customer agrees to reimburse BGA Partners an additional 15% for any and all collection fees, attorney's fees, or any other fees associated with any action arising out of this Agreement.

(c) **Notices.** Any notice required or permitted to be given by either party under this Agreement will be in writing. Such notice may be delivered via email, personally delivered or sent by a reputable overnight mail service, or by first-class mail (certified or registered). Notices will be deemed effective:

- (i) three (3) working days after the postmarked date, if mailed;
- (ii) the next day if sent by overnight mail, or
- (iii) upon confirmation that the email was received

If to BGA Partners:
BGA Partners, LLC
2840 Lander Rd.
Pepper Pike, OH 44124
Attention: Brian Atlas, Member

If to the Customer:
The first address listed under Licensed Locations
(Exhibit A)

(d) **Assignment.** The Customer may not assign its rights or delegate its obligations hereunder, either in whole or in part, whether by operation of law or otherwise, without the prior written consent of BGA Partners. Any attempted assignment or delegation without Company's written consent will be void *ab initio*. Subject to the foregoing, the rights and liabilities of the parties under this Agreement will bind and inure to the benefit of the parties' respective successors and permitted assigns.

13. Waiver and Modification Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

(f) **Survival; Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.

(g) **Controlling Law and Jurisdiction.** This Agreement and any action related thereto will be governed, controlled, interpreted and defined by and under the laws of the State of Maryland, without regard to the conflicts of laws provisions thereof. Unless waived by BGA Partners (which it may do in its sole discretion) the exclusive jurisdiction and venue of any action with respect to the subject matter of this Agreement will be the State and Federal courts of the State of Maryland, and each of the parties hereto submits itself to the exclusive jurisdiction and venue of such courts for the purpose of any such action. Service of process in any such action may be affected in the manner provided in Section 10(c) for delivery of notices.

(h) **Headings.** Headings used in this Agreement are for ease of reference only and will not be used to interpret any aspect of this Agreement.

(i) **Entire Agreement.** This Agreement, including all exhibits that are incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral regarding such subject matter.

(j) **Counterparts.** This Agreement may be executed in two counterparts, each of which will be an original and together which will constitute one and the same instrument.