

***ATTACHMENT VII  
END USER LICENSE AGREEMENT***

**Please include a copy of your End User License Agreement.**

## MASTER SOFTWARE LICENSE AGREEMENT

This Master Software License Agreement (“Agreement”) is entered into as of \_\_\_\_\_, 200\_\_ (the “Effective Date”) by and between CORTICON TECHNOLOGIES, INC. a California corporation with offices at 1000 Bridge Parkway, Suite 125, Redwood City, California 94065 (“Corticon”) and \_\_\_\_\_ a \_\_\_\_\_ corporation with offices at \_\_\_\_\_ (“Licensee”).

### RECITALS

- A. Corticon provides, among other things, business solutions using its proprietary Decision Management Software solution (the “Software” as further defined below) that allows Corticon’s customers to more effectively capture, optimize and deploy their business knowledge.
- B. Licensee wishes to obtain a license to use the Software, as more fully set forth below.

### AGREEMENT

#### 1. DEFINITIONS

1.1 “Confidential Information” means any and all information disclosed by either party to the other which is designated in writing as confidential or proprietary, including but not limited to, financial information, product plans, business plans, trade secrets, technology diagrams, designs, drawings, sketches, flow charts, source code and object code relating to the Software, the Documentation or any other proprietary information.

1.2 “Documentation” means any instruction manuals, on-line help files, or other materials that Corticon makes generally available regarding Use of the Software.

1.3 “Equipment” means the computer system(s), including the number of central processing units (“CPU”) and operating system software as described in Exhibit A.

1.4 “Software” means Corticon’s proprietary software described in Exhibit B, including any integrated third party software, and Updates and Upgrades, if any.

1.5 “Update” means a release or version of the Software containing minor functional enhancements, extensions, error corrections or fixes, which may be indicated by a change in the numeric identifier for the Software in the digit to the right of the decimal as determined by Corticon and that is generally made available by Corticon free of charge to Corticon’s customers.

1.6 “Upgrade” means a release or version of the Software that contains new features or significant functional enhancements, which are indicated by a change in the numeric identifier for the Software in the digit to the left of the decimal, as determined by Corticon in its sole discretion and that may be made available by Corticon subject to separate fees and charges.

1.7 “Use” means loading, utilizing, storing or displaying the Software by Licensee in accordance with the permitted uses and restrictions set forth in this Agreement.

## 2. GRANT OF LICENSE

2.1 License. Subject to the terms and conditions of this Agreement, Corticon hereby grants to Licensee, and Licensee hereby accepts a non-exclusive, non-transferable license to: (i) Use the Software only on the Equipment and amount of time specified in Exhibit A; and (ii) reproduce and use the Documentation solely in connection with the license granted herein, and solely for internal purposes.

2.2 Copies. Licensee may make a reasonable number of copies of the Documentation and may make one (1) copy of the machine-readable object code version of the Software for back-up or archival purposes. Licensee may not copy the Software, except as expressly permitted by this Agreement. Licensee shall maintain accurate and up-to-date records of the location of the Software, including all copies, and upon Corticon's request, shall inform Corticon in writing of such location(s). All copies of the Documentation and/or Software will be subject to all terms and conditions of this Agreement. Whenever Licensee is permitted to copy or reproduce all or any part of the Documentation or Software, all titles, trademarks, copyright symbols and legends and other proprietary markings must be reproduced and not covered or obscured in any manner.

2.3 Restrictions. The Software is licensed to Licensee for its internal use only. Licensee shall not, nor shall it permit any third party to: (a) offer for sale, sell, lease, license, sublicense or otherwise encumber the Software or Documentation; (b) decompile, disassemble or otherwise attempt to reverse engineer any portion of the Software; (c) modify the Software, (d) Use the Software on any other CPU, equipment or device other than the Equipment; (e) allow any third party to access the Software or otherwise use the Software on a commercial timesharing, rental or "service bureau" basis; or (f) use the Software or Documentation in any way other than as expressly granted in Section 2.1 above.

2.4 Sites and Equipment. Licensee may use the Software only at Licensee's designated site set forth in Exhibit A and only on the designated Equipment set forth therein. Licensee may Use the Software at or on additional or substitute equipment or physical locations other than the equipment and sites designated in Exhibit A upon prior written notice to Corticon.

2.5 Audit. On written request, Licensee shall provide to Corticon a signed certification (a) verifying the Software is being used in accordance with the terms of this Agreement; (b) listing the sites and equipment is Software is running on. Corticon may, at Corticon's expense and not more that once annually, audit Licensee's use of the Software and compliance with the terms hereof, upon notice to Licensee. Any such audit shall be conducted during business hours and shall not unreasonably interfere with Licensee's business activities. If such an audit reveals that Customer has underpaid Fees to Corticon, Licensee shall be invoiced for the underpaid Fees based upon Corticon's generally available list price at the time the Fees would have otherwise been incurred.

2.6 Rights in the Software. The Software is owned by Corticon (and its licensors) and is protected by U.S. and international copyright laws. Corticon may, at any time and at its sole election, replace, modify, alter, improve, enhance or change the Software. Further, this Software license is not a sale and does not transfer to Licensee any title or ownership interest in or to the Software or any patent, copyright, trade secret, trade name, trademark or other proprietary or intellectual property right related to the Software. Except for the limited rights granted in Section 2.1, Corticon (and its licensors) retains all right, title, and interest in and to the Software and Documentation.

## 3. DELIVERY AND SUPPORT

3.1 Delivery of Software. Following execution of this Agreement and verification by Corticon that Licensee has made available the Equipment for installation of the Software, Corticon shall deliver to Licensee and install on the Equipment one (1) machine-readable copy of the Software in object code

format along with one (1) master copy of the Documentation. Licensee acknowledges that no copy of the source code of the Software will be provided to Licensee.

3.2 Maintenance and Support. Corticon will provide maintenance and telephone and e-mail support in accordance with the terms of the maintenance agreement, attached hereto as Exhibit C (the "Maintenance and Support Agreement").

#### **4. FEES**

4.1 Fees. In consideration of the licenses granted in Section 2.1, and the maintenance and support services, Licensee shall pay to Corticon the license fees ("License Fees") and the maintenance fees ("Maintenance Fees") specified in the fee schedule attached as Exhibit B (the "Software and Fees"). The License Fee is a one-time, non-cancelable fee due in accordance with the payment terms set forth below.

##### 4.2 Payment Terms.

- (a) Corticon will invoice Licensee for the License Fee as specified in Exhibit B.
- (b) Corticon will invoice Licensee for the Maintenance Fee, as set forth in the Maintenance and Support Agreement (Exhibit C).
- (c) Licensee shall pay all amounts invoiced by Corticon within thirty (30) days of the invoice date or as otherwise specified in Exhibit B.

4.3 Additional Sites. Licensee may expand the license granted pursuant to Section 2 to include Use of the Software at multiple sites or additional CPUs only upon Corticon's receipt of additional license fees for the expanded Use as set forth in Corticon's then-current price list. Any such expanded Use to additional sites will be governed by this Agreement.

4.4 Late Payments. For any amounts not paid within thirty (30) days of the invoice date, Licensee shall pay Corticon one and one half percent (1.5%) interest per month on the unpaid balance, or the maximum amount permitted by law, whichever is less, until all past due amounts are satisfied. Licensee shall further be responsible for all costs incurred by Corticon in connection with any claim made by Corticon in order to recover payment of overdue fees, including without limitation, all professional fees and legal costs.

4.5 Taxes. All fees specified hereunder do not include and are net of any foreign or domestic governmental taxes or charges of any kind that may be applicable to the licensing of the Software or the provision of Services, including without limitation excise, sales, use, property, license, value-added taxes, franchise, income, withholding or similar taxes, customs or other import duties or other taxes, tariffs or duties other than taxes which are imposed by the United States based on the net income of Corticon. Any such taxes which are otherwise imposed on payments to Corticon shall be the sole responsibility of Licensee.

#### **5. CONFIDENTIAL INFORMATION**

5.1 Non-use and Non-disclosure. Both parties acknowledge that the Confidential Information obtained by either party pursuant to this Agreement constitutes valuable trade secrets of the disclosing party. Both parties agree to use Confidential Information solely in accordance with the provisions of this Agreement and will not disclose, or permit to be disclosed, either directly or indirectly, Confidential

Information to any third party, without the other's prior written consent. Neither party shall reverse engineer, disassemble, decompile or otherwise attempt to discover the source code of any software, prototypes or any tangible objects which embody the other party's Confidential Information. Each party shall use strict measures to protect the secrecy and avoid disclosure or unauthorized use of the other party's Confidential Information. Each party shall exercise the same degree of care to prevent disclosure of the Confidential Information as it takes to preserve and safeguard its own Confidential Information, but in any event, no less than a reasonable degree of care. Notwithstanding Section 1.1, neither party to this Agreement bears responsibility for safeguarding information that is: (a) publicly available; (b) obtained from third parties not under confidentiality restrictions; (c) independently developed without reference to Confidential Information; or (d) required to be disclosed by order of a court or other governmental entity.

5.2 Remedy. If either party breaches, or threatens to breach the provisions of Section 5.1 above, each party agrees that the non-breaching party will have no adequate remedy at law and is therefore entitled to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual money damages.

## 6. WARRANTY AND DISCLAIMER

6.1 Limited Warranty. Corticon warrants to Licensee that for a period of ninety (90) days following the Software as delivered to and accepted by Licensee, will perform substantially in accordance with its specifications. Corticon's sole liability and Licensee's sole remedy for failure of the Software to conform to the foregoing warranty will be for Corticon, in its sole discretion, to: (a) provide a bug-fix, patch or work-around for the non-conforming Software; (b) replace the non-conforming Software with conforming Software; or (c) terminate this Agreement and return to Licensee any fees paid hereunder. Further, the foregoing warranty will only apply if: (i) Licensee has promptly installed any and all Updates provided by Corticon; (ii) the non-conformity would not have occurred but for a modification or customization of the Software made at the request of Licensee.

6.2 Disclaimer. EXCEPT AS PROVIDED IN SECTION 6.1, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND CORTICON MAKES NO WARRANTIES OR CONDITIONS TO LICENSEE OR ANY OTHER THIRD PARTY, WHETHER EXPRESS, STATUTORY, IMPLIED, OR OTHERWISE, AND CORTICON SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, AND WITH RESPECT TO THE USE OF ANY OF THE FOREGOING.

## 7. INDEMNITY

7.1 By Corticon. Corticon shall defend or at its option settle any third party claim, action or proceeding brought against Licensee alleging that the Software as delivered to Licensee and used as authorized in this Agreement, infringes any copyright or trade secret or trademark right of a third party and Corticon shall pay any final judgements awarded or settlements entered into; provided that Licensee provides Corticon with: (a) prompt written notice of such claim; (b) sole control over the defense and settlement of such claim; and (c) all necessary information and assistance (at Corticon's expense) to defend and/or settle such claim. Licensee may participate in the defense of a claim asserted hereunder after Corticon has assumed the defense or settlement, provided that Licensee shall bear any legal fees and expenses or other costs it incurs in so participating. Corticon shall not be liable for any costs or expenses incurred without its prior written authorization.

7.2 Limit on Indemnity. Notwithstanding the foregoing, Corticon will have no liability for infringement claims arising from: (a) combination of the Software with other software or products not provided by Corticon, which claim would have been avoided if the Software had not been so combined;

(b) the modification of the Software, in whole or in part, by anyone other than Corticon; or (c) use by Licensee of any specified release of the Software after Corticon notifies Licensee that continued use may subject Licensee to such claim of infringement, provided Corticon provides Licensee with a replacement release.

7.3 Entire Liability. THE FOREGOING STATES THE ENTIRE LIABILITY AND OBLIGATION OF CORTICON, AND THE SOLE AND EXCLUSIVE REMEDY OF LICENSEE WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT BY THE SOFTWARE OR DOCUMENTATION.

## **8. TERM AND TERMINATION**

8.1 Term. This Agreement and the licenses granted hereunder will continue in full force and effect from the Effective Date until terminated pursuant to this Section 8.

8.2 Termination for Breach. If either party defaults in the performance of any material provision of this Agreement (including the payment of fees), the non-defaulting party may terminate this Agreement if the default is not cured within thirty (30) days of written notice of the non-breaching party's intent to terminate.

8.3 Termination for Insolvency. Either party may terminate this Agreement immediately upon notice if the other party (a) makes a general assignment for the benefit of creditors, (b) is adjudicated bankrupt, (c) files a voluntary petition for bankruptcy or reorganization, or has a petition filed against it for an adjudication in bankruptcy or reorganization and such petition is not dismissed within sixty (60) days, or (d) applies for or permits the appointment of a receiver, trustee or custodian for any of its property or assets.

8.4 Effect of Termination. Upon termination of this Agreement, the rights and obligations of the parties hereunder will cease, except that: (a) each party shall immediately return or destroy (and provide written certification of such destruction within five (5) days) the Confidential Information of the other party; and (b) Sections 2.3, 2.6, 5, 6, 7.2, 9, 10 and any payment obligations incurred prior to the date of termination, will survive.

## **9. LIMITATION OF LIABILITY**

EXCEPT FOR A BREACH OF SECTION 2.3 OR SECTION 5, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY UNDER THIS AGREEMENT FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE, INCLUDING LOSS OF DATA, LOST PROFITS, OR COST OF COVER HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF WARRANTY OR CONTRACT, TORT (INCLUDING NEGLIGENCE), INFRINGEMENT OR OTHERWISE, ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN. IN NO EVENT SHALL CORTICON'S TOTAL LIABILITY HEREUNDER EXCEED THE AMOUNTS ACTUALLY PAID BY LICENSEE TO CORTICON UNDER THIS AGREEMENT.

## **10. GENERAL**

10.1 Assignment. Licensee may not assign, by operation of law or otherwise, this Agreement or any right or duty arising hereunder to a third party without Corticon's prior written consent. Any purported assignment in violation of this Section shall be void. Corticon may assign this Agreement and its rights and obligations hereunder in its sole discretion.

10.2 Amendment and Waiver. This Agreement may only be amended or any right or obligation waived with a written document signed by authorized representatives of the party to be charged. The waiver of a breach or failure to enforce any obligation herein will in no way be construed as a waiver of any other breach or obligation herein.

10.3 Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of law principals. Both parties consent to the exclusive venue and personal jurisdiction of the state and federal courts located in the federal Northern District of California for any lawsuit arising from or relating to this Agreement.

10.4 Press Releases. Licensee agrees to work with Corticon to issue a press release or other similar "success story" regarding Licensee's use of the Software. Licensee will be asked to allow Corticon to identify it as a customer in Corticon's marketing and promotional materials, and to act as a reference for other potential licensees.

10.5 Notices. All notices, demands or consents required or permitted under this Agreement shall be in writing. All notices under this Agreement shall be deemed to have been given when sent by (1) registered mail, return receipt requested, or (2) a nationally recognized delivery service (such as Federal Express). Notice shall be sent to the parties at the addresses set forth on the first page of this Agreement or at such other address as shall be given by either party to the other in writing. Notices to Corticon shall be addressed to the attention of Legal Department. Notices to Licensee shall be addressed to the attention of Legal Department.

10.6 Non-Exclusivity. The parties agree this is a non-exclusive relationship. Nothing set forth in this Agreement is intended to, nor shall it create any exclusive obligations for Licensee to continue to have Corticon provide additional Services, or for Corticon to provide Software Services solely on behalf of Licensee. Nothing in this Agreement prohibits, nor shall it be construed to prohibit Corticon from developing software products, at any time whether now or in the future.

10.7 Severability. If any provision of this Agreement is held or made invalid or unenforceable for any reason, such invalidity will not affect the remainder of this Agreement, and the invalid or unenforceable provision will be replaced by a mutually acceptable provision, which being valid, legal and enforceable, comes closest to the original intentions of the parties without unduly favoring either party.

10.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.9 Headings. The headings to the Sections and Subsections of this Agreement are included merely for convenience of reference and do not affect the meaning of the language included therein.

10.10 Export Regulations. Licensee understands that Corticon is subject to regulation by agencies of the U.S. government, including, but not limited to the U.S. Department of Commerce, which prohibit export or diversion of certain technical products to certain countries. Licensee warrants that it will comply in all respects with the Export Administration Regulations and all other export and re-export restrictions as may be applicable to the technology and documentation licensed hereunder.

10.11 Force Majeure. Except for payment obligations, neither party shall be liable for the performance of its obligations under this Agreement if it becomes commercially impracticable to perform due to any contingency beyond the reasonable control of that party, including as a result of disruptions of transportation facilities, inability to obtain supplies or materials, failures or breaches by suppliers, acts of government or its agencies, strikes, labor disputes, power or telecommunications disruptions, lockouts or



any other industrial disturbance, judicial action, or any other act of God ("Force Majeure") and the obligation of a party to perform hereunder shall be suspended during the occurrence of a Force Majeure.

10.12 Entire Agreement. The terms and conditions herein contained, including all Exhibits hereto, constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersede any previous and contemporaneous agreements and understandings, whether oral or written, between the parties hereto with respect to the subject matter hereof. There are no other agreements, understandings, representations, or promises between the parties with respect to the subject matter of this Agreement. The parties understand and agree that any terms or conditions on any order form, purchase order, or other similar document that are different from or in addition to the terms and conditions of this Agreement shall have no effect whatsoever and Corticon hereby rejects all such terms and conditions. In case of any conflict between the terms of an Exhibit and the terms of this Agreement, the terms of the Exhibit shall prevail.



IN WITNESS WHEREOF, the parties have executed this Agreement below to indicate their acceptance of its terms.

**Corticon Technologies, Inc. ("Corticon")  
("Licensee")**

**[CLICK AND TYPE COMPANY NAME]**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

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

**EXHIBIT A**

**EQUIPMENT AND SITES**

**EXHIBIT B**  
**SOFTWARE AND FEES**

**EXHIBIT C**

**MAINTENANCE AND SUPPORT AGREEMENT**

(See attached)



## MAINTENANCE AND SUPPORT AGREEMENT

This Maintenance and Support Agreement (“Maintenance and Support Agreement”) is entered into as of \_\_\_\_\_, 200\_\_ (the “Effective Date”) by and between Corticon Technologies, Inc. (“Corticon”) and \_\_\_\_\_ (“Licensee”), and describes the terms and conditions pursuant to which Corticon will provide Support (as defined below) to Licensee with respect to the Software licensed by Licensee under the Software License Agreement dated \_\_\_\_\_, 200\_\_ (the “Agreement”). Any capitalized terms not expressly defined in this Maintenance and Support Agreement will have the meanings given to such terms in the Agreement.

### 1. Definitions.

- 1.1 “Business Day” means a business day, which shall exclude weekends and Corticon holidays.
- 1.2 “Designated Contacts” means the designated employees of Licensee who are permitted to contact Corticon to report problems, or otherwise request support services.
- 1.3 “Update” means a release or version of the Software containing minor functional enhancements, extensions, error corrections or fixes, which may be indicated by a change in the numeric identifier for the Software in the digit to the right of the decimal as determined by Corticon and that is generally made available by Corticon free of charge to Corticon’s customers.
- 1.4 “Upgrade” means a release or version of the Software that contains new features or significant functional enhancements, which are indicated by a change in the numeric identifier for the Software in the digit to the left of the decimal, as determined by Corticon in its sole discretion and that is generally made available by Corticon free of charge to Corticon customers who have contracted for maintenance services.
- 1.5 “Error” means a software problem or documentation error, which causes a failure of Corticon’s unmodified Software product to operate in accordance with its specifications on authorized Equipment.
- 1.6 “Equipment” means the computer systems(s), including the central processing unit (“CPU”) and all peripheral equipment and operating system software as described in Exhibit A of the Agreement.
- 1.7 “Support” means the services provided by Corticon in connection with the installation, customization and implementation of the Software for Licensee as set forth in the Maintenance and Support Agreement.
- 1.8 “Workaround” means a modification or “patch” of the Software, which may be of a temporary or interim nature, to help avoid an Error.

### 2. Technical Support.

2.1 Telephone Access. During the term of this Maintenance and Support Agreement Corticon shall provide a telephone hotline staffed by support personnel who shall be available on Business Days during the hours of 8 am-5 pm Pacific Standard Time to answer technical questions by Licensee regarding use and operation of the Software. Further, Corticon will make available to Licensee a twenty-four (24) hour technical support website.

### 3. On-Site Support.

If Licensee requests on-site support, Licensee shall pay for no less than four (4) hours of technical support at Corticon’s then-current rates, regardless of whether the technical support representative is present for a shorter period of time. Corticon’s current technical support rates for on-site support are set forth on Exhibit A.

### 4. Updates and Upgrades

During the term of this Maintenance and Support Agreement, Licensee shall be entitled to receive, within a reasonable time, one (1) copy of each Update, if any, which Corticon makes generally available to its maintenance and support customers. Updates, Upgrades and electronic documentation will be available to Licensees free of charge via the technical support website.

**5. Training Services.**

At Licensee’s request and subject to Corticon’s availability, Corticon will provide on-site training services to Licensee at its then-current rates, which are set forth on Exhibit A.

**6. Correction of Software Errors.**

6.1 Support Representative. During the hours set forth in Section 2.1, Corticon will use reasonable efforts to have a customer care representative available to answer all initial calls from the Designated Contacts, and to document and log the reported problem.

6.2 Classification. Errors in the Software are classified by Corticon according to severity of impact on the use of the Software as follows:

Grade	Impact
1	Fatal: Errors preventing all useful work from being done (total crash)
2	Severe Impact: Errors disabling major functions causing performance to be significantly impacted.
3	Degraded Operations: Errors disabling non-essential functions
4	Minimal Impact: Any other errors

6.3 Response Times. Corticon agrees to use reasonable efforts to acknowledge Software Errors reported to Corticon by the Designated Contacts. Following receipt of notice of a potential Error, Corticon shall use reasonable commercial efforts to attempt to reproduce the reported Error. Corticon does not warrant that Workarounds will be provided, or that Errors will be corrected in Software Updates, according to this schedule, or in every case. In addition, in cases where the Software may not conform to Documentation because of a Documentation, rather than a Software Error, Corticon shall provide Licensee with corrected Documentation if, and when, available.

Classification	Response
1	Less than 4 hours
2	Less than 8 hours
3	Less than 12 hours
4	Prior to end of next working day

6.4 Exclusions. Support does not include any third party software or hardware support services, nor support of any enhancements to any of the foregoing. Upon request, Corticon shall provide Licensee with contact information for applicable third party support service suppliers. Corticon will not be responsible for correcting any

errors not reproducible by Corticon on the unmodified Software or errors caused by: (a) Licensee's failure to implement all Updates issued to Licensee by Corticon; (b) any alterations of or additions to the Software made by parties other than Corticon; (c) changes to the operating system or environment which may adversely affect the Software; (d) use of the Software in a manner for which it was not designed; (e) combination of the Software with other software products not authorized or designated by Corticon; (f) accident, negligence, or misuse of the Software; or (g) use of the Software on an unsupported platform or by unauthorized users. Corticon will only be obligated to support the then-current production version of the Software and the immediately prior release for a period of six (6) months after such release. Support for any earlier versions or for errors not covered under this Maintenance and Support Agreement may be obtained as special services pursuant to Section 7 below at Corticon's then current rates.

6.5. **Responsibilities.** Licensee may designate two contacts as Designated Contacts. Licensee will provide Corticon with a list of the Designated Contacts as well as updates to that list on a regular basis. Licensee agrees that only the Designated Contacts are permitted to contact Corticon for technical or customer support services. Licensee will ensure that only persons properly trained in the operation and usage of the Software will be selected as a Designated Contact. Corticon's provision of Support to Licensee as set forth in this Maintenance and Support Agreement is subject to the following:

(a) during normal business hours and upon request, Licensee shall provide Corticon with access to Licensee's personnel and Equipment. This access shall include the ability to perform remote, on-line diagnostics of the Equipment as may be necessary to correct the Software;

(b) providing sufficient information to Corticon for Corticon to duplicate the circumstances indicating a reported Software defect or Error;

(c) using the currently-supported versions of the Software, including Error corrections, after release by Corticon of any such Error corrections, Updates or Upgrades;

(d) promptly paying all maintenance fees and other amounts payable hereunder;

(e) providing all reasonable cooperation to Corticon with respect to Corticon's furnishing of Support hereunder; and

(f) providing all communications in the English language, including the reporting of any Errors in English.

## **7. Special Services.**

All Software support services not covered by this Maintenance and Support Agreement which Licensee requests, may be provided by Corticon subject to the mutual agreement of the terms and conditions of Corticon's Consulting Services Agreement. All services provided by Corticon at Licensee's request, other than during than Corticon's normal working hours at Corticon's California headquarters shall be billed as special services. Such special services shall be invoiced monthly and payment shall be due in accordance with Section 8.3 below.

## **8. Fees and Payment.**

8.1 **Maintenance and Support Agreement Fees.** Fees for technical and customer support provided in accordance with this Maintenance and Support Agreement will be as set forth on Exhibit A.

8.2 **Other Fees.** Licensee shall also be responsible for payment for all special services pursuant to Section 7, all communication costs with respect to the reporting of Errors, all communications outside of the United States and all reasonable and approved travel costs incurred by Corticon in connection with the provision of on-site support requested hereunder.

8.3 Payment. Licensee agrees to pay the fees for each twelve (12) month period of Support. All fees are payable within thirty (30) days of the date of invoice. Charges for any special services, including reasonable and mutually agreed travel expenses, will be invoiced monthly, as such expenses are incurred, and payment of such expenses is due within thirty (30) days of the date of invoice. Corticon will be entitled to suspend performance under this Maintenance and Support Agreement during any period in which fees are due and unpaid. In addition, if any fee is not received by the 60th day following the date of invoice for which it applies, Corticon may terminate this Maintenance and Support Agreement immediately. Corticon shall provide at least sixty (60) days prior notice to Licensee of any fee increases, and Licensee shall be entitled, and any time until the effective date of the increase and on notice to Corticon, to terminate this Maintenance and Support Agreement as of the effective date of the increase.

8.4 Late Payments. Late payments shall be subject to a service charge of one and one half percent (1.5%) per month (or, if less, the maximum allowed by applicable law from the date such payment was due until the date payment is received).

8.5 Taxes. Unless otherwise specified, the fees, charges and other amounts specified in this Maintenance and Support Agreement do not include any sales, use, excise, or other applicable foreign or domestic taxes. Licensee shall pay or reimburse Corticon for any and all such taxes (excluding any applicable U.S. taxes based on Corticon's income.)

## **9. Warranty Exclusion.**

Corticon agrees to perform its obligations hereunder in a professional and workmanlike manner. Except as set forth in the preceding sentence, ALL SOFTWARE AND SUPPORT ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. CORTICON MAKES NO WARRANTIES OR CONDITIONS TO LICENSEE OR ANY THIRD PARTY, WHETHER EXPRESS, STATUTORY, IMPLIED OR OTHERWISE, AND CORTICON SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

## **10. Limitation of Liability.**

CORTICON'S LIABILITY ARISING OUT OF OR RELATED TO THIS MAINTENANCE AND SUPPORT AGREEMENT SHALL NOT EXCEED THE TOTAL FEES RECEIVED HEREUNDER FROM LICENSEE. IN NO EVENT SHALL CORTICON BE LIABLE FOR ANY LOSS OF PROFITS OR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF OR RELATED TO THIS MAINTENANCE AND SUPPORT AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN.

## **11. Term and Reinstatement.**

11.1 Term. This Maintenance and Support Agreement shall remain in effect for one (1) year from the Effective Date. The parties may, upon mutual agreement at least thirty (30) days before the end of the then-current term, renew this Maintenance and Support Agreement for additional one (1) year terms.

11.2 Reinstatement. If this Maintenance and Support Agreement expires, Licensee shall be entitled to reinstate this Maintenance and Support Agreement at a later time, provided that (a) Corticon is, at such later time, offering such Support, and (b) Licensee pays to Corticon all applicable fees which would have accrued during the period of lapsed Support, plus twenty percent (20%).

11.3 Survival. Sections 1, 8, 9, 10, 11, and 12 shall survive expiration or termination of this Maintenance and Support Agreement for any reason. Neither expiration, nor termination shall affect any legal or equitable rights or remedies accrued prior to expiration or termination.

## **12. General.**

12.1 Assignment. Licensee may not assign, by operation of law or otherwise, this Maintenance and Support Agreement or any right or duty arising hereunder to a third party without Corticon's prior written consent. Any purported assignment in violation of this Section 12.1 shall be void. Corticon may assign this Maintenance and Support Agreement and its rights and obligations hereunder in its sole discretion.

12.2 Amendment and Waiver. This Maintenance and Support Agreement may only be amended or any right or obligation waived with a written document signed by authorized representatives of the party to be charged. The waiver of a breach or failure to enforce any obligation herein will in no way be construed as a waiver of any other breach or obligation herein.

12.3 Governing Law, Jurisdiction and Venue. This Maintenance and Support Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of law principals. Both parties consent to the exclusive venue and personal jurisdiction of the state and federal courts located in the federal Northern District of California for any lawsuit arising from or relating to this Maintenance and Support Agreement.

12.4 Notices. All notices, demands or consents required or permitted under this Maintenance and Support Agreement shall be in writing. All notices under this Maintenance and Support Agreement shall be deemed to have been given when sent by (1) registered mail, return receipt requested, or (2) a nationally recognized delivery service (such as Federal Express). Notice shall be sent to the parties at the addresses set forth on the first page of this Maintenance and Support Agreement or at such other address as shall be given by either party to the other in writing. Notices to Corticon shall be addressed to the attention of Legal Department. Notices to Licensee shall be addressed to the attention of Legal Department.

12.5 Non-Exclusivity. The parties agree this is a non-exclusive relationship. Nothing set forth in this Maintenance and Support Agreement is intended to, nor shall it create any exclusive obligations for Licensee to continue to have Corticon provide additional Support, or for Corticon to provide Software Support solely on behalf of Licensee. Nothing in this Maintenance and Support Agreement prohibits, nor shall it be construed to prohibit Corticon from developing software products, at any time whether now or in the future.

12.6 Severability. If any provision of this Maintenance and Support Agreement is held or made invalid or unenforceable for any reason, such invalidity will not affect the remainder of this Maintenance and Support Agreement, and the invalid or unenforceable provision will be replaced by a mutually acceptable provision, which being valid, legal and enforceable, comes closest to the original intentions of the parties without unduly favoring either party.

12.7 Counterparts. This Maintenance and Support Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.8 Headings. The headings to the Sections and Subsections of this Maintenance and Support Agreement are included merely for convenience of reference and do not affect the meaning of the language included therein.

12.9 Force Majeure. Except for payment obligations, neither party shall be liable for the performance of its obligations under this Maintenance and Support Agreement if it becomes commercially impracticable to perform due to any contingency beyond the reasonable control of that party, including as a result of disruptions of transportation facilities, inability to obtain supplies or materials, failures or breaches by suppliers, acts of government or its agencies, strikes, labor disputes, power or telecommunications disruptions, lockouts or any other industrial disturbance, judicial action, or any other act of God ("Force Majeure") and the obligation of a party to perform hereunder shall be suspended during the occurrence of a Force Majeure.

12.10 Entire Agreement. The terms and conditions herein contained, including all Exhibits hereto, constitute the entire agreement between the parties with respect to the subject matter of this Maintenance and Support Agreement and supersede any previous and contemporaneous agreements and understandings, whether oral or written,

between the parties hereto with respect to the subject matter hereof. There are no other agreements, understandings, representations, or promises between the parties with respect to the subject matter of this Maintenance and Support Agreement. The parties understand and agree that any terms or conditions on any order form, purchase order, or other similar document that are different from or in addition to the terms and conditions of this Maintenance and Support Agreement shall have no effect whatsoever and Corticon hereby rejects all such terms and conditions. In case of any conflict between the terms of an Exhibit and the terms of this Maintenance and Support Agreement, the terms of the Exhibit shall prevail.

**[CLICK AND TYPE COMPANY NAME]** (“Licensee”)

Corticon Technologies, Inc. (“Corticon”)

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

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



## EXHIBIT A

### FEES

1. Training. Corticon will provide Licensee with on-site installation and training support services at a rate of \$2,000 per day plus reasonable travel expenses.
2. Maintenance and Support. [ TBD]
3. On-site Support. Upon Licensee's request, Corticon shall provide on-site technical support to Licensee at a rate of \$250 per hour per person, with a minimum four (4) hour charge plus reasonable travel expenses.