

MERIDIUM, INC.
10 S. Jefferson St., Suite 1100
Roanoke, VA 24011 USA
SOFTWARE SUPPORT AGREEMENT
RCMO™

I. SPECIFIC CONDITIONS

Date: _____

Licensee: _____

Address: _____

Licensee representative designated to receive notices: _____

Date of Software License Agreement: _____

In consideration of the Support Fees paid by the above-named Licensee to Meridium, Meridium hereby agrees to deliver the Software Support Services as and for the Term described in the General Conditions to this Software Support Agreement. This Software Support Agreement consists of these Specific Conditions and the RCMO™ Software Support Agreement General Conditions, which Licensee acknowledges receipt of.

Initial Support Fees and Payment Schedule:

Payment in U.S. Dollars, invoices are payable on receipt. Interest of one and one-half (1.5) percent per month, but in no event higher than that permitted by law, will be payable on any amounts not paid within thirty (30) days from due date.

IN WITNESS WHEREOF, Meridium and Licensee have caused this Software Support Agreement to be executed by their respective, duly authorized officers or representatives.

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| <p>MERIDIUM, INC.</p> <p>By: _____</p> <p>Title: _____</p> | <p>Licensee:</p> <p>_____</p> <p>By: _____</p> <p>Title: _____</p> |
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II. GENERAL CONDITIONS

1. **Term and Renewal.** This Agreement shall continue from the date first above written until midnight on December 31 of the same calendar year, but shall thereafter be renewed automatically for successive one-year terms unless either party gives the other notice of non-renewal by October 31 of the year in which the Agreement expires.

2. **Support Services.** During the term of this Agreement, Meridium shall provide the following services, collectively referred to as "Support Services":

2.1. **Help Desk.** Meridium shall maintain a telephone help desk for the Software staffed by persons who are fully versed in the Software and the support programs for the Software. The help desk shall be staffed during the hours of 7:30 a.m. to 5:30 p.m. Eastern Time Monday through Friday of each calendar week (excluding Meridium's holidays, a schedule of which will be provided on request) while this Agreement is in effect. Meridium shall provide telephone support for calls by Licensee for problems encountered by Licensee.

2.2. **Releases.** Meridium shall provide Licensee with all maintenance releases that Meridium may issue from time to time to enhance or improve the Software. Maintenance releases consist of general product releases, repair or corrections of defects and problems found in the Software by Meridium or by any licensee, including Licensee, and reported to Meridium. All releases received by Licensee shall be subject to the terms, conditions, restrictions and covenants of the License Agreement.

Support Services shall be limited to support of the then-current and immediately preceding releases of Software. Meridium will support any pre-release (beta) Software component installed by Licensee for at least six calendar months after the regular release of the Software component.

3. **Support Fees.** Licensee shall pay to Meridium an annual Support Fee in the amount as set out in the Specific Conditions. The Support Fee will be pro-rated for the period from delivery until the end of the first calendar year. Thereafter, annual Support Fees will be paid annually for each calendar year in advance upon receipt of invoice. Support Fees shall be fixed for the initial support period as set out in the Specific Conditions and are subject to change thereafter.

4. **Taxes.** Licensee is solely responsible for payment of any taxes (including sales or use taxes, intangible taxes, and property taxes) resulting from Licensee's receipt of Support Services, exclusive of taxes based on Meridium's net income imposed on Meridium by the United States of America or any of its fifty states. Licensee shall provide Meridium with copies of its applicable direct pay permits and shall pay any such taxes as they fall due to the appropriate authority. Licensee agrees to indemnify and hold harmless Meridium from all claims and liability arising from Licensee's failure to report or pay such taxes directly.

5. **Net Payments After Taxes, Withholdings, Deductions and Other Charges.** The following additional provisions shall apply with respect to Support Services performed in, performed for Sites in, or performed for entities domiciled in, any jurisdiction other than the United States of America or its fifty states:

5.1. All fees and reimbursable expenses due to Meridium hereunder are payable as net amounts after gross-up by Licensee for any manufacturers' tax, occupational tax, use tax, sales tax, excise tax, value-added tax, luxury tax, wholesale sales tax, income tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed on Meridium by any governmental authority, or measured by the transaction(s) between Meridium and Licensee by any governmental authority, other than the United States of America and its fifty states. In the event that Meridium is required to pay

any such tax, fee or charge, Licensee shall immediately reimburse Meridium therefor and indemnify and hold Meridium harmless against such tax, fee or charge, together with all costs, expenses, penalties, interest and monetary correction related to or resulting from the payment of such tax, fee or charge and/or any tax assessment made upon Meridium with respect to such tax, fee or charge or related to any income imputed to Meridium as a result of any of the above mentioned taxes paid by Licensee to or for the benefit of Meridium. Meridium shall make all reasonable efforts to minimize its obligation to pay any such taxes, fees and charges and to recover any such taxes or other amounts paid, but recoverable. Meridium shall ensure that its subcontractors, if any, will do the same. Meridium's invoices shall separately itemize any such taxes, duties and fees that it seeks to recover from Licensee.

5.2. When and if applicable, Licensee shall withhold from the amounts payable to Meridium the amounts owed under the income tax law and other taxation decrees, regulations and provisions in force in the Territory on the date of payment of said amounts. Licensee shall provide to Meridium a receipt for each withholding made and written evidence of the payment of said withholding to the Territory's Treasury. In connection with the foregoing, Licensee expressly agrees that the sums payable to Meridium shall be increased so that after making all required deductions for withholding, Meridium receives an amount equal to the sum it would have received had no such deductions been made.

6. **Invoices.** Invoices for Support Services are payable within 30 days of invoice date in United States Dollars in Roanoke, Virginia or such other place as Meridium may designate. Interest of one and one-half (1.5) percent per month, but in no event higher than that permitted by law, will be payable on any amounts not paid within thirty (30) days of invoice date.

7. **Warranties.**

7.1. **Support Services Warranty.** All Support Services shall be performed by qualified personnel in a professional and workmanlike manner.

7.2. **Infringement Warranty.** Meridium warrants maintenance releases against patent, trade secret, and copyright infringement in the same manner and to the same extent as it warrants its Software in the Section of the License Agreement entitled "**INTELLECTUAL PROPERTY RIGHTS; WARRANTIES; REMEDIES,**" which Section is incorporated herein by this reference.

7.3. NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE, INCLUDING WITHOUT LIMITATION THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. **License Rights; Proprietary Rights; Confidentiality.** All maintenance releases and bug fixes and all Documentation supplied under this Agreement shall become part of the Software and Documentation, respectively, under the License Agreement. They are proprietary to Meridium and shall be subject to the same limitations and restrictions on use, access, copying, transfer, nondisclosure, and ownership as are set forth in the License Agreement. The terms of the Articles of the License Agreement entitled "License", "Proprietary Rights", and "Nondisclosure and Confidentiality" are incorporated herein by this reference with respect to all maintenance releases and all Documentation supplied under this Agreement.

9. **Default.** In the event of any failure or breach of this Agreement or any other agreement between the parties, which failure or breach shall continue for 30 days after written notice of breach (except in the case of a payment default or a default involving the unauthorized use or disclosure of Confidential Information, for which there shall be no notice required or cure period), the nonbreaching party may terminate this Agreement and pursue any other remedy provided by law, equity or any agreement.

10. **Force Majeure.** Neither party shall be responsible for any delays occasioned by causes beyond a party's reasonable control including without limitation strikes, acts of God, failures or default of suppliers. If either party is unable to perform its obligations under any other agreement between the parties on account of causes beyond its control, such nonperformance shall not operate as a default under this Agreement.

11. **Assignment.** Licensee may not assign this Agreement or any portion hereof without the prior written consent of Meridium, in Meridium's sole discretion, except that Licensee may assign this Agreement in connection with a permitted assignment of license rights under the License Agreement. No assignment shall relieve Licensee of its obligations herein unless Meridium expressly and in writing referring to this provision releases Licensee of such obligations, and no assignment shall have the effect of enlarging or expanding Meridium's obligations hereunder. No assignment shall confer the right to install or use the Software at any Site other than as set out in the License Agreement. All use restrictions and confidentiality obligations herein shall apply to assignees.

12. **Notices.** All notices required to be given hereunder shall be in writing. Notices to Meridium shall be to the attention of Bonz Hart, President. Notices to Licensee shall be to the attention of the person designated in the Special Conditions. Notice shall be effective if sent by registered or certified mail, UPS or FedEx courier, facsimile or telegram to the address of the recipient set forth in the Specific Conditions. Either party may designate a different notice address by notice given in accordance with this Section.

13. **Relationship of Meridium and Licensee.** Meridium and Licensee are contracting parties only. Neither the making of this Agreement nor the performance of its provisions shall be construed to constitute either party an agent, employee or legal representative of the other party for any purpose whatsoever, nor shall this Agreement be deemed to establish a joint venture or partnership.

14. **Limitation on Liability.** NOTWITHSTANDING ANY OTHER PROVISION HEREIN: LICENSEE AGREES THAT MERIDIUM'S LIABILITY TO LICENSEE FOR DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN TORT, WARRANTY, STRICT LIABILITY OR CONTRACT, AND WHETHER FOR BREACH OF CONTRACT OR SOME OTHER CAUSE, RELATING TO OR ARISING FROM ANY CLAIM OF A DEFECT, ERROR OR OMISSION IN ANY OF MERIDIUM'S SUPPORT SERVICES OR PRODUCT DELIVERED IN CONNECTION THEREWITH, SHALL CONSIST OF THE OBLIGATION TO REPLACE THE DEFECTIVE SERVICES OR PRODUCT WITH NONDEFECTIVE SERVICES OR PRODUCT. IN NO EVENT SHALL MERIDIUM BE LIABLE FOR CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, OR INDIRECT DAMAGES OR COSTS, INCLUDING BUT NOT LIMITED TO LEGAL FEES, OR LOSS OF GOODWILL RESULTING FROM ANY CLAIM OF ANY NATURE ARISING FROM THIS AGREEMENT OR RESULTING FROM THE USE OR INABILITY TO USE, OR THE PERFORMANCE OF ANY OR ALL OF THE SERVICES OR SOFTWARE, REGARDLESS OF WHETHER MERIDIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL MERIDIUM BE LIABLE FOR LOSS OF DATA OR RECORDS OF LICENSEE, IT BEING UNDERSTOOD THAT LICENSEE SHALL BE RESPONSIBLE FOR ENSURING PROPER AND ADEQUATE BACK-UP AND STORAGE PROCEDURES. IN NO EVENT WILL MERIDIUM'S TOTAL CUMULATIVE AGGREGATE LIABILITY FOR DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, TORT, PRODUCTS LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THAT CAUSED BY DEFECTIVE SERVICES, SOFTWARE OR DOCUMENTATION, EXCEED THE SUPPORT FEES PAID BY LICENSEE DURING THE FIRST TWELVE MONTHS FOLLOWING THE COMMENCEMENT OF THE TERM OF THIS AGREEMENT. MERIDIUM SHALL HAVE NO LIABILITY FOR ANY LOSS, DAMAGE, INJURY, DEATH OR OTHER CLAIM OR LIABILITY WITH RESPECT TO ANY ACT, OMISSION OR OCCURRENCE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSEE OR ANY OF ITS EMPLOYEES, CONTRACTORS OR AGENTS. ANY CLAIM MADE BY LICENSEE UNDER THIS AGREEMENT ARISING FROM ANY ACT, OCCURRENCE, OMISSION OR EVENT SHALL NOT BE BROUGHT AS A CLAIM UNDER THE LICENSE AGREEMENT.

15. **Purchase Orders.** Licensee may tender a purchase order for Support Services. Any such purchase order shall be solely for the purpose of confirming the purchase of Support Services under the terms of this Agreement, and no pre-printed terms of the purchase order which vary from the terms herein shall be valid.

16. **Ethics; Conflicts of Interest.** All transactions hereunder shall be based strictly on quality and competitive support fees. Meridium shall not pay salaries, commissions or fees, or make any payments or rebates to any employee or officer of Licensee, or to any designee of any employee or officer of Licensee, or favor any employee or officer of Licensee, or any designee of any employee or officer of Licensee, with gifts or entertainment of significant cost or value, or enter into any business arrangements with any employee or officer of Licensee other than as a representative of Licensee.

17. **Miscellaneous.**

17.1. **Entire Agreement; Modification.** This Agreement, together with the License Agreement, constitutes the entire understanding of the parties with respect to the subject matter herein. This Agreement can only be modified by a written agreement duly executed by the parties.

17.2. **Nonwaiver.** No waiver or breach of this contract shall be held to be a waiver of any other or subsequent breach, and shall not affect the right of either party to enforce at any time any provision of this Agreement. Any waiver to be effective must be in writing and signed by a duly authorized agent of either party and shall apply to that specific time and provision only.

17.3. **Permitted Beneficiaries.** This Agreement is for the benefit of the parties signatory hereto and their permitted successors and assigns, and is not intended to benefit any other person.

17.4. **Applicable Law.** In the event of any dispute with regard to this Agreement, the applicable law shall be that of the Commonwealth of Virginia, excluding any choice of law rules which would require the application of the laws of another jurisdiction.

17.5. **Severability.** If any provision or provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of remaining provisions shall not in any way be affected or impaired thereby.

17.6. **Terms.** Terms used herein, which are defined in the License Agreement, shall have the same meaning in this Agreement as in the License Agreement unless the context clearly indicates otherwise.

**** END OF AGREEMENT ****

MERIDIUM, INC.
10 S. Jefferson St., Suite 1100
Roanoke, VA 24011 USA
SOFTWARE LICENSE AGREEMENT
RCMO™

I. SPECIFIC CONDITIONS

Date: _____

Licensee: _____

Address: _____

In consideration of the License Fee paid by the above-named Licensee to Meridium, Meridium hereby grants to Licensee the limited right and license to use the Software and Documentation described below in the Territory, subject to the Use Limits below and subject further to all the terms and conditions of this Software License Agreement. This Software License Agreement consists of these Specific Conditions and the RCMO™ Software License Agreement General Conditions, which Licensee acknowledges receipt of. Licensee hereby agrees to be bound by the terms, covenants and conditions of this Software License Agreement.

Territory: _____

Software: Meridium Reliability Centered Maintenance and Optimization ("RCMO")™

Use Limits: _____

Compatibility:

- SAP™ ECC version 5.0
- SAP™ Portals version 7.0
- SAP™ Web Application Server version 6.40 or 7.0
- SAP™ Business Intelligence version 3.5 or 7.0

License Fee and Payment Schedule: The total net license fee for the Software licensed above is \$_____ which shall be invoiced on or before _____. Payment in U.S. Dollars, invoices are payable on receipt. Interest of one and one-half (1.5) percent per month, but in no event higher than that permitted by law, will be payable on any amounts not paid within thirty (30) days from due date.

IN WITNESS WHEREOF, Meridium and Licensee have caused this Software License Agreement to be executed by their respective, duly authorized officers or representatives.

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| <p>MERIDIUM, INC.</p> <p>By: _____</p> <p>Title: _____</p> | <p>Licensee:</p> <p>_____</p> <p>By: _____</p> <p>Title: _____</p> |
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MERIDIUM, INC.
SOFTWARE LICENSE AGREEMENT

and nonassignable, limited right and license as follows:

II. GENERAL CONDITIONS

The provisions of these General Conditions are incorporated in their entirety as part of the Software License Agreement.

ARTICLE 1 –DEFINITIONS

Agreement shall mean this Software License Agreement, which comprises the Specific Conditions and these General Conditions.

Authorized Users shall mean (1) those employees of Licensee who require access to the Software to perform the functions of their employment and who are authorized access by Licensee and (2) those contractors of Licensee who are not competitors of Meridium who require access to the Software to perform computer systems services for Licensee's Sites, provided that such contractors shall first agree in writing to be bound by the use and confidentiality restrictions of this Agreement.

Confidential Information means commercial or technical proprietary, trade secret, or confidential information marked as such by the disclosing party. Confidential Information includes the Documentation and the Licensed Programs whether or not marked as confidential. Confidential information shall not include information which the receiving party can prove (i) is generally available to the public through no disclosure by the receiving party, (ii) was developed independently of any information obtained from the other party, or (iii) came into the receiving party's possession through a third party who did not have an obligation of confidentiality and who did not acquire the information, directly or indirectly, from the disclosing party.

Documentation shall mean the documentation of the Software provided by Meridium to end users in any medium, including user guides, installation guides, reference guides, and administrator's guides. "Documentation" does not include promotional materials, correspondence or proposals in any medium.

Licensee shall mean the party identified as "Licensee" in the Specific Conditions.

License Fees shall mean the fees payable for use of the Software as provided in the Specific Conditions.

Software shall mean the specific versions and releases of the computer software programs that are identified in the Specific Conditions, in machine readable executable form only. The Software contains valuable trade secrets of Meridium.

Site shall mean a designated facility, operation or plant of Licensee, the data from which is to be processed by the Software. Sites with respect to which Licensee is authorized to use the Software are designated in the Specific Conditions.

Specific Conditions shall mean the pages of this Agreement designated as "Specific Conditions" preceding the General Conditions

Termination shall include expiration at the specified end of a term or early termination.

Territory shall mean the country or countries specified in the Specific Conditions.

Use Limits shall mean the limitations on use of the Software set forth in the Specific Conditions, including by asset count, Site location, or other metric.

ARTICLE 2 - LICENSE

2.1 **Grant.** Meridium does not transfer title to any of the Software or Documentation. Licensee is granted, subject to the terms and conditions of this Agreement, a non-exclusive, personal, nontransferable

2.1.1. **Installation.** To install the Software on Licensee's system at the location(s) specified in the Specific Conditions.

2.1.2. **Use.** To use, solely by Licensee's Authorized Users, the Software to process data from the Sites authorized and subject to the Use Limits and other restrictions in this Agreement, for internal, in-house purposes in support of the plant and equipment maintenance and reliability function of Licensee's business (excluding resale, sublicensing or software development).

2.1.3. **Copies.** To make one (1) archival copy and one (1) test copy of the Software in machine-readable, executable code form, for backup and test purposes only, provided that Meridium's proprietary legend is included. The archival and test copies shall be deemed Confidential Information, and Licensee shall secure the archival and test copies as the Licensee secures its most confidential proprietary information. Licensee will provide Meridium in writing with the exact location of the archival and test copies on request. All archival and test copies remain property of Meridium and subject to the restrictions and limitations in this Agreement.

2.1.4. **Documentation.** To reproduce the Documentation for use solely by the Licensee to support permitted use of the Software. With respect to any copies of Documentation made by Licensee, Licensee agrees to affix a proprietary legend thereto in a conspicuous location or as otherwise specified by Meridium. Furthermore, Meridium is not responsible for and Licensee will indemnify and hold Meridium harmless against all claims and liabilities arising from inaccurate or incomplete reproduction of Documentation.

2.2 **Access Restriction.** In no event shall Licensee provide or permit access to the Software to other than Authorized Users. Further, no service bureau work or time-sharing arrangement is permitted.

2.3. **Site Restriction.** Licensee shall not install or use the Software at any location other than as specified in the Specific Conditions.

2.4. **Transfer Restrictions.** The rights granted herein to Licensee may not be transferred, assigned, leased or sublicensed in whole or in part without Meridium's express advance written consent referring to this section.

ARTICLE 3 - FEES AND PAYMENTS

3.1 **License Fees.** Licensee shall pay Meridium the License Fees for the Software in the amounts and at the times specified in this Agreement. Invoices are payable at Meridium's offices in Roanoke, Virginia, U.S.A., or at such other place as Meridium may from time to time designate, upon receipt, in United States Dollars.

3.2. **No Offsets.** The License Fees due to Meridium are net amounts to be received by Meridium, exclusive of all taxes, duties, and assessments, and are not subject to offset or reduction because of any costs, expenses, taxes, duties, assessments, or liabilities incurred by Licensee or imposed on Meridium as a result of this Agreement.

3.3. **Taxes.**

3.-3.1. Licensee is solely responsible for payment of any taxes (including sales or use taxes, intangible taxes, and property taxes) resulting from Licensee's possession and use of the Software, exclusive of Meridium's taxes based on Meridium's net income imposed by the United States of America or any of its fifty states. Licensee shall provide Meridium with copies of its applicable direct pay permits and shall pay any such taxes as they fall due to the appropriate authority. Licensee agrees to indemnify and hold harmless Meridium from all claims and liability arising from Licensee's failure to report or pay such taxes directly.

3.-3.2. All License Fees due to Meridium hereunder are

payable as net amounts after gross-up by Licensee for any manufacturers' tax, occupational tax, use tax, sales tax, excise tax, value-added tax, luxury tax, wholesale sales tax, - duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed on Meridium by any governmental authority, or measured by the transaction(s) between Meridium and Licensee by any governmental authority, other than the United States of America and its fifty states. In the event that Meridium is required to pay any such tax, fee or charge, Licensee shall immediately reimburse Meridium therefor and indemnify and hold Meridium harmless against such tax, fee or charge, together with all costs, expenses, penalties, interest and monetary correction related to or resulting from the payment of such tax, fee or charge and/or any tax assessment made upon Meridium with respect to such tax, fee or charge or related to any income imputed to Meridium as a result of any of the above mentioned taxes paid by Licensee to or for the benefit of Meridium. Meridium shall make all reasonable efforts to minimize its obligation to pay any such taxes, fees and charges and to recover any such taxes or other amounts paid, but recoverable. Meridium shall ensure that its subcontractors, if any, will do the same. Meridium's invoices shall separately itemize any such taxes, duties and fees that it seeks to recover from Licensee. When and if applicable, Licensee shall withhold from the amounts payable to Meridium the amounts owed under the income tax law and other taxation decrees, regulations and provisions in force in the Territory on the date of payment of said amounts. Licensee shall provide to Meridium a receipt for each withholding made and written evidence of the payment of said withholding to the Territory's Treasury. In connection with the foregoing, Licensee expressly agrees that the sums payable to Meridium shall be increased so that after making all required deductions for withholding, Meridium receives an amount equal to the sum it would have received had no such deductions been made.

ARTICLE 4 - LICENSEE'S RESPONSIBILITIES

4.1. **Installation and Hardware.** Licensee is responsible for installation of the Software and appropriate hardware and cabling at its cost. Meridium assumes no responsibility under this Agreement for obtaining, providing or installing hardware or equipment, including cabling. Licensee is exclusively responsible for ensuring a proper environment and proper utilities for the computer system on which the Software will operate.

4.2. **File Conversion.** Meridium assumes no responsibility under this Agreement for converting Licensee's data files for use with the Software, this being exclusively Licensee's responsibility .

4.3. **Supporting Environment.** Licensee alone is responsible for maintaining back-up and proper third party software for use with the Software, including operating system, databases and other utilities for the computer system on which the Software operates.

4.4. **Data.** Licensee alone is responsible for the accuracy and completeness of all data concerning Licensee's equipment, maintenance history and operating conditions which the Software utilizes to perform their respective functions.

ARTICLE 5 - SUPPORT

This Agreement does not confer upon Licensee any rights to support services. If the parties agree that Software support will be provided by Meridium, the parties shall enter into a separate support agreement.

ARTICLE 6 - PROPRIETARY RIGHTS

6.1. **Ownership.** Meridium shall have sole and exclusive ownership of all right, title, and interest in and to the Software and all modifications and enhancements thereof (including ownership of all trade secrets, copyrights, moral rights and all other intellectual property rights pertaining thereto), and all copies thereof in any medium, subject only to the limited rights expressly granted to Licensee herein by Meridium. No use, modification, contribution to or enhancement of the Software by or on behalf of Licensee or any other person shall result in Licensee's or any employee, agent or contractor of Licensee, obtaining any copyright or

other right or title in the Software or any interest therein. Licensee hereby assigns to Meridium all rights to modifications and enhancements of the Software which may now or hereafter be claimed by Licensee.

6.2. **Limited License.** No express or implied license or right of any kind is granted to Licensee regarding the Software or the trademarks or service marks of Meridium associated with the Software, including, but not limited to, any right to know, use, produce, receive, reproduce, copy, market, sell, distribute, transfer, translate, modify, or adapt the Software or create derivative works based on the Software or any portions thereof, or obtain possession of any source code or other technical material relating to the Software, except as expressly authorized herein. Licensee is not authorized to and will not disassemble, decompile or reverse engineer the Software.

6.3. **Modifications.** No right is conferred upon Licensee to make modifications to the Software.

6.4. **Licensee's Data.** Notwithstanding the foregoing provisions of this Article, Meridium shall acquire no rights to use or disclose any of Licensee's data.

ARTICLE 7 - NONDISCLOSURE AND CONFIDENTIALITY

7.1. **Nondisclosure Obligations.** Licensee acknowledges that Meridium may disclose Confidential Information to Licensee in the course of the performance of this Agreement. Licensee agrees that it has an obligation not to disclose to third parties such Confidential Information, and to prevent such disclosure by its employees, agents and contractors, and not to use such Confidential Information other than for the purpose of performance under this Agreement without the prior written consent of Meridium. These obligations will survive ten (10) years after the termination of this Agreement.

7.2. **Injunctive Relief.** Licensee acknowledges that, in the event of Licensee's breach of any of the foregoing provisions of this Article, Meridium will not have an adequate remedy in money or damages. Meridium shall therefore be entitled to obtain an injunction against such breach from any court of competent jurisdiction immediately upon request, and Licensee agrees not to assert as a defense in any such proceeding the availability of an adequate remedy at law. The right to obtain injunctive relief shall not limit Meridium's right to seek further remedies.

ARTICLE 8 - AUDITS

Licensee will, upon request of Meridium from time to time, certify to Meridium the location(s) at which the Software is installed and used, respectively, and such other information concerning the use of the Software as may reasonably be requested by Meridium in order to verify compliance with the terms of this Agreement. The Software may contain report programs to be used to audit compliance. Licensee shall execute and send such reports to Meridium upon request. If Licensee is determined to have been using the Software in excess of the Use Limits, Meridium may, in addition to all other remedies available to it, assess additional License Fees at its then-current list prices, plus late charges of 1.5% per month from the date on which the Use Limit was first exceeded.

ARTICLE 9 - INTELLECTUAL PROPERTY RIGHTS; WARRANTIES; REMEDIES

9.1. **Intellectual Property Rights.** Subject to the limitations set forth in this Section 9.1, Meridium warrants for a period of ninety (90) days following delivery that the Software does not infringe any United States patents, trade secrets of any third party established under applicable law of the United States, or United States copyrights. In the event of a bona fide claim by a third party alleging infringement of any United States patents, trade secrets established under applicable law of the United States, or United States copyrights, which materially interferes with Licensee's right to use the Software, Meridium may at its sole option (i) procure for Licensee the right to use the Software; (ii) replace or

modify the Software to make them noninfringing or nonviolating; or (iii) refund or credit to Licensee the license fees paid with respect to the infringing Software upon the Licensee's return or destruction (at Meridium's option) of the Software and all Documentation and copies thereof. Notwithstanding the foregoing, Meridium shall have no obligation hereunder to the extent that the claim for infringement arises from (a) an improper and unauthorized act of the Licensee, (b) the use of the Software with other items unless specifically recommended by Meridium as a combination, (c) the incorporation of a specific modification or design made or requested by Licensee, (d) the use of software not produced by Meridium, or (e) the failure of Licensee to implement changes, replacements or new releases recommended by Meridium and made available to Licensee. THIS SECTION 9.1 SETS FORTH THE ENTIRE LIABILITY OF MERIDIUM WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. EXCEPT AS PROVIDED IN THIS SECTION 9.1, THERE IS NO WARRANTY AGAINST INTERFERENCE WITH LICENSEE'S ENJOYMENT OF THE SOFTWARE OR THE INFORMATION PROCESSED THEREBY OR AGAINST INFRINGEMENT.

9.2. Conformance to Specifications. Provided that Licensee is in compliance with the terms and conditions herein, and subject to the limitations following, Meridium warrants for a period of 90 days following delivery that the Software shall be free of material defects and will operate in substantial conformity with Meridium's specifications, except for nonconformities associated with (i) alterations, modifications, or revisions of the Software performed by a party other than Meridium; (ii) negligence of Licensee or Licensee's agents in the operation or use of any or all of the Software; (iii) a malfunction of any products or goods other than those produced by Meridium; or (iv) use, adjustments, or installation of products not certified by Meridium to be 100% compatible with the Software. Meridium shall not be responsible for obsolescence of the Software that may result from changes in Licensee's requirements or business. Due to the complex nature of software, Meridium does not warrant that the Software is error-free or that all errors will be corrected. Meridium does not guarantee results, and does not warrant that the Software is fault-tolerant. The Software is not warranted to prevent fraud, intrusion, deception and/or attack and is not designed or intended for use as an on-line control application in hazardous environments requiring fail-safe performance. As Licensee's exclusive remedy for any material defect in the Software of which Meridium is given notice within the warranty period, Meridium shall promptly exert reasonable commercial effort to correct or cure any reproducible defect by issuing corrected instructions, restriction, or bypass. Meridium shall not be obligated to correct, cure, or otherwise remedy any nonconformity or defect in the Software if Licensee has made any changes whatsoever to the Software, if the Software has been misused or damaged in any respect, or if Licensee has not reported to Meridium the existence and nature of such nonconformity or defect promptly upon discovery thereof. If Meridium is unable to correct or cure the defect within a commercially reasonable time, Meridium shall refund to Licensee the License Fees paid for the defective Software.

9.3. LIMITATION OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE 9, MERIDIUM MAKES NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE SOFTWARE OR DOCUMENTATION, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, ACCURACY, OR FITNESS FOR A PARTICULAR PURPOSE. MERIDIUM DOES NOT WARRANT THAT THE SOFTWARE OR DOCUMENTATION WILL MEET LICENSEE'S REQUIREMENTS OR THAT THEY WILL OPERATE UNINTERRUPTED OR ERROR FREE.

9.4. LIMITATION OF LIABILITY. MERIDIUM'S LIABILITY TO LICENSEE FOR DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN TORT, WARRANTY, STRICT LIABILITY OR CONTRACT AND WHETHER FOR BREACH OF CONTRACT OR SOME OTHER CAUSE, RELATING TO OR ARISING FROM ANY CLAIM OF A DEFECT, ERROR OR OMISSION IN ANY OF MERIDIUM'S SOFTWARE OR DOCUMENTATION SHALL CONSIST OF THE OBLIGATION TO REPLACE THE DEFECTIVE SOFTWARE OR DOCUMENTATION WITH NONDEFECTIVE SOFTWARE OR

DOCUMENTATION. IN NO EVENT SHALL MERIDIUM BE LIABLE FOR CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, OR INDIRECT DAMAGES OR COSTS, INCLUDING BUT NOT LIMITED TO LEGAL FEES, OR LOSS OF GOODWILL RESULTING FROM ANY CLAIM OF ANY NATURE ARISING FROM THIS AGREEMENT OR RESULTING FROM THE USE OR INABILITY TO USE, OR THE PERFORMANCE OF ANY OR ALL OF THE SOFTWARE, REGARDLESS OF WHETHER MERIDIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL MERIDIUM BE LIABLE FOR LOSS OF DATA OR RECORDS OF LICENSEE. IN NO EVENT WILL MERIDIUM'S TOTAL CUMULATIVE AGGREGATE LIABILITY FOR DAMAGES AT A SITE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, TORT, PRODUCTS LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THAT CAUSED BY DEFECTIVE SOFTWARE OR DOCUMENTATION, EXCEED THE LICENSE FEES PAID FOR THE SOFTWARE. ALL OF MERIDIUM'S EXPENDITURES IN CONNECTION WITH INVESTIGATION, DEFENSE AND REMEDIATION OF A CLAIM SHALL BE INCLUDED WITHIN THE AGGREGATE LIABILITY LIMIT.

ARTICLE 10 - COMPLIANCE WITH LAWS

The Software, Documentation and all other items provided by Meridium under this Agreement (collectively "Technical Data") and the underlying transactions contemplated herein, are subject to all pertinent import and export laws, rules and regulations of the United States of America and laws of the countries in which Meridium transacts business (collectively, "Export Control Laws"). In no event shall Meridium be bound by any terms and conditions that contravene any Export Control Laws. Licensee will not use or transfer any Technical Data either directly or indirectly (including by electronic access) in or to any country in violation of any applicable Export Control Laws. Nothing in this Article shall expand any territorial limitations otherwise specified in this Agreement. Without limiting the generality of the foregoing, and without enlarging the permitted uses and locations provided herein, Licensee covenants to take appropriate measures to ensure that the Technical Data are kept and used only in the Territory. This Article shall survive the termination of this Agreement.

ARTICLE 11- TERM AND TERMINATION

11.1. Term. The grant of license hereunder shall be effective upon delivery of the Software to Licensee and shall continue in perpetuity unless terminated as provided below.

11.2. Termination of License by Meridium.

11.2.1 Meridium may terminate Licensee's license and other rights herein upon a failure by Licensee to observe any covenant or agreement of Licensee herein and, if applicable, a failure to cure within the prescribed time. Upon such termination, Licensee shall promptly return all copies of the Software and Documentation and shall cease to utilize the Software and Documentation. This termination right shall be in addition to and not in limitation of any other remedies provided herein, at law, or in equity.

11.2.2 Meridium may terminate Licensee's license and other rights herein if Licensee uses, copies, or modifies the Licensed Program or if Licensee transfers possession of any copy, adaptation, transcription, or merged portion of the Licensed Program to any other party in any way not expressly authorized by Meridium.

11.2.3 Licensee's rights herein and in the Software shall terminate without notice or a cure period in the event of the dissolution or termination of existence of Licensee.

11.3. Termination of License by Licensee. Licensee may terminate this Agreement and its license and other rights under this Agreement at any time upon written notice to Meridium and return of all copies of the Software and Documentation and cessation of all utilization of the Software and Documentation.

11.4. **Termination.** Upon termination of this Agreement, all rights and licenses granted by Meridium under this Agreement shall terminate and revert to Meridium. The provisions of the Articles entitled "Nondisclosure and Confidentiality," "Limitation of Liability," and "Compliance with Laws", and Section 10.5 of this Article shall survive termination of this Agreement.

11.5. **Return/Destruction of Software.** Promptly upon termination of this Agreement for any reason or upon Licensee's abandonment of possession or discontinuance of use of the Software, Licensee shall return or destroy, as requested by Meridium, all copies of the Software in Licensee's possession (whether modified or unmodified), and all other materials pertaining to the Software, including but not limited to Documentation (including all copies thereof). Licensee shall certify Licensee's compliance with such destruction upon Meridium's request.

11.6. **Right to Cure.** In the event of any default or breach of this Agreement or any other agreement relating to the subject matter hereof, the breaching party shall be entitled to written notice of breach and an opportunity to cure such breach within sixty (60) days of notification of such breach, except that there shall be no notice required or cure period for a failure to make a payment when due or a default involving a violation of any use or export restriction herein.

ARTICLE 12 - MISCELLANEOUS

12.1. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, excluding such laws as would require the application of the laws of another jurisdiction. The parties expressly decline to be bound by the United Nations Convention on Contracts for the Sale of Goods. In the event of any dispute between the parties relating to this Agreement, Licensee agrees to the jurisdiction of the federal and state courts of Virginia, specifically the U.S. District Court for the Western District of Virginia and the City of Roanoke Circuit Court, and further agrees that the said courts will be convenient forums. Licensee consents to the enforcement of any judgment, order or decree of such court in any jurisdiction.

12.2. **Entire Agreement.** This Agreement expresses the entire agreement of the parties with respect to the subject matter herein, and all previous written or oral understandings are merged herein. No modification of this Agreement shall be binding unless in writing and signed by an authorized representative of both parties.

12.3. **Assignment.** Neither this Agreement nor any rights of Licensee herein may be assigned, sublicensed or transferred, voluntarily or involuntarily or by operation of law, by Licensee without the prior written consent of Meridium, which may be withheld in Meridium's sole discretion. No partner, stockholder, joint venturer or member of Licensee shall acquire any license or other rights herein or in the Software upon the dissolution or termination of existence of Licensee.

12.4. **Notices.** Any notices required or permitted under this Agreement shall be in writing and delivered in person or sent by registered or certified mail, return receipt requested, or by FedEx, UPS, DHL or other international overnight courier service, delivery prepaid, addressed as provided for the addressee party in the Special Conditions. Either party may change its notice address by notice given in accordance with the provisions in this section.

12.5. **Severability.** In the event that any provision herein is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other provision herein.

12.6. **Headings.** The headings in this Agreement are for convenience of reference only and are not to be employed in the interpretation of this Agreement.

12.7. **Waivers.** No waiver or forbearance on the part of a party of any default by the other party shall act as a waiver or forbearance of any other or subsequent default.

12.8. **Relationship of Parties.** Meridium and Licensee are contracting parties only. Neither the making of this Agreement nor the performance of its provisions shall be construed to constitute either party an agent employee or legal representative of the other party for any purpose whatsoever, nor shall this Agreement be deemed to establish a joint venture or partnership.

12.9. **Third-Party Beneficiaries.** No person, firm or entity not a party to this Agreement is intended to be a beneficiary of any provision herein, including without limitation any warranty provision.

12.10. **Ethics; Conflicts of Interest.** All transactions hereunder shall be based strictly on quality and competitive license fees. Meridium shall not pay salaries, commissions or fees, or make any payments or rebates to any employee or officer of Licensee, or to any designee of any employee or officer of Licensee, or favor any employee or officer of Licensee, or any designee of any employee or officer of Licensee, with gifts or entertainment of significant cost or value, or enter into any business arrangements with any employee or officer of Licensee other than as a representative of Licensee.

12.11. **Rules of Priority.** The terms of this Agreement supersede any pre-printed terms of any purchase order issued by Licensee for licenses hereunder. The nonpreprinted terms of any purchase order issued by Licensee and accepted by Meridium shall supersede any conflicting preprinted terms herein. Terms of the General Conditions control over conflicting provisions in the Special Conditions unless reference is made to the General Condition to be subordinated.

12.12. **Governing Language.** The governing language for this Agreement shall be English. Licensee agrees to correspond in English and/or provide English versions of its documents.

12.13. **Monetary References.** All prices referenced in this Agreement and in any exhibit, amendment and/or addendum hereto are to United States dollars, and Licensee agrees to pay all fees and reimbursable expenses to Meridium in U.S. dollars.

12.14. **Force Majeure.** A party shall be excused from performance during any delay occasioned by causes beyond the party's reasonable control including without limitation strikes, war, and acts of God.

END OF AGREEMENT