

METAPASS, INC.

SOFTWARE LICENSE AND SUPPORT AGREEMENT

Subject to the terms and conditions of this Software and Services License Agreement ("Agreement"), MetaPass, Inc., a California corporation whose address is 625 Ellis St., Suite 208 Mountain View, CA 94040 ("MetaPass"), hereby grants to _____, a _____ corporation, whose address is _____ ("Licensee"), the following rights with respect to the software products and services as defined herein below.

1. DEFINITIONS.

- 1.1. "**Agreement**" means the Order Form executed by the parties, this Agreement, and the attached Exhibit A.
- 1.2. "**Confidential Information**" means the Software and Services, and all source code, source code documentation, inventions, know-how, ideas, updates and any Documentation and information related to the Software and Services, and any non-public information regarding the business of a party provided to the other party where such information is conspicuously marked or otherwise communicated as being "proprietary" or "confidential."
- 1.3. "**Documentation**" means the written or electronic end user documentation or guides relating to the operation and use of the Software and/or Services, including their specifications.
- 1.4. "**Effective Date**" means _____ 200__.
- 1.5. "**Intellectual Property Rights**" means patents, copyrights, authors' rights, trademarks, trade-names, know-how, trade secrets, moral rights and all other intellectual property rights that may exist now and/or hereafter come into existence and all renewals and extensions thereof, regardless of whether such rights arise under United States or international intellectual property, unfair competition or trade secret laws and all derivative works of the foregoing.
- 1.6. "**Licensee**" means the customer or end user named on the Order Form.
- 1.7. "**Maintenance and Support Services**" means the maintenance and support services for the Software as described on Exhibit A.
- 1.8. "**Services**" means Maintenance and Support Services, and training services as set forth on the Order Form.
- 1.9. "**Software**" means the current commercial release of the proprietary software product(s) as listed in on the Order Form.
- 1.10. "**Updates**" means maintenance or improvement releases of the Software (including any localizations, translations and documentation thereof) that contain bug fixes, error corrections and minor enhancements, but do not contain any major enhancements or significant new functionalities, as determined in MetaPass' reasonable discretion.
- 1.11. "**Upgrades**" means new versions of the Software that contain major enhancements and significant new functionalities, including localizations and translations thereof, as determined in MetaPass' reasonable discretion, and any related documentation.
- 1.12. "**User**" means the greater of the number of unique named users accessing the Software, or the number of concurrent users accessing the Software.

2. GRANT OF LICENSE.

- 2.1. Upon delivery, MetaPass hereby grants to Licensee a non-transferable, non-exclusive, limited license to use the Software and Services and all accompanying Documentation.
- 2.2. In the event Licensee orders additional licenses, Software or Services from MetaPass with a purchase order or via other means, the rights and obligations of both parties with respect to such additional licenses, Software or Services shall also be governed by the terms of this Agreement, unless amended in writing and signed by both parties. Any preprinted terms and conditions on a purchase order or subsequent invoice are hereby expressly disclaimed by both parties and only the terms and conditions of this Agreement shall apply to such orders.
- 2.3. Certain technologies in the Software and Services are supplied and licensed to MetaPass from third party licensors. Title, ownership rights and Intellectual Property Rights in and to the Software and Services shall remain with MetaPass, its licensors and/or suppliers. All rights not expressly granted herein are reserved by MetaPass.

3. USE RESTRICTIONS.

- 3.1. Licensee will not (i) modify, prepare derivative works of, decompile, reverse engineer, disassemble or otherwise attempt to derive source code or object code from the Software and Services, (ii) use the Software and Services in a manner that is inconsistent with their Documentation or intended or recommended use, and (iii) use of the Software and Services in a manner that breaches this Agreement.
- 3.2. Licensee may (i) make one copy of the Software solely for non-concurrently operational backup or archival purposes or (ii) transfer the Software to a single hard disk provided that the original is kept solely for backup purposes. Licensee may not, without MetaPass' prior written consent, copy the accompanying Documentation and other materials.
- 3.3. Except as expressly permitted by this Agreement, Licensee may not directly or indirectly (i) distribute, resell, rent, lease or sublicense the Software and Services or any of the rights granted hereunder or (ii) make the Software and Services available to unauthorized third parties.
- 3.4. Licensee may not market, display, and/or promote the Software in any manner that may indicate that the Software is the property of Licensee. Private labeling and/or branding of the Software is expressly prohibited.
- 3.5. The Software and Services shall be deemed accepted upon delivery.

4. PAYMENT TERMS.

- 4.1. The "Total Initial Payment" as indicated on the Order Form is due and payable within thirty (30) days from the invoice date. All other fees (including renewal fees) are due and payable within thirty (30) days from the invoice date. Unless specified otherwise in the Order Form.
- 4.2. Except as expressly provided hereunder, all fees paid to MetaPass pursuant to this Agreement are non-refundable.
- 4.3. All fees set forth herein are exclusive of any and all taxes. Except for taxes on MetaPass' net income, Licensee shall pay and be solely responsible for paying all sales, use, VAT, withholding, property, customs, excise and other governmental levies or charges imposed on Licensee, or required to be collected by MetaPass from Licensee, in connection with this Agreement. All applicable taxes shall be paid by Licensee whether or not they are included in the initial invoice or subsequent invoices.

- 5. WARRANTIES.** MetaPass represents and warrants that it has the right to grant the license(s) as set forth hereunder and that it has the right and power to enter into this Agreement. MetaPass further warrants that the Software, when properly used, will operate substantially in accordance with its Documentation for a period of forty-five (45) days from the date of delivery. MetaPass' entire liability and Licensee's exclusive remedy under this warranty, which is subject to Licensee providing MetaPass with a written statement of defects, will be that MetaPass, solely at its option use reasonable commercial efforts to correct or provide a workaround for the malfunction of the Software.
- 6. DISCLAIMER OF WARRANTY.** EXCEPT AS EXPRESSLY PROVIDED HEREUNDER, THE SOFTWARE AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND METAPASS HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND OTHER WARRANTIES ARISING BY COURSE OF DEALING, CUSTOM OR USAGE, OR TRADE PRACTICES.
- 7. INDEMNIFICATION BY METAPASS.**
- 7.1. MetaPass shall indemnify, defend and hold harmless Licensee from and against any and all liabilities, losses, damages, costs, and expenses (including reasonable attorneys' fees and related costs), in connection with or arising out of any allegation that the Software and Services infringe upon or that use of the Software and Services, in accordance with this Agreement, constitutes an unlawful use of any patent, copyright, or other intellectual or proprietary property of a third party; provided, however, that MetaPass has the right to assume full control over any action, claim, demand, or proceeding. Licensee may, at its sole cost and expense, retain separate counsel from the counsel utilized or retained by MetaPass. Licensee shall promptly notify MetaPass of any such action, claim, demand, or proceeding, and shall provide MetaPass with reasonable assistance and any tangible materials that are reasonably available to Licensee for the defense of the action, claim, demand, or proceeding. Licensee shall not settle or compromise any of same for which MetaPass has agreed to assume responsibility without MetaPass' prior written consent.
- 7.2. If use of the Software and Services delivered under this Agreement is enjoined as a result of a suit based on any claim of infringement of a copyright or patent, MetaPass shall, at its sole discretion and expense, and subject to the other provisions of this Agreement, (i) negotiate a license or other agreement with the claimant so that the Software and Services are no longer subject to such injunction, (ii) modify the Software and Services so that they become non-infringing, provided such modifications can be accomplished without materially affecting the performance of the Software and Services, (iii) replace the Software and Services with non-infringing software and services of equal or better performance and quality, subject to the prior approval of Licensee, or (iv) refund any fees actually paid to MetaPass in connection with this Agreement, if any, prorated over three (3) years, in exchange for the return of the infringing Software and termination of the Services.
- 7.3. THE FOREGOING PROVISIONS STATE THE EXCLUSIVE REMEDY OF LICENSEE AND THE ENTIRE LIABILITY AND OBLIGATIONS OF METAPASS, ITS LICENSORS AND/OR SUPPLIERS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OF THIRD PARTY PATENTS, COPYRIGHTS, TRADE SECRETS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY RIGHTS.
- 8. INDEMNIFICATION BY LICENSEE.** Licensee shall indemnify and hold MetaPass harmless from and against any and all liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and related costs), which result from, arise in connection with or are related in any way to any breach by Licensee of its obligations set forth hereunder, and Licensee shall permit MetaPass to control, in a manner not adverse to Licensee, the defense, settlement, adjustment or compromise of any such claim using counsel selected by MetaPass.
- 9. LIMITATION OF LIABILITY**
- 9.1. MetaPass will have no liability for any claim that the Software and Services licensed hereunder infringes any United States patent, trade secret or copyright (including its indemnification obligations in Section 7 above), to the extent that such claim arises from: (i) Licensee's use of any version of the Software other than the original unmodified version provided to Licensee; (ii) Licensee's use of the Software with any third party software or hardware; (iii) Licensee's use of the Software that is inconsistent with their Documentation; or (iv) Licensee's use of the Software in a manner which breaches this Agreement.
- 9.2. In no event whatsoever shall MetaPass be liable for any claim of infringement of any copyright, patent, trade secret, database right or other intellectual property right based on Licensee's use of the Software to obtain or process any data or information from third parties. Licensee acknowledges that it is solely responsible for securing the appropriate rights to use such third party data or information.
- 9.3. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL METAPASS, ITS LICENSORS OR SUPPLIERS BE LIABLE TO LICENSEE OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST REVENUES, LOST PROFITS, BUSINESS INTERRUPTION OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF METAPASS, ITS LICENSORS AND/OR SUPPLIERS HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL METAPASS' TOTAL LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT ACTUALLY RECEIVED BY METAPASS FROM LICENSEE HEREUNDER.
- 10. MAINTENANCE AND SUPPORT SERVICES.**
- 10.1. Upon Agreement with the terms and conditions as set forth in Exhibit A and delivery of the Software, Licensee shall be entitled to Maintenance and Support Services as set forth on Exhibit A. Any Upgrades and Updates of the Software provided to Licensee shall also be governed by the terms and conditions of this Agreement. Subject to Section 12 below, the term for Maintenance and Support Services shall automatically be renewed for successive one (1) year periods, unless Licensee gives MetaPass sixty (60) days prior written notice of Licensee's intent not to renew from the anniversary of the Effective date.
- 10.2. Subject to MetaPass' prior written approval, Maintenance and Support Services which were terminated due to non-renewal by Licensee may be restored upon agreement to pay all back-charges, plus twenty-five (25%) percent of the back-charges for administrative purposes.
- 10.3. MetaPass will provide Maintenance and Support Services for up six (6) months following any End-Of-Life for the Software. For purposes of this Agreement, "End-Of-Life" shall mean MetaPass is no longer commercially distributing the Software to the general public.
- 11. EXPORT RESTRICTIONS; COMPLIANCE WITH LAWS.** In connection with Licensee's exercise of the rights granted hereunder, Licensee agrees to comply with all export and re-export restrictions and regulations, including those of the government of the United States. Licensee agrees that the Software and any tangible components of the Services may not be exported into (or to a national or resident of) Cuba, Iraq, Libya, Iran, Sudan, North Korea, Syria or any other country to which the United States has embargoed goods. Licensee will take all reasonable actions necessary to file any certificates or filings required in connection with its license of the Software and Services in Licensee's local territory, and agrees to assist MetaPass

with the submission of any related certificates, reports or other filings including, without limitation, import or taxation certificates or filings by MetaPass. Notwithstanding the foregoing, Licensee will comply with all applicable laws, rules, regulations, and statutes, including any Internet regulations or policies, in connection with Licensee's use of the Software and Services. Licensee will obtain all appropriate waivers or consents, if necessary, from its authorized users regarding their use of the Software and Services. In any event, Licensee shall not directly or indirectly use the Software and Services for any illegal or unlawful purpose.

12. TERM; TERMINATION. MetaPass may terminate this Agreement if: (i) Licensee materially breaches this Agreement and does not cure the breach within thirty (30) days of receipt of written notice of such breach, or (ii) Licensee becomes or is declared insolvent or bankrupt. Licensee may terminate this Agreement at any time; provided, however, that all payment obligations of Licensee shall survive this Agreement including, without limitation, all fees due and payable or incurred prior to the date of termination. Upon any termination of this Agreement, Licensee shall immediately discontinue use of the Software and Services and within ten (10) days, certify in writing to MetaPass that all copies of the Software have either been returned to MetaPass or destroyed.

13. NO ASSIGNMENT; INDEPENDENT CONTRACTORS. Licensee will not assign this Agreement or any rights granted hereunder without the prior written consent of MetaPass. The parties are operating as independent contractors and nothing herein constitutes any association, partnership or joint venture between the parties.

14. CONFIDENTIAL INFORMATION. Each party acknowledges that it shall have access to the Confidential Information of the other party. Each party agrees that it shall not use in any way, for its own account or the account of any third party, except for the performance of this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accounts and other advisors as reasonably necessary), any of the other party's Confidential Information and shall take reasonable precautions to protect the confidentiality of such information.

15. PRESS ANNOUNCEMENT. Within thirty (30) days after the date of execution of this Agreement, the parties shall issue a mutually acceptable joint press release announcing the existence of this Agreement and the relationship of the parties.

16. SURVIVAL PROVISIONS. The provisions of Sections 1, 4, 6, 7, 8, 9, 11, 12, 13, 14, 16, and 17 of this Agreement, and all payment obligations incurred during the term of this Agreement, shall survive the expiration or termination of this Agreement for any reason. The provisions of Section 14 shall survive the expiration or termination of this Agreement for a period of five (5) years.

17. MISCELLANEOUS. This Agreement, together with Exhibit A, contains the entire agreement between MetaPass and Licensee and supersedes all prior agreements and representations between them. It may be amended only in writing and executed by both parties. The section headings contained herein are for the purposes of convenience only and are not intended to define or limit the contents of the sections. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. This Agreement is governed by and construed under the laws of the State of California without giving effect to its conflict of law provisions, and the parties hereto agree to submit to the jurisdiction and venue of the Courts of the State of California. Use, duplication or disclosure by the Government is subject to restrictions set forth in subparagraphs (a) through (d), excluding subparagraph (c)(2)(iv), of FAR 52.227-19 when applicable, or in DFARS 227.7202-3, and in similar clauses in the NASA FAR Supplement.

IN WITNESS WHEREOF, the following duly authorized representatives have signed this Agreement on behalf of the entities indicated below, as of the date first written above.

MetaPass, Inc. Licensee:

MetaPass, Inc.

(Signature of Authorized Representative)

(Signature of Authorized Representative)

(Title)

(Title)

(Date)

(Date)

EXHIBIT A

MAINTENANCE AND SUPPORT

TERMS AND CONDITIONS

1. Definitions.

(a) "**Error(s)**" means any verifiable and reproducible failure of the applicable licensed Software to materially conform to such Software's functional specifications set forth in its Documentation. "Error (s)" do not include any failure of the Software to materially conform to its functional specifications if the Error(s): (i) result from use in a manner that is inconsistent with the Documentation of the applicable Software; (ii) do not materially affect the operation and use of the applicable Software; (iii) results from the modification by any third party other than MetaPass not approved in writing by MetaPass; or (iv) result from failure to implement in a timely manner any relevant updates, improvements or maintenance releases provided to Licensee.

(b) "**Error Correction**" shall mean either a modification or addition to or deletion from the Software that, when made to such Software shall materially conform such Software its functional specifications as set forth in the Documentation, or a procedure or routine, when observed in the regular operation of the Software, that eliminates the adverse effect of an Error.

(c) "**Severe (P1) Error**" means any demonstrable Error that: (i) causes such Software to have a significant loss of utility of function as set forth in its Documentation; (ii) causes or is likely to cause data to be lost or destroyed; or (iii) prevents such Software from being installed or executed on the properly configured environment.

(d) "**Moderate (P2) Error**" means any demonstrable Error that: (i) causes the Software to operate improperly; or (ii) produces results materially different from those described in the Documentation, but which error does not rise to the level of a Severe Error.

(e) "**Minor (P3) Error**" means any demonstrable Error that: (i) causes a function to not execute as documented in the Documentation without a significant loss of utility of intended functionality; or (ii) disables one or more nonessential functions.

(f) "**Non-Critical (P4) Event**" means any demonstrable event wherein the Software materially conforms to its functional specifications as set forth in Documentation, yet Licensee requests that it perform in some different way, and this will require a development or enhancement to the Software.

(g) "**Workaround**" means a temporary solution to an Error that MetaPass has implemented, or enabled the Licensee to implement that allows the Software to regain functionality and provide major Software functions in accordance with its Documentation.

2. Maintenance and Support Services.

(a) **Licensee's Responsibilities.** Licensee will be required to notify MetaPass by email promptly following the discovery of any Error. MetaPass will make available to Licensee a listing of known Errors and to notify Licensee as soon as possible following the discovery of any Severe Error. Upon request by MetaPass, and in order to correct an Error, Licensee will be required to provide a listing of output and any other data, including the operating conditions under which the Error occurred or was discovered, that MetaPass may reasonably require to reproduce the Error. Such listings, data, and requested information shall be deemed Confidential Information.

(b) **Telephone and Electronic Support.** MetaPass provides standard support by telephone, facsimile and electronic mail at the telephone and facsimile numbers and e-mail address as provided to MetaPass by Licensee. The technical support telephone line will be staffed by a customer technical support representative during the hours of 9:00 a.m. to 5:00 p.m. (Pacific Time) Monday through Friday, excluding MetaPass' scheduled holidays ("**Normal Business Hours**"), subject to any changes by MetaPass at its reasonable discretion. Voicemail may be provided for back-up support when the line is busy or after Normal Business Hours, and MetaPass may offer a pager-based or other contact method for emergency support outside of Normal Business Hours.

(c) **Response to Errors.** MetaPass will use reasonable business efforts to correct Errors in accordance with the following response times and with as little disruption to Licensee's service as commercially practicable.

(i) **Severe (P1) Errors.** Within four (4) hours of the receipt of notice of any Severe Error, MetaPass will contact Licensee to verify such Severe Error and begin a resolution process. Upon MetaPass' verification of such Severe Error, MetaPass will use reasonable business efforts to provide a Workaround for such Severe Error within five (5) days of verification, and on a twenty-four (24) hour, seven (7) days per week basis, work on the Error Correction for such Severe Error until such Severe Error is corrected.

(ii) **Moderate (P2) Errors.** Within twenty four (24) hours of the receipt of notice of any Moderate Error, MetaPass will contact the Licensee to verify such Moderate Error. Upon MetaPass' verification of such Moderate Error, MetaPass will use commercially reasonable efforts to provide a Workaround for such Moderate Error. Error Corrections for Moderate Errors will be included in the next scheduled patch release of the Software.

(iii) **Minor (P3) Errors.** Upon MetaPass' receipt of notice of a Minor Error and upon MetaPass' verification of such Minor Error, MetaPass will initiate work to provide Error Correction for such Minor Error in the next regular release of the Software.

(iv) **Non-Critical (P4) Event.** Upon MetaPass' receipt of notice of a Non-Critical Event and upon MetaPass' verification of such Non-Critical Event, MetaPass will include Licensee's request for consideration of future development or enhancement plans.

(d) **Version Level Support** Support of a previous version release of the Software is limited to six (6) months following release of a new Upgrade of the Software. If an Error is identified during that six (6) month period, MetaPass' policy is as follows:

(i) If MetaPass categorizes the error as Severe Error, MetaPass will attempt to issue a temporary modification or Workaround. If a temporary modification is not possible, and the Error is not resolved in the latest version, MetaPass will use reasonable efforts to expedite its next scheduled Maintenance and Support Services release of the Software.

(ii) If MetaPass categorizes the error as Minor Error, MetaPass will attempt to issue a temporary modification or Workaround. If a temporary modification is not possible, and the Error is not corrected in the latest version, MetaPass will use commercially reasonable efforts to incorporate the correction in its next scheduled Maintenance and Support Services release of the Software.

(e) **Exclusions from Maintenance and Support Services.** Maintenance and Support Services do not cover services for any failure or defect in the Software caused by: (i) the improper use, alteration, or damage of the Software by Licensee or persons not authorized by MetaPass to use the Software; (ii) modifications to the Software not made by MetaPass;

(iii) application software not provided or approved by MetaPass; or (iv) use of the Software on operating systems and platforms that have not been approved by MetaPass. In addition, unless mutually agreed to in writing, Maintenance and Support Services may not be provided for any Software one (1) year following the End-of-Life or discontinuation of distribution of the Software to the general public.

3. **Updates and Upgrades.** MetaPass provides periodic Updates and Upgrades to the Software, as it reasonably determines necessary. As Software specifications change and MetaPass publishes new versions of the Documentation, MetaPass reviews such changes to determine if any changes are necessary to the Software. The standard Software specifications shall be deemed changed when the final published document is released by the originating agency and is generally available to the users of such standards. MetaPass will determine whether or not such changes in the standards, including enhancements and protocol changes, are considered part of Maintenance and Support Services. Updates and Upgrades to the Software shall be made available to Licensee via electronic delivery/download.

4. **Fees.** The annual Maintenance and Support Services fees ("Annual Maintenance and Support Fees") in the amount of twenty percent (20%) of list price of the Software are the fees in order to obtain MetaPass' standard 9x5 Gold Maintenance and Support Services. Such Annual Maintenance and Support Fees may be increased by MetaPass from time to time to reflect any increases in its costs.

5. **Term.** Upon Agreement with the terms and conditions as set forth in this Exhibit A and delivery of the Software, the initial term for Maintenance and Support Services is one (1) year ("Initial Term"). The term shall be extended automatically for additional one (1) year periods, unless either party provides written notice of cancellation not later than sixty (60) days prior to the expiration of the Initial Term and each subsequent term. Should Licensee allow the Maintenance and Support Services to lapse, re-instatement of Maintenance and Support Services will require Licensee to agree to pay all back-charges, plus 25% of the prior lapsed amount in order to bring the Licensee up to date.

6. **Licensee's Designated Contacts.** MetaPass limits the number of technical contacts to two (2) contacts per customer. Licensee will be required to provide the contact information of each designated contact as set forth in Section 4 of the Order Form and to notify MetaPass of any changes to those designated contacts.

MetaPass' Support Contact Information

MetaPass, Inc.

625 Ellis St., Suite 208

Mountain View, CA 94040

Phone: (650)-266-8255

Fax #: (650)-963-3599

Email: support@metaPass.com