

Agreement No. _____ Effective Date _____
Customer _____

This agreement governs the licensing of Saratoga Data Systems, Inc. (Saratoga Data) products to Customer and prevails over any additional, conflicting or inconsistent terms and conditions appearing on any purchase order submitted by Customer. SARATOGA DATA and Customer agree as follows :

1. **SCOPE OF LICENSE GRANTED.** Each license granted to Customer by SARATOGA DATA shall be a nonexclusive, nontransferable license to use a SARATOGA DATA software product or product set (Licensed Software) in machine-readable form only, and solely for Customer's internal business purposes, on the item or items of computer hardware equipment expressly authorized by SARATOGA DATA to execute the Licensed Software (Authorized Systems). A node-specific Licensed Software product will be authorized to operate on only one specific Authorized System. A floating Licensed Software product may be authorized to operate on multiple Authorized Systems, but in no event on more than one Authorized System at any one time. All Authorized Systems for a floating license must be located within a single site. Upon relocation of an Authorized System outside the original site, that item of computer hardware equipment shall cease to be an Authorized System for that license. Customer is not entitled to receipt or use of the source code to any Licensed Software.
2. **PERMISSION TO COPY LICENSED SOFTWARE.** Customer may copy Licensed Software only as reasonably necessary to support the authorized use. Customer shall maintain, reproduce and include in all copies of Licensed Software all notices and legends included in Licensed Software as received from SARATOGA DATA and shall affix to the copy medium and the container housing the medium all notices and legends affixed to the medium or container as received from SARATOGA DATA. All copies of Licensed Software whether provided by SARATOGA DATA or made by Customer, shall be and remain the property of SARATOGA DATA or third parties from whom SARATOGA DATA has obtained a licensing right. Customer shall maintain a record of the number and location of all copies made of Licensed Software, including Licensed Software that has been merged with other software, and make such record available to SARATOGA DATA upon request.
3. **PROTECTION AND SECURITY OF SOFTWARE.** All software provided by SARATOGA DATA to Customer is trade secret or confidential information of SARATOGA DATA or its licensors. Customer shall not make such software available in any form to any person other than Customer's employees whose job performance requires such access. Customer shall take appropriate action to protect the confidentiality of such software and to ensure that any person permitted access to such software does not provide or disclose it to others. Customer shall not reverse-assemble, reverse-compile, or otherwise reverse-engineer any such software, in whole or in part. The provisions of this Section 3 shall survive the termination of this agreement.
4. **LIMITED WARRANTY.**
 - 4.1 SARATOGA DATA warrants that its software products when properly installed will not fail to execute their programming instructions due to defects in material and workmanship in the media and will substantially conform to the specifications in the applicable user manual that accompanies shipment of the product. SARATOGA DATA does not warrant that products will meet Customer's requirements or that operation of the products will be uninterrupted or error free. The warranty period is 90 days. If Customer believes a product does not conform to the above warranties Customer shall notify SARATOGA DATA in writing during the warranty period. If SARATOGA DATA determines that it is unable to repair or replace a defective software medium or to bring a product into substantial conformance with the applicable specifications, then SARATOGA DATA will refund the price of the product to Customer upon return of the product to SARATOGA DATA. Such repair, replacement or refund constitutes SARATOGA DATA's sole and exclusive liability and Customer's sole and exclusive remedy under this warranty.
 - 4.2 THE WARRANTIES SET FORTH IN THIS SECTION 4 ARE EXCLUSIVE AND SARATOGA DATA MAKES NO OTHER WARRANTIES EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS. SARATOGA DATA SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
5. **PATENT AND COPYRIGHT INDEMNITY.**
 - 5.1 SARATOGA DATA shall defend or settle at its sole option and expense any action brought against Customer alleging that any product furnished by SARATOGA DATA under this agreement infringes a United States patent or copyright. SARATOGA DATA will pay any costs and damages finally awarded against Customer that are attributable to such claim provided that Customer (a) notifies SARATOGA DATA promptly in writing of the action, (b) provides SARATOGA DATA all reasonable information and assistance to settle or defend the action and (c) grants SARATOGA DATA sole authority and control of the defense or settlement of the action.
 - 5.2 If a final non-appealable injunction is issued against Customer's use of any product, SARATOGA DATA will at its sole option and expense either (a) replace or modify the product so that it becomes non-infringing or (b) procure for Customer the right to continue using the product. If in SARATOGA DATA's sole opinion neither of the foregoing alternatives is financially practicable or otherwise reasonably available, SARATOGA DATA will accept the return of the product and refund to Customer the purchase price paid hereunder less a reasonable allowance for use.
 - 5.3 SARATOGA DATA shall have no liability if the alleged infringement is based upon (a) the combination of the product with any product not furnished by SARATOGA DATA to Customer, (b) the modification of the product other than by SARATOGA DATA, or (c) the use of other than a current unaltered release of a software product.

This Section 5 states SARATOGA DATA's entire liability and the sole and exclusive remedy of Customer with respect to any alleged patent or copyright infringement by any product.

6. LIMITATION OF LIABILITY. THE REMEDIES PROVIDED ABOVE FOR BREACH OF WARRANTY SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY CLAIM RELATING TO SARATOGA DATA'S PRODUCTS, WHETHER IN CONTRACT, TORT OR OTHERWISE. IN NO EVENT SHALL SARATOGA DATA BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS) WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY.

7. TERMINATION.

7.1 Unless earlier terminated pursuant to Section 7.2 below, this agreement shall have a minimum term of one year commencing on the effective date. After the initial one year term the agreement shall continue in effect until terminated as provided in Section 7.2 below or by either party with at least 60 days prior written notice.

7.2 Either party may terminate this agreement or any license granted under this agreement at any time upon written notice if the other party fails to comply with any material term or condition. The party not in compliance shall have 30 days after notice to cure any failure and avoid termination. Upon termination of any license, Customer shall return to SARATOGA DATA or destroy all Licensed Software covered by such license, including any copies made thereof, and shall furnish to SARATOGA DATA a certificate of compliance with this provision signed by an officer or authorized representative of Customer.

8. GENERAL PROVISIONS.

8.1 **Entire Agreement; Amendment.** This document contains the entire agreement relating to the subject matter contained herein and supersedes all prior or contemporaneous agreements, written or oral, between the parties. This agreement may not be modified except by written document signed by an authorized representative of each party.

8.2 **Export.** Customer understands that SARATOGA DATA is subject to regulation by United States Government agencies which prohibit export or diversion of SARATOGA DATA products, information about products and direct products of the products to certain countries. Regardless of any disclosure made by Customer to SARATOGA DATA of an ultimate destination of the products or direct products thereof, Customer warrants that it will not export in any manner, either directly or indirectly, any product or direct product thereof without first obtaining all necessary approval from appropriate United States Government agencies. Customer acknowledges that the regulation of product export is in continuous modification by the United States Congress and administrative agencies. Customer agrees to complete all documents and meet all requirements arising out of such modifications.

8.3 **Notice.** All notices required or authorized under this agreement shall be given in writing and shall refer to this agreement by number. All notices shall be effective upon delivery if delivered in person or upon mailing if mailed at a U.S. Post Office, first class mail, postage prepaid, addressed or delivered to Customer at the Customer address listed on page one or, to: Corporate Contracts Manager, SARATOGA DATA Systems, Inc., 1400 Coleman Avenue, Santa Clara, California 95050, or at such other address that either party provides by advance written notice to the other party.

8.4 **Waiver.** No term of this agreement shall be considered waived and no breach excused by either party unless made in writing. No consent, waiver, or excuse by either party, express or implied, shall constitute a subsequent consent, waiver or excuse.

8.5 **Severability.** If any provision of this agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be severed from this agreement and the remaining provisions will remain in full force and effect.

8.6 **Assignment.** SARATOGA DATA may assign any of its duties with respect to warranty or support service to third parties. No such assignment shall relieve SARATOGA DATA of its obligations under this agreement. This agreement and the rights and duties under it may not be sublicensed, assigned or otherwise transferred by Customer without the prior written consent of SARATOGA DATA.

8.7 **Controlling Law.** This agreement shall be governed by the laws of the State of California.

CUSTOMER

SARATOGA DATA SYSTEMS, INC.

By _____

By _____

Name _____
Authorized Signature

Name _____

Title _____
Type or Print

Title _____

Date _____

Date _____