



Software License Agreement

This Software License Agreement (“Agreement”) for SalesTrackR™ from MC Services is entered into on the date signed below between MC Services (“Company”) and the undersigned individual and/or entity (“Customer”) for the Services and number of authorized users; the terms of which are incorporated by reference.

1. DEFINITIONS

“**Documentation**” means the manuals, user guides, and other materials provided by Company to assist Customer in using the Products.

“**Fix(es)**” means a Workaround and/or additional or replacement lines of Software code provided by Company to remedy a defect in the Materials that caused it to not operate substantially in accordance with its written specifications.

“**Materials**” means the Software and Documentation provided under a separate grant to Customer.

“**Maintenance**” means Services relating to any Updates that may become available by Company during the Term of this Agreement.

“**Problem**” means Software that does not operate substantially in accordance with its written specifications; or Documentation that is not correct.

“**Product**” means the proprietary computer software program identified above. “Product” is the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related software materials, and 5) software use documents or keys, and documentation.

“**Services**” or “**Maintenance & Technical Support Services**” means the maintenance and support to be provided pursuant to the terms of this Agreement repairing or replacing Product that does not operate in accordance with its written specifications.

“**Software**” means computer programs in machine-readable form granted to Customer under a separate software agreement by Company for use on a designated machine and/or by a designated user.

“**Start Date**” means the date of this signed Agreement by Customer and the Company, or the date Product is delivered for first use, whichever is later, this shall begin the “Initial Term” (defined in Section 3).

“**Support Period**” means the initial 12 months following the Start Date (the “Initial Term”). The Support Period shall also include any subsequent 12-month renewal periods.

“**Special Services**” means any Software or Services, including by not limited to customizations, provided that they are not part of the core product sold or Maintenance & Technical Support Services in Section 4, as well as any Services provided in excess of the Monthly Allotment defined in Section 4.

“**System Administrator**” means an employee or agent of Customer with sufficient training and experience to identify and isolate Problems and to provide sufficient information and assistance to Company to be able to reproduce such Problems. The System Administrator or his/her delegate shall be the single point of contact with Company when reporting Problems. Company may require Customer to appoint a new System Administrator if Company reasonably determines that the System Administrator does not possess the training or experience necessary to perform the required functions of the System Administrator or cannot communicate effectively with Company’s support personnel.

“**Technical Support**” means access to telephone based support personnel for the purpose of providing second line assistance to Customer’s System Administrator with the standard business use of the Product as well as any Fixes.

“**Updates**” means subsequent releases of Company Software, which are generally made available for supported Software at no additional charge, to correct design faults, discrepancies or defects (“bugs”) in the Product. Updates are generally designated by a change in the number appearing to the right of the initial decimal point in the Product’s version number (i.e., 1.1 vs. 1.0).

“**Workaround**” means a temporary solution to a Problem.

2. LICENSE

MC Services grants Customer a nonexclusive license(s) to install and use the Software that is being purchased on a single machine, device, or network server for access by licensed users only. Only one copy of this program may be running at any time for each license Customer has acquired. A license must be purchased for each named user.

Customer may not sublicense, assign or transfer this program and any license(s) to another party, or attempt to otherwise sublicense, assign or transfer the rights granted hereunder.

3. TERM AND TERMINATION

The term of this Agreement shall commence on the Start Date of the initial term and end 12 months thereafter (the "Initial Term"). Thereafter, this Agreement shall automatically renew for succeeding 12-month annual term(s), hereinafter known as the "renewal period(s)" (collectively "Term"); unless either party provides written notice on or before 60 days preceding an anniversary of the Start Date of its intent not to renew for the next annual period. The amount of charges for any renewal period for Services shall be at Company's prices in effect for the upcoming Renewal Period. If a lapse in Services coverage occurs at any time, Company may invoice Customer a reactivation fee prior to entering into a new agreement or reinstating current agreement. In the event of the termination of the underlying end user software agreement for the Product, it is the intent of the parties that this Agreement shall concurrently terminate. If Customer fails to pay any invoice in full within a period of 30 days after the same is due, Company may terminate this Agreement and/or revoke access to Software upon 5 business days' notice to Customer without any liability to Customer whatsoever, until account is brought to current status. Except for Customer's failure to make payments, as invoiced, either party may terminate this Agreement on notice if the other party has defaulted in the performance of its obligations under this Agreement, has breached any material provision of this Agreement, or becomes insolvent, invokes as a debtor any laws relating to the relief of debtors' or creditors' rights, or has such laws invoked against it as a debtor. Such termination shall be effective 30 days after notice, unless such default or breach has been cured or the terminating party is satisfied with other party's solvency within that time. Upon termination of the Agreement due to Customer's breach, Company shall be entitled to accelerate all remaining payments for the Term and any prepaid fees shall not be refunded.

4. SOFTWARE MAINTENANCE & TECHNICAL SUPPORT

Company provides the following software maintenance and technical support and reserves the right to change or modify the Services at any time and from time to time upon 30 days written notice to Customer.

4.1 SOFTWARE MAINTENANCE

Delivery of Updates. Whenever Company makes Updates generally available to its users who have purchased Services, Company will grant Customer a copy of the new release containing Updates, provided Customer's account is paid and current on the applicable fees. Customer's use of all such Updates is subject to this Agreement.

4.2 TECHNICAL SUPPORT

Technical support is available by telephone and/or e-mail during normal business hours of 9:00 a.m. to 5:00 p.m., Central Standard Time, Monday through Friday (except Company holidays).

Technical Support is available after hours, by e-mail. Customer will get a response before the end of the next business day.

5. SPECIAL SERVICES

Any Special Services, including, but not limited to, customizations, requested will be quoted on an individual basis.

6. MAINTENANCE & TECHNICAL SUPPORT SERVICE EXCLUSIONS

Unless otherwise agreed to in writing by Company, the Maintenance & Technical Support Services and the charges quoted by the Company for such Services do not cover or include the following:

- A. Support of a Product which has been modified or repairs other than by Company;
- B. Making specification changes or performing Services connected with the relocation of a Product;
- C. Modification or replacement of a Product, repair of damage, or increase in service time caused by failure to continually provide a suitable operational environment with all facilities prescribed by the applicable documentation; including, but not limited to, the failure to provide or the failure of adequate electrical power, temperature or humidity control, or computing environment;
- D. Modification or replacement of a Product, repair of damage, or increase in service time caused by the use of the Product for other than the purposes for which it is authorized or not;
- E. Modification or replacement of a Product, repair of damage, or increase in service time caused by:
 - a. Accident
 - b. Natural or man-made disaster which shall include but not be limited to fire, water, wind, and lightning
 - c. Transportation

- d. Neglect or misuse;
- F. Modification or replacement of a Product, or increase in service time caused by the use of the Product in combination with other products or materials not furnished by Company or in combination with other Product or materials furnished by, but not combined by, Company;
- G. Backing up or restoring programs and/or data;
- H. Keying, importing, converting or manipulation of data;
- I. On-site or formal classroom training on the operation and use of the Product or Software;
- J. Creation of any new non-standard, customer-defined reports; or
- K. Installation of the Product.

At Customer's request and in the Company's sole discretion, Company may perform any of the foregoing services on a billable Special Services basis or as part of a separate quote.

7. OBLIGATIONS OF CUSTOMER

Customer shall provide access to Customer's facilities and equipment in connection with Company's performance of its obligations hereunder. No charge shall be made for such access and Company will provide prior notification when such access is required;

Customer shall maintain a proper network connection near any machine and/or device used with a Product being maintained by Company hereunder;

Customer shall be responsible for obtaining any required third party hardware, software, and/or services, including updated thereto;

Customer's System Administrator must be present when any on-site Service is provided. If applicable, Customer agrees that if a representative is not present when Company's technician arrives on site that no Service will be performed and Customer will be charged at the Special Service rate then in effect for such visit, plus any travel expenses.

Customer may permit any device to access and use Customer's authorized copy of the Product for the sole purpose of providing Customer with technical support and maintenance services. Prior to providing on-site or remote Maintenance & Technical Support, it is Customer's responsibility to properly backup all data.

Customer agrees that Company and its affiliates may collect and use technical information gathered as part of the Maintenance & Technical Support Services provided to Customer. Company may use this information to ensure proper authorization of all copies of the Software as well as to improve Company's products or provide customized services or technologies to Customer. Company will not disclose this information to any third parties.

8. SOFTWARE UPDATES, FIXES AND WORKAROUNDS

Customer agrees that all Updates, Fixes and Workarounds furnished to Customer shall be deemed to be part of such Materials subject to the terms and conditions of the end user software agreement for the Materials.

9. INVOICES, TAXES AND PAYMENTS

Billing for monthly service fees shall begin on the date of this signed agreement.

Services, fees and any Special Services charges, shall be payable within 15 days of the date of Company's invoice. If Customer requests Special Services, the charges for such services shall be invoiced as soon as practicable after the Special Services are provided.

If any authority imposes a duty, tax, levy or fee upon the Product, Customer agrees to pay the amount specified.

Payments provided for in this Agreement shall, when overdue, be subject to a late payment charge calculated at a rate of one and one-half percent (1.5%) per month until paid; provided, however, that if the amount of such late payment charge exceeds the maximum permitted by law for such charge, such charge shall be reduced to such maximum amount.

10. ADDITIONAL USERS

Each additional user Customer grants access to use the Software is included under this Agreement. Customer will be responsible for additional charges for such Services. For purposes of this Agreement, each additional user is equal to another license.

11. WARRANTY

Company warrants to Customer that Services hereunder will be performed in a professional manner and in accordance with good usage and acceptable practices.

This warranty extends only to failures that appear within ninety (90) days from the date of delivery. Company further warrants that the media on which this program is furnished will be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery.

Company does not warrant that this program will meet Customer's requirements or that operation of this program will be uninterrupted or error-free. Customer assumes sole responsibility for the selection of this program to achieve Customer's intended results and for the installation, use and results obtained from this program.

12. LIMITATION OF REMEDIES

Company's entire liability and Customer's exclusive remedies shall be:

Replacement of the software or, at Company's option, an equitable reduction in the purchase price based on the performance actually provided; and replacement of any nonconforming electronic media or, if Company is unable to provide replacement media that is free of defects in materials and workmanship, Customer may terminate this Agreement by promptly returning the Software and accompanying documentation for a full refund.

13. LIMITATION OF LIABILITY

COMPANY SHALL IN NO EVENT BE LIABLE TO CUSTOMER OR ANY PERSON OR ENTITY USING ANY SERVICE SUPPLIED UNDER THIS AGREEMENT FOR ANY LOSS OF TIME, REVENUE, PROFITS, BUSINESS INTERRUPTION, INCONVENIENCE, LOSS OR DAMAGE OF DATA, LOSS OF USE OF ANY PRODUCT OR EQUIPMENT OR PROPERTY DAMAGE CAUSED BY ANY TECHNICIAN, PRODUCT OR EQUIPMENT, OR THEIR FAILURE TO WORK, OR FOR ANY OTHER INDIRECT, SPECIAL, RELIANCE, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE ARISING OUT OF THIS AGREEMENT OR ANY OBLIGATION RESULTING THEREFROM, OR THE USE OR PERFORMANCE OF ANY PRODUCT OR PRODUCTS WHETHER IN AN ACTION FOR OR ARISING OUT OF ALLEGED BREACH OF WARRANTY, ALLEGED BREACH OF CONTRACT, DELAY NEGLIGENCE (ACTIVE OR PASSIVE), STRICT TORT LIABILITY OR OTHERWISE. COMPANY'S ENTIRE LIABILITY FOR ANY CLAIM OR LOSS, DAMAGE, OR EXPENSE FROM ANY CAUSE WHATSOEVER, SHALL IN NO EVENT EXCEED THE FEES ACTUALLY PAID BY CUSTOMER. NO ACTION OR PROCEEDING AGAINST COMPANY MAY BE COMMENCED MORE THAN ONE YEAR AFTER THE SERVICES ARE COMPLETED EXCEPT FOR COMPANY CLAIMS RELATING TO COLLECTION OF FEES DUE AND PAYABLE BY CUSTOMER. THIS PARAGRAPH SHALL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY.

14. FORCE MAJEURE

Except with respect to Customer's obligation to make timely payments, neither party shall be held responsible for any delay or failure in performance to the extent that such delay or failure is caused by fires, strikes, embargoes, explosions, earthquakes, floods, wars, water, the elements, labor disputes, government requirements, civil or military authorities, acts of God or by the public enemy, inability to secure raw materials, or transportation, facilities, acts or omissions of carriers or suppliers, or other causes beyond its control whether or not similar to the foregoing.

15. CHOICE OF LAW

The law of the State of Wisconsin, excluding its conflicts of law provisions, shall govern this construction, interpretation and performance of all transactions under this Agreement.

16. ENTIRE AGREEMENT

The terms and conditions contained in this Agreement supersede all prior oral or written understandings between the parties, shall constitute the entire Agreement between the parties with respect to the subject matter of this Agreement and shall not be contradicted, explained, or supplemented by any course of dealing between Company or any of its affiliates and Customer or any of Customer's affiliates. Company employees' statements and Company advertisements or descriptions other than its published specifications do not constitute warranties or other contractual obligations, and shall not be relied upon by Customer as such. This Agreement shall not be modified or amended except by a writing signed by an authorized representative of both parties.

17. NOTICES

All notices under this Agreement (except for requests for Service) must be in writing and shall be given by mail, postage prepaid, or by e-mail. If to Customer, at Customer's address set forth in the signature block below or to COMPANY at:

MC Services
N27W23921 Paul Road, Suite G
Pewaukee, WI 53072
E-mail: accounting@mcservices.com

Such notices shall be deemed given when received. Either party may change its notice address upon notice to the other party pursuant to this provision.

18. SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable in any jurisdiction in which this Agreement is being performed, then the meaning of such paragraph or clause shall be construed so as to render it enforceable, to the extent feasible; and if no feasible interpretation would save such paragraph or clause, it shall be severed from this Agreement and the remainder shall remain in full force and effect. However, in the event such paragraph or clause is considered an essential element of this Agreement, the parties shall promptly negotiate a replacement thereof. If the parties are unable to agree upon a replacement term within 30 days of the final ruling, either party may terminate this Agreement upon 10 days prior written notice.

19. INDEPENDENT CONTRACTOR

All work performed under this Agreement by a party shall be performed as an independent contractor and not as an agent of the other. No persons furnished by either party shall be considered the other party's employees or agents, and each party shall be responsible for its own and its employees' compliance with any and all laws.