

West Master Software Subscriber Agreement for FEDLINK Members

MASTER AGREEMENT (the "Agreement") entered into between _____ ("Subscriber") and West, a Thomson Reuters business ("West") regarding West Software, as follows:

1. Designation of Licensed Products. The terms and conditions of this Agreement are applicable to various West software products ("Software"). Subscriber is licensing the West Software product(s) specified in the applicable Exhibit(s) attached hereto and incorporated herein. In the event of a conflict between the terms and conditions in paragraphs 1 through 12.4 of the Agreement and the terms and conditions of the applicable Exhibit(s), the terms and conditions of the applicable Exhibit(s) shall control.

2. FAR Applicability. All of the terms and conditions set forth below are subject to and governed by the language of FAR clause 52.212-4 (Contract Terms and Conditions – Commercial Items). In the event any language in the terms and conditions of this Agreement or the applicable Exhibit(s) conflicts with the governing FAR clause, such FAR clause takes precedence over the language of this Agreement and the applicable Exhibit(s).

3. Software License.

3.1. Grant. West grants Subscriber a non-exclusive, non-transferable, limited license to use for the number of Attorneys/Users (as defined in the applicable Exhibit) at its licensed site(s) identified in the applicable Exhibit, the Software listed in the applicable Exhibit hereto, in object code only, in Subscriber's normal course of business (including all currently installed versions and any prepaid Updates, as defined below, included in the initial license, but excluding any new software feature or substantial additional functionality for which West, in its sole discretion, generally charges subscribers of the Software additional software subscription charges). A site means all personal computers, servers or minicomputers (including networked systems) with the same operating system platform at a single location or at different locations which are connected by a single networked system (i.e., any combination of two or more terminals that are electronically linked and capable of sharing the use of a single software product) ("Site"). In addition, Subscriber's personnel who work at or are assigned to the licensed Site may use the Software on personal computers or laptops located off-site. The Software is protected by copyright and various U.S. and international patent applications.

3.2. Copying. Subscriber may make copies of the Software for backup and recovery purposes only. Each copy made by Subscriber must include the copyright/proprietary rights notice(s) embedded in and affixed to the Software. All other copying is prohibited.

3.3. Other Restrictions. Subscriber may not publish, transmit, retransmit, disseminate, broadcast, circulate, sell, resell, loan, lease, distribute or transfer Software or copies to third parties, nor reverse engineer, decompile, disassemble or otherwise attempt to discern the source code of the components of the Software. Subscriber may not use Software, nor allow Software to be used, to provide data management or processing services for third parties. Subscriber may not reproduce all or any portion of the Software (except as expressly permitted in this Agreement) or any accompanying user documentation ("Documentation"), or modify, translate or otherwise create derivative works of the Software. Subscriber agrees to notify its employees and agents who may have access to Software of the restrictions contained in this Agreement and to ensure their compliance with these restrictions.

3.4 Server Code (if applicable). The server code portion of the Software ("Server Code") may be used on the server(s) specified in the applicable Exhibit. Subscriber may use the Server Code on other servers in addition to the Specified Server(s) (as defined below) upon payment of the applicable additional license fees to West; provided, however, that if the Specified Server(s) is/are temporarily incapable of operating, the Server Code may be temporarily installed on another server or servers pending repair of the Specified Server(s). Specified Server shall mean the application server, or related application servers, in support of the production database utilized by the Software and any equivalent replacement(s) for such server(s). The Specified Server(s) does/do not include any training, testing, backup or other non-production servers.

4. Other Licenses. The Software may be used to access and use various West products and services, including Westlaw® ("West Services"). All access to and use of such West Services by means of the Software, including any charges for such access and use, will be governed by the terms of the applicable West user agreement.

5. Title. Subscriber hereby acknowledges and agrees that all right, title and interest in and to the Software, the Documentation and any other related materials are, and shall remain, vested solely in West and other software owners, if any, and Subscriber shall not hold itself out as having any ownership or other rights with respect thereto, except as specifically granted hereunder. Except as expressly permitted herein, Subscriber covenants and agrees that it shall make no use of the Software, the Documentation or any other related materials without West's prior written consent. Any and all goodwill associated with such rights shall inure directly and exclusively to the benefit of West.

6. Confidential Information.

6.1 West acknowledges that any documents, the contents thereof, or other proprietary or confidential materials expressly designated as confidential that are provided to West by Subscriber during the Term of this Agreement ("Subscriber Confidential Information") are valuable assets of Subscriber. West will take reasonable steps to ensure that the Subscriber Confidential Information is not used or disclosed except as expressly permitted by this Agreement. West will not permit any unaffiliated third party access to, in any manner, the Subscriber Confidential Information, except as provided in this Agreement. Subscriber Confidential Information shall not include information that consists of ideas, concepts, know-how or techniques relating to the enhancement, customization, installation or implementation of the Software. West may access Subscriber's Software server to provide services as provided in this Agreement.

6.2 Subscriber acknowledges and agrees that the Software constitutes a valuable proprietary product of West and that the Software, together with the terms of this Agreement, constitute information confidential to West ("West Confidential Information"). Subscriber will take reasonable steps to ensure that the West Confidential Information is not used or disclosed except as expressly permitted by this Agreement. Subscriber will not permit any third party access to, in any manner, the West Confidential Information, except as provided in this Agreement. Subscriber may permit its independent contractors access to the West Confidential Information to the extent necessary for such contractor's provision of services to Subscriber if such contractor executes a confidentiality agreement with Subscriber or West which prohibits the contractor from using or disclosing the West Confidential Information; provided, however, that such independent contractors may not include any competitor. Competitor shall mean a third party that is regularly engaged in the business of developing or marketing software that performs the same or similar functions as one or more of the modules of the West Software implemented by Subscriber ("Competitor").

7. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY.

7.1 West warrants that for the period ending ninety (90) days after the first date that Subscriber commences production use of the Software (the "Warranty Period") the Software will substantially conform to the Documentation (available at west.thomson.com.). THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, ANY APPLICABLE SCHEDULE OR LICENSE AGREEMENT, THE SOFTWARE IS PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, OMISSIONS, COMPLETENESS, CURRENTNESS AND DELAYS. SUBSCRIBER'S EXCLUSIVE REMEDY

AND WEST'S AND/OR ITS AFFILIATES' ENTIRE LIABILITY UNDER THIS AGREEMENT, IF ANY, FOR ANY CLAIM(S) FOR DAMAGES RELATING TO THE SOFTWARE WHICH ARE MADE AGAINST THEM, INDIVIDUALLY OR JOINTLY, WHETHER BASED IN CONTRACT OR NEGLIGENCE, SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF SOFTWARE SUBSCRIPTION CHARGES PAID BY SUBSCRIBER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL WEST AND/OR ITS AFFILIATES BE LIABLE TO SUBSCRIBER FOR ANY LOST PROFITS OR OTHER CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES RELATING IN WHOLE OR IN PART TO SUBSCRIBER'S RIGHTS UNDER THIS AGREEMENT OR USE OF, OR INABILITY TO USE, THE SOFTWARE, EVEN IF WEST AND/OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER WEST NOR ITS AFFILIATES MAKE ANY WARRANTY THAT ACCESS TO THE SOFTWARE WILL BE UNINTERRUPTED, SECURE, COMPLETE OR ERROR FREE. SUBSCRIBER ACKNOWLEDGES THAT PROVISION OF THE SOFTWARE ENTAILS THE LIKELIHOOD OF SOME HUMAN AND MACHINE ERRORS, DELAYS, INTERRUPTIONS AND LOSSES, INCLUDING THE INADVERTENT LOSS OF DATA OR DAMAGE TO MEDIA. The performance of the Software varies with various manufacturers' equipment with which it is used. Certain software used by Subscriber may not be capable of supporting the Software. West does not warrant the level of performance of the Software or that earlier versions superseded by new versions (whether or not distributed to Subscriber) will continue to be capable of access to and use with West Services.

7.2 Failures Not Caused by West. West will not be responsible to the extent that the Software fails to perform due to one or more of the following: (1) the malfunction of software not provided by West (2) the malfunction of hardware, (3) Subscriber's negligence or fault, (4) Subscriber's failure to follow the instructions set forth in the Documentation, (5) material changes in the operating environment not authorized by West, (6) modifications to or changes in the Software not made or suggested by West or (7) Subscriber's failure to implement and maintain a proper and adequate backup and recovery system for the West database or user files. If West discovers that a failure is caused by one of the above, West reserves the right to charge Subscriber for its work in investigating such failure. At Subscriber's request and at a fee to be agreed upon, West will thereafter assist Subscriber in resolving such failure. It is Subscriber's responsibility to develop and implement a proper and adequate backup and recovery system.

7.3 Exclusive Remedies. The remedies in paragraphs 8.1 (Infringement Claims), 9 (Term and Termination), and 12.4 (Remedies) are Subscriber's exclusive remedies and are in lieu of all other legal or equitable remedies and all liabilities or obligations on the part of West for damages (except for bodily injury) arising out of, relating to, or in connection with this Agreement, including, but not limited to, the licensing, delivery, installation, use or performance of the Software or the integration of the Software with other software or hardware.

8. Indemnification.

8.1 Infringement Claims. At its sole expense, West shall defend, indemnify and hold Subscriber harmless from copyright, trade secret and U.S. patent infringement claims based upon the Software in the form delivered by West, including paying any judgment, attorneys fees, costs and expenses associated with such claim.

8.2 Without limiting its obligations under paragraph 8.1, in the event a claim of infringement or misappropriation is made against West or Subscriber with respect to the Software, West, for the purpose of settling such claim, may, at its option, in respect of such allegedly infringing Software:

- (i) substitute fully equivalent non-infringing software; or
- (ii) modify the Software so that it no longer infringes but remains functionally equivalent.

If, as a result of such claim, Subscriber or West is permanently enjoined from using the Software by a final, non-appealable decree from a court of competent jurisdiction, West will take one or both of the actions set forth in (i) and (ii) above or will obtain for Subscriber at West's expense the right to continue to use the Software.

8.3 West's obligation to indemnify Subscriber pursuant to this paragraph 8 is contingent upon West being given prompt notice and control of, and detailed information with regard to, any such claim, suit or proceeding. Subscriber shall have the right to participate at its own cost in the defense of any such claim or action through legal counsel of its choosing. Subscriber shall not settle any such claim or action without West's prior written consent.

8.4 This paragraph 8 contains West's entire indemnification obligation and the exclusive remedies of Subscriber with regard to any claimed infringement arising out of or based upon the Software used by Subscriber.

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9. Term and Termination.

9.1 This Agreement will become effective upon approval and acceptance by West, and will continue in effect for the Minimum Term as set forth in the applicable Exhibit, unless otherwise provided in the FEDLINK Agreement currently in effect between Subscriber and West. Notwithstanding the foregoing, (i) West may terminate this Agreement immediately upon giving written notice of termination to Subscriber if Subscriber commits a material breach of any obligation to West under any other agreement between the parties; and (ii) either party may terminate this Agreement immediately upon giving written notice of termination to the other party if the other party commits a material breach of this Agreement and such breach is not cured within thirty (30) days of notice of such breach to the breaching party by the non-breaching party.

9.2 Except as otherwise expressly permitted in this Agreement, upon the termination of this Agreement, Subscriber's license and right to use the Software or any part thereof shall end immediately and within thirty (30) days of such termination, Subscriber shall return to West the Software (or uninstall web-based Software), the Documentation, content enhancements, and any other documents, manuals, data, information or materials furnished by West, as well as any copies thereof and shall destroy any embodiments of these materials stored in or on a reusable electronic or similar medium, including but not limited to memory, disk packs, tape, and other peripheral devices, and certify such destruction in writing to West.

10. General Provisions.

10.1 Force Majeure. West shall not be liable for any delay or failure in performing hereunder if caused by factors beyond its reasonable control, such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labor dispute, inability to obtain necessary supplies and the like.

10.2 Notices. Except as otherwise provided herein, all notices must be in writing to West at 610 Opperman Drive, P.O. Box 64833, St. Paul, Minnesota 55164 - 1803, Attention: Customer Service, and to Subscriber at the address first set forth below.

10.3 Assignment and Waiver. Neither this Agreement nor any part or portion may be assigned, sublicensed or otherwise transferred by Subscriber without West's prior written consent. West, as used herein, applies to West Publishing Corporation, Thomson Reuters Applications Inc., West Services Inc., Thomson Reuters (Legal) Inc., and their affiliates. Should any provision of this Agreement be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions will not be affected thereby. Failure of any party to enforce any provision of this Agreement will not constitute or be construed as a waiver of such provision or of the right to enforce such provision. The headings and captions contained in this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

10.4 Export Laws. The Software and its related Documentation may not be exported or reexported in violation of the U.S. Foreign Corrupt Practices Act and its implementing regulations, the U.S. Export Administration Act and its implementing regulations or any other applicable laws, rules and regulations. Subscriber shall bear all expenses relating to any necessary licenses and/or exemptions with respect to the export from the United States of the Software to any location so as to be in compliance with all applicable laws, rules and regulations.

10.5 U.S. Government Restricted Rights. Use, duplication or disclosure by the Government is subject to restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer-Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Product clause in DFARS 252.227-7013, or in subdivision (c)(1) and (c)(2) of the Commercial Computer Product - Restricted Rights clause at 48 CFR 52.227-19, as applicable, and in similar clauses in the NASA FAR Supplement.

10.6 Survival. Paragraphs 5 (Title), 6 (Confidential Information), 7 (Disclaimer of Warranties and Limitation of Liability), 8 (Indemnification), 9 (Term and Termination), 10 (General Provisions); and 12.4 (Remedies) shall survive any termination of this Agreement.

10.7 Ideas and Concepts. Any and all title, ownership rights, and intellectual property rights concerning any ideas, concepts, suggestions, materials and the like that Subscriber provides to West regarding the Software shall become the exclusive property of West and may be used for its business purposes in its sole discretion without any payment, accounting, remuneration or attribution to Subscriber.

11. Maintenance Terms.

11.1 Maintenance Services. Maintenance Services consist of the following:

11.1.1 Updates and Versions. West may provide periodic point releases (e.g., minor enhancements and/or improvements, patches, fixes, or the like to the Software) ("Updates"), if any, to Subscriber as part of the West Software Subscription Charges. New versions of the Software (e.g., major enhancements, improvements, alterations and/or modifications to the Software outside of a point release) ("Versions") and/or entirely new modules that are part of a new product in the same product line ("New Modules") are not included in the West Software Subscription Charges.

11.1.2 Telephone Support. West will provide telephone support for purposes of handling Subscriber questions relating to the operation of the Software. Telephone support is provided by West Customer and Technical Support Representatives at 1-800-937-8529 or other such telephone number as set forth in the applicable Exhibit.

11.2 West Obligations.

11.2.1 Except as otherwise set forth in the applicable Exhibit hereto, West's obligations hereunder will extend only to (a) the Updates and Versions of the Software provided to Subscriber by West; (b) Software that has not been modified or altered in any way by anyone other than West or at West's direction and/or with West's consent; or (c) the most current Update/Version and the immediately preceding Update/Version of the Software. .

11.2.2 Maintenance Services will not include services for the items for which West is not responsible set forth in paragraph 7.2 of this Agreement.

11.3 Subscriber Obligations.

11.3.1 Cooperation. Subscriber shall insure that West's personnel are provided with such information under Subscriber's control as is reasonably necessary to enable West to comply with its obligations hereunder.

11.3.2 Updates and New Versions. Subscriber is responsible for installing Updates and new Versions to ensure maximum Software functionality and capability. In the event that West determines that any of Subscriber's reported maintenance problems cannot be resolved due to Subscriber's failure to install Updates or procure new Versions of the Software, Subscriber will be given a reasonable opportunity to install such Updates or procure a new Version. If, after such opportunity, Subscriber fails or otherwise refuses to install such Updates or procure such new Version, West shall be relieved of its obligations under this paragraph 11.

12. Implementation and Training Services.

12.1 Installation of the Software. West and Subscriber shall cooperate to identify the hardware and related communications equipment necessary for installation of the Software. Installation of all hardware and supporting software so that minimum configuration requirements for installation of the Software are met is the responsibility of Subscriber. Once the configuration of the hardware, including the operating system, conforms to the minimum configuration requirements provided by West, West shall provide instructions for the download and installation of the Software ("Installation").

12.2 Subscriber Obligations. When West performs any services at Subscriber's facility, Subscriber shall be responsible for providing a safe and appropriate work space and access to all terminals, materials and related resources that may be reasonably required by West for timely performance of its obligations hereunder. Subscriber shall provide to West in a timely manner any information, assistance, review, feedback or approvals related specifically to providing assistance as requested by Subscriber and that are the responsibility of Subscriber hereunder.

12.3 Training. West shall make training available to Subscriber at locations and times to be mutually determined by West and Subscriber.

12.4 Remedies. Subscriber's sole remedy for West's material breach of its obligations under this paragraph 12 will be to have West reperform the defective services so that they conform to the specifications provided herein. If West is unable after a reasonable time to provide conforming services, and the services relate to the initial implementation of the Software, Subscriber may terminate the Agreement if such defective services cause the Software to fail to conform to the Documentation provided with the Software.