

## West Solutions<sup>®</sup> Subscriber Agreement for GSA Subscribers

Your ability to download and use West Software ("Software") through West Solutions is subject to the terms and conditions of the agreement below ("Agreement"), a legal document between you (the "Subscriber") and West, a Thomson Reuters business ("West"). West, as used herein, means West Publishing Corporation, Thomson Reuters Applications, Inc., West Services, Inc, Thomson Reuters (Legal) Inc., Westlaw Business Services ("WLB"), and their affiliates. To accept the terms and conditions, to be bound by them and to download the Software, please read the Agreement. If you agree with the terms of the Agreement, click on "I Agree" below to submit the Agreement. If you do not agree with the terms of the Agreement, click on "I Do Not Agree" below and you will not be able to download the Software.

**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).

### 1. Software License

**1.1. Grant.** West grants Subscriber a non-exclusive, non-transferable, limited license to use, and to allow its partners, shareholders, members and employees to use the Software, in object code only, at Subscriber's licensed site(s), identified in the applicable ordering document, in Subscriber's normal course of business (including all currently installed versions and any prepaid updates 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 subscription fees). The Software is protected by copyright and various U.S. and international patent applications.

**1.2. Copying.** Except as otherwise expressly set forth in any applicable ordering document, Subscriber may make copies of the Software for backup purposes only. Each copy made by Subscriber must include the copyright/proprietary rights notice(s) embedded in and affixed to the Software.

**1.3. 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.

**1.4. Server Code (if applicable).** The server code portion of the Software ("Server Code") may be used on the server(s) specified in the applicable ordering document. 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.

**2. Other Licenses.** The Software may be used to access and use various West products and services, including Westlaw ("West Services") or Westlaw Business Services computer assisted research services ("WLB Services"). All access to and use of such West Services and/or WLB Services by means of the Software, including any charges for such access and use, will be governed by the terms of the applicable user agreement for the West Services and/or WLB Services.

**3. 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.

### 4. Confidential Information.

**4.1** West acknowledges that any documents, the contents thereof, or other proprietary or confidential materials expressly designated as confidential 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.

**4.2** 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, shall be referred to as the "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").

### 5. DISCLAIMER OF WARRANTIES, REMEDIES AND LIMITATION OF LIABILITY.

**5.1** 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, 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. 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.

**5.2** In no event shall West's, or its officers,' employees', directors', parent's, affiliates' or subsidiaries', liability to Subscriber arising out of or related to this Agreement, or the licensing, delivery, use or performance of the Software or services provided under this Agreement or any breach of this Agreement, whether based on an action or claim in contract or tort, including negligence, strict liability or warranty, except liability for bodily injury, exceed the Software Subscription Charges paid by Subscriber during the twelve (12) month period preceding the event giving rise to such claim. In no event will West and/or its affiliates be liable to Subscriber for any lost profits or other damages, including indirect, incidental, exemplary, special or consequential damages arising out of this Agreement or the use of the Software licensed hereunder, even if West and/or its affiliates have been advised of the possibility of such damages.

**5.2.1** Failures Not Caused by West. West will not be responsible to the extent that the Software fails to perform as warranted 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.

**5.3** Remedy. Subscriber shall have the following remedy:

**5.3.1** The remedies in Paragraphs 7 (Indemnification); and 8 (Term and Termination) 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.

## **6. Indemnification.**

**6.1** 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, attorney fees, costs and expenses associated with such claim.

**6.2** Without limiting its obligations under Paragraph 7.1, 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.

**6.3** West's obligation to indemnify Subscriber pursuant to this Paragraph 7 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.

**6.4** This Paragraph 7 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.

## **7. Term and Termination.**

**7.1** This Agreement and each applicable ordering document will become effective upon approval and acceptance by West and will continue in effect for the Term or Minimum Term, as applicable and as set forth in the applicable ordering document. 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; (ii) Subscriber may terminate this Agreement immediately upon giving written notice of termination to West after receiving notice of an amendment (as permitted under paragraph 9.1) which contains new terms that materially alter the terms of this Agreement and are unacceptable to Subscriber; and (iii) 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.

**7.2** Upon the termination of this Agreement, Subscriber's license and right to use the Software or any part thereof shall end immediately and Subscriber shall return to West the Software (or uninstall web-based Software), the Documentation, content enhancements (if any), 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/deinstallation in writing to West.

## **8. General Provisions.**

**8.1 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.

**8.2 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 set forth in the applicable ordering document.

**8.3 Governing Law and Assignment.** Neither this Agreement nor any part or portion may be assigned, sublicensed or otherwise transferred by Subscriber without West's prior written consent. Any attempt to assign or transfer in violation of this Paragraph shall be null and void. West, as used herein, applies to West Publishing Corporation, Thomson Legal & Regulatory Applications, Inc., and West Services, 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.

**8.5. 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.

**8.6. 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.

**8.7. Survival.** Paragraphs 3, 4, 5, 6, 7, 8, and 9 shall survive any termination of this Agreement.

## **9. Maintenance Terms.**

**9.1 Maintenance Services.** Maintenance Services consist of the following:

**9.1.1** Updates. West will provide all Updates for the Software to Subscriber. "Updates" shall mean any periodic software point releases. Subscriber will be responsible for installing such Updates.

**9.1.2** Telephone Support. West will provide telephone support at 1-800-WESTLAW for purposes of handling Subscriber questions relating to the operation of the Software. Telephone support for questions related to WLB Software will be provided at 1-800-669-1154.

**9.2 West Obligations.**

**9.2.1** West's obligations hereunder will extend only to (a) the most current Update and the immediately preceding Update of the Software provided to Subscriber by West and (b) Software that has not been modified or altered in any way by anyone other than West.

**9.2.2** Maintenance Services will not include services for the items for which West is not responsible set forth in Paragraph 6.2.1 of this Agreement.

**I AGREE**

**I DO NOT AGREE**

[Click here to print this Agreement](#)