



SOFTWARE LICENSE AND SUPPORT SERVICES AGREEMENT

1. RECITALS:

1.1 BE Systems, Inc., doing business as Broadcast Electronics ("BE"), desires to grant to the Customer and the Customer desires to acquire from BE a non-exclusive and non-transferable license to use certain computer software in executable code form only, and to use certain user materials as herein defined, in this BE Software License and Support Services Agreement ("License Agreement").

1.2 This License Agreement incorporates by reference all the terms and conditions included in the Quotation, Bill of Materials (or Equipment List), the Terms and Conditions, and the Sales Order Acknowledgment, which collectively constitutes the entire agreement of the parties (the "Contract").

1.3 This License Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal successors but shall not otherwise be assignable by either party without the written consent of the other, which consent shall not be unreasonably withheld.

2. SOFTWARE LICENSE:

2.1 BE grants to the Customer, effective upon completion of delivery and installation of equipment (the "Equipment") itemized on the BE Sales Order Acknowledgment ("Bill of Materials"), a nonexclusive and non-transferable license (the "License") to use in executable code form only the software owned by BE and itemized on the Bill of Materials or contained in the Equipment (the "Software"). The Customer's rights in the Software pursuant to the License are expressly limited to the use of the Software by the Customer with the Equipment. The Customer's rights in the Software pursuant to the License do not include any rights with respect to the source code form of the Software. The Customer shall not assign, transfer or sub-license the Software without the prior written consent of BE.

3. LICENSE FEE:

3.1 The purchase price of the Equipment may include an initial license fee and additional periodic fees for the Customer's use of the Software may be required in accordance with the provisions of this License Agreement and the terms of the Contract ("License Fee"). License Fees may be separately listed on the Bill of Materials (or Equipment List). License Fees are subject to change at the sole discretion of BE.

4. USER MATERIAL LICENSE:

4.1 BE may from time to time furnish the Customer with drawings, diagrams, specifications, documentation and other materials, including training manuals and user manuals relating to the use and servicing of the Equipment and Software (the "User Materials"). BE licenses the Customer to use the User Materials in conjunction with the use and servicing of Equipment and Software (the "User Material License"). BE reserves all rights, title and interest in the User Materials.

5. PROPRIETARY INFORMATION:

5.1 The Customer acknowledges that:

- a) the Software (and all materials furnished or produced in connection with the Software), including, without limitation, the design, programming techniques, flow charts, object code and input data formats, contains Proprietary Information of BE that has been developed or purchased by BE at great expense and that has required considerable effort of skilled



professionals, and is entrusted by BE to the Customer under this License Agreement for use only in the manner expressly permitted hereby;

- b) in order to carry out the provisions of this License Agreement, it may be necessary for BE to disclose to the Customer certain Proprietary Information; and
- c) BE claims and reserves all rights and benefits afforded under the applicable law in the Software, and all materials furnished or produced in connection with the Software, as an unpublished copyrighted work.
- d) As used herein, the term “Proprietary Information” shall mean any scientific, technical or business information relating to BE’s products or business that is valuable to BE and not generally known to those in the broadcast industry.

5.2 The Customer acknowledges the Proprietary Information of BE has substantial value. The Customer shall maintain all Proprietary Information of BE in confidence and shall neither use, copy or disclose, nor permit any Customer personnel to use, copy or disclose, such Proprietary Information for any purpose not specifically authorized under this License Agreement.

5.3 The Customer may make a reasonable number of copies of the executable code version of the Software for backup purposes only.

5.4 The Customer shall ensure that the Software and all copies thereof and User Materials, when not in use, are kept in a secure place, subject to restricted access only by those persons authorized to use and maintain the Equipment and Software.

5.5 The Software and User Materials may not be decoded, reverse engineered, reprinted, transcribed, extracted or reproduced, in whole or in part, without the prior written consent of BE. The Customer shall not in any way modify or enhance the Software without the prior written consent of BE. Any such enhancement shall become the property of BE.

5.6 The Customer acknowledges that any use or disclosure of BE’s Proprietary Information by the Customer or the Customer’s personnel in a manner not authorized by this License Agreement would cause BE irreparable damage that could not be fully remedied by monetary damages. The Customer therefore agrees that BE shall have the right to obtain such injunctive or other equitable relief from a court of competent jurisdiction as may be necessary or appropriate to prevent such unauthorized or unlawful action. In the event that BE is required to bring any action at law or in equity against Customer to enforce any terms of Section 5, and in the event that such an action is decided or settled in favor of BE, then Customer hereby agrees to pay BE’s reasonable attorneys’ fees and costs.

5.7 The Customer’s rights under the License granted in Section 2, the User Materials License in Section 4 and the Patent License in Section 6 shall terminate immediately upon breach of any of the provisions described in Section 5 or Section 8 of this License Agreement. The provisions of this Section 5, including all confidentiality, Proprietary Information and ownership obligations, shall survive termination of any such license or of this License Agreement. The Customer shall promptly return all copies of the Software, together with all User Materials furnished or produced in connection with the Software, upon:

- a) termination for any reason of the License Agreement or any license granted under this License Agreement, or
- b) abandonment or other termination of the Customer’s control, possession or use of the Software.

Upon any such event, the Customer shall immediately cease all use of the Software and User Materials and, within ten (10) days, return to BE or, at BE’s election, permanently destroy all copies of the Software,



User Materials and Proprietary Information in its possession or control, and an authorized officer of the Customer shall certify in writing to BE that it has fully complied with this obligation.

6. ACKNOWLEDGMENT OF PATENT RIGHTS AND LIMITED, NON-EXCLUSIVE LICENSE UNDER PATENTS:

6.1 The Customer acknowledges that the various components of the Equipment and Software are the subject of one or more issued BE patents and may be the subject of one or more pending BE patent applications.

6.2 BE hereby grants the Customer a non-exclusive right limited strictly to use the Equipment and Software as licensed under this License Agreement (the "Patent License") to practice the inventions protected by BE's issued patents or pending applications that are embodied in either the Equipment or Software. This Patent License shall remain in force only so long as the Equipment and Software are used at the Installation Site and the Software is used in connection with the Equipment.

7. CHANGES & SECURITY:

7.1 The Customer agrees that BE may, from time to time, provide revised versions of the Software to use in the Equipment. Installation of revised versions of software on the equipment may be mandatory in order to maintain the License and is the responsibility of Customer to ensure installation of updated software. BE may, in its discretion, provide hosted software managed by BE to Customer ("Hosted Software"). BE will be responsible for any installation of revisions of the Hosted Software.

7.2 With exception of Hosted Software, Customer is responsible for implementing, regulating and maintaining all security and safeguarding measures relating to the Software.

8. SOFTWARE SUPPORT SERVICES:

8.1 BE will provide Customer with support and maintenance services ("Software Support Services") for the Software in consideration of Customer's payment of the applicable support services fees to BE. Software Support Services will consist of periodic technical and functional improvements and customer support. Software Support Services are mandatory, and Customer agrees to payment of any recurring software support service fees ("Software Support Service Fees"). Software Support Service Fees may be separately listed on the Bill of Materials (or Equipment List). In the event Customer breaches the support services provisions (including the obligation to pay any Software Support Service Fee) and such breach has not been cured within thirty (30) days of written receipt of notice of breach, BE may terminate this License Agreement. BE shall have no obligation to support or maintain:

- a) Altered, damaged or modified Software;
- b) Errors caused by Customer's negligence, or hardware malfunction, or other causes beyond the reasonable control of BE;
- c) Software installed in a hardware or operating environment not supported by BE; and
- d) Third party software not licensed through BE.

9. LIMITED WARRANTY:

9.1 BE WARRANTS THAT THE SOFTWARE SUPPLIED TO THE CUSTOMER WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE ACCOMPANYING DOCUMENTATION FOR A PERIOD OF NINETY (90) DAYS FROM THE DATE OF RECEIPT. CUSTOMER SHALL INSPECT ALL SOFTWARE UPON RECEIPT AND AGREES TO NOTIFY BE OF ANY ERROR, DEFECT OR POTENTIAL PROBLEM PRIOR TO COMMERCIAL USE. IF CUSTOMER DOES NOT SEND WRITTEN NOTICE OF DEFECTS TO BE WITHIN THIRTY (30) DAYS OF RECEIPT OF THE SOFTWARE, IT SHALL BE CONCLUSIVELY PRESUMED THAT CUSTOMER HAS UNCONDITIONALLY ACCEPTED ALL SOFTWARE.



10. LIMITED REMEDIES:

10.1 BE'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR A BREACH OF ANY WARRANTY OR OBLIGATION BY BE SHALL BE, AT BE'S OPTION, FOR BE TO EITHER (A) RETURN THE PRICE PAID FOR THE LICENSE OR (B) REPAIR OR REPLACE THE SOFTWARE THAT DOES NOT MEET BE'S LIMITED WARRANTY, SUBJECT TO CUSTOMER RETURNING TO BE THE SOFTWARE OR (C) ATTEMPT TO CORRECT ANY ERRORS WHICH CUSTOMER MAY FIND IN THE SOFTWARE DURING THE ABOVE-DESCRIBED WARRANTY PERIOD AND WHICH PREVENT THE SOFTWARE FROM PERFORMING SUBSTANTIALLY IN ACCORDANCE WITH THE DOCUMENTATION. THE LIMITED WARRANTY DESCRIBED ABOVE IS VOID IF FAILURE OF THE SOFTWARE HAS RESULTED FROM ACCIDENT, ABUSE, OR MISAPPLICATION. ANY REPLACEMENT SOFTWARE WILL BE WARRANTED FOR THE REMAINDER OF THE ORIGINAL WARRANTY PERIOD OR THIRTY (30) DAYS, WHICHEVER IS LONGER.

11. NO OTHER WARRANTIES OR REMEDIES:

11.1 EXCEPT AS EXPRESSLY PROVIDED HEREIN, BE DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SOFTWARE, SOFTWARE SUPPORT SERVICES, DELIVERY OF SOFTWARE SUPPORT SERVICES, EQUIPMENT, DOCUMENTATION AND USER MATERIALS.

11.2 IN NO EVENT SHALL BE OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES EVEN IF BE HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND REVENUES, FAILURE TO REALIZE EXPECTED SAVINGS, ANY CLAIM AGAINST A CUSTOMER BY A THIRD PARTY, OR ANY OTHER COMMERCIAL OR ECONOMIC LOSSES OF ANY KIND.

11.3 IN NO EVENT SHALL BE OR ITS SUPPLIERS BE LIABLE FOR ANY LOSS, DAMAGE, OR UNAUTHORIZED ACCESS TO DATA, OR ANY SECURITY BREACH, TO THE EXTENT CAUSED BY: (I) CUSTOMER'S OWN NEGLIGENCE OR FAILURE TO MAINTAIN SECURE ACCESS OF THE SOFTWARE, EQUIPMENT, DOCUMENTATION AND USER MATERIAL; (II) FAILURES IN THIRD-PARTY HARDWARE, SOFTWARE, OR NETWORKS NOT OPERATED BY BE; OR (III) FORCE MAJEURE EVENTS THAT COULD NOT HAVE BEEN PREVENTED BY REASONABLE COMMERCIAL SECURITY MEASURES.

11.4 THESE LIMITATIONS AND DISCLAIMERS ARE NOT MADE BY BE WHERE PROHIBITED BY LAW.

12. ACKNOWLEDGEMENT OF UNDERSTANDING – ENTIRE AGREEMENT:

12.1 The Contract consisting of this License Agreement, the Quotation, the Bill of Materials (or Equipment List), the Terms and Conditions, and the Sales Order Acknowledgment, collectively constitutes the entire agreement of the parties.