

## ABACO SYSTEMS

### Software License Agreement – Source Code

Customer (use full company name): \_\_\_\_\_

Customer's place of business: \_\_\_\_\_

Source Code licensed under this Agreement: \_\_\_\_\_

#### 1. DEFINITIONS

"Source Code" shall mean the source code identified above, or if not identified above, the source code supplied by Abaco pursuant to this Agreement.

"Abaco" or "Licensor" shall mean the Abaco Systems business providing Source Code pursuant to this Agreement, whether Abaco Systems, Inc. or its subsidiary.

"Abaco Software" shall mean those portions of the Source Code owned by Abaco or its affiliate company.

"Licensed Product" shall mean the Source Code and/or its accompanying documentation.

"Object Copy" shall mean software in object code form, or any copy thereof, derived from the Source Code and intended for use on an Abaco hardware product.

"Third Party Software" shall mean those portions of the Source Code owned or licensed by a third party, including but not limited to operating system code, that is embedded within the Source Code.

#### 2. LICENSE

2.1 Subject to the terms of this Agreement, Abaco hereby grants Customer a personal, non-transferable, nonexclusive license, solely at its site for which it has paid the fee as set forth in section 2.6 below, to use internally and modify the Source Code to make Object Copies, and to merge such Object Copies into other software, in each case for running on an Abaco hardware product only.

2.2 Customer may copy the Source Code for development and backup purposes only, in support of such use, limited to the number of development hosts it is then currently using plus a reasonable number of backup copies. No other copies shall be made unless authorized in writing by Abaco. Customer shall reproduce and include all applicable copyright notices on any copy of the Source Code or Object Copies. Neither Source Code nor Object Copies may be copied, reproduced, or used for any other purpose outside of operation of Abaco hardware. All Licensed Product is owned by Abaco or its licensor(s), whether or not merged with other software, and no title to the intellectual property is transferred. Subject to the foregoing, Customer shall own its modifications to the Source Code, and grants Abaco a royalty-free nonexclusive license to use such modifications.

2.3 Customer may not transfer or distribute any Source Code. Customer may transfer Object Copies, either as installed on Abaco hardware products or on separate media, for use on Abaco's hardware product only, and provided that the end user agrees to be bound by license terms solely to use such Object Copies no less restrictive than the provisions of Abaco's standard Software License Agreement for object code, which may be found at: [www.abaco.com/legal](http://www.abaco.com/legal), and provided that all proprietary markings are maintained. In addition, the end user may be permitted to copy the Object Copies solely for use on Abaco hardware, plus for reasonable backup purposes, provided that the end user agrees to be bound by terms no less restrictive than the provisions of Abaco's standard Software License Agreement for object code referenced in the previous sentence, and subject to payment of fees as set forth in section 2.6 below. Such end user shall be required to reproduce and include all applicable copyright notices on each copy and shall be prohibited from modifying, reverse compiling or otherwise reverse engineering the Object Copy. Abaco provides no warranty with respect to, and disclaims any liability arising from, any Object Copy. Any other transfer is void and automatically terminates this license. Customer shall use its best efforts to enforce such agreement and shall promptly report any violation or suspected violation to Abaco. In the event it does not enforce such agreement after a breach, it shall, to the extent permissible by applicable law, grant Abaco the right to enforce such agreement.

2.4 The Source Code may include Third Party Software licensed to Abaco. The owner of the Third Party Software (the "Third Party") and its licensors are intended third party beneficiaries of this Agreement, and the provisions of this Agreement relating to the Source Code, as the same incorporates Third Party Software, are made expressly for the benefit of, and are enforceable by, the Third Party and its licensors. The Third Party and its licensors retain ownership of all copies of the Third Party Software. **Unless a pass-through warranty covering the Third Party Software is extended directly to Customer by the Third Party, all Third Party Software is provided "AS IS" without warranty of any kind, and each of Third Party and its licensors disclaim all warranties, either express or implied, including but not limited to the implied warranties of merchantability, title, non-infringement or fitness for a particular purpose with regard to the Third Party Software. The Third Party shall not have any liability for special, indirect, punitive, incidental or consequential damages.** Unless otherwise expressly stated by Abaco, Customer must make its own provision for any required operating system software licenses even if the Source Code contains some operating system code.

2.5 In addition to the Source Code licensed above, Abaco may provide certain files to be used on the Abaco hardware product, the use of which, and programming activity with respect to which, may be subject to the terms of the GNU General Public License (GPL) or the GNU Lesser General Public License (LGPL), the current text of which may be found at: <http://www.gnu.org>, or another open source license. The Licensed Product is proprietary software not subject to the GPL or LGPL or other open source license, and Customer has no license to take any action, and shall take no action, which would have the effect of subjecting the Source Code or any portion of the Source Code to the terms of the GPL or LGPL or other open source license. Customer may consult the user documentation for identifications and further information.

2.6 For the rights granted in this Agreement, Customer shall pay to Abaco the fee quoted by Abaco for the use of the Source Code at the applicable Customer site, or the fee quoted by Abaco for annual maintenance that includes the use of the Source Code at such site, whichever is applicable, plus any additional fees for copies of Object Copies (other than backup copies pursuant to sections 2.2 or 2.3 above) made by Customer or by Customer's customer (unless Customer's customer has entered into a separate license agreement with Abaco for such copies), as may be applicable. For the avoidance of doubt, copies of Object Copies, whether created beforehand or at run-time, running on multiple hardware units, or on multiple processor cores or in multiple partitions (e.g., above a Hypervisor) within a hardware unit, are also Object Copies subject to the payment of fees.

2.7 Customer shall pay all import duties and registration fees and all sales, use and excise taxes (and any other assessments in the nature of taxes however designated) on the Licensed Product or its license to use the Licensed Product, or resulting from this Agreement, exclusive of taxes based on Abaco's net income.

#### 3. CONFIDENTIALITY

3.1 The Licensed Product, comprising proprietary trade secret information of Abaco and/or its licensors, shall be held in strict confidence by the Customer and protected from disclosure to any third party. Customer shall limit availability of the Licensed Product to employees of Customer who need to have access thereto for the limited purpose as set forth in this Agreement. The parties agree that unauthorized disclosure or use of the Licensed Product would cause immediate and irreparable harm to Abaco, and Abaco shall be entitled to injunctive or other equitable relief against Customer seeking to restrain such disclosure or use. Such remedy shall be in addition to all other legal or equitable remedies.

#### 4. WARRANTY

4.1 Abaco warrants that the Abaco Software will be in substantial conformance with Abaco's standard published user documentation pertaining thereto as of the date of shipment by Abaco. If, within ninety (90) days of date of shipment, it is shown that the Abaco Software does not meet this warranty, and such Abaco Software is returned to Abaco with a copy of Customer's purchase confirmation, Abaco will, at its option, either correct the defect or error in the Abaco Software, free of charge, or make available to Customer satisfactory substitute software, or return to Customer all payments made as license fees and terminate the license with respect to the Abaco Software affected. Abaco does not warrant that operation of the Abaco Software will be uninterrupted or error free or that it will meet Customer's needs. **All other portions of the Licensed Product are provided "as is" without warranty of any kind.**

4.2 THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO THE LICENSED PRODUCT WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. **NO IMPLIED OR STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY. NO WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE SHALL APPLY.**

#### 5. LIMITATION OF LIABILITY

5.1 ABACO'S LIABILITY FOR ALL CLAIMS OF ANY KIND, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, FAILURE OF A REMEDY TO ACCOMPLISH ITS ESSENTIAL PURPOSE, OR OTHERWISE, FOR ALL LOSSES OR DAMAGES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT, OR THESE TERMS AND CONDITIONS, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM THE LICENSED PRODUCT OR ANY PART THEREOF, OR FROM ANY SERVICE FURNISHED HEREUNDER (INCLUDING REMEDIAL WARRANTY EFFORTS), SHALL, IN THE AGGREGATE, IN NO CASE EXCEED THE LICENSE FEES FOR THE LICENSED PRODUCT GIVING RISE TO THE CLAIM. ALL SUCH LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THE WARRANTY PERIOD AS SET FORTH IN SECTION 4.

5.2 IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, FAILURE OF A REMEDY TO ACCOMPLISH ITS ESSENTIAL PURPOSE, OR OTHERWISE, SHALL ABACO, ITS EMPLOYEES OR SUPPLIERS BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, LOSS OF USE OF ANY PROPERTY, COST OF CAPITAL, COST OF PURCHASED POWER, COST OF SUBSTITUTE EQUIPMENT, FACILITIES, OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF CUSTOMERS AND TRANSFEREES OF THE CUSTOMER FOR SUCH DAMAGES EVEN IF ABACO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND THE CUSTOMER WILL INDEMNIFY ABACO, ITS EMPLOYEES AND SUPPLIERS AGAINST ANY SUCH CLAIMS FROM THE CUSTOMER'S CUSTOMERS. IF THE LICENSED PRODUCT WILL BE FURNISHED BY THE CUSTOMER TO A THIRD PARTY BY CONTRACT OR RELATE TO A CONTRACT BETWEEN THE CUSTOMER AND A THIRD PARTY, THE CUSTOMER SHALL OBTAIN FROM SUCH THIRD PARTY A PROVISION AFFORDING ABACO AND ITS SUPPLIERS THE PROTECTION OF THIS SUBSECTION AND THE PRECEDING SUBSECTION.

5.3 The Licensed Product is not intended for use in any nuclear facility or application, or any life-support equipment or other application where failure of the products could lead directly to death, personal injury or severe physical or environmental damage. If so used, Abaco disclaims all liability for any damages arising as a result of the hazardous nature of the application in question, including but not limited to nuclear or environmental damage, injury or contamination, and Customer shall indemnify, hold harmless and defend Abaco, its officers, directors, employees and agents against all such liability, whether based on contract, warranty, tort (including negligence), strict liability, or

any other legal theory, regardless of whether Abaco had knowledge of the possibility of such damages.

5.4 If Abaco furnishes Customer with advice or other assistance concerning any products or systems which is not required pursuant to this agreement, the furnishing of such advice or assistance will not subject Abaco to any liability, whether in contract, indemnity, warranty, tort, (including negligence), strict liability or otherwise.

#### 6. INDEMNITY

6.1 Abaco warrants that the Abaco Software shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. If promptly notified in writing and given full authority, information and assistance, Abaco shall defend, or may settle, at its expense, any suit or proceeding against Customer so far as based on a claimed infringement which would result in a breach of this warranty, and Abaco shall pay all damages and costs finally awarded therein against Customer due to such breach, other than damages and costs arising from any willful infringement by Customer after receipt of notice of the claimed infringement. Abaco shall not be responsible for any compromise or concession made by Customer without Abaco's prior written consent. In case the Abaco Software is in such suit held to constitute such an infringement and its use for the purpose intended for such software is enjoined, Abaco shall, at its expense and option, either procure for Customer the right to continue using said software, or replace same with non-infringing software, or modify same so it becomes non-infringing, or remove the software and refund the license fees pertaining thereto (less reasonable depreciation for any period of use) and any transportation costs separately paid by Customer. The foregoing states the entire liability of Abaco for patent or copyright infringement by the Licensed Product or any part thereof.

6.2 The indemnity under the preceding paragraph shall not apply if the infringement or claim is based in whole or in part upon any modification of Abaco Software or development or use of Object Copies hereunder or other use of Abaco Software in conjunction with any other product in a combination not furnished by Abaco as a part of this transaction. As to any such modification, development, or use in such combination, or any improper or unauthorized use, modification, installation, or operation of the Abaco Software, Abaco assumes no liability whatsoever for patent or copyright infringement and Customer will hold Abaco harmless against any infringement claims arising therefrom.

#### 7. TERM AND TERMINATION

7.1 Customer may terminate the license granted hereunder at any time by destroying the Licensed Product and all Object Copies together with all copies thereof and notifying Abaco in writing that all use of the Licensed Product and Object Copies have ceased and that same has been destroyed.

7.2 Abaco may terminate this Agreement or any license hereunder upon notice to Customer if Customer breaches any of the terms and conditions of this Agreement or if Customer attempts to assign this Agreement or any license hereunder without Abaco's prior written consent. Within twenty (20) days after any termination of this Agreement, Customer shall certify in writing to Abaco that all use of the Licensed Product and Object Copies have ceased, and that the same has been destroyed.

7.3 All provisions of this Agreement related to disclaimers of warranty, limitation of liability, Abaco's intellectual property rights, confidentiality, or export shall survive any expiration or termination and remain in effect. Termination of this Agreement or any license hereunder shall not relieve Customer of its obligation to pay any and all outstanding charges hereunder nor entitle Customer to any refund of such charges previously paid.

#### 8. EXPORT

8.1 If Customer intends to export (or reexport), directly or indirectly, the Licensed Product, Object Copies, or technical data relating thereto or any portion thereof, it is Customer's responsibility to assure compliance with U.S. and other applicable export control laws and to obtain any required licenses or approvals in its own name. Customer is also responsible for the accuracy and completeness of any information or certification it provides for purposes of export control compliance.

#### 9. U.S. GOVERNMENT CONTRACTING

If Customer is a U.S. Government entity or elects to sell products or services provided hereunder to the U.S. Government or to a contractor selling to the U.S. Government, the following provisions apply: (a) Customer agrees that all products and services provided by Abaco meet the definition of "commercial-off-the-shelf" (COTS) or "commercial item" as defined in FAR 2.101, and that the subparagraph terms of FAR 52.212-5(e) or FAR 52.244-6 (or, for orders from the U.S. Government, FAR 52.212-5 and FAR 52.212-4 with tailoring to the extent permitted by FAR 12.302 by replacing all paragraphs except those listed in FAR 12.302(b) with these Conditions of Sale), and (subject to subsection (e) below) DFARS 252.212-7001(c) or DFARS 252.244-7000, whichever are applicable, apply only to the extent applicable to COTS or commercial items and only as appropriate for the dollar value of this order; (b) with regard to any terms related to Buy American Act or Trade Agreements, the country of origin of products is unknown unless otherwise specifically stated in writing by Abaco; (c) Customer agrees that any services offered by Abaco are exempt from the Service Contract Act of 1965 (FAR 52.222-41); (d) Customer agrees that this sale is not funded, in whole or in part, by the American Recovery and Reinvestment Act unless otherwise set forth in a written agreement of the parties; and (e) Customer is solely and exclusively responsible for compliance with any other applicable statutes or regulations governing sales to the U.S. Government, and Abaco makes no representations, certifications or warranties whatsoever with respect to the ability of its goods, services or prices to satisfy any such statutes and regulations other than those contained herein.

#### 10. GENERAL

9.1 This Agreement shall be governed by the laws of the State of New York, without regard to its conflict of law provisions. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to this Agreement.

9.2 This Agreement is the complete and exclusive statement of the Agreement between the parties and supersedes any proposal, purchase order, or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this Agreement. No change or amendment to this Agreement shall be effective unless agreed to by written instrument signed by both parties.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on its behalf by its duly authorized representative.

#### Customer

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

#### Licensor

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(Nov. 2015)