

SILVER CREEK END USER LICENSE AGREEMENT

PLEASE READ CAREFULLY

1. Grant of License. Silver Creek Computers, Inc. ("Silver Creek") hereby grants to You a limited, perpetual, non-exclusive, non-transferable (except as set forth in **Section 4(b)** below) license to Use the Software on the terms and conditions set forth in this End User License Agreement ("Agreement").

2. Introduction.

(a) Silver Creek is willing to grant to You a license of the scope described herein to Use the Software (comprised of the Program and the Documentation) only upon the conditions that You or someone acting on Your behalf and at Your direction, such as Your Distributor has:

- (1) placed an order with Silver Creek for either an initial license or an upgrade (such as for more users, additional modules, etc.), or a service plan for future maintenance releases ("Software Updates") and/or for customer support, and Silver Creek has accepted such order and Enabled Use of the Software; and
- (2) accepted all of the terms and conditions of this Agreement either before or during installation of the Program.

(b) YOU WILL INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT AND ALL OF ITS TERMS AND CONDITIONS BY DOING ONE OR MORE OF THE FOLLOWING OR ALLOWING OR AUTHORIZING A THIRD PARTY TO DO IT FOR YOU:

- (1) CLICKING "I AGREE" OR A SIMILAR AFFIRMATION, AS APPLICABLE, THAT APPEARS DURING INSTALLATION OF THE PROGRAM, OR
- (2) USING THE PROGRAM.

(c) IF YOU DO NOT AGREE TO BE LEGALLY BOUND BY THIS AGREEMENT (IN ITS ENTIRETY AND WITHOUT CHANGE TO OR ADDITION TO ITS TERMS AND CONDITIONS), THEN YOU DO NOT HAVE A LICENSE TO USE THE SOFTWARE.

3. Definitions. As used herein, the following terms have the following meanings:

(a) "Affiliate" means any entity that controls You, that You control or that is under common control with You where "control" means the ownership, directly or indirectly, of equity securities or other ownership interests which represent more than 50% of the voting power of such affiliate.

(b) "Distributor" means the reseller that You have chosen to be Your reseller of record.

(c) "Documentation" means the Program specifications that are set forth in the help files of the Program and any release-related notes, guides or manuals Silver Creek publishes specific to the current version of the Program.

(d) "Enabled Use" means Silver Creek 's having fulfilled the applicable software delivery process (whether by shipping tangible goods including recorded media containing the Software, enabling

downloading of the Software, delivering activation codes for the Software, or otherwise), thereby enabling Use of the Software.

(e) "Software Update" means a patch, workaround, improvement, correction, modification or derivate to the Software that is made generally available by Silver Creek as part of a support subscription or incidental to Silver Creek's warranty obligation;

(f) "Program" means the computer program, a part of which includes the install routine that when executed causes this Agreement to be displayed.

(g) "Silver Creek " means Silver Creek Computers, Inc.

(h) "Software" means collectively, the Program and the Documentation, and any part thereof.

(i) "Supplemental License Terms" means the additional terms and restrictions that are specific to the Program licensed by You under this Agreement and are available by contacting Silver Creek at <https://silvercreek.com/contact/>

(j) "Use" means to install and execute the Program, provided that:

- (1) You install the Program only on a computer system that You own or only on a computer system not owned by You if You will be the only party with access to the installed Program; and
- (2) You execute the Program (i) for its intended purpose solely in connection with the management of the business that You and Your Affiliates conduct, and (ii) solely to the extent of any and all applicable limitations (whether as to specific modules or other parts of the Program, or number of production or backup server computers) set forth in this Agreement and the Supplemental License Terms; and
- (3) You may make only a reasonable number of backup copies of the Program solely for the purpose of reinstalling the Program, if reinstallation becomes necessary; and
- (4) You may make one copy of the Program for Use in a testing environment solely for testing purposes; and,
- (5) You may make and install one copy of the Program at a disaster recovery site for Your Use only for so long as a disaster or other emergency prevents You from Using the Program at Your original installation site.

(k) "You" or "Your" means or refers to the company or person that Silver Creek has registered as the licensee for the Software.

4. Limits of License. The license contained in this Agreement does not include the right to perform, and You agree to refrain from performing, any of the following:

(a) Except as expressly set forth in section 3(j) above, making any copy of the Software, except as an essential step in Your licensed Use thereof.

(b) Distributing any copy of the Software (whether by renting, leasing, lending, sublicensing, time-sharing, or otherwise), except that, if Silver Creek consents in writing, which consent will not be

unreasonably denied, You may transfer the Software to a purchasing party after the close of a sale of either Your entire business, or all, or substantially all, of the assets of Your business, provided that the purchasing party reads and accepts (in writing to Silver Creek) the terms and conditions of this Agreement, the purchasing party agrees to other reasonable transfer requirements, and You do not retain a copy of the Software.

(c) Using the Software for personal, family, household, or other non-business purposes;

(d) Altering, modifying, translating, decompiling, disassembling or reverse-engineering the Software or creating any derivative work based upon the Software;

(e) Removing or obscuring any copyright or trademark notices from the Software.

(f) Using the Software in excess of (i) the limitations set forth in this Agreement and Supplemental License Terms, and (ii) the number and types of users, seats or licenses You purchase or rightfully acquire.

5. Additional Restrictions.

(a) Any report-writing software contained within the Program may be subject to a restriction such that its use may be limited to accessing only the data that is created by, or used by, the Program;

(b) You may not Use, export, re-export or otherwise transfer the Software in violation of any domestic or foreign laws or regulations in effect from time to time in the jurisdiction in which You are a resident or in which the Software is Used. You represent and warrant that You are not located in, under the control of, a national or resident of, any restricted country or of any entity or person designated as restricted.

6. U.S. Government Restricted Rights. The Software is provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (b)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable. The Manufacturer is Silver Creek, with business address of 1141 S. Allante Avenue, Suite 101, Boise, ID 83709.

7. Limited Warranty and Disclaimers.

(a) Silver Creek warrants that, during the sixty (60) (the "Warranty Period") that commences on the date that Silver Creek Enabled Use of the Software (whether for an initial license, an upgrade or a maintenance release under a service plan), the Program, when properly Used, shall perform substantially in accordance with the Documentation. Silver Creek does not warrant or represent that Your Use of the Program will be uninterrupted or error-free. If You report to Silver Creek in writing within the Warranty Period any non-conformity between the Documentation and the Program, and if Silver Creek is able to replicate and verify that such non-conformity exists, Silver Creek shall make commercially reasonable efforts to correct such non-conformity and, if successful, shall supply You with such correction at no additional cost to You. If such efforts are unsuccessful and the non-conformity is material: (1) Except for Software Updates, You may terminate this Agreement, discontinue Use of, and

return all copies You have of the Software, and Silver Creek will ensure that You receive a refund of the license fee You paid and credit for any license fee You owe for the Software; and (2) For Software Updates, You may terminate Your service plan, discontinue Use of, and return all copies You have of the Software Updates, and Silver Creek will ensure that You receive a refund of, or credit for, the service fee You incurred for the purchase of your most recent service plan. The foregoing states Your SOLE AND EXCLUSIVE REMEDY for any breach of this warranty.

(b) With respect to any media by which You may have received Your installation copy of the Program, Silver Creek warrants that the media is free from defects in materials and workmanship under normal use for the Warranty Period. YOUR SOLE AND EXCLUSIVE REMEDY under this warranty is limited to replacement of defective media.

(c) OTHER THAN THE EXPRESS, LIMITED WARRANTIES STATED ABOVE IN THIS SECTION, SILVER CREEK AND ITS SUPPLIERS EXPRESSLY DISCLAIM TO THE FULLEST EXTENT PERMITTED BY LAW ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS AND GUARANTEES OF ANY KIND OR NATURE WHATSOEVER, WHETHER EXPRESS, IMPLIED AND STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES, CONDITIONS OR GUARANTEES (I) OF MERCHANTABILITY, (II) OF FITNESS FOR A PARTICULAR PURPOSE, (III) OF NON-INFRINGEMENT OF PROPRIETARY OR INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, AND (IV) ARISING FROM CUSTOM OR TRADE OR BY ANY COURSE OF DEALING OR COURSE OF PERFORMANCE. YOU UNDERSTAND AND AGREE THAT: (1) THE UTILITY OF A BUSINESS MANAGEMENT COMPUTER PROGRAM DECREASES AS TECHNOLOGY EVOLVES AND THE BUSINESS ENVIRONMENT CHANGES, (2) YOU ARE FREE TO DECIDE, AND ARE RESPONSIBLE FOR DECIDING, WHEN TO UPGRADE YOUR SOFTWARE, AND (3) SILVER CREEK DISCLAIMS ANY RESPONSIBILITY TO DELIVER LATER-RELEASED SOFTWARE OR OTHERWISE RENDER ANY CUSTOMER SUPPORT SERVICES EXCEPT AS MAY BE SPECIFIED IN A SEPARATE CUSTOMER MAINTENANCE AND SUPPORT AGREEMENT.

(d) Other Limitations. Silver Creek will have no responsibility under these limited warranties for any Software or media that has been modified, lost, stolen or damaged by accident, abuse or misapplication. No employee, agent or representative of Silver Creek, nor any reseller (including Your Distributor) or any other third party, is authorized to make any warranty with respect to the Software, except those expressly stated in this Agreement, and You may not rely on any such unauthorized warranty. You acknowledge and agree that You have chosen Your Distributor, and that such Distributor is an independent party and not an agent of Silver Creek.

8. Exclusions of and Limitation of Liability.

(a) You acknowledge Your understanding that software is inherently complex and may not be free from errors, and that You have been advised to verify the work produced by the Program. Neither Silver Creek nor its suppliers shall be liable for any special, indirect, incidental, consequential or punitive damages resulting from any defect in the Software or media, even if Silver Creek has been advised of the possibility of such damages. This means Silver Creek is not responsible or liable for damages or costs incurred as a result of loss of time, loss of data, loss of anticipated profits, lost opportunity cost or loss of use of the Software, nor for damages or costs incurred in connection with obtaining substitute software,

claims made against You by others or similar costs. IN NO EVENT SHALL SILVER CREEK 'S LIABILITY TO YOU ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE LICENSE FEE ACTUALLY PAID BY YOU TO PURCHASE THE LICENSE FOR THE SOFTWARE. You acknowledge and agree that this Agreement allocates risk between You and Silver Creek as authorized by applicable law, and that the pricing of Silver Creek's products reflects this allocation of risk and the exclusions and limitations of liability contained in this Agreement. If any remedy hereunder is determined to have failed of its essential purpose, all limitations of liability and exclusion of damages set forth in this Agreement shall remain in full force and effect.

(b) You acknowledge that unless You and Silver Creek agree in writing for Silver Creek to provide software implementation services to implement the Program at your place of business, You are responsible for engaging a qualified party to provide implementation services for You on terms You negotiate. You also acknowledge that You are responsible for independently investigating the skills and qualifications of such party to ensure that they provide You with the level of skill and service Your business requires. You agree that Silver Creek shall have no liability whatsoever for any failure associated with such implementation services, even if the party You engage is an authorized or certified Distributor, consultant, or installer of Silver Creek products.

9. Jurisdictional Rights. This Agreement gives You specific legal rights, and You may also have other rights, which vary from jurisdiction to jurisdiction. Some jurisdictions do not allow the exclusion or limitation of implied warranties or of liability for incidental or consequential damages, so some or all of those sections of the Agreement may not apply to You.

10. Term. This Agreement is effective from the date You accept it and continues in effect until terminated. You may terminate this Agreement at any time upon receipt of the non-terminating (i.e. other) party of written notice, at which point Your license hereunder will terminate. This Agreement and the license granted herein will terminate automatically and without notice if You fail to comply with any term or condition of this Agreement. You agree upon termination to return the original Software to Silver Creek and to destroy all other Software copies in Your possession. Any provision in this Agreement which when reasonably read is intended to survive the termination of this Agreement shall survive, including without limitation, the disclaimer of warranties and limitations of liability.

11. Entire Agreement and Severability. This Agreement (including the Supplemental License Terms which are incorporated by reference and made a part hereof) represents the complete and exclusive understanding between You and Silver Creek regarding the Software, and supersedes any prior purchase order, confirmation, advertising, representation, or other communication. This Agreement may not be modified except by a written agreement signed by an authorized Silver Creek representative. If any provision of this Agreement is found to be void, invalid, or unenforceable, it shall be severed from and shall not affect the remainder of this Agreement, which shall remain valid and enforceable. Any such severed provision shall be replaced with a similar provision, which conforms to applicable law and embodies as closely as possible the original intent of the parties.

12. Indemnification.

(a) If You receive notice of any claim that Your use of any part of the Software infringes any third party's intellectual property right in a patent, copyright, or trade secret, Silver Creek shall defend, and shall indemnify and hold You harmless by paying any resulting costs and damages finally awarded by a court with respect to any such claim provided that You:

- (1) Notify Silver Creek in writing promptly upon becoming aware of the claim,
- (2) At Silver Creek 's request and expense, give Silver Creek such information and assistance as is reasonable under the circumstances, and
- (3) Give Silver Creek the right to settle the claim in Silver Creek 's sole discretion and at Silver Creek 's expense.

(b) This indemnification does not extend to any claim based upon any alleged infringement arising from the combination of the Software with other elements not under Silver Creek 's sole control, or arising from any part of the Software that You or a third-party modify, or that incorporates specifications, designs or formulas that You provide. If You are prevented from Using the Software because of an actual or claimed infringement, then at Silver Creek 's option, Silver Creek shall promptly either obtain for You the right to continue Using the affected part of the Software, replace or modify the affected part of the Software so that it becomes non-infringing, or if none of the foregoing alternatives are possible after Silver Creek exercises commercially reasonable efforts, You may terminate this Agreement and any service plan, and Silver Creek shall ensure that You receive a refund of, or credit for:

- (1) the service fee You incurred for the purchase of Your most recent service plan; and
- (2) pro rata portion of the license fees You incurred for the purchase of Your initial license and all upgrades, which pro rata portion will be determined on the basis of the remaining period of a useful life of (5) five years, where the five year useful life begins on the date of Your purchase of Your initial license and the remaining period begins on the date You so terminate.

(c) THIS **SECTION 12** SETS OUT SILVER CREEK 'S ENTIRE FINANCIAL LIABILITY FOR ANY INTELLECTUAL PROPERTY CLAIMS OR ACTUAL INFRINGEMENTS RELATING TO THE SOFTWARE.

13. Modifications. The terms of this Agreement may be modified only by subsequent written agreement between Silver Creek and You or an amended supplement signed by both Silver Creek and You.

14. Governing Law. This Agreement shall be in all respects interpreted and governed in accordance with the laws of the State of Idaho, without regard to conflicts of laws principles. The parties agree that any action in law or in equity relating to this Agreement shall be brought in Boise, Idaho and the parties' consent to and hereby waive any objections to jurisdiction and venue at that location. The prevailing party in any action shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party.

15. Waiver. No delay or failure by either party to exercise or enforce at any time any right or provision of this Agreement shall be considered a waiver thereof or of such party's right thereafter to exercise or enforce each and every right and provision of this Agreement. A waiver to be valid shall be in writing, but need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver.

16. Interpretation. In construing or interpreting this Agreement, the word or shall not be construed as exclusive, and the word including shall not be limiting. This Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party, and ambiguities shall not be interpreted against the drafting party.

17. Severability. If any provision of this Agreement shall be held illegal, invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid and enforceable, and the legality, validity and enforceability of the remaining provisions shall not be affected thereby.

18. Notices. Any notice or other communication hereunder shall be in writing and shall be deemed given and effective (i) when delivered personally or by overnight express, (ii) when delivered via facsimile or electronic mail with confirmation of receipt or (iii) three (3) days after the postmark date if mailed by certified or registered mail, postage prepaid, return receipt requested, addressed to a party at its address stated in this Agreement or to such other address as such party may designate by written notice to the other party in accordance with the provisions of this Section.

19. Force Majeure. Silver Creek shall not be liable for any delays in the performance of any of its obligations hereunder due to causes beyond its reasonable control, including but not limited to, fire, strike, war, riots, acts of civil or military, judicial actions, acts of God, or any other casualty or natural calamity.

20. Assignment. This Agreement and any of the licenses, permissions, and Software may not be assigned, delegated, sublicensed, pledged or otherwise transferred by You to any party without the prior written consent of Silver Creek. This Agreement may be assigned by Silver Creek without consent.

21. Permission to Provide Information. You hereby give Silver Creek permission to send You information regarding Silver Creek's products and services by various delivery methods, including via email and/or facsimile.