

## EXHIBIT "A"

### Lucity Software License Agreement

#### IMPORTANT – READ CAREFULLY BEFORE INSTALLATION

This software is subject to acceptance of the Lucity Software License Agreement. Lucity, Inc. (Lucity) is willing to license this software to you only upon the condition that you accept all of the terms and conditions contained in the Lucity Software License Agreement and any stated Special Provisions. If you do not agree with the terms and conditions as stated, please return the unopened media package, the disks, and all accompanying printed materials to Lucity for a full refund of the license fees.

THIS AGREEMENT ("**Agreement**") is between Lucity, Inc., a Kansas corporation with its principal place of business at 10561 Barkley, Suite 500, Overland Park, KS 66212 ("**Lucity**"), and **Licensee** with its software programs accessing databases residing at **Licensed Site**.

#### RECITALS

WHEREAS, Lucity owns certain software programs that are licensed under individual program titles which are known collectively as "**Lucity software**";

WHEREAS, Licensee would like to use, and Lucity would like to grant Licensee the right to use, those software programs, while protecting the copyrights, trade secrets, confidential information, and other valuable intellectual property they contain.

NOW, THEREFORE, Lucity and Licensee agree as follows:

#### 1. DEFINITIONS.

"**Program(s)**" means the object code versions of the computer software programs, databases, and related documentation.

"**Seats**" means the number of concurrent users (i.e., the number of persons using a Program at one time) permitted to use a Program.

"**Clients**" means the number of individual database setups that can be accessed by a Program.

"**Licensed Site**" means the location at which the Licensee will be permitted to store the databases used by the Program(s).

#### 2. LICENSE GRANT.

(a) **License**. Subject to the terms and conditions of this Agreement, Lucity grants Licensee a fee-bearing nonexclusive license to use the object code versions of the Program(s) for its internal purposes during the term of this Agreement; provided, however, that (i) the number of concurrent users of each Program, including all users authorized to use any Program(s) pursuant to Section 2(b) below, shall not exceed the number of Seats for each such Program, (ii) the number of individual database setups that can be accessed by each Program shall not exceed the number of Clients for each such Program, and (iii) the location at which the databases accessed by the Program(s) reside shall be the Licensed Site designated herein.

(b) **Sublicense**. For information on granting sublicense rights, please contact Lucity.

(c) **Limited Transfer**. For information on transferring the location of the Licensed Site, please contact Lucity.

(d) **Copying**. Licensee may make only as many copies of each Program as are necessary for Licensee to utilize the total Seats for each such Program.

(e) **Future Licenses**. Lucity and Licensee may, by mutual agreement, include future licenses of the Program(s) under this Agreement by exchanging documents (i.e., a purchase order from Licensee and acknowledgment from Lucity) referencing this Agreement and the Program(s) to be licensed. Such future Program(s) shall be included as Program(s) under this Agreement. The parties agree that such purchase orders and acknowledgments shall have no effect on the terms and conditions of this Agreement, under which such Program(s) are licensed.

(f) **Limited Grant**. Except as expressly provided in this Section 2, Lucity grants and Licensee receives no right, title or interest in or to the Programs or any other deliverables provided by Lucity in connection with this Agreement and Lucity reserves and retains all such right, title, and interest.

(g) **Disaster Recovery and Testing**. The Licensee is permitted to install the Programs at its internal disaster recovery site and to store copies of the databases used by the Programs for the purposes of testing its disaster recovery plan. The Licensee is also permitted to install the Programs in a testing environment at its Licensed Site and to store copies of the databases used by the Programs for the purposes of testing future releases and training users.

#### 3. LICENSE RESTRICTIONS.

(a) **No Reverse Engineering**. Licensee agrees not to disassemble, decompile, reverse analyze, or reverse engineer the Program(s).

(b) **No Modification**. Licensee agrees not to modify the Program(s) without the written consent of Lucity.

(c) **No Copying**. Licensee agrees not to copy the Program(s), in whole or in part, except for a reasonable number of back-up copies and copies for disaster

recovery and testing purposes, and as may be necessary to utilize the total Seats for a given Program.

(d) **No Third Party Use**. Licensee will not use the Program(s) in any manner to provide computer services to third parties, except as may be necessary to implement a sublicense.

(e) **Training**. Licensee will not use the Program(s) until its personnel have received sufficient training in the use of the Program(s) to generate accurate data from the operation of the Program(s).

#### 4. PROPRIETARY RIGHTS.

(a) **Lucity's Property**. The Program(s), in whole and in part and all copies thereof, are and will remain the sole and exclusive property of Lucity.

(b) **Licensee's Property**. Any and all information provided by Licensee, as well as any and all information generated by Licensee's use of the Programs (specifically excluding Program code), shall remain the sole and exclusive property of Licensee.

(c) **Proprietary Notices**. Licensee will not delete or alter any copyright, trademark, and other proprietary rights notices of Lucity and its licensors appearing on the Program(s). Licensee agrees to reproduce such notices on all copies it makes of the Program(s).

#### 5. DELIVERY.

Lucity will deliver the Program(s) to Licensee, or Licensee's designated representative, within a reasonable time of execution of this Agreement by both parties.

#### 6. FEES AND TAXES.

(a) **License Fee**. As consideration for the rights granted to Licensee under the Agreement set forth in Section 2 of this Agreement, Licensee shall remit payment to Lucity, or Lucity's designated representative, the License Fee within thirty (30) days of the Shipping Date. Late payments will be subject to a late fee of one and one-half percent (1-1/2%) per month or the maximum rate permitted by applicable law, whichever is less. Lucity may publish revised fee schedules from time to time, and any fees for future licenses for the Program(s) included under this Agreement shall be determined by Lucity's then-current fee schedule.

(b) **Taxes**. Fees due under this Agreement do not include any taxes. Licensee will be responsible for, and will promptly pay, all taxes of whatever nature (including but not limited to sales and use taxes) resulting from or otherwise associated with this Agreement or Licensee's receipt or use of the Program(s), except income taxes based on Lucity's income. In lieu of payment of such taxes, Licensee shall provide Lucity, or Lucity's designated representative, with proof of Licensee's tax exempt status.

#### 7. WARRANTIES.

(a) **Warranty**. Lucity warrants that during the ninety (90) days following the shipping date:

- (i) the Program(s) will be capable of performing in the manner described in all the documentation in all material respects; and
- (ii) the storage media containing the Program(s) will be free from defects in materials and workmanship.

(b) **Exclusive Remedy**. In the event that the Program(s) or storage media fail to conform to such warranty, as Licensee's sole and exclusive remedy for such failure Lucity will, at its option and without charge to Licensee, repair or replace the Program(s) or storage media or refund to Licensee the License Fee paid, provided that the nonconforming item is returned to Lucity within the 90-day warranty period.

(c) **Disclaimer**. The Warranties provided in this Section are in lieu of all other warranties, express and implied, including but not limited to any implied warranties of Merchantability, and Fitness for a Particular Purpose.

(d) **Year 2000 Compliance**. "Year 2000 Compliant" means that the Program(s), when used in accordance with its associated documentation, will (a) initiate and operate, (b) correctly store, represent, and process dates, and (c) not cause or result in abnormal termination or ending, when processing data containing dates in the year 2000 and in any preceding and following years, provided that all third party applications that exchange date data with the program do so properly and accurately in a form and format compatible with the program. The Program(s) provided by Lucity under this agreement process dates only to the extent that the Program(s) use date data provided by the host or target operating system for date representations used in internal processes, such as file modifications. Any Year 2000 Compliance issues resulting from the operation of the Program(s) are therefore necessarily subject to the Year 2000 Compliance of the relevant host or target operating system. The preceding does not apply, however, and Lucity does not assume any liability for, the performance of any applications that authorized licensees may create through use of the Program(s), nor for any Year 2000 Compliance issues that may arise from the use of the Program(s) with any third party products, including hardware, software or firmware. Except as expressly provided in this Section, Lucity makes no Year 2000 related representations

## EXHIBIT "A"

### Lucy Software License Agreement

or warranties for the Program(s), and any such warranties, including any implied warranties, are hereby disclaimed.

#### 8. INDEMNITY.

##### (a) Duty to Indemnify and Defend.

(i) Lucy will defend or settle at Lucy's own expense, any action or other proceeding brought against Licensee to the extent that it is based on a claim that the use of the Program(s) as licensed in this Agreement infringes any U.S. copyright or that the Program(s) incorporates any misappropriated trade secrets.

(ii) Lucy will pay any and all costs, damages, and expenses (including but not limited to reasonable attorneys' fees) Licensee becomes obligated to pay in any such action or proceeding attributable to any such claim.

(iii) Lucy will have no obligation under this Section as to any action, proceeding, or claim unless: (A) Lucy is notified of it promptly; (B) Lucy has sole control of its defense and settlement; and (C) Licensee provides Lucy with reasonable assistance in its defense and settlement.

(b) Injunctions. If Licensee's use of any Program(s) under the terms of this Agreement is, or in Lucy's opinion is likely to be, enjoined due to the type of infringement or misappropriation specified in Section 8(a)(i), then Lucy may, at its sole option and expense, either:

(i) procure for Licensee the right to continue using such Program(s) under the terms of this Agreement;

(ii) replace or modify such Program(s) so that it is noninfringing and substantially equivalent in function to the enjoined Program(s); or

(iii) if options (i) and (ii) above cannot be accomplished despite the reasonable efforts of Lucy, then Lucy may both:

(A) terminate Licensee's rights and Lucy's obligations under this Agreement with respect to such Program(s); and

(B) refund to Licensee the unamortized portion of the License Fee paid based upon a 5 year straight-line depreciation, such depreciation to be deemed to have commenced on the effective date of this Agreement.

(c) Exclusive Remedy. The foregoing are Lucy's sole and exclusive obligations, and Licensee's sole and exclusive remedies, with respect to infringement or misappropriation of intellectual property rights. Lucy makes no separate warranty of noninfringement under or in connection with this agreement.

(d) Exceptions. Lucy will have no obligations under this Section 8 with respect to infringement or misappropriation arising from: (i) modifications to the Program(s) that were not made by Lucy (whether or not authorized by Lucy); (ii) Program(s) specifications or modifications requested by Licensee; or (iii) the use of Program(s) with products (including but not limited to software) not provided by Lucy.

#### 9. CONFIDENTIAL INFORMATION.

(a) Definition. "**Confidential Information**" refers to: (i) the Program(s), including but not limited to their software source code, and any related documentation or technical or design information related to the Program(s); (ii) the business or technical information of Lucy, including but not limited to any information relating to Lucy's product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how; (iii) any information reasonably and appropriately designated by Lucy as "confidential" or "proprietary" or which, under the circumstances taken as a whole, would reasonably be deemed to be confidential under applicable law; and (iv) the terms and conditions and existence of this Agreement.

(b) "Confidential Information" will not include information that:

(i) is in or enters the public domain without Licensee's breach of this Agreement;

(ii) Licensee receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; or

(iii) Licensee party develops independently, which it can prove with clear and convincing written evidence.

(c) Confidentiality Obligations. Licensee agrees to take all measures reasonably required in order to maintain the confidentiality of all Confidential Information in its possession or control, which will in no event be less than the measures Licensee uses to maintain the confidentiality of its own information of equal importance.

(d) Employee Confidentiality Procedures. Licensee agrees to inform its employees of their confidentiality obligations regarding the Program(s) and other Lucy Confidential Information. Licensee further agrees to ensure that contract employees (including temporary employees) of Licensee agree to confidentiality obligations similar to those of this Agreement.

#### 10. MAINTENANCE AND SUPPORT.

Lucy and Licensee may, by mutual agreement, include the maintenance and support services described in the software's online help for the Program(s) under this Agreement by exchanging documents (i.e., a purchase order from

Licensee and acknowledgment from Lucy) referencing this Agreement and the Program(s) to be included under such services. The parties agree that such purchase orders and acknowledgments shall have no effect on the terms and conditions of this Agreement, under which such Program(s) are licensed. Maintenance and support services are provided at a rate and for a term as mutually determined by Lucy and Licensee for the scope of services to be provided by Lucy for the Program(s) to be included under such services.

#### 11. LIMITATIONS OF LIABILITY.

Lucy's total liability under this Agreement will be limited to the License Fee. Licensee agrees that, as part of the material consideration for Lucy licensing the Programs to Licensee hereunder, in no event will Lucy be liable to Licensee or any third party under this Agreement for any Special, Incidental, or Consequential Damages, whether based on breach of contract, tort (including negligence), product liability, or otherwise, and whether or not Lucy has been advised of the possibility of such damage. Input and/or edits of data by means other than the Lucy standard Program(s) interface may result in loss of data, and/or improper operation of the Program(s). The Licensee agrees that in no event will Lucy be liable to Licensee or any third party under this Agreement for costs necessary to diagnose, recover data and/or restore proper operation of the Program(s) resulting from said actions.

#### 12. TERM AND TERMINATION.

(a) Term. This Agreement will continue in full force and effect perpetually, except as follows:

(b) Termination. Lucy will have the right to terminate this Agreement if Licensee breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days of written notice from Lucy;

(c) Effect of Termination. If this Agreement is terminated, Licensee will immediately terminate any sublicenses then in effect, retrieve from sublicensees all copies of the Program(s) in sublicensees' possession, and then return to Lucy, or Lucy's designated representative, or (at Lucy's request) destroy all copies of the Program(s) in its possession or control, and an officer of Licensee will certify to Lucy in writing that it has done so.

(d) Survival. The provisions of Sections 4 (Proprietary Rights), 6(b) (Taxes), 7(b) and (c) (Warranties Exclusive Remedy and Disclaimer), 8(c) and (d) (Infringement Exclusive Remedy and Exceptions), 9 (Confidential Information), and 11 (Limitations of Liability) will survive termination of this Agreement for any reason.

(e) Nonexclusive Remedy. The exercise by Lucy of any remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

#### 13. GENERAL PROVISIONS.

(a) Audit Rights. Licensee agrees to allow Lucy, or Lucy's designated representative, at Lucy's sole expense, upon reasonable written notice, and during Licensee's ordinary business hours, to visit the facilities in which Licensee uses the Program(s) and review Licensee's practices with regard to the Program(s).

(b) Assignment. This Agreement will bind and inure to the benefit of each party's successors and assigns, provided that either party may not assign this Agreement, in whole or in part, without written consent of both parties.

(c) Modifications. This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.

(d) Conflicting Terms. Purchase orders or similar documents relating to the Program(s) issued by Licensee will have no effect on the terms of this Agreement.

(e) Notices. All notices under this Agreement will be deemed given when delivered personally or upon receipt of by U.S. certified mail, return receipt requested, to the address shown below or as may otherwise be specified by either party to the other in accordance with this Section.

(f) Severability. If any provision of this Agreement is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this Agreement will not be affected.

(g) Waiver. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights.

(h) Entire Agreement. This Agreement is the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. No purchase orders, acknowledgments, invoices, or other documents exchanged in the ordinary course of business shall modify or add to the terms and conditions of this Agreement.

(i) Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the State of Kansas.

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**EXHIBIT "A"**  
**Lucity Software License Agreement**

**SPECIAL PROVISIONS**

The following provisions supersede the preceding standard terms and conditions.

**13. GENERAL PROVISIONS.**

(i) Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the State of **Ohio**.