

## Software License Agreement

This **SOFTWARE LICENSE AGREEMENT** ("Agreement") is entered into by and between you, the **end user** and Walnut Hill Technology, LLC, a Virginia corporation located in Victoria, VA 23974 (hereinafter the "Licensor"), for the purpose of Licensor licensing to Licensee Licensor's proprietary agricultural inventory software product, and providing certain support for the software, all as set forth herein and in Exhibit A hereto.

### TERMS AND CONDITIONS

- 1. LICENSE.** Licensor licenses to Licensee and Licensee hereby takes from Licensor certain proprietary computer software as set forth in Exhibit A which is usable in a agricultural business (the "Software"). Licensee also agrees to buy the necessary hardware and equipment (the "Hardware") and to obtain from Licensor the software support set forth in Exhibit A. The Software is and shall at all times be and remain the sole and exclusive property of the Licensor and Licensee shall have no right, title, or interest therein or thereto except as to the use thereof subject to the terms and conditions of this Agreement.
- 2. TERM AND USE.** The term for the license of the Software shall be for the current agricultural season. The license is only good for Licensee's location at the address set forth above, and for no other season or location.
- 3. PAYMENT.** Licensor shall invoice Licensee consistent with **Exhibit A** and Licensee shall immediately pay said invoices, without offset, or Licensor shall be able to end the license of the Software and/or seek damages as appropriate in a court of law as set forth in this Agreement. Where Exhibit A provides estimates, Licensor's invoice as to final costs shall be binding on Licensee.
- 4. LIMITED WARRANTY.** Licensor makes no warranties (express, implied, or statutory) with respect to the Software and the accompanying Hardware and any written materials including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose. Licensee acknowledges in particular that the Hardware provided hereunder is manufactured by third parties. To the extent allowed by the Hardware manufacturer, Licensor shall title the Hardware in Licensee's name for warranty purposes (if any), or transfer the warranty to Licensee. In no event shall Licensor be liable to Licensee for any direct or indirect damages including loss of profits, lost savings, loss of data, or other special incidental or consequential damages arising out of Licensee's use of or inability to use the Software or Hardware. In no event, will Licensor's liability exceed the amount of the license fee charged under this Agreement.
- 5. END OF TERM.** At the end of the term, if not extended by the parties, licensee shall cease using the Software for any purpose and shall return the Software and/or allow its deletion by Licensor, at Licensor's option, all at Licensee's expense.
- 6. SOFTWARE ACCEPTANCE.** Licensee's acceptance of the Software for its business acknowledges that all Software and related Hardware set forth in this Agreement are in good and operable condition and that Licensor has fully and satisfactorily performed all covenants and conditions to be performed by it under this Agreement.
- 7. PLACE OF USE.** Licensee shall keep the Software at its place of business as specified above. Licensee covenants and agrees not to allow the use of the Software by other businesses, entities, or individuals and that said Software shall be used only on the work stations authorized by this Agreement. Licensee further covenants and agrees not to copy, rent, sublease, license, transfer, donate, commercially exploit, reverse engineer, decompile, modify, disassemble (or allow the same to occur) the Software, or any part thereof.
- 8. TAXES.** Licensee shall pay all taxes and assignments (including interest, penalties, court costs and attorneys' fees, if any) which may be levied directly or indirectly against the Software and related Hardware, or any interest therein, or with respect to the ownership, possession, or use thereof, whether

such taxes are levied against Licensor or Licensee. Such taxes to be paid by the Licensee shall include without limitation property, sales, rent, lease, and use taxes. If such taxes are levied against the Licensor, it shall notify Licensee of such fact and the Licensor shall have the right, but not the obligation, to pay any such taxes whether levied against the Licensor or the Licensee. In such event, the Licensee shall reimburse the Licensor therefor within ten (10) days from receipt of invoice and upon the failure to make such reimbursement when due, the Licensor shall have all remedies provided under the law and as set forth in this Agreement.

- 9. INDEMNITY.** Licensee shall indemnify and hold Licensor harmless of and from any and all claims, losses, liabilities (including negligence, tort and strict liability), damages, judgments, suits, or legal proceedings, including court costs, expenses, and reasonable attorneys' fees, related to the use of the Software and related Hardware; provided however that Licensor shall indemnify and hold Licensee harmless to the same degree expressed herein from any claim that Licensee's use of the Software violates the intellectual property rights of another party. Licensee's indemnity specifically includes any and all damages to Licensor caused by infection of Licensor's computer equipment by viruses or malware present in any data Licensee provides to Licensor.
- 10. TITLE; LIENS/ENCUMBRANCES.** All of the Software shall remain personal property and the title thereto shall remain with the Licensor at all times. Licensee shall keep the Software and related Hardware free from any and all judgments, liens, and encumbrances. Licensee shall give Licensor immediate notice of the attachment or other judicial process, lien, or encumbrance affecting any Software and related Hardware and shall indemnify and save Licensor harmless of and from any loss or damage caused thereby.
- 11. CONFIDENTIALITY.** During the course of this Agreement, either party may have or may be provided access to the other's proprietary items or confidential information ("Confidential Information"). Each party agrees to maintain the confidentiality of the other's Confidential Information in accordance with this provision. Licensee acknowledges that its data shall be maintained on Licensor's servers. Licensor shall take the same precautions to protect Licensee's data as Licensor takes to maintain its own data. At a minimum, each party agrees that it shall not make the other's Confidential Information available to any third party without the written consent of the other and that title and ownership of the Confidential Information provided by one party to the other shall remain the exclusive property of that party who has the right to possess the Confidential Information.
- 12. RIGHT OF INSPECTION.** Licensor, its agents, and representatives shall have the right to inspect the Software and for that purpose to have access to the location of the Software during normal business hours.
- 13. NON-WAIVER.** Licensor's failure at any time to require strict performance from Licensee of any of the provisions of this Agreement shall not waive or diminish Licensor's right thereafter to demand strict compliance therewith or with any other provision. Waiver of any default shall not waive any other default. Licensor's rights hereunder are cumulative and not alternative.
- 14. POSSESSION OF SOFTWARE.** Licensor covenants that Licensor is the lawful owner of said Software and that conditioned upon Licensee's performance of the conditions of this Agreement, Licensee shall peacefully and quietly hold and use the Software during the term of this Agreement without hindrance.
- 15. DEFAULT.** If Licensee fails to pay any amount herein provided after the same is due and payable; or if Licensee fails to observe, keep, or perform any other provision of this Agreement required to be observed, kept, or performed by Licensee; or if a petition is filed by or against Licensee under the Bankruptcy Act or any amendment thereto (including a petition for reorganization or an arrangement); or if a receiver is appointed for Licensee and its property; or if Licensee commits an act of bankruptcy, becomes insolvent, makes an assignment for the benefit of creditors, or offers a composition or extension of any of its indebtedness; or if Licensee, without Licensor's prior consent, attempts to alter, modify, translate,

decompile, modify, disassemble, copy, sell, trade, transfer, encumber, pledge, sublease, or in any way dispose of the Software, then Licensor or its agents shall have the right to exercise any one or more of the following remedies:

a. To sue and recover from Licensee liquidated damages in the amount of \$10,000. This amount represents a reasonable estimate of actual damages associated with the time and cost of development of the Software by Licensor and its installation of Software on the Hardware and the training of Licensee and Licensor's reasonable profit anticipation in its dealings with Licensee. This amount is not a penalty. Without liquidated damages, the parties agree that ascertaining actual damages for Licensee's default would be difficult. In addition, Licensee shall be liable for any attorney's fees and expenses and costs associated with the enforcement of this Agreement.

b. To take possession of the Software and related Hardware without demand or notice where ever the same may be located, with or without court order. Licensee hereby waives any and all damages occasioned by such retaking of possession of such Software and related Hardware. Any said taking of possession shall not relieve Licensee of its original obligations under this Agreement.

c. Additionally, Licensor shall have upon default such other and further remedies and rights as may be available at law by reason of the Licensee's breach of any of the provisions of this Agreement.

- 16. ASSIGNMENTS.** Neither Licensee nor Licensor shall assign any rights or obligations herein with regard to this Agreement without the written consent of the other party.
- 17. RISK OF LOSS.** Licensee hereby assumes and shall bear the entire risk of loss, theft, damage, malware or virus infection, and destruction of the Software and related Hardware from any cause whatsoever, and no loss, theft, damage, malware or virus infection, or destruction of the Software or related Hardware shall relieve Licensee of any obligations under this Agreement. Licensee shall promptly notify Licensor in writing of any such loss, theft, damage, malware or virus infection, or destruction of the Software or related Hardware.
- 18. BINDING AGREEMENT.** This Agreement shall be binding upon the Licensee and its legal representatives, successors, and assigns and shall inure to the benefit of the Licensor, its legal representatives, successors, and assigns.
- 19. GOVERNING LAW/DISPUTE VENUE. THIS AGREEMENT SHALL BE DEEMED TO BE MADE AND EXECUTED IN LUNENBURG COUNTY, VIRGINIA AND SHALL BE INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF VIRGINIA. ANY DISPUTE ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE EXCLUSIVELY LITIGATED IN THE COURTS LYING IN LUNENBURG COUNTY, VIRGINIA. THE PARTIES HEREBY CONSENT TO THE JURISDICTION AND VENUE OF SAID COURTS.**
- 20. SEVERABILITY.** If any provision hereof or any remedy herein provided for is invalid under any applicable law, such provision shall be enforced to the fullest extent allowable by law or equity; if not enforceable, such provision shall be inapplicable and deemed omitted. However, the remaining portions herein, including remaining default remedies, shall be given full force and effect in accordance with the intent of this Agreement.
- 21. NOTICES.** Any notices under this Agreement shall be in writing and sent to the addresses of the parties listed herein by either U.S. Mail or commercial overnight delivery. Notices given by U.S. Mail shall be valid upon receipt (receipt shall be presumed four (4) days after proper mailing). Likewise, notices given by commercial overnight delivery shall be valid upon receipt (receipt shall be presumed the next business day after proper drop off for overnight delivery).

**22. HEADINGS.** The headings of this Agreement are meant for convenience only, and shall not otherwise alter, modify, or amend the terms of this Agreement.

**23. NO OTHER AGREEMENTS.** This Agreement and Exhibit A hereto contain the entire agreement and understanding between the parties hereto with respect to the subject matter contained herein. There are no other agreements, written or unwritten, that shall bind the parties. All prior agreements, oral or written, are merged into this document.