



SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement (this "*Agreement*") is entered into and made effective as of _____, 200_ (the "*Effective Date*"), by and between CashTrax Corporation, with corporate offices at 2840 San Tomas Expressway, Santa Clara, CA 95051 ("*CashTrax*") and _____, with corporate offices at _____ ("*Customer*").

1. DEFINITIONS.

1.1 "*Intellectual Property Rights*" means patent rights (including patent applications and disclosures), copyrights, trade secrets, know-how and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.2 "*Order Schedule*" means the document by which Customer orders Product licenses and Services, and may be the CashTrax document titled Order Schedule and/or Customer's purchase order. Customer may acquire either Product licenses or Services separately.

1.3 "*Products*" means CashTrax's software development tools and application products ("*Application Products*") in object code form and related documentation specified in an Order Schedule issued pursuant to this Agreement, including any error corrections and updates thereto provided by CashTrax to Customer under this Agreement.

1.4 "*Services*" means the maintenance and support services, consulting services, installation services, and/or training services specified in an Order Schedule issued by Customer pursuant to this Agreement.

2. LICENSE.

2.1 *Grant of License.* Subject to the terms and conditions of this Agreement, CashTrax grants to Customer a nonexclusive, nontransferable, perpetual license to use each copy of the Products specified in an Order Schedule accepted by CashTrax on a single CPU,

only for Customer's internal use in the United States. In the event CashTrax has granted Customer a site license, the terms and conditions of such site license shall be set forth in an Exhibit to this Agreement.

2.2 *License Restrictions.* Customer has no right to transfer, sublicense or otherwise distribute the Products to any third party. Customer may not: (a) modify, disassemble, decompile or reverse engineer the object code of the Products nor permit any third party to do so; (b) copy the Products, except for a reasonable number of backup copies; or (c) use the Products in any manner to provide service bureau, time-sharing or other computer services to third parties.

2.3 *Development Kit Restrictions.* If Customer purchases a Product license for any CashTrax development kit ("*Development Kit*"), then Customer may use the Development Kit for application development only and Customer expressly agrees not to use the Development Kit or any component thereof in a production application. In addition, Customer's use of the Development Kit is limited to a maximum of three (3) CashTrax Software Agent Products.

2.4 *Limited Rights.* Customer's rights in the Products will be limited to those expressly granted in this Section 2. CashTrax reserves all rights and licenses in and to the Products not expressly granted to Customer under this Agreement.

3. OWNERSHIP.

CashTrax and its licensors presently own and will continue to own all worldwide right, title, and interest in and to the Products and all worldwide Intellectual Property Rights therein, whether or not the Products, in whole or in part, are incorporated in or combined with any other product. Customer will not delete or in any manner alter the copyright, trademark, and other proprietary rights notices of CashTrax and its licensors appearing on the Products as delivered to Customer. Customer will reproduce such notices on all copies it makes of the Products.

4. SERVICES.

4.1 *Maintenance and Support Services.* CashTrax will perform the maintenance and support services specified in an accepted Order Schedule in accordance with CashTrax's standard Software Maintenance Program as described in the CashTrax Customer Support Handbook, incorporated in this Agreement by reference, which CashTrax publishes from time to time. CashTrax may modify its Software Maintenance Program upon written notice to Customer. CashTrax will be obligated to provide maintenance and support services only for Products installed at the Customer sites designated in an Order Schedule accepted by CashTrax.

4.2 *Term of Maintenance and Support Services.* CashTrax will provide maintenance and support services for each Product specified in an accepted Order Schedule for an initial period of fifteen (15) months from the date of receipt by Customer of such Product and for additional twelve (12) month periods thereafter, provided that Customer pays CashTrax's then-current annual maintenance and support service fees in accordance with the terms of Section 6.1. Either party may elect to terminate maintenance and support services for a Product by notifying the other in writing at least forty-five (45) days prior to the expiration of such initial fifteen (15) month period or of any twelve (12) month renewal period thereafter. Customer may elect to renew maintenance and support services with respect to some, but not all, of the Products or Customer sites. Reinstatement of lapsed maintenance and support services is subject to payment by Customer of CashTrax's reinstatement fees in effect on the date Customer re-orders maintenance and support services.

4.3 *Exclusions to Maintenance and Support Services.* CashTrax shall have no obligation of any kind to provide maintenance and support services for problems in the operation or performance of the Products caused by any of the following (each, "*Customer-Generated Error*"): (a) non-CashTrax software or hardware products; (b) Customer's failure to

properly maintain Customer's site and equipment on which the Products are installed; or (c) alterations to Customer's site or equipment made by Customer or a third party after CashTrax's completion of installation services pursuant to Section 4.4. If CashTrax determines that it is necessary to perform maintenance and support services for a problem caused by a Customer-Generated Error, CashTrax will notify Customer thereof as soon as CashTrax is aware of such Customer-Generated Error and CashTrax will have the right to invoice Customer at CashTrax's then-current published time and materials rates for all such maintenance and support services performed by CashTrax.

4.4 *Installation Services.* CashTrax will perform the installation services specified in an accepted Order Schedule to install the Products on Customer's equipment at Customer's site. Customer will be solely responsible for completing all tasks that are required to prepare Customer's site and equipment for the performance of such services by CashTrax, including without limitation all items identified on CashTrax's Site Preparation Checklist, the terms of which are incorporated into this Agreement by reference.

4.5 *Other Services.* CashTrax will perform for Customer the consulting services and training services specified in an accepted Order Schedule in accordance with the terms and conditions of this Agreement.

4.6 *Customer Security Procedures.* CashTrax personnel who perform Services at Customer's site will comply with Customer's reasonable security procedures, provided that Customer furnishes CashTrax with such procedures in writing prior to the date any CashTrax personnel begin performing such Services.

4.7 *Year 2000.* The Products delivered to Customer under this Agreement are Year 2000 compliant. "Year 2000" compliant means that the Products will be capable of recording, maintaining and processing accurate dates for all dates including and following January 1, 2000, provided that all other products used by Customer in connection or combination with the Products, including without limitation hardware, software and firmware, properly exchange date data with the Products. This warranty does not cover third party products that CashTrax resells; any compliance warranties for such third party products are as agreed upon between Customer and the applicable vendor. CashTrax's sole and exclusive obligation, and Customer's sole and exclusive remedy, for breach of this warranty is for CashTrax, at its sole option and expense, either to make the Products Year 2000 compliant or to provide Customer with other functionally-

similar products which are Year 2000 compliant, provided that the Product at issue is under CashTrax's then-current maintenance program.

4.8 *Source Code Escrow.* For a one-time fee of five hundred dollars (\$500), Customer may participate as a Licensee of Record under the Software Deposit Agreement dated September 22, 1993, by and between CashTrax Corporation and Brambles NSD, Inc. ("Escrow Agreement"). In the event the Product source code is released pursuant to the Escrow Agreement, CashTrax hereby grants Customer the right and license to use the Product source code solely for internal support and maintenance purposes of Products properly licensed from CashTrax prior to the release of such source code. Notwithstanding anything to the contrary in this Agreement, Customer agrees that the Product source code for the Products is Confidential Information of CashTrax and shall be protected perpetually until and unless one or more of the confidentiality exclusions set forth in Section 9.2 occur. Further, Customer agrees (i) to use the Product source code under carefully controlled conditions; (ii) to limit access to the Product source code to those employees and contractors (who have signed confidentiality agreements with Customer) of Customer who have a need to know; and (iii) to use the Product source code only in one (1) location at a time in the United States.

5. ORDERING AND DELIVERY.

5.1 *Ordering.* Customer may submit Order Schedules to CashTrax for the purchase of Product licenses and Services. Each such Order Schedule must reference this Agreement and must be signed by Customer. No Order Schedule will be deemed accepted by CashTrax unless and until CashTrax accepts such Order Schedule in writing, or unless CashTrax ships such order to Customer. Any terms and conditions of any Order Schedule that are inconsistent with or in addition to the terms and conditions of this Agreement will be deemed stricken from such Order Schedule, even if CashTrax accepts any such Order Schedule, unless otherwise agreed to in writing by the parties.

5.2 *Delivery.* All Products will be shipped FOB CashTrax's site. Shipping and handling charges will be invoiced with shipment.

6. PAYMENT.

6.1 *License and Services Fees.* Except for the payment of training services fees pursuant to Sections 6.2, Customer will pay CashTrax the total fees and expenses for all Products and Services specified in an accepted Order Schedule

within thirty (30) days after the date of CashTrax's invoice for such fees and expenses.

6.2 *Training Fees.* Customer will pay CashTrax the training services fees specified in an accepted Order Schedule when Customer enrolls in such training services, but in no event later than two (2) weeks prior to the scheduled date for such training services. CashTrax's then-current cancellation policy will apply to any cancellation by Customer of such training services.

6.3 *Travel and Incidental Expenses.* Customer will reimburse CashTrax for any reasonable out-of-pocket expenses incurred by CashTrax in connection with performing any Services at Customer's site and will provide documentation upon request.

6.4 *Payment Terms and Taxes.* Customer will pay all amounts due under this Agreement in U.S. currency. Customer will be responsible for, and will promptly pay, all taxes of any kind (including but not limited to sales and use taxes) associated with this Agreement or Customer's receipt or use of the Products and Services, except for taxes based on CashTrax's net income.

7. WARRANTY.

7.1 *Limited Product Warranty.* CashTrax warrants that for a period of ninety (90) days after the shipment date: (a) the medium on which each copy of the Products is furnished will be free from defects in materials and workmanship under normal use; and (b) the Products will function substantially in accordance with the published documentation. As Customer's sole and exclusive remedy and CashTrax's entire liability for any breach of the foregoing warranty, CashTrax will, at its sole option and expense, promptly repair or replace any medium or Products which fail to meet this limited warranty or, if CashTrax is unable to repair or replace the medium or the Products, refund to Customer the applicable license fees paid upon return of the nonconforming item to CashTrax.

7.2 *Disclaimer of Warranties.* THE LIMITED WARRANTIES SET FORTH IN THIS SECTION 7 ARE IN LIEU OF, AND CASHTRAX DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. INDEMNIFICATION.

8.1 *Infringement Indemnity.* CashTrax will defend any action brought against Customer to the extent that it is based upon a claim that the Products, as provided by CashTrax to Customer under this Agreement and used within

the scope of this Agreement, infringe any U.S. patent or copyright, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Customer, provided that Customer: (a) promptly notifies CashTrax in writing of the claim; (b) grants CashTrax sole control of the defense and settlement of the claim; and (c) provides CashTrax with all assistance, information and authority required for the defense and settlement of the claim.

8.2 *Injunctions.* If Customer's use of any of the Products hereunder is, or in CashTrax's opinion is likely to be, enjoined due to the type of infringement specified in Section 8.1 above, CashTrax may, at its sole option and expense: (a) procure for Customer the right to continue using such Products under the terms of this Agreement; (b) replace or modify such Products so that they are non-infringing and substantially equivalent in function to the enjoined Products; or (c) if options (a) and (b) above cannot be accomplished despite CashTrax's reasonable efforts, then CashTrax may terminate Customer's rights and CashTrax's obligations hereunder with respect to such Products and refund to Customer the unamortized portion of the license fees paid hereunder, based upon a straight-line five (5) year depreciation commencing as of the date of receipt by Customer of such Products.

8.3 *Exclusions.* Notwithstanding the terms of Section 8.1, CashTrax will have no liability for any infringement claim of any kind to the extent it results from: (a) modification of the Products made other than by CashTrax; (b) the combination, operation or use of any Product supplied hereunder with equipment, devices or software not supplied by CashTrax to the extent such a claim would have been avoided if the Products were not used in such combination; (c) failure of Customer to use updated or modified Products provided by CashTrax to avoid infringement; or (d) compliance by CashTrax with designs, plans or specifications furnished by or on behalf of Customer. Customer shall defend and hold CashTrax harmless against any expense, judgment or loss for alleged infringement of any patents or copyrights or misappropriation of trade secrets which result from CashTrax's compliance with Customer's designs, specifications or instructions.

8.4 *Sole Remedy.* THE PROVISIONS OF THIS SECTION 8 SET FORTH CASHTRAX'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

9. CONFIDENTIALITY.

9.1 *Definition.* "Confidential Information" means: (a) the Products; and (b) any business or technical information of CashTrax or Customer, including but not limited to any information relating to CashTrax's or Customer's product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how that is designated by the disclosing party as "confidential" or "proprietary" and, if orally disclosed, reduced to writing by the disclosing party within thirty (30) days of such disclosure.

9.2 *Exclusions.* Confidential Information does not include information that: (a) is or becomes generally known to the public through no fault or breach of this Agreement by the receiving party; (b) is known to the receiving party at the time of disclosure without an obligation of confidentiality; (c) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (d) the receiving party rightfully obtains from a third party without restriction on use or disclosure; or (e) is disclosed with the prior written approval of the disclosing party.

9.3 *Use and Disclosure Restrictions.* During the term of this Agreement, and for a period of five (5) years after any termination of this Agreement, each party will not use the other party's Confidential Information except as permitted herein, and will not disclose such Confidential Information to any third party except to employees and consultants as is reasonably required in connection with the exercise of its rights and obligations under this Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein executed in writing by such employees and consultants). However, each party may disclose Confidential Information of the other party: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the disclosing party gives reasonable notice to the other party to contest such order or requirement; and (b) on a confidential basis to legal or financial advisors.

10. LIMITATION OF LIABILITY.

10.1 *Total liability.* CASHTRAX'S AND ITS LICENSORS' CUMULATIVE LIABILITY TO CUSTOMER, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED THE AMOUNTS PAID TO CASHTRAX BY CUSTOMER PURSUANT TO THIS AGREEMENT FOR THE PRODUCTS AND SERVICES WHICH ARE THE SUBJECT OF THE CAUSE OF ACTION OR CLAIM.

10.2 *Exclusion of Damages.* IN NO EVENT WILL CASHTRAX OR ITS LICENSORS BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL

DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE PRODUCTS OR SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, AND WHETHER OR NOT CASHTRAX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

10.3 Basis of Bargain. The parties expressly acknowledge and agree that CashTrax has set its prices and entered into this Agreement in reliance upon the limitations of liability specified herein, which allocate the risk between CashTrax and Customer.

11. TERMINATION.

11.1 Term. This Agreement will begin on the Effective Date and will remain in effect thereafter unless terminated earlier in accordance with the terms of this Agreement. The term of each Product license granted by CashTrax hereunder will begin upon the date of receipt by Customer of the Product specified in an accepted Order Schedule and will remain in effect thereafter until Customer discontinues use of such Product or until terminated earlier by either party in accordance with the terms of this Agreement.

11.2 Termination for Breach. Each party will have the right to terminate this Agreement or any Product license granted hereunder if the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after written notice thereof.

11.3 Automatic Termination. This Agreement, but not the Product licenses, will terminate automatically if Customer: (a) becomes the subject of any voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (b) becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing.

11.4 Effect of Termination. Upon any termination of this Agreement or of any individual Product license granted hereunder, Customer will promptly return to CashTrax or, at CashTrax's request, destroy, the applicable Products and all copies and portions thereof, in all forms and types of media, and provide CashTrax with an officer's written certification, certifying to Customer's compliance with the foregoing.

11.5 Nonexclusive Remedy. Termination of this Agreement by either party will be a

nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such party.

11.6 Survival. The rights and obligations of the parties contained in Sections 3, 6, 8, 9, 10, 11.4, 11.5 and 12.10 will survive the termination of this Agreement or of any individual Product license.

12. GENERAL.

12.1 Assignment. Customer will have no right to assign this Agreement, in whole or in part, without CashTrax's prior written consent. Any attempt to assign this Agreement, without such consent, will be null and void. Notwithstanding the foregoing, Customer may assign this Agreement, without CashTrax's consent, to any entity that controls, is controlled by, or is under common control with, Customer; provided that the assignee agrees in writing to be bound by the terms and conditions of this Agreement and the assignee is not a competitor of CashTrax. For purposes of the preceding sentence, "control" means having the ability to elect a majority of the board of directors or a similar governing body.

12.2 Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California applicable to agreements entered into, and to be performed entirely, within California between California residents. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts of the Northern District of California and the parties hereby consent to the personal jurisdiction and venue therein.

12.3 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

12.4 Waiver. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

12.5 Notices. All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier or overnight delivery service, or by certified mail, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth above or to such other address as may be specified by either party to the other in accordance with this Section. Either party may change its address for notices under this

Agreement by giving written notice to the other party by the means specified in this Section.

12.6 *Force Majeure.* Neither party will be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, riot, act of God or governmental action.

12.7 *Relationship of Parties.* The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

12.8 *Announcements.* Customer agrees that CashTrax may publicly announce and list Customer as a customer of CashTrax.

12.9 *Non-Solicitation.* For a period of two (2) years after the Effective Date, Customer will not recruit or solicit any CashTrax employee that has provided any Services to Customer

hereunder, without CashTrax's prior written consent.

12.10 *Audit.* CashTrax may conduct a Customer audit to ensure compliance with the terms of this Agreement. Any such audit shall be conducted upon reasonable notice to Customer and shall not unreasonably interfere with Customer's business activities. If an audit reveals that the Customer has underpaid fees to CashTrax in excess of ten percent (10%) of the applicable license fees paid, then Customer shall pay CashTrax's reasonable costs of conducting the audit.

12.11 *Entire Agreement.* This Agreement, including all schedules, exhibits and attachments attached hereto, contains the complete understanding and agreement of the parties and supersedes all prior or contemporaneous agreements or understandings, oral or written, relating to the subject matter herein. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

CUSTOMER

By: _____

Name: _____

Title: _____

CashTrax

By: _____

Name: _____

Title: _____

Rev. 10/2003