

Software License Agreement

This Software License Agreement (“Agreement”) is made as of this ____ of _____, _____ by and between **TIP Technologies, Inc. (“TIP”)**, a Wisconsin corporation and _____ (“Licensee”), with principle offices located at _____.

1. Definitions

- a. “Software” means TIP’s **TIPQA™** software, in compiled object format only, and all related materials (“Media” and “Documentation”) written or produced by TIP. The Software is the property of TIP and is protected by copyright law and other laws that relate to ownership and protection of intellectual property.
- b. “Licensor” means TIP Technologies, Inc. (“TIP”) which is the sole and rightful owner of the Software and all rights, title, and interest therein.
- c. “Licensee” means the licensee and/or end user of the Software as identified above.
- d. “License” means this Agreement and the rights and obligations it creates under law.

2. Grant of License

- a. TIP hereby grants to Licensee a personal, non-transferable, and non-exclusive right to use the Software and associated Media and Documentation on a computer system at facilities, subject to the terms and conditions set forth in this Agreement between Licensee and TIP.
- b. This license is granted for only the following uses:
 - i. **Production Use:** Solely for use by Licensee in Licensee’s actual internal production operations (as opposed to testing or training operations), Licensee may use the Software and the production use enabling key provided to Licensee by TIP to create and access a single database residing on a single server at Licensee’s site (“Production Database”) by not more than the number of concurrent users for which Licensee has paid license fees as indicated on the Purchase Order to which this Agreement is attached. Licensee may not use the production use enabling key to create or access more than one database, without TIP’s prior express written consent and obtaining from TIP a new production use enabling key authorizing the creation and use of additional Production Databases.
 - ii. **Training and/or Test Use:** Solely for use by Licensee for its internal training and/or test purposes at Licensee’s site, and not for production purposes, Licensee may use the Software and the training/test enabling key provided to Licensee by TIP to create and access databases containing sample data for training purposes only (“Training Databases”) and to create databases containing test data for testing purposes only (“Test Databases”) residing on servers at Licensee’s site. The use described in this subparagraph is subject to a twenty (20) concurrent user limit for each such database. For purposes of this Agreement “test purposes” means testing of the Software or any components, modules, upgrades or modifications thereto. Licensee may not use the training/test use enabling key provided by TIP to create or access any database not authorized herein, or to divide the number of allowable concurrent users without TIP’s prior express written consent and obtaining from TIP a new training/test enabling key authorizing the creation and use of additional Training and Test Databases.
- c. For purposes of this Agreement, “concurrent users” means the number of simultaneous Software clients (users) logged on to one or more QA modules at any given time. Each unique combination of logged on User ID and Workstation ID, regardless of the number of

modules executing per User ID, constitutes a concurrent user within the logged on database use key. Note: The single required dedicated QA Service Client for background activities and processing is not counted as a concurrent user for license usage determination.

- d. Promptly upon Licensor's request, but not more often than quarterly, Licensee shall provide to Licensor, in accordance with Licensor's written instructions, the unaltered contents of certain data files maintained by the Software relating to the number of concurrent users using the Software. The Access Control Module contains a concurrent user count function that automatically collects concurrent user data. Licensee may be required to provide reports upon Licensor's request. Licensor may also access such data files in connection with any on-site or remote maintenance service Licensor may perform on the Software. If Licensee exceeds the allowable concurrent user limit, Licensor may require Licensee to purchase licenses for additional concurrent users at Licensor's then current license fee.

3. **Term of Software Rights**

- a. The rights granted herein to use any particular Software and associated Media and Documentation shall continue as long as Licensee makes all payments required for the Software License(s) and the first year maintenance, and is not otherwise declared to be in default hereunder. If Licensee fails to make any required payment to TIP when due, then TIP may terminate the Licensee's right to use the Software, Media and Documentation by written notice to Licensee at the aforementioned address. Upon any termination, Licensee, at its expense and upon receipt of such notice, will a) purge all TIP Software for all and any Licensee systems, tapes and archive and b) return to TIP all Software, Media and Documentation and copies thereof. Licensee, at its expense, shall provide written certification to TIP that all originals and copies of the subject matter contained herein have been either a) returned to TIP or b) destroyed and that all TIP Software is no longer used by Licensee. TIP may, upon reasonable advance notice, examine Licensee's systems and facilities to confirm the accuracy of the foregoing certification.

4. **Assignability**

- a. The right to use the Software may not be assigned, sublicensed, or otherwise transferred by Licensee without the prior expressed written consent of TIP. TIP may require any proposed transferee to execute any documents or follow any procedures as established by TIP as a condition precedent to any proposed transfer, and a transfer fee may be applicable as established by TIP, from time to time, at TIP's sole discretion.

5. **Ownership**

- a. This is a License, not a sale. Licensee recognizes and agrees that title and all other proprietary rights in and to all Software, Media and Documentation shall at all times remain exclusively TIP's property.

6. **Confidentiality**

- a. The Software, Media and Documentation are confidential and constitute trade secrets of TIP. Licensee agrees that it has a relationship of trust and confidentiality with respect to the Software, Media and Documentation and agrees that, except as expressly instructed in documentation for Software, it shall not, and shall not permit others to, copy, use, disclose, recreate, reverse engineer, recompile, resell, rent, re-license, sublicense, provide others access to, nor modify the Software, Documentation or Media delivered by Licensor in whole or in part without the prior expressed written consent of TIP. All copies of Media and Documentation in Licensee's possession at any time shall contain all copyright, patent and proprietary notices specified by TIP and any third parties under contract with TIP which may have any rights in any of the Software, Media and Documentation. Licensee shall take all

security measures and procedures necessary to insure compliance with this Paragraph. This paragraph shall survive any termination of this Agreement. Licensee acknowledges that any breach by Licensee of the provisions of this paragraph will cause irreparable harm to TIP for which there is no adequate remedy at law. In the event of any such breach, TIP may, at Licensee's expense, obtain both immediate and permanent injunctive relief as well as such monetary damages or other relief as the Court may deem appropriate.

7. Payment Terms

- a. **License Orders and Initial Maintenance.** Payment in full for license fees and the fees for the Initial Maintenance Term, for all Software, Media and Documentation is due net 30 upon delivery of the license key to Licensee.
- b. **Maintenance Renewals.** Payment must be received prior to the expiration of the previous maintenance terms.
- c. **Professional Services and Billable Maintenance.** Payment for all professional services and Billable Maintenance shall be invoiced every two weeks and due net 10 days from receipt of TIP's invoice.

8. Maintenance and Support

- a. Licensor will provide Licensee with the Software maintenance and support services, described on Exhibit A, provided Licensee signs a SOFTWARE MAINTENANCE AGREEMENT in the form attached as Exhibit A and pays and remains current on all applicable maintenance and support fees described herein. The fee for the required first year maintenance is eighteen percent (18%) of the purchase price for the number of concurrent licenses licensed under this Agreement. The maintenance fee may be adjusted annually, per the Escalation of Fees clause. If Licensee discontinues receiving software maintenance service at the end of the first or any subsequent year and later wishes to resume receiving maintenance service, Licensor may, but is not obligated to, reinstate such service. Licensor may condition such reinstatement upon the execution by Licensee of a maintenance agreement in form and substance satisfactory to Licensor and payment by Licensee of all applicable fees. Such fees shall include the maintenance fee for the reinstated term and an upgrade fee that shall not exceed twenty-five percent (25%) of the total license fees paid by Licensee under this Agreement. For each year or partial year that Licensee did not renew software maintenance service on any supplied Interface, Licensor will undertake to provide the Software side of a working interface as part of a software maintenance agreement. As part of maintenance, Licensor will supply the Software side of the interface to the selected ERP business system's published specifications. Licensee acknowledges that Licensor is not supplying any portion of the ERP system software, nor the ERP side of any interface. Costs associated with the Software side of the Interface are included as part of the maintenance agreement, except that if any enhancements to the ERP system (that the Software is interfacing to) were part of a Licensee initiated enhancement to the interfaced ERP system. If Licensee initiated an enhancement, Licensor may assess a fee to integrate the Licensee-initiated enhancement into the Software.

9. Software Warranty

- a. TIP warrants, for one (1) year from Software delivery to Licensee, that the Software will perform substantially in accordance with the Documentation when operated per TIP's described environment.
- b. Licensee's sole and exclusive remedy, and TIP's sole and exclusive obligation, in case of any breach of the foregoing warranty, are to repair or replace the Software as required to cause it to perform as warranted. Should TIP determine that any failure of the Software to perform as

- warranted is caused in whole or in part by: (i) any modification to or unauthorized use of the Software by Licensee; or (ii) use of the Software by Licensee in an environment other than as recommended by TIP; or (iii) any failure or defect in any equipment, system, network, service or utility not under TIP's control; or (iv) user error or omission, then TIP shall have no obligation to remedy such failure and may, at its discretion, charge Licensee, and Licensee shall pay TIP, at TIP's then-current rates for any diagnostic or remediation services related thereto.
- c. TIP warrants that it owns all rights in and to the Software Products or otherwise has the authority to enter into this License Agreement, but does not purport to have any rights to or in the development language in which the application Software is written, or the operating system and databases on which it runs. TIP shall defend any action against Licensee for infringement of copyright of the Software Products of TIP, but not for any actions brought against Licensee as a result of Licensee's modification or unauthorized use of the Software.
- d. **THE FOREGOING WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY OF TIP RELATIVE TO SOFTWARE, AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR OR INTENDED PURPOSE. TIP DISCLAIMS ANY WARRANTY THAT SOFTWARE WILL MEET ANY PARTICULAR REQUIREMENT OR BUSINESS NEED OF THE LICENSEE, EVEN IF TIP HAS BEEN ADVISED OF SUCH REQUIREMENT OR NEED.**
10. **LIMITATION OF LIABILITY. LICENSOR'S AGGREGATE LIABILITY FOR DAMAGES TO LICENSEE FOR ALL CLAIMS OR CAUSES WHATSOEVER AND REGARDLESS OF THE NUMBER OF CLAIMS OR THE FORMS OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, SHALL BE LIMITED TO THE TOTAL SOFTWARE LICENSE FEE PAID BY LICENSEE. THESE REMEDIES ARE EXPRESSLY AGREED TO BE THE SOLE AND EXCLUSIVE REMEDIES OF LICENSEE. NO ACTION, REGARDLESS OF THE FORM, MAY BE BROUGHT MORE THAN ONE (1) YEAR AFTER THE OCCURRENCE GIVING RISE TO THE CAUSE OF ACTION.**
11. **CONSEQUENTIAL DAMAGES. LICENSOR WILL NOT BE LIABLE: (A) FOR PERSONAL INJURY OR PROPERTY DAMAGE; (B) FOR LOSS OF PROFITS OR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES EVEN IF TIP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (C) FOR ANY DAMAGES (REGARDLESS OF THEIR NATURE) CAUSED WHOLLY OR IN PART BY LICENSEE'S NEGLIGENCE OR FAILURE TO FULFILL ITS RESPONSIBILITIES HEREIN; OR (D) FOR ANY CLAIM AGAINST THE LICENSEE BY ANY THIRD PARTY. TIP SHALL NOT BE LIABLE FOR ANY DELAY OR FAILURE TO PERFORM ITS OBLIGATIONS HEREUNDER DUE TO ANY CAUSE BEYOND ITS REASONABLE CONTROL.**
12. **Taxes**
- a. Licensee shall be responsible for and shall pay any tax or levy imposed by any governmental authority on any fee or payment charged relative to the licensing of the Software including but not limited to sales taxes, use taxes, property taxes, tangible or ad valorem taxes, value add tax, duties and any customs charges, but excluding taxes based upon TIP's net income.
13. **Default**
- a. Licensee shall be in default under this Agreement if Licensee: (a) fails to make any payment hereunder to TIP when due or violates any provision of paragraph 6; or (b) breaches any other term, provision or condition contained in this Agreement and fails to cure such breach within thirty (30) days of receipt by Licensee of written notice from TIP of such breach. In the event of any default by Licensee, TIP may, in its discretion, do either or both of the following:

terminate this Agreement and all of Licensee's rights hereunder, or pursue such other remedies as may be available to TIP pursuant to this Agreement or otherwise available at law or in equity. No termination of this Agreement shall relieve Licensee of its obligation to make any payments required hereunder.

14. Miscellaneous

- a. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereunder and modification of this Agreement or any waiver of any provision hereunder shall not be binding on either party unless it is in writing and signed by both parties, and no waiver of any breach of any provision hereunder shall constitute a waiver of the same or any other provision of this Agreement.
- b. Acceptance of this Agreement is limited to acceptance of the terms and conditions contained in this document. This Agreement shall control in case of conflict with the terms of other agreements, schedules, purchase orders or other similar documents or forms that are entered into by the parties relating to this Agreement.
- c. The provisions of this Agreement can be severed, and if any one or more such provisions are judicially determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions or portions of this Agreement shall nevertheless be binding on and enforceable by and between the parties.
- d. All notice required or permitted hereunder shall be in writing and shall be sent by prepaid first class mail addressed to the parties as follows. A facsimile may be faxed with the original then sent via first class mail.

If to Licensee

Company Name	_____
Address 1	_____
Address 2	_____
City, State, Zip	_____
Country	_____
Telephone	() _____
Facsimile	() _____
Attn:	_____

If to TIP

TIP Technologies, Inc.
N14 W24200 Tower Place, Suite 100
Waukesha, WI 53188-1119
USA
Tel: 262-544-1211 x102
Fax: 262-544-1230
Attn: Contract Management

- e. This Agreement shall run to and bind all permitted successors and permitted assigns of each party including, but not limited to, any entity that is a party to a merger or a re-organization with either party hereto.
- f. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, excluding its conflicts of laws principles.

- g. Licensee acknowledges that the Software and all related documentation is subject to United States export control laws as well as applicable regulations issued by, among others, the U.S. Departments of Commerce, State and Treasury. Licensee will comply with all such laws and regulations. Without limiting the generality of the foregoing nor any other prohibition or restriction contained in this Agreement, Licensee will not directly or indirectly export, re-export, divert, transfer, furnish or otherwise make available the Software, or any copy or any part thereof, to, or to any person or entity in, Cuba, Iran, Iraq, Libya, North Korea or any other country that is subject to any U.S. embargo pursuant to Executive Order or to any other export limitations or restrictions, without the prior express written consent of Licensor and the United States government.
- h. Escalation of Fees. The maintenance fee may be escalated by no more than either three percent (3%) or the prior year's Consumer Price Index (CPI), whichever is greater, and will not exceed eighteen percent (18%) of then current software license pricing for the items described in Exhibit A – Software Maintenance Agreement Section 1: Covered Maintenance.

15. Notice to Government Users

- a. This is restricted computer software as defined in 48 C.F.R. 52.227-19. As provided in 48 C.F.R. 227.7202-3, the rights of the Department of Defense regarding its use, reproduction and disclosure are as set forth in this Agreement.

LICENSEE	TIP TECHNOLOGIES, INC.
By: _____	By: _____
Name: _____	Name: <u>Michael S. Miller</u>
Title: _____	Title: <u>President</u>
Date: _____	Date: _____
Tel: _____	Tel: <u>(262) 544-1211 x102</u>
Fax: _____	Fax: <u>(262) 544-1230</u>



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Software License Agreement Exhibits

Exhibit A –Software Maintenance Agreement