

# West Master Software Subscriber Agreement

MASTER AGREEMENT (the "Agreement") entered into between the State of Tennessee ("Subscriber") and West, a Thomson Reuters business ("West") regarding West Software, as follows:

**1. Designation of Licensed Products.** The terms and conditions of this Agreement are applicable to various West Software products. Subscriber is licensing the West Software product(s) specified in the applicable Exhibit(s) attached hereto and incorporated herein.

**2. Software License.**

**2.1. Grant.** West grants Subscriber a non-exclusive, non-transferable, limited license to use the Software set forth in the applicable Exhibit(s) hereto for the number of Attorneys or other authorized "Users" (as defined in the relevant Exhibit at its licensed site(s) identified in the applicable Exhibit, in object code only, in Subscriber's normal course of business, but excluding any new software feature or substantial additional functionality for which West, in its sole discretion, generally charges subscribers of the Software additional software subscription charges). A "Site" means all personal computers, servers or minicomputers (including networked systems) with the same operating system platform at a single location or at different locations which are connected by a single networked system (i.e., any combination of two or more terminals that are electronically linked and capable of sharing the use of a single software product). In addition, Subscriber's personnel who work at or are assigned to the licensed Site may use the Software on personal computers or laptops located off-site. The Software is protected by copyright and various U.S. and international patent applications.

**2.2. Copying.** Subscriber may make copies of the Software for backup purposes only. Each copy made by Subscriber must include the copyright/proprietary rights notice(s) embedded in and affixed to the Software. All other copying is prohibited.

**2.3. Other Restrictions.** Subscriber may not publish, transmit, retransmit, disseminate, broadcast, circulate, sell, resell, loan, lease, distribute or transfer Software or copies to third parties, nor reverse engineer, decompile, disassemble or otherwise attempt to discern the source code of the components of the Software. Subscriber may not use Software, nor allow Software to be used, to provide data management or processing services for third parties. Subscriber may not reproduce all or any portion of the Software (except as expressly permitted in this Agreement) or any accompanying user documentation ("Documentation"), or modify, translate or otherwise create derivative works of the Software. Subscriber agrees to notify its Attorneys and/or authorized Users who may have access to Software of the restrictions contained in this Master Agreement and to ensure their compliance with these restrictions. Notwithstanding anything above to the contrary the State is subject to and must comply with the Tennessee Public Records Act found at Tenn. Code Ann. Title 10 Chapter 7 Part 5.

**3. Other Licenses.** The Software may be used to access and use various West products and services, including Westlaw® ("West Services"). All access to and use of such West Services by means of the Software, including any charges for such access and use, will be governed by the terms of the applicable West user agreement.

**4. Title.** Subscriber hereby acknowledges and agrees that all right, title and interest in and to the Software, the Documentation and any other related materials are, and shall remain, vested solely in West and other software owners, if any, and Subscriber shall not hold itself out as having any ownership or other rights with respect thereto, except as specifically granted hereunder. Except as expressly permitted herein, Subscriber covenants and agrees that it shall make no use of the Software, the Documentation or any other related materials without West's prior written consent. Any and all goodwill associated with such rights shall inure directly and exclusively to the benefit of West.

**5. Confidential Information.**

**5.1** West acknowledges that any documents, the contents thereof, or other proprietary or confidential materials expressly designated as confidential that are provided to West by Subscriber during the Term of this Agreement ("Subscriber Confidential Information") are valuable assets of Subscriber. West ensure that the Subscriber Confidential Information is not used or disclosed except as expressly permitted by this Agreement. West will not permit any unaffiliated third party access to, in any manner, the Subscriber Confidential Information, except as provided in this Agreement. Subscriber  
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Confidential Information shall not include information that consists of ideas, concepts, know-how or techniques relating to the enhancement, customization, installation or implementation of the Software. West may access Subscriber's Software server to provide services as provided in this Agreement.

**5.2** Subscriber acknowledges and agrees that the Software constitutes a valuable proprietary product of West and that the Software, together with the terms of this Agreement, shall be referred to as the "West Confidential Information". Subscriber will take reasonable steps to ensure that the West Confidential Information is not used or disclosed except as expressly permitted by this Agreement. Subscriber will not permit any third party access to, in any manner, the West Confidential Information, except as provided in this Agreement. Subscriber may permit its independent contractors access to the West Confidential Information to the extent necessary for such contractor's provision of services to Subscriber if such contractor executes a confidentiality agreement with Subscriber or West which prohibits the contractor from using or disclosing the West Confidential Information; provided, however, that such independent contractors may not include any Competitor. A "Competitor" shall mean a third party that is regularly engaged in the business of developing or marketing software that performs the same or similar functions as one or more of the modules of the West software implemented by Subscriber. Notwithstanding anything above to the contrary the State is subject to and must comply with the Tennessee Public Records Act found at Tenn. Code Ann. Title 10 Chapter 7 Part 5.

**6. Charges and Modification of Charges.** "Software Subscription Charges" payable by Subscriber for use of the Software will consist of charges for the software license, and initial implementation, consulting, maintenance, and support services as provided in paragraphs 11 and 12 herein. During the Minimum Term as defined herein, Software Subscription Charges shall be billed to Subscriber as set forth in this paragraph 6 and in the applicable Exhibit, attached hereto, or as otherwise agreed to by the parties in writing. Software Subscription Charges may be modified upon at least 30 days prior notice to Subscriber in writing or online; provided, however, that Subscriber's Software Subscription Charges set forth in the applicable Exhibit hereto shall not be modified during the minimum term set forth in the applicable Exhibit ("Minimum Term") following the date West processes Subscriber's order ("Effective Date"). Upon conclusion of the Minimum Term, this Agreement will automatically renew for consecutive twelve (12) month periods ("Renewal Term(s)") unless either party gives notice of non-renewal to the other party at least thirty (30) days in advance of any Renewal Term, including the first Renewal Term; but in no event shall this agreement be automatically renewed past five (5) years from the initial effective date of this contract. In the event of a change in rates for any Renewal Term, West will provide Subscriber with thirty (30) days written or online notice prior to the end of any Renewal Term. In the event a change in rates is unacceptable to Subscriber, Subscriber may terminate this Agreement upon prior written notice to West any time up to the start of the upcoming Renewal Term. Subscriber will pay all invoices in full within forty five (45) days of date of invoice. If full payment is not made within 6 days, Subscriber may be charged up to the maximum legal interest allowed under Tennessee law on any unpaid balance. West may withhold and or delay delivery of software or services if Subscriber fails to comply with this Paragraph 6. Notwithstanding anything above to the contrary, the contract subscription charges shall be billed in accordance with the most up to date pricing agreement between West and the State of Tennessee that resulted from Event #396 or any subsequent pricing updates/agreements.

**7. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY.**

**7.1** West warrants that for the period ending ninety (90) days after the first date that Subscriber commences production use of the Software (the "Warranty Period") the Software will substantially conform to the Documentation (available at west.thomson.com.). THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, ANY APPLICABLE SCHEDULE OR LICENSE AGREEMENT, THE SOFTWARE IS PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A

PARTICULAR PURPOSE, ACCURACY, OMISSIONS, COMPLETENESS, CURRENTNESS AND DELAYS. SUBSCRIBER'S EXCLUSIVE REMEDY AND WEST'S AND/OR ITS AFFILIATES' ENTIRE LIABILITY UNDER THIS AGREEMENT, IF ANY, FOR ANY CLAIM(S) FOR DAMAGES RELATING TO THE SOFTWARE WHICH ARE MADE AGAINST THEM, INDIVIDUALLY OR JOINTLY, WHETHER BASED IN CONTRACT OR NEGLIGENCE, SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF SOFTWARE SUBSCRIPTION CHARGES PAID BY SUBSCRIBER RELATIVE TO THE SPECIFIC SOFTWARE FEATURE (i.e., THE SPECIFIC FUNCTION BEING PERFORMED) WHICH IS THE BASIS OF THE CLAIM(S) DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL WEST AND/OR ITS AFFILIATES BE LIABLE TO SUBSCRIBER FOR ANY LOST PROFITS OR OTHER CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES RELATING IN WHOLE OR IN PART TO SUBSCRIBER'S RIGHTS UNDER THIS AGREEMENT OR USE OF, OR INABILITY TO USE, THE SOFTWARE, EVEN IF WEST AND/OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER WEST NOR ITS AFFILIATES MAKE ANY WARRANTY THAT ACCESS TO THE SOFTWARE WILL BE UNINTERRUPTED, SECURE, COMPLETE OR ERROR FREE. SUBSCRIBER ACKNOWLEDGES THAT PROVISION OF THE SOFTWARE ENTAILS THE LIKELIHOOD OF SOME HUMAN AND MACHINE ERRORS, DELAYS, INTERRUPTIONS AND LOSSES, INCLUDING THE INADVERTENT LOSS OF DATA OR DAMAGE TO MEDIA. The performance of the Software varies with various manufacturers' equipment with which it is used. Certain software used by Subscriber may not be capable of supporting the Software. West does not warrant the level of performance of the Software or that earlier versions superseded by new versions (whether or not distributed to Subscriber) will continue to be capable of access to and use with West Services. Notwithstanding anything in this section to the contrary, any provision or provisions of this section will not apply to the extent they are finally determined by a court of competent jurisdiction, including appellate review if pursued, to violate the laws or Constitution of the State of Tennessee.

**7.2 Failures Not Caused by West.** West will not be responsible to the extent that the Software fails to perform due to one or more of the following: (1) the malfunction of software not provided by West (2) the malfunction of hardware, (3) Subscriber's negligence or fault, (4) Subscriber's failure to follow the instructions set forth in the Documentation, (5) material changes in the operating environment not authorized by West, (6) modifications to or changes in the Software not made or suggested by West or (7) Subscriber's failure to implement and maintain a proper and adequate backup and recovery system for the West database or user files. If West discovers that a failure is caused by one of the above, West reserves the right to charge Subscriber for its work in investigating such failure. At Subscriber's request and at a fee to be agreed upon, West will thereafter assist Subscriber in resolving such failure. It is Subscriber's responsibility to develop and implement a proper and adequate backup and recovery system. The Agreement will be governed by and construed under the laws of Tennessee.

**7.3 Remedies.** The remedies in paragraphs 8.1 (Infringement Claims), 9 (Term and Termination), and 12.4 (Remedies) are Subscriber's exclusive remedies and are in lieu of all other legal or equitable remedies and all liabilities or obligations on the part of West for damages (except for bodily injury) arising out of, relating to, or in connection with this Agreement, including, but not limited to, the licensing, delivery, installation, use or performance of the Software or the integration of the Software with other software or hardware.

## **8. [Intentionally left blank].**

## **9. Term and Termination.**

**9.1** This Agreement will become effective upon approval and acceptance by West, and will continue in effect for the Minimum Term as set forth in the applicable Exhibit. The Agreement will renew thereafter pursuant to paragraph 6 (Charges and Modification of Charges) herein. Notwithstanding the foregoing, (i) West may terminate this Agreement immediately upon giving written notice of termination to Subscriber if Subscriber commits a material breach of any obligation to West under any other agreement between the parties; and (ii) either party may terminate this Agreement immediately upon giving written notice of termination to West after receiving notice of an amendment (as permitted under paragraph 10.1) which contains new terms that materially alter the terms of this Master Agreement and are acceptable to Subscriber; (iii) either party may terminate the Agreement immediately upon giving written notice of termination to the other party if the other party commits a material breach of the Agreement; and (iv) either party may terminate the Agreement as provided in paragraph 6 (Charges and Modification of Charges) above.

**9.2** Upon the termination of the Agreement, Subscriber's license and right to use the Software or any part thereof shall end immediately and within thirty (30) days of such termination, Subscriber shall return to West the Software, the Documentation, and any other documents, manuals, data, information or materials furnished by West, as well as any copies thereof and shall destroy any embodiments of these materials stored in or on a reusable electronic or similar medium, including but not limited to memory, disk packs, tape, and other peripheral devices, and certify such destruction in writing to West. In the event of a conflict between Section 9 Term and Termination of this agreement and the State's terms and conditions, the States term and conditions is control.

## **10. General Provisions.**

**10.1 Effect of Agreement.** This Master Agreement which includes State's Contract #44073 (including any applicable Exhibits and/or attachments hereto) (collectively, "Agreement") embodies the entire understanding between the parties with respect to the subject matter of the Agreement and supersedes any and all prior understandings and agreements, oral or written, relating to the subject matter. Furthermore, the Agreement supersedes the terms and conditions of any clickthrough agreement associated with the Software. Except as otherwise provided in the Agreement, West may amend the terms and conditions of this West Master Software Subscriber Agreement by giving Subscriber at least thirty (30) days prior written notice. During the thirty (30) days following such notice, Subscriber may request in writing to West that the parties enter into good faith negotiations regarding the new terms and conditions. If the parties do not reach an understanding and do not execute a mutually agreeable amendment to this West Master Software Subscriber Agreement within thirty (30) days thereafter, Subscriber may terminate the Agreement pursuant to paragraph 9.1(ii) herein upon written notice to West. Notwithstanding the foregoing, Subscriber may, at its option and with written notice to West, continue its access to and use of the Software for twelve (12) calendar months from the date termination pursuant to paragraph 9.1(ii) herein would otherwise be effective ("Transition Period"), under the terms and conditions (including pricing terms set forth in the applicable Exhibit hereto) of the Agreement, as modified by the new amendment. During the Transition Period, West shall be relieved of its obligations under paragraphs 11 and 12 of this Master Agreement. Any other amendment must be in writing and signed by both parties. West, as used herein, applies to West Publishing Corporation and West Services, Inc.

**10.2 Force Majeure.** The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, wars, epidemics or any other similar cause.

**10.3 Notices.** Except as otherwise provided herein, all notices must be in writing to West at 610 Opperman Drive, P.O. Box 64833, St. Paul, Minnesota 55164 - 1803, Attention: Customer Service, and to the State of Tennessee at Central Procurement Office, Attn: Category Team Lead, 312 Rosa L. Parks Avenue, Tennessee Tower, 3<sup>rd</sup> Floor, Nashville, TN 37243.

**10.4 Governing Law and Jurisdiction for Government Subscribers Only.** The Agreement will be governed by and construed under the laws of Tennessee. The state and federal courts sitting in Tennessee will have exclusive jurisdiction over any claim arising from or related to the Agreement and each party consents to the exclusive jurisdiction of such courts.

**10.5 Assignment.** Neither the Agreement nor any part or portion may be assigned, sublicensed or otherwise transferred by Subscriber without West's prior written consent. Should any provision of the Agreement be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions will not be affected thereby. Failure of any party to enforce any provision of the Agreement will not constitute or be construed as a waiver of such provision or of the right to enforce such provision. The headings and captions contained in this Master Agreement are inserted for convenience only and do not constitute a part of this Agreement.

**10.7 Export Laws.** The Software and its related Documentation may not be exported or reexported in violation of the U.S. Foreign Corrupt Practices Act and its implementing regulations, the U.S. Export Administration Act and its implementing regulations or any other applicable laws, rules and regulations. Subscriber shall bear all expenses relating to any necessary licenses and/or exemptions with respect to the export from the United States of the Software to any location so as to be in compliance with all applicable laws, rules and regulations.

**10.8 U.S. Government Restricted Rights.** Use, duplication or disclosure by the Government is subject to restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer-Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Product clause in DFARS 252.227-7013, or in subdivision (c)(1) and (c)(2) of the Commercial Computer Product - Restricted Rights clause at 48 CFR 52.227-19, as applicable, and in similar clauses in the NASA FAR Supplement.

**10.9 Feedback.** Any and all Feedback that Subscriber provides to West shall become the exclusive property of West without any payment, accounting, remuneration, or attribution to Subscriber. "Feedback" means information provided, in any manner, by or on behalf of Subscriber with respect to any Feature, West product or service, or their enhancement, customization, configuration, installation, or implementation, including but not limited to ideas, concepts, suggestions, materials, functions, methods, processes, and rules.

**10.10 Survival.** Paragraphs 4 (Title), 5 (Confidential Information), 6 (Charges and Modification of Charges), 7 (Disclaimer of Warranties and Limitation of Liability), 8 (Indemnification), 9 (Term and Termination), 10 (General Provisions); and 12.4 (Remedies) as amended shall survive any termination of this Master Agreement.

**11. Maintenance Terms.**

**11.1 Maintenance Services.** Maintenance Services consist of the following:

**11.1.1 Updates.** West may provide Updates for the Software to Subscriber. Updates shall mean any periodic Software releases, if any, for purposes of 1) providing minor new functionality or features, or 2) resolving technological issues related to Subscriber's then-current Version (as defined below) of the Software. Subscriber will be responsible for installing such Updates..

**11.1.2 Telephone Support.** West will provide telephone support for purposes of handling Subscriber questions relating to the operation of the Software. Telephone support is provided by West Customer and Technical Support Representatives at 1-800-937-8529 or other such telephone number as set forth in the applicable Exhibit.

**11.2 West Obligations.**

**11.2.1** West's obligations hereunder will extend only to (a) the Updates and Versions of the Software provided to Subscriber by West (see the applicable Exhibit); and (b) Software that has not been modified or altered in any way by anyone other than West or under West's direction. As used herein, "Version" means a new release of the Software (outside a point release) that includes a major revision, alteration, improvement, modification, or the like, to the current Software release.

**11.2.2** Maintenance Services will not include services for the items for which West is not responsible set forth in paragraph 7.2 of this Master Agreement.

**11.3 Subscriber Obligations.**

**11.3.1 Cooperation.** Subscriber shall insure that West's personnel are provided with such information under Subscriber's control as is reasonably necessary to enable West to comply with its obligations hereunder.

**11.3.2 Updates and New Versions.** In the event that West determines that any of Subscriber's reported maintenance problems cannot be resolved due to Subscriber's failure to install Updates or procure new Versions of the Software, Subscriber will be given a reasonable opportunity to install such Updates or procure a new Version. If, after such opportunity, Subscriber fails or otherwise refuses to install such Updates or procure such new Version, West shall be relieved of its obligations under this paragraph 11.

**12. Implementation and Training Services.**

**12.1 Installation of the Software.** West and Subscriber shall cooperate to identify the hardware and related communications equipment necessary for installation of the Software. Installation of all hardware and supporting software so that minimum configuration requirements for installation of the Software are met is the responsibility of Subscriber. Once the configuration of the hardware, including the operating system, conforms to the minimum configuration requirements provided by West, West shall provide instructions for the download and installation of the Software ("Installation").

**12.2 Subscriber Obligations.** When West performs any services at Subscriber's facility, Subscriber shall be responsible for providing a safe and appropriate work space and access to all terminals, materials and related resources that may be reasonably required by West for timely performance of its obligations hereunder. Subscriber shall provide to West in a timely manner any information, assistance, review, feedback or approvals that are the responsibility of Subscriber hereunder.

**12.3 Training.** West shall make training available to Subscriber at locations and times to be mutually determined by West and Subscriber.

**12.4 Remedies.** Subscriber's sole remedy for West's material breach of its obligations under this paragraph 12 will be to have West reperform the defective services so that they conform to the specifications provided herein. If West is unable after a reasonable time to provide conforming services, , Subscriber may terminate the relevant Exhibit if such defective services cause the Software to fail to conform to the Documentation provided with the Software.

**SUBSCRIBER**

Signature \_\_\_\_\_

Name (please print) \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Firm Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Contact \_\_\_\_\_

Telephone \_\_\_\_\_

E-mail Address \_\_\_\_\_

Sales Representative \_\_\_\_\_

**WEST, A THOMSON REUTERS BUSINESS**

Signature \_\_\_\_\_

Name (please print) \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_