Software License and Services Agreement

This Software License and Services Agreement ("Agreement") is made and entered into as of this ___ day of _____, 19___, between BC, Inc. ("BC") and _____ ("Customer").

In consideration of the mutual covenants and conditions contained in this Agreement, the parties agree as stated herein. The following attachments, required when applicable, are also part of this Agreement:

A.   Current Licensing Practices
B.   Software Maintenance Terms & Conditions
C.   Professional Services Terms & Conditions

1.   License.

A.   BC hereby grants to Customer a nonexclusive and nontransferable license, during the term of this Agreement, to use the object code for the Software. For the purpose of this Agreement, "Software" shall mean all versions, including current, previous, and subsequent versions, of all software products, together with operating instructions, user manuals, training material, and other documentation as may, in BC's sole discretion, be supplied to Customer.

B.   Customer shall use the Software for internal purposes only in accordance with BC's published licensing practices, as may be changed by BC from time to time, or as otherwise agreed to in writing. BC's current licensing practices are described in Attachment A.

C.   Customer may not (a) modify, adapt, translate, rent, lease, or loan the Software; (b) electronically transmit the Software over a network except as necessary for Customer's licensed use of the Software; (c) modify, disassemble, decompile, or reverse engineer the Software; (d) transfer possession of any copy of the software to another party; or (e) use the Software in any way not expressly provided for in this Agreement.

2.   Maintenance, Training, and Other Services.

Customer may obtain Software support and updates in accordance with the Software Maintenance Terms and Conditions included as Attachment B to this Agreement, provided Customer executes such Attachment B. If Customer orders maintenance without executing such Attachment B, it will be provided under BC's then-current maintenance terms and conditions. Maintenance, training, and other services are provided at prices quoted in writing by BC.

3.   Payment, Prices.

A.   Invoices shall be issued upon delivery of the products or services, unless specified herein to the contrary, and shall be due and payable in United States currency upon receipt by Customer. Payment shall be overdue thirty (30) days after the delivery date specified on the invoice. Overdue payments shall be subject to a finance charge of 1½% for each month or

fraction thereof that the invoice is overdue, or the highest interest rate permitted by applicable law, whichever is lower.

B. Product(s) will be shipped FOB BC's facility in San Francisco, California, U.S.A., by commercial surface transportation, unless Customer requests in writing shipment by other means. Transportation charges for Software will be prepaid and billed to Customer. Unless otherwise specified by Customer, BC will arrange for insurance on all shipments while in transit and will bill Customer for such charges.

C. The prices stated in BC quotations are exclusive of any federal, state, municipal, value-added, foreign withholding or other governmental taxes, duties, fees, excises, or tariffs now or hereafter imposed on the production, storage, licensing, sale, transportation, import, export, or use of the Software or any improvements, alterations, or amendments to the Software. Customer shall be responsible for, and if necessary reimburse, BC for all such taxes, duties, fees, excises, or tariffs, except for governmental or local taxes imposed on BC's corporate net income.

4. Title to Software.

A. Title to and ownership of the Software will at all times remain with BC or licensors to BC of software being sublicensed to Customer hereunder. Customer shall include BC's copyright or proprietary rights notice on any copies of the Software or associated documentation, including copyright or proprietary rights notices of third parties that are included on media or in documentation provided by BC. Customer acknowledges that the Software is the property of BC or its licensors and that Customer's rights in and to the Software may not be assigned, sub-licensed, or otherwise transferred for any reason without the prior written consent of BC.

B. Customer shall ensure that the phrase "Powered by BC 121" shall appear prominently on the logon screen, splash screen, or other first view of the Customer's application seen by consumers or other end-users when they enter such application. The above phrase shall be a hypertext link to a URL specified by BC.

5. Warranty.

BC warrants that the Software will conform in all material respects to its written specifications when installed and for 90 days thereafter. For purposes of this Agreement, the sole source of such specifications shall be BC's written user documentation. Customer will notify BC within 10 days of the expiration of the warranty period of any nonconformity. Where a material nonconformity exists within the warranty period, and proper notice has been given to BC, BC will, as its sole and exclusive liability to Customer, use due diligence to correct the nonconformity and provide Customer with one copy of any such corrected version of the Software, or, if BC is unable to correct such nonconformances within a reasonable period of time, refund all license fees paid to it for the Software. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES.

6.   Limitation of Liability.

BC's liability to Customer under this Agreement or for any other reason relating to the products and services provided under this Agreement, including claims for contribution or indemnity, shall be limited to the amount paid to BC under this Agreement. NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY UNDER THIS AGREEMENT, CUSTOMER AGREES THAT IN NO EVENT SHALL BC BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS OR LOSS OF USE.

7.   Intellectual Property Indemnity.

BC will defend any action against Customer claiming that the Software constitutes direct infringement of a duly issued United States patent existing or issued prior to the Effective Date or United States copyright. BC shall indemnify Customer for any loss, cost, damage, or expense finally awarded against Customer by a court of competent jurisdiction in connection with the foregoing. BC's obligations under this section are conditioned upon (x) BC having sole control of any such action, and (y) Customer notifying BC immediately in writing of the claim and giving authority, information, and assistance necessary to settle or defend such claim. If the use of the Software infringes or is enjoined, or BC believes it is likely to infringe or be enjoined, BC may, at its sole option, (i) procure for Customer the right to continue use of the licensed Software as furnished, (ii) replace the licensed Software, (iii) modify the licensed Software to make it non-infringing, or (iv) terminate the license and refund the license fee for the Software, less a proportional adjustment for the time the Software was used by Customer, equal to the ratio of the time elapsed since the delivery date to five (5) years. The indemnity provided herein shall not apply if the alleged infringement arises from: (a) the use of other than a currently supported, unaltered release of the licensed Software; (b) the use of Software that has been modified or merged with other programs by Customer; or (c) the use of the licensed Software in combination with software or hardware not provided under this Agreement.

8.   Confidentiality of Software and Documents.

A.   Customer shall not reproduce, duplicate, copy, sell, lease, or otherwise disclose, transfer, or disseminate the Software, including operating instructions, user manuals, and training materials, in any medium except as authorized herein. Customer may make copies of the Software, in machine readable form, only as is reasonably necessary for archival and backup purposes. Any such authorized copy shall contain BC's copyright/proprietary rights notices as specified in Section 4 above.

B.   Customer expressly undertakes, using reasonable efforts not less than it exercises for its own confidential materials, to retain, and to require its employees or consultants to retain, the Software in confidence and will make no use of such information, except under the terms and during the existence of this Agreement, and only to the extent that such use is necessary to Customer's employees or consultants in the course of their employment.

C.   The provisions of this Section shall survive the termination of this Agreement for a period of five (5) years. Notwithstanding the expiration of the obligation to exert the standard of care specified in this Agreement, Customer may not transfer Software or information licensed hereunder to a third party.

9.   Term/Termination.

This Agreement is effective on the earlier of (i) the date of shipment of the Software or (ii) the date set forth above, and continues until terminated as provided herein, or by agreement of both parties. BC may terminate this Agreement upon: (a) any material breach of this Agreement by Customer that is not cured within 10 days following written notice thereof; (b) Customer's insolvency, bankruptcy, suspension of business, assignment of assets for the benefit of creditors, voluntary dissolution, or appointment of a trustee for all or any substantial portion of Customer's assets; or (c) failure by Customer to pay license fees for Software under the payment terms specified in this Agreement or as stated on BC's invoice for such Software. In the case of annual or other periodic fees, Customer may terminate its rights by electing not to pay such fees, in which case this Agreement terminates on the last day of the last period for which Customer had paid such fees. Upon termination, all licenses granted hereunder terminate and Customer will immediately destroy the Software and all copies in any form.

10.   General.

A.   Waiver/Amendment. No waiver, amendment, or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment, or modification is sought to be enforced.

B.   Assignment. Either party may assign this Agreement to an entity acquiring substantially all of its assets or that merges with it, provided that such assignee agree in writing to assume all obligations under this Agreement. Except as set forth above, neither party may assign any of its rights or delegate any of its obligations under this Agreement to any third party without the express written consent of the other. Subject to the above, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

C.   Disputes. The rights of the parties hereunder shall be governed by the laws of the State of California. Any suits brought hereunder shall be brought in the federal or state courts in San Francisco County, California, and Customer admits the jurisdiction thereof.

Customer agrees that BC has the right to obtain injunctive and other equitable relief in any court of competent jurisdiction at any time. Customer acknowledges that the Software contains trade secrets, the disclosure of which would cause substantial harm to BC that could not be remedied by the payment of damages alone. Accordingly, BC will be entitled to preliminary and permanent injunctive relief and other equitable relief for any breach of BC's intellectual property rights in the Software.

D.   Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect.

E.   Export. Customer acknowledges that the laws and regulations of the United States restrict the export of the Software. Customer agrees that it will not export or re-export the Software in any form without first obtaining written approval from BC and the appropriate United States and foreign government approvals.

F.   Notice. Any notice, consent, or other communication hereunder shall be in writing and shall be given personally or by express delivery to either party at their respective addresses or such other address as may be designated by written notice of either party. Notices shall be deemed given when delivered or seven days after deposit in the mail.

G.   Entire Agreement. This Agreement, including all Attachments hereto, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof and supersedes all proposals, oral, or written, all previous negotiations, and all other communications between the parties with respect to the subject matter hereof. The terms of this Agreement shall prevail notwithstanding any different, conflicting, or additional terms that may appear in any purchase order or other Customer document. All products and services delivered by BC to Customer are subject to the terms of this Agreement unless specifically addressed in a separate agreement.

BC: **CUSTOMER:**

By: _____   By: _____

Name: _____   Name: _____

Title: _____   Title: _____

Attachment A to
Software License and Services Agreement
BC Licensing Practices

BC's standard licensing practices are as follows for the products listed below and are subject to change on 30 days notice.

- Development System – licensed on a per-user basis. In other words, each individual who will use the Development System to develop BC 121 applications must be separately licensed.

- Deployment System – licensing is based on the maximum number of profiled users permitted to be tracked by the BC 121 software.

- DCC – licensed on a per-machine basis. In other words, each computer on which the DCC is installed must be separately licensed.

These licensing practices are subject to change.

Attachment B to
Software License and Services Agreement
Software Maintenance Terms and Conditions

This Attachment B is incorporated into the Software License and Services Agreement (the "Agreement") dated the ___ day of _____, 19__ between BC, Inc. ("BC") and _____ ("Customer"). The terms and conditions contained herein are subject in all respects to the terms and conditions of that Agreement, except that in the event of a conflict between the terms of this Attachment B and the Agreement, the terms of this Attachment B shall govern.

1.   Software Maintenance.

BC agrees to provide Customer with software maintenance subject to the following provisions and conditions:

A.   Software maintenance shall be provided during the term of the Agreement for the Software, which may be updated from time to time by mutual agreement. Software provided by BC but for which BC does not provide maintenance will be specifically identified.

B.   Software maintenance shall include (i) telephone and electronic mail support provided during BC's normal working hours, and (ii) standard releases containing improvements or modifications to the Software, where such improvements or modifications are not priced as separate new products or options ("Standard Release").

C.   Software maintenance shall also include, at BC's sole option, "Patch Releases," which are intended to address material deviations between the Software and its published specifications until a Standard Release can be made available.

D.   BC shall not be responsible for maintaining Software that fails to comply with its published specifications if such non-compliance is the result of: (i) modification of the Software by Customer or third parties, or (ii) use of the Software with other BC software not covered under BC's Software Maintenance Terms and Conditions. If BC expends its time on a noncompliance found to be the result of any of the preceding, Customer shall pay BC for such time at BC's then-current hourly consulting rate.

E.   Customer agrees to provide BC with timely written notification containing complete details of software problems using a standard format defined for such purpose by BC. Customer agrees to cooperate fully in providing BC with Customer's source code, in machine-readable form, and other materials necessary to reproduce a reported software problem. Subject to Customer's security requirements, Customer agrees to provide BC reasonable direct or remote access to Customer's computer system to diagnose reported software problems.

F.   Customer shall designate one or, with BC's prior written approval, more than one Support Contact Person, who shall be responsible for communicating support issues to BC.

G.   Customer agrees to install, or arrange for installation of, each new Standard Release promptly after receipt. BC agrees to provide software maintenance for any Standard Release until ninety (90) days after shipment of the subsequent Standard Release. Customer may install Patch Releases at its option; BC agrees to provide software maintenance for any Patch Release only while software maintenance is available for the Standard Release on which such Patch Release is based.

H.   If deviations between the Software and its published specifications are the result of errors in the published specifications and not in the Software, corrections to the published specifications will be provided to Customer within a commercially reasonable time.

2.   Terms and Termination.

If not terminated as specified below, software maintenance automatically will be renewed for successive one-year periods at BC's then current prices for software maintenance. Either party may terminate maintenance at any time by giving the other party ninety (90) days prior written notice. In the event of termination of the Agreement, maintenance of the Software will be automatically terminated and all fees or charges due under this Agreement shall be immediately due and payable without notice.

3.   Travel Expenses.

Customer agrees to reimburse BC for all travel-related expenses for travel incurred at Customer's prior written request, including travel to and from Customer's site, lodging, meals, telephone, and shipping of materials, as may be necessary in connection with duties performed under these Software Maintenance Terms and Conditions.

4.   Payment, Prices.

Annual software maintenance fees are due and payable in advance; in all other respects payments are subject to the terms and conditions of the Agreement.

Pricing of software maintenance is specified for each item of Software in price quotes made by BC to Customer. Upon annual renewal, prices will be adjusted to reflect BC's then-current software maintenance prices for the Software.

If Customer initially declines software maintenance and then subsequently elects to commence maintenance, or if maintenance for an item of Software is discontinued at Customer's request and then subsequently renewed, Customer shall pay the maintenance fees that would have been due for the period during which maintenance was not provided.

5.   Warranty.

BC warrants that each Standard Release of the Software will conform in all material respects to its written specifications when installed and for 90 days thereafter. Where a material nonconformity exists within the warranty period, and proper notice has been given to BC, BC

will, as its sole and exclusive liability to Customer, use due diligence to correct the nonconformity and provide Customer with one copy of any such corrected version of the Software, or, if BC is unable to correct such nonconformances within a reasonable period of time, refund the most recent maintenance fee paid to it. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES.

6.   Limitation of Liability.

BC'S LIABILITY TO CUSTOMER UNDER THIS AGREEMENT OR FOR ANY OTHER REASON RELATING TO THE SUBJECT SOFTWARE OR ANY SERVICES PROVIDED HEREUNDER, INCLUDING CLAIMS FOR CONTRIBUTION OR INDEMNITY, SHALL BE LIMITED TO THE SOFTWARE MAINTENANCE FEE PAID FOR THE SOFTWARE.

BC: **CUSTOMER:**

By: _____   By: _____

Name: _____   Name: _____

Title: _____   Title: _____

Attachment C to
Software License and Services Agreement
Professional Services Terms and Conditions

This Attachment C is incorporated into the Software License and Services Agreement (the "Agreement") dated the ___ day of _____, 19__ between BC, Inc. ("BC") and _____ ("Customer"). The terms and conditions contained herein are subject in all respects to the terms and conditions of that Agreement, except that in the event of a conflict between the terms of this Attachment C and the Agreement, the terms of this Attachment C shall govern.

1.   Scope of Work; Consideration.

BC will use commercially reasonable efforts to perform such services as set forth in a purchase order prepared by Customer and accepted by BC (the "Statement of Work"). In consideration of BC's performance as herein set forth, Customer agrees to pay BC the actual charges for the services performed and expenses incurred. Customer will be invoiced once each month for all charges incurred in the previous period(s).

2.   Limitation of Charges.

It is currently estimated that the total charge to the Customer for performance of this contract will be $_____ and no liability shall be incurred by the Customer in excess of such amount unless and until this Agreement is so amended in writing by both parties. This estimate includes professional services, but not materials and out-of-pocket expenses reasonably required for contract performance, including office and travel expenses, secretarial and graphics, documentation, research materials, and data processing, all of which shall be invoiced separately. BC is not required to continue performance beyond the funding limitation set forth herein and as may be modified by amendment hereto unless and until Customer shall have notified BC in writing that such funding limitation has been increased and shall have specified in such notice a revised estimated charge. When and to the extent that the funding limitation set forth has been increased, any charges incurred by BC in excess of the funding limitation prior to the increase shall be allowable, due and payable to the same extent as if such charges were incurred after such increase in the estimated charge and funding limitation.

3.   Changes.

It is understood by the parties that because of the developmental nature of the project called for by this contract, the Statement of Work may require changes and modifications during performance. In order to provide a mechanism for accomplishing such changes, the parties agree that such changes shall be made in writing and signed by authorized representatives of Customer and BC.

All such changes shall subsequently be incorporated in an amendment to this Agreement and shall specify the changes ordered, any increases in the estimated charges for performance, adjustment to the schedule of performance, and any changes to other terms and conditions as may be effected thereby.

4.   Title.

BC shall have title to the software, systems design, and documentation arising out of performance or delivery to Customer under this contract. The parties acknowledge that performance hereunder may result in the development of new concepts, software, methods, techniques, processes, adaptations, and ideas, in addition to BC's prior technology which may be incorporated in BC's performance. The parties agree that the same shall belong to BC exclusively without regard to the origin thereof.

With respect to all such software, system design information and documentation delivered to or disclosed to Customer pursuant to the Statement of Work ("Application Software"), BC hereby grants to Customer or Customer's affiliates a perpetual, irrevocable, non-exclusive, non-transferable, royalty-free license to use the Application Software for Customer's internal use only.

5.   Limitation of Liability.

BC'S LIABILITY TO CUSTOMER UNDER THIS AGREEMENT OR FOR ANY OTHER REASON RELATING TO THE SUBJECT SOFTWARE OR ANY SERVICES PROVIDED HEREUNDER, INCLUDING CLAIMS FOR CONTRIBUTION OR INDEMNITY, SHALL BE LIMITED TO THE FEES PAID FOR THE SOFTWARE AND SERVICES PROVIDED HEREUNDER.

6.   Disclaimer of Warranty.

THE SERVICES PROVIDED UNDER THIS ATTACHMENT C ARE OFFERED EXCLUSIVE OF ANY WARRANTY.

7.   General Indemnity.

The parties acknowledge that it may be necessary for the employees of each to be present at the facilities of the other for extended periods of time. The parties agree to provide the employees of the other with all reasonable facilities and services to assure that their services may be properly performed. Each party will instruct their employees to conform with the internal regulations and procedures of the other party while on such party's premises. Additionally, each party agrees to indemnify, defend, and save harmless the other party, its officers, agents and employees from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the sole negligence of the party in performance of this Agreement.

BC: **CUSTOMER:**

By: _____   By: _____

Name: _____   Name: _____

Title: _____   Title: _____