

## TERMS AND CONDITIONS OF SALE

**1. Orders.** This is a legal agreement (the "Agreement") between the entity which ordered products and/or services (our "Customer") and Scantron Corporation ("Scantron"). As used herein "Scantron Schedules" mean the Scantron product and/or service schedules, proposals or other descriptions providing the terms pursuant to which Scantron and/or its affiliates and subcontractors will provide and Customer will purchase the products and services described therein. "Product" means the hardware, software, forms printed by Scantron (the "Forms"), third party products or other items provided by Scantron and/or its affiliates and subcontractors as described in the applicable Scantron Schedule. "Service" means the installation, training, consulting, support or other services provided by Scantron and/or its affiliates and subcontractors as described in the applicable Scantron Schedule. The "Products" and "Services" include any documentation and click-through license agreement accompanying the applicable Product or Service ("Documentation"). Products and Services purchased by Customer will be set forth in an applicable purchase order or other applicable order document (collectively, a "purchase order"). This Agreement, including any Scantron Schedules, and the purchase order form the complete contract for this transaction between Scantron and Customer. If you do not agree to the terms of this Agreement, promptly return the unopened Product package and accompanying items for a refund of the applicable fee. A purchase order is not effective until accepted by Scantron and, once accepted, is firm and noncancellable. Terms of any Customer issued order forms or any other communication which are additional to or inconsistent with this Agreement are not binding unless Scantron expressly assents to such terms in writing. Scantron will use its best commercially reasonable efforts to deliver the Products and Services specified in an applicable purchase order to Customer on or before the specified delivery dates. Customer will promptly inspect and accept or reject the Products and/or Services upon delivery. Absent Customer's earlier written acceptance, Products and Services are accepted 30 days following delivery.

**2. Software License Grant.** To the extent that software Products are acquired by Customer under this Agreement (the "Software"), Scantron grants a non-exclusive, non-transferable license to the Software (the "License Grant"). Documentation is included in and with the license for the Software. Each License Grant is only for the United States and Canada and provides Customer with the right to use the Software object code (not source code) for Customer's internal purposes only, to perform services in the normal course of Customer's business, and consistent with the applicable Documentation, which define any additional or alternative terms and conditions of the License Grant. Scantron or its designated agents shall have the right to enter and inspect Customer's records and/or its computer systems for the purpose of auditing Customer's usage of the Software. Access will be permitted with reasonable advance notice during business hours.

**3. Title; Risk of Loss; Delivery.** To the extent that hardware Products are purchased by Customer under this Agreement, Scantron transfers title to Customer upon shipment of the hardware Products. However, Scantron retains a purchase money security interest in the hardware Products until paid for in full by Customer. Customer agrees to execute appropriate documents to permit Scantron to perfect its purchase money security interest. Scantron bears the risk of loss for Products up to and including their date of shipment. Thereafter, Customer assumes the risk of loss. All Products will be shipped FOB Origin. If Customer is to lease any of the hardware Products, a separate leasing agreement must be executed.

**4. Services.** To the extent any Services are purchased by Customer under this Agreement, all technical information, custom software (in object code only), know-how and other intellectual property that may be supplied by Scantron to Customer in the course of performing any Services (the "Work Product") is licensed to Customer in accordance with the provisions of this Agreement and Documentation. Upon delivery, such custom software shall be "Software" under the terms of this Agreement. The Scantron Schedule for software assurance service, software support and/or product maintenance is available upon request. Products must be continuously under warranty and then service, support and/or maintenance (as applicable) or a reinstatement fee may apply in order to obtain such Services in the future. CUSTOMER ACKNOWLEDGES THAT AS PART OF ANY INSTALLATION SERVICES, SCANTRON MAY "ACCEPT" CLICK-THROUGH AGREEMENTS FOR THE PRODUCTS AND THIRD PARTY PRODUCTS ON BEHALF OF CUSTOMER. Hardcopies of such click-through agreements are available upon request.

**5. Compensation.** In addition to applicable Product fees and Services fees, Customer will reimburse Scantron's out-of-pocket costs including shipping and reasonable travel and living expenses. Invoices shall be paid within 30 days of receipt without deduction, withholding or offset. Scantron may suspend any License Grant and/or Services provided under this Agreement until payments are brought current. Amounts not paid when due are subject to finance charges of 1.5% per month or the highest rate permitted by law (whichever is lower). Customer will pay or reimburse Scantron for all duties, taxes (other than taxes on Scantron's income), fees or other similar amounts assessed or imposed by governmental authorities. Scantron may at any time change fees for Products, Services or other items respecting future orders. Fees for Services not scheduled within 9 months of invoice date will be forfeited, unless extended in writing by Scantron.

**6. Term; Termination.** This Agreement remains in effect until Services are complete and all License Grants extended under this Agreement, if any, cease. If a party fails to cure a default within 30 days after written notice explaining the default, the non-defaulting party may immediately terminate any License Grants, Services (including Work Products) or other items to which the default relates. Termination of this Agreement terminates further performance. If the termination is based upon a default of any License Grant, Customer will immediately stop using all Software, promptly remove it from any hardware on which the Software is installed, and within 20 days of termination return to Scantron or destroy all copies of any Software and Documentation in Customer's possession or control and certify the return or destruction of all Software and Documentation. Early termination does not relieve Customer of any payment obligations which arise prior to the effective date of such termination.

**7. Proprietary Rights; Confidentiality/Privacy/Security.** **A. Proprietary Rights.** The Products and Services (including any Work Product) are protected by copyright, trade secret and other proprietary rights of Scantron and its suppliers. Software and Work Product are licensed, not sold, to Customer. Scantron reserves all rights in Products, Services, Work Product and Documentation not expressly granted to Customer. **B. Limitations on Use.** Customer will not: reproduce Products or Services; sell or sublicense Products or Services; permit the use of Software, Services or Documentation by others or otherwise operate Software for third parties (e.g., as a service bureau or data processing service); modify or translate Software; disassemble, reverse engineer or decompile Software or otherwise attempt to discover trade secrets related to Software; use the Software in excess of the licenses granted and license fees paid. **C. Confidentiality.** Both parties may acquire certain information that is confidential, proprietary or trade secret information of the other party or a third party ("Confidential Information") in the performance of this Agreement. The party receiving Confidential Information will: use such information solely for performance under this Agreement; not disclose such information to any third party (excluding agents and, in the case of Scantron, its affiliated companies); and otherwise protect such information from any unauthorized use or disclosure. The receiving party shall bind its employees, agents and affiliates having access to Confidential Information to confidentiality obligations consistent with this provision. Neither party will be obligated to keep confidential any information that is: publicly available through no fault of such party; received by such party from a third party not under a confidentiality obligation regarding the information; independently developed by such party without referring to the Confidential Information; or required by applicable law to be disclosed by such party. Scantron may reflect the Customer's name in a customer list and the respective products involved. **D. Privacy/Security.** Scantron will maintain and monitor policies and procedures to meet the data security objectives of the Health

Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Gramm-Leach-Bliley Act, the Fair and Accurate Credit Transactions Act, the Fair Credit Reporting Act, and other related laws and regulations (collectively, the "Privacy Laws"), by addressing administrative, technical and physical safeguards designed to (i) ensure the security and confidentiality of nonpublic personal information relating to Customer's customers; (ii) protect against any anticipated threats or hazards to the security or integrity of such information; and (iii) protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to Customer. With reasonable advance notice, Scantron will permit a review during regular business hours to assess whether appropriate key controls are in place, or will provide reasonable documentation to verify compliance with its obligations under this paragraph. If Customer is a "covered entity" under HIPAA, Scantron agrees to execute a business associate agreement upon the reasonable request of Customer and to the extent required by law. Upon execution by both parties, such business associate agreement shall be incorporated herein by this reference.

**8. Warranties. A. Software.** In addition to the warranty (if any) provided in the Documentation, Scantron warrants the CD, DVD downloaded files or other media carrying the Software against defects in materials or manufacture for a period of 90 days following the delivery of the Software. During such warranty period, Scantron will, at its expense, replace any defective media provided that: Scantron is promptly notified upon discovery of such defects during the warranty period; the defective item is returned to Scantron; there is no evidence that such defects have been caused by misuse, neglect, alteration, accident or by any cause external to the media. If Scantron is unable to comply with the foregoing limited warranty, Customer's sole and exclusive remedy shall be to terminate the License Grant by returning the Software for a refund of the Software fees. In addition, Scantron warrants to Customer that on the date any custom software is delivered by Scantron for installation on Scantron approved hardware, it will substantially meet the specifications stated in the Statement of Work and/or final Functional Specifications agreed upon by the parties in writing. Customer must notify Scantron in writing of any claim under this limited warranty within 30 days after delivery. It is Customer's responsibility to demonstrate to Scantron the errors for which Customer requests warranty service. While there can be no assurance that the performance of the custom software will be uninterrupted or error-free, Scantron will undertake to identify and correct such custom software and/or documentation errors as Customer may timely bring to Scantron's attention. Scantron's sole obligation, and Customer's sole remedy, shall be the making of such corrections by Scantron, which may include reasonable "work-around" solutions. If Scantron personnel discover that the failure reported is attributable to user error, or to Customer's failure to provide an acceptable operating environment, or to any other non-warranted cause, then Customer will be obligated to pay Scantron for its time and expenses incurred in diagnosing the cause, at Scantron's then-standard rates.

**B. Forms.** Scantron warrants that the Forms will function in all material respects consistent with specifications appearing in the applicable Documentation. If a problem occurs with the Forms caused by an error in Scantron's manufacturing process, Scantron will replace any defective Forms. Scantron reserves the right to examine all Forms claimed to be defective. If Scantron determine the Forms to be defective, Scantron will take the necessary steps to correct the problem by reprinting or using alternative data capture methods. **C. Hardware Products.** For a period of 30 days (or such other period as agreed in the Scantron Schedules) following the delivery of any hardware Product (including additions, upgrades and parts), Scantron warrants that such hardware Product will function in all material respects consistent with specifications appearing in the applicable Documentation. Scantron will use reasonable efforts to correct any hardware Product (by either repair or replacement, at Scantron's sole discretion) that fail to comply with the foregoing limited warranty, provided that Customer gives Scantron prompt written notice of such failure during the given warranty period, and Scantron is able to reproduce the noncompliance. Customer will provide reasonable assistance to Scantron in reproducing the failure. For Depot warranty repairs, Customer shall ship, at its own expense, the hardware Products to the Scantron Depot Service Center. The cost of return shipping shall be paid by Scantron. For Central Exchange warranty repairs, Customer shall promptly call Scantron's Call Center for diagnosis and consultation. Upon Scantron's diagnosis, Scantron will ship a replacement for the hardware Product. Customer shall install the replacement per Scantron's specifications. Within 5 business days of receipt of the replacement, Customer shall return the original, faulty Products to Scantron via the enclosed shipping label. In the event Customer fails to return the failed Products within 10 business days, Customer shall be charged the full retail value of the Products. For On-Site warranty repairs, Scantron shall provide the repair services at Customer's premises (during Scantron's regular business hours). **D. Services.** Scantron warrants that the Services will be provided in a professional and workmanlike manner consistent with the definition of the Services to be performed. Provided that Customer gives Scantron written notice of failure to meet the foregoing warranty within 30 days after completion of Services, Scantron will use reasonable efforts to correct any Services that fail to comply with the foregoing warranty. If Scantron is unable to correct or re-perform the Services, Customer's sole and exclusive remedy shall be a refund of the reasonable portion of the fees paid with respect to such Services. **E. Third Party Products.** Some Products and Services may include or operate in conjunction with computer programs, data or hardware supplied by a third party. Other than third party programs or data that are embedded in, and delivered as, an inseparable part of the Product or Services, all third party computer programs, data and hardware ("Independent Third Party Products") are supplied "AS IS" by Scantron. If Independent Third Party Products are supplied with separate warranty and support terms that can be passed through to Customer, the third party that supplies such programs and data is responsible for fulfilling such warranty and support terms, and Scantron makes no warranty and assumes no obligation with respect to such items. **F. Exclusive Warranties and Remedies.** Scantron does not warrant that the Products are free from all bugs, errors or omissions. The foregoing warranties do not extend to any failure of the Products caused by: modification or change not made by Scantron; noncompliance because of use of the Products or Services in combination with items furnished by anyone other than Scantron or not approved in writing for use with the Products or Services by Scantron; or use of the Products in an operating environment other than as specified in writing by Scantron. THE WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND ARE IN SUBSTITUTION FOR ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES OF SCANTRON, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

**9. Limitations of Liability.** SCANTRON'S ENTIRE LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY CLAIM ARISING FROM OR RELATED TO THIS AGREEMENT OR ANY PRODUCTS, SERVICES, DELIVERABLES OR OTHER ITEMS FURNISHED OR TO BE FURNISHED UNDER THIS AGREEMENT, WILL IN NO EVENT EXCEED THE LESSER OF (i) THE FEES PAID TO SCANTRON BY CUSTOMER FOR THE APPLICABLE ITEM WHICH IS THE BASIS FOR THE CLAIM, OR (ii) THE FEES PAID TO SCANTRON BY CUSTOMER FOR THE APPLICABLE ITEM WHICH IS THE BASIS FOR THE CLAIM DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CAUSE OF ACTION NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. NO ACTION RELATED TO THIS AGREEMENT MAY BE BROUGHT MORE THAN 2 YEARS AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CAUSE OF ACTION. IN NO EVENT WILL SCANTRON BE LIABLE TO CUSTOMER OR TO ANY OF CUSTOMER'S CUSTOMERS OR ANY OTHER PERSON OR ENTITY FOR LOST DATA, LOST PROFITS, INTEREST OR COST OF MONEY; OR FOR COVER; OR FOR ANY PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF SCANTRON'S

PERFORMANCE OR NONPERFORMANCE OR THE USE OF, INABILITY TO USE OR RESULTS OF USE OF ANY PRODUCTS, SERVICES, DELIVERABLES, OR OTHER ITEMS.

**10. Defense of Infringement Claims.** Scantron will defend Customer against any claim based upon infringement of any U.S. patent, copyright or trademark by the Products (not including the Independent Third Party Products), provided that: Customer promptly notifies Scantron of such proceeding; Scantron has exclusive control over the defense and settlement of the proceeding; Customer provides reasonably requested assistance in the defense and settlement of the proceeding; and Customer complies with any settlement or court order made in connection with such proceeding. Scantron will: indemnify Customer against any and all damages, costs and attorneys' fees finally awarded against Customer in any such proceeding; reimburse Customer's reasonable, out-of-pocket expenses incurred in providing assistance requested by Scantron; pay any amounts agreed by Scantron in settlement of any claims of infringement. Scantron's obligations under this Section will not apply to any infringement arising out of: use or combination of the Products with products, goods, services or other items not furnished or approved in writing for use with the Products and/or Services by Scantron; modification or change not made or authorized in writing by Scantron; use of an infringing version of the Products when a comparable noninfringing version has been made available to Customer; or Products developed to specifications which Customer has supplied or required of Scantron. In the event that Scantron reasonably believes it will be required to discontinue offering the Products, Scantron will, at its option, do one of the following: obtain for Customer the right to continue use of the Products; modify the Products to make them noninfringing; or if Scantron is not reasonably able to accomplish the foregoing, terminate Customer's right to use the infringing Products and refund to Customer a pro-rata portion of the fees Customer paid to Scantron for such Products, amortized on a three-year straight line basis from the date of delivery. THIS SECTION STATES THE ENTIRE LIABILITY OF SCANTRON WITH RESPECT TO INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT BY ANY PRODUCTS, SERVICES, DELIVERABLES OR OTHER ITEMS FURNISHED OR TO BE FURNISHED UNDER THIS AGREEMENT.

**11. Miscellaneous.** **A. No Waiver.** The failure of either party to enforce any rights under this Agreement or to take action against the other party will not be deemed a waiver by that party as to subsequent enforcement of rights. **B. Assignment.** This Agreement may not be assigned or transferred in any way by Customer without Scantron's prior written consent. Attempted assignments without Scantron consent are void. **C. Notices.** Notices shall be in writing and delivered by hand, mail or courier and will be deemed delivered only upon receipt. **D. Applicable Law.** This Agreement will be interpreted, construed and enforced in all respects in accordance with the local laws of the State of Minnesota, USA, without reference to its choice of laws principles. Customer and Scantron each waive application of the 1980 UN Convention on Contracts for the International Sale of Goods. **E. Dispute Resolution.** Any dispute arising from or related to this Agreement will be settled

exclusively by binding arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Any arbitration will be held in a location in the continental United States selected by the non-complaining party. Arbitration will be before a single arbitrator active in a state bar with experience in business respecting the subject matter of the dispute. The award of the arbitrator will be final and binding, and judgment may be entered upon it in any court having jurisdiction. In no event will the arbitrator award punitive damages or an award in excess of the amount of direct compensatory damages consistent with the limitations of liability in this Agreement. Except as required by law, the parties, may not disclose the contents or results of any arbitration hereunder without the prior written consent of all parties. Either party may seek equitable relief from any court having jurisdiction to the extent necessary to prevent irreparable harm. **F. Equal Employment Opportunity; Affirmative Action.** In connection with Scantron's performance under this Agreement, unless exempt, the Equal Opportunity Clauses as set forth in Section 202 of Executive Order 11246, as amended, 41 C.F.R. § 1.4(a), Section 402 of the Vietnam Era Veterans Readjustment Act of 1974, as amended, 41 C.F.R. § 250.5(a), Section 503 of the Rehabilitation Act of 1973, as amended, and 41 C.F.R. § 741.5(a) are incorporated by reference. Scantron has developed and maintains an affirmative action program. **G. Insurance.** Scantron shall carry and maintain commercial general liability insurance in an amount not less than \$1 million per occurrence with a \$2 million aggregate covering claims for bodily injury, death, personal injury or property damage. **H. Restricted Rights.** If Customer is the United States Government or any agency or instrumentality thereof, the Software and Documentation are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the United States Government is subject to restriction as set forth in (i) subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFAR 252.227-7013 (October 1988), if Customer is subject to Department of Defense Federal Acquisition Regulations; or (ii) FAR 52.227-19 (June 1987), if Customer is not subject to the DFAR, but is the United States Government or any agency or instrumentality thereof. The "manufacturer" or "contractor", for purposes of such provisions, is Scantron Corporation, 1313 Lone Oak Road, Eagan, MN 55121-1334. The Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101 (Oct 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227-7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the Software and Documentation with only those rights set forth herein. **I. Compliance with Laws.** Customer shall, at all times, use the Products and Services in compliance with all applicable laws, including observing the terms and conditions of its own privacy policies and applicable copyright laws when requesting the design and printing of forms. **J. Entire Agreement.** This Agreement in conjunction with the applicable purchase order and Scantron Schedules supersedes any and all prior agreements among the parties related to the Products, the Services and any other items provided hereunder. No modification of any of the provisions of this Agreement will be valid unless set forth in a written instrument signed by both parties. - END -