

Abaco Systems Pre-Production Equipment User Agreement

In consideration of Abaco Systems, Inc., or its subsidiary ("Abaco") supplying you, the Customer, with the Products as set forth below, the parties agree as follows:

1. DEFINITIONS

"Products" shall mean the pre-production equipment and accompanying documentation supplied by Abaco to you as listed below:

Fill-In Item Description(s) Here
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2. USE OF PRODUCTS

2.1 You understand that the Products being provided to you are pre-production products, made available now in order to facilitate your development and evaluation efforts prior to availability of a production version of the Products. The terms of this Agreement are applicable to the Products, and will be supplanted by our standard terms and conditions if you later transition to a production version of the Products. You understand that Abaco makes the Products available so that Abaco can receive feedback from you on the suitability of the Products and documentation, and you agree to provide feedback to Abaco during usage of the Products regarding quality and usability of the Products and documentation.

2.2 The Products and components thereof, comprising proprietary trade secret information of Abaco and/or its licensors, shall be held in confidence by you and protected from disclosure to third parties. Neither Products nor any components thereof may be exported, distributed or used outside the U.S. or the country of your place of business where the Products were originally shipped without the advanced written permission of Abaco or its authorized affiliate.

2.3 IF YOU TRANSFER POSSESSION OF THE PRODUCTS, IN WHOLE OR IN PART, TO ANOTHER PARTY WITHOUT WRITTEN CONSENT OF ABACO, THIS AGREEMENT IS AUTOMATICALLY TERMINATED. Any attempt otherwise to sublicense, assign or transfer any of the right, duties or obligations hereunder is void.

3. WARRANTY

3.1 THE PRODUCTS, WHICH ARE PRE-PRODUCTION PRODUCTS, ARE PROVIDED "AS IS", WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE ADEQUACY OF THE PRODUCTS. YOU UNDERSTAND THAT THE PRODUCTS MAY CONTAIN DEFECTS. ABACO DOES NOT WARRANT THAT THE PRODUCTS WILL BE FREE FROM DEFECTS IN MATERIAL OR WORKMANSHIP OR THAT THE USE OF THE PRODUCTS WILL NOT INFRINGE ANY PATENT, TRADE SECRET, OR COPYRIGHT OF ANY THIRD PARTY. NO IMPLIED OR STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

3.2 It is understood that the provision of any capabilities within the Products does not obligate Abaco to further provide such capabilities in subsequent pre-production or production releases. Furthermore, the operation and user interfaces supported by the Products may change with subsequent pre-production or production releases, and Abaco assumes no liabilities for any resulting adaption to subsequent releases which may be required by you.

4. LIMITATION OF LIABILITY

4.1 IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE SHALL ABACO OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PENAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE PRODUCTS OR ANY PART THEREOF, OR ANY ASSOCIATED EQUIPMENT, DAMAGE TO ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWN TIME COSTS, OR CLAIMS OF YOUR CUSTOMERS AND TRANSFEREES FOR SUCH DAMAGES EVEN IF ABACO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4.2 IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT OR WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL ABACO'S LIABILITY TO YOU FOR ANY LOSS OR DAMAGE ARISING OUT OF, OR RESULTING FROM THIS AGREEMENT, OR FROM ITS PERFORMANCE OR BREACH, OR FROM THE PRODUCTS OR ANY PART THEREOF OR FROM ANY SERVICE FURNISHED HEREUNDER, EXCEED THE SUM OF FIVE HUNDRED DOLLARS

(\$500.00). ANY SUCH LIABILITY SHALL TERMINATE ONE (1) YEAR AFTER THE DATE OF THIS AGREEMENT.

4.3 If Abaco furnishes you with advice or other assistance which concerns the Products or any portion thereof supplied hereunder or any system or equipment on which any such Products may be installed and which is not required pursuant to this Agreement, the furnishing of such advice or assistance will not subject Abaco to any liability, whether in contract, warranty, tort, (including negligence) or otherwise.

4.4 The Products to be used hereunder are not intended for use in any nuclear, chemical or weapons production facility or activity, or other activity where failure of the Products could lead directly to death, personal injury or severe physical or environmental damage. If so used, Abaco disclaims all liability for any damages arising as a result of the hazardous nature of the business in question, including but not limited to nuclear, chemical or environmental damage, injury or contamination, and you shall indemnify, hold harmless and defend Abaco, its officers, directors, employees and agents against all such liability, whether based on contract, warranty, tort (including negligence), or any other legal theory, regardless of whether Abaco had knowledge of the possibility of such damages.

4.5 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, YOU AGREE TO DEFEND, INDEMNIFY AND HOLD ABACO HARMLESS FOR ANY AND ALL LIABILITY ARISING FROM THIS AGREEMENT OR FROM THE PRODUCTS OR SERVICES FURNISHED HEREUNDER.

5. TERM AND TERMINATION

5.1 You may terminate this Agreement at any time by returning the Products in their entirety together with all copies of any documentation supplied with the Products.

5.2 Abaco, upon thirty (30) days notice, may terminate this Agreement if you fail to perform any obligation or undertaking to be performed by you under this Agreement or if you attempt to assign this Agreement without the prior written consent of Abaco, or if Abaco, in its sole discretion, notifies you it is terminating your use of the Products. Within twenty (20) days after any such termination of this Agreement, you shall return the Products in their entirety together with all copies of any documentation supplied with the Products.

5.3 Sections 4 and 6 of this Agreement shall survive any expiration or termination and remain in effect. Termination of this Agreement shall not relieve you of your obligation to pay any and all outstanding charges hereunder nor entitle you to any refund of such charges previously paid.

6. EXPORT

6.1 If you intend to export (or reexport), directly or indirectly, the Products or technical information relating thereto supplied hereunder or any portion thereof, it is your responsibility to assure compliance with U.S. export control regulations and, if appropriate, to secure any required export licenses in your own name.

7. GENERAL

7.1 This Agreement shall be governed by the laws of the State of New York, without regard to its conflict of law provisions. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to this Agreement.

7.2 Software furnished shall be provided pursuant to Abaco's applicable software license agreement, the terms and conditions of which shall take precedence over this Agreement with respect to the provision of such software.

(Nov. 2015)

Abaco Systems, Inc.

By: _____
Title: [Enter Title Here]
Date: [Enter Agreement Date Here]

Customer: [Identify Customer Here]

By: _____
Title: [Enter Title Here]
Date: [Enter Agreement Date Here]