

## Vertical Software License Agreement

THIS AGREEMENT entered into by and between Carillon Financials Corp. ("Licensor"), a Texas corporation having principal offices at Dallas, Texas, USA and \_\_\_\_\_ ("Licensee"), having principal offices in \_\_\_\_\_ determines the rights and licenses granted to the Licensee in the Licensed Software (hereinafter defined) supplied by the Licensor hereunder.

**1. Definitions.** As used herein, the following definitions shall apply:

- a. "Licensed Product" shall mean collectively the Licensed Software and Licensed Documentation (as hereinafter defined) for the following Carillon modules/features:
  - i. General Ledger;
  - ii. Accounts Payable;
  - iii. Accounts Receivable;
  - iv. System Setup;
  - v. Contact Management/CRM;
  - vi. Sales Order Entry;
  - vii. Inventory;
  - viii. Purchase Order;
  - ix. Time & Billing;
  - x. Job Cost; and
  - xi. Payroll.
- b. "Licensed Product" shall not include the following modules/features:
  - i. Production Order;
  - ii. Financial Desktop;
  - iii. Executive Desktop;
  - iv. Employee Portal;
  - v. Vendor Portal;
  - vi. Customer Portal;
  - vii. Salesperson Portal;
  - viii. Art Conversion;
  - ix. Barcode and MICR fonts (must be licensed from provider);
  - x. Document Imaging; and
  - xi. Mail
- c. "Licensed Software" or "Software" shall mean the software, in source code form, all updates and revisions thereto supplied by Licensor during the term hereof and all permitted copies of the foregoing. Source code is to include all computer files created by Licensor that are needed for the development, compilation, and operation of the Licensed Software, such as program source code, object and framework libraries, database creation scripts, and utility programs. It shall explicitly exclude any products owned and marketed by SAP, Microsoft Corporation, and Oracle Corporation (or any of their subsidiaries).
- d. "Licensed Documentation" shall mean all existing system documentation, other than the Licensed Software, that is related to such Software and any other documentation provided by Licensor to Licensee to assist in the use of the Licensed Product.
- e. "Licensed Company" shall mean the Licensee and its subsidiaries and operating divisions, and specifically excludes any other related or unrelated entity.
- f. "Use" shall mean the reading into and out of memory of the Licensed Software and the execution of such Software, in whole or in part, for the internal use of the Licensed Company and its Permitted Clients. Use shall also include the modification of existing source code, the inheriting of ancestor objects, the calling of functions integral to the source code, and the compiling of new executable code.
- g. "Maintenance" shall mean software error corrections, enhancements to licensed modules, and Licensed Documentation enhancements and corrections prepared by Licensor. It includes subsequent versions to existing modules but does not include new or other modules or new products released by Licensor. Licensor is under no obligation to provide a list of all software error corrections or enhancements included in Maintenance releases, but shall make its reasonable efforts to provide a list of substantial error corrections and enhancements.
- h. "Permitted Client" shall mean organizations whose primary business is \_\_\_\_\_.

## **2. License.**

- a. Subject to the payment of the license fees and charges to Licensor, Licensor hereby grants to Licensee, and Licensee hereby accepts, a personal, nonexclusive and nontransferable (except as provided in Section 15(d), below) perpetual license to use, copy, modify, sublicense, distribute, or otherwise market, directly or through resellers, the Licensed Software in Object Code form to Permitted Clients, and use the Licensed Documentation in support of the Licensed Software.
- b. Licensee may sublicense systems containing the Licensed Product only to Permitted Clients.
- c. Licensee will provide Licensor an annual listing of Permitted Clients who have sublicensed software containing all or part of the Licensed Software. Licensor agrees not to attempt to sell products or services to listed Permitted Clients without the prior written authorization of Licensee. The names on such lists shall also be considered Confidential Information.
- d. Carillon will retain the right to license, change or to enhance any software developed for licensee by Carillon or its related entities, using Carillon's trademarks, without any royalty payment to licensee.

## **3. License fees, charges and taxes.**

- a. The License fee and charge for the License herein granted to Licensee shall be \$400,000.00 USD and is due and payable upon signing this agreement.
- b. A royalty payment equal to one percent of the license fee collected for the Licensed Product from each Permitted Client is due and payable within fifteen days of the end of each month. Such royalty payment shall be converted to USD using the current exchange rate normally charged by Licensee's banking institution.
- c. An initial year annual maintenance fee of \$72,000.00 USD is also due upon the signing of this agreement. Future year's maintenance is due and payable upon the anniversary of this agreement unless licensee notifies Licensor not less than thirty (30) days prior to the anniversary of this agreement that maintenance is no longer desired.
- d. Licensee shall pay a late payment charge of 1.5 percent per month, or the maximum rate permitted by applicable law, whichever is less, on any unpaid amount for each calendar month or fraction thereof that any payment to Licensor is in arrears.
- e. Licensee shall pay all taxes, duties, fees or other out-of-pocket expenses based on or in any way measured by this Licensee Agreement, the Licensed Product or any portion thereof, or any services related thereto, excluding U.S. taxes based on Licensor's net income as adjusted for applicable foreign tax credits, but including personal property taxes, if any. If Licensee challenges the applicability of any such tax, it shall pay the same to Licensor and Licensee may thereafter seek refund thereof.

## **4. Term of license agreement and licenses.**

Unless otherwise terminated or canceled as provided herein, the term hereof and of the licenses granted herein shall commence on the effective date of this Agreement and shall continue until Licensee discontinues the support of the Licensed Software. Sublicensees of the software shall be allowed to continue to use the Licensed Software after termination.

## **5. Protection of licensed product.**

- a. Licensee acknowledges and agrees that the Licensed Product and all permitted copies thereof are Licensor's exclusive property and constitute a valuable trade secret of Licensor. Licensee may not disclose or make available to third parties the source code associated with the Licensed Software. Licensee agrees to take all reasonable actions to protect such source code and trade secrets.
- b. Licensee will protect the confidentiality of confidential portions of the Licensed Product, including without limitation the Source Code, in accordance with the confidentiality provisions set forth in Section 13, "Confidentiality," below.
- c. Licensee will not allow the transport of source code into countries that have not entered into an international copyright enforcement treaty with the United States.
- d. In addition to all other remedies in law or in equity, Licensee agrees that Licensor may obtain injunctive relief against Licensee to enforce terms and conditions of this License Agreement and to protect Licensor's proprietary rights in the Licensed Product.

## **6. Reproduction and modification of licensed product.**

- a. Subject to the confidentiality provisions set forth in Section 13, Licensed Company shall have the right to duplicate in whole or in part, the Licensed Documentation and Software for internal use by Licensee and for Use by sublicensees of Licensee who have signed Licensee's end user license agreement in a form approved by Licensor,

which approval will not unreasonably be withheld. Licensee will take every reasonable effort to prevent unauthorized copying of the software.

- b. Licensee shall re-label the Licensed Software using its own label and logos.
- c. Licensee may reproduce the Licensed Software for archival purposes.

**7. Services.**

- a. Licensee shall have the sole and exclusive responsibility for the selection, installation and Use of the Licensed Product. Licensor may provide Licensee with instruction, installation assistance, technical support and services under the terms and conditions of a separate agreement, at Licensor's then current charges therefor. Licensor reserves the right to only provide support and error corrections to the current version of the licensed software while maintenance is in effect. Licensee hereby agrees that error correction may only be possible for problems that are reproducible.
- b. Provided that Licensee has paid the maintenance fee for any particular period, Licensor shall provide Licensee with the most current version of the Licensed software as it is enhanced, amended or modified from time to time, within 30 days of the release of such enhancement, amendment or modification.
- c. No annual maintenance fee charge to Licensee shall be increased by a percentage greater than five percent plus the Consumer Price Index per annum.

**8. Negation of warranty.**

THE LICENSED PRODUCT IS PROVIDED ON AN "AS-IS" AND "WITH ALL FAULTS" BASIS, AND THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. LICENSEE SHALL BE SOLELY RESPONSIBLE FOR THE SELECTION, USE, EFFICIENCY AND SUITABILITY OF THE LICENSED PRODUCT FOR THE LICENSED COMPANIES AND LICENSOR SHALL HAVE NO LIABILITY THEREFOR.

**9. Proprietary rights indemnity.**

- a. Licensor agrees to indemnify and hold Licensee harmless against any loss, damage, expense, or cost, including reasonable attorney's fees, arising out of any claim, demand, or suit asserting that the Licensed Software infringes or violates any copyright, patent, trade secret, trademark, or proprietary right existing under the laws of the United States or any state or territory thereof ("Claim").
- b. The indemnification obligation in this section shall be effective only if Licensee gave prompt notice of the Claim and permitted Licensor to defend, and Licensee has reasonably cooperated in the defense of the claim. Licensor shall have no obligation to Licensee to defend or satisfy any claims made against Licensee that arise from the use, sale, licensing, or other disposition of the Licensed Software by Licensee other than as permitted by this Agreement, or from the Licensee's modification of the Licensed Software.
- c. To reduce or mitigate damages, Licensor may at its own expense procure the right for Licensee to continue using the Software. THE FOREGOING IS LICENSEE'S EXCLUSIVE REMEDY AGAINST ANY AND ALL PARTIES FOR ANY CLAIM ARISING FROM OR RELATING TO LOSS OF USE OF THE LICENSED SOFTWARE OR ANY OTHER DAMAGE ARISING AS A RESULT OF THIS PROVISION.

**10. Licensee Indemnification**

Licensee hereby agrees to indemnify and hold harmless Licensor, its officers, agents and employees for all loss, cause or expense, including reasonable attorney fees incurred as a result of Licensee's representations, use, development, modifications, marketing, sub-licensing, and licensing of systems. This warranty shall survive the termination of this agreement.

**11. Termination/cancellation**

- a. Licensor may terminate/cancel this License Agreement and any license granted to Licensee hereunder if:
  - i. Licensee fails to pay Licensor any license fee or charges in a timely fashion; or
  - ii. Licensee is in default of any other provision hereof and such default has not been cured within fifteen (15) days after Licensor gives Licensee written notice thereof.
- b. In the event of any termination/cancellation of any license granted to Licensee hereunder, Licensor may:
  - i. Declare all amounts owed hereunder to Licensor to be immediately due and payable;
  - ii. Require that Licensee cease any further Use of the Licensed Product and all copies thereof, in whole or in part; and
  - iii. Cease performance of all Licensor's obligations hereunder without liability to Licensee.

- c. Licensor's foregoing rights and remedies shall be cumulative and in addition to all other rights and remedies available to Licensor in law and in equity.
12. The termination of this Agreement shall not extinguish any rights or obligations of the parties relating to protection of Confidential Information.

**13. Limitation of liability.**

- a. IN NO EVENT SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO THIS LICENSE AGREEMENT OR THE PERFORMANCE OR BREACH HEREOF, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. LICENSOR'S LIABILITY TO LICENSEE HEREUNDER, IF ANY, SHALL IN NO EVENT EXCEED THE TOTAL OF THE LICENSEE FEES PAID TO LICENSOR HEREUNDER BY LICENSEE.
- b. IN NO EVENT SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES RESULTING FROM OR RELATED TO ANY FAILURE OF THE SOFTWARE PRODUCTS, INCLUDING, BUT NOT LIMITED TO LOSS OF DATA, OR DELAY OF THE LICENSOR IN THE DELIVERY OF MAINTENANCE UNDER THIS LICENSE AGREEMENT.

**14. Confidentiality.**

Each party agrees to keep the other party's confidential information confidential. Confidential Information will include all information which recipient reasonably knows is treated by the disclosing party as being confidential. Each party will expend best efforts to protect the confidentiality of such information and will apply to such information the policies and procedures it uses to protect its own confidential business information including without limitation, limiting access to employees and others on a need-to-know basis and then only after such persons have been informed of and obligated to maintain confidentiality. The parties agree to make use of confidentiality agreements. The confidentiality obligations of this paragraph shall not apply to any information which: is now or becomes part of the public domain through lawful means; is rightfully obtained from a third party not subject to confidentiality obligations with respect to such information; is already known by recipient at the time of disclosure, is subpoenaed, or is information which recipient can demonstrate by clear and convincing evidence as independently developed by recipient without use of other party's confidential information.

**15. Trademark Usage.**

Licensee will not use Carillon's trademark(s), or any variation thereof in the marketing or distribution of its product(s).

**16. General.**

- a. The effective date of this Agreement shall be upon execution thereof by Licensee and acceptance thereof by an authorized representative of Licensor.
- b. Any claim arising out of or related to this Agreement must be brought no later than one year after a party has become aware or should reasonably have become aware that it has accrued.
- c. This Agreement is the sole agreement between the parties relating to the subject matter hereof and supersedes all prior understandings, writings, proposals, representations or communications, oral or written, by either party. This Agreement may be amended only by a writing executed by the authorized representatives of both parties.
- d. This Agreement and the licenses granted hereunder may not be transferred or assigned by Licensee without the prior written consent of Licensor, such consent will not unreasonably be withheld. An example of a situation where Licensor would withhold consent would be the transfer or assignment to a competitor of Carillon Financials Corp.
- e. Any notice required or permitted to be sent hereunder shall be in writing and shall be sent in a manner requiring a signed receipt, such as Federal Express, courier delivery, or if mailed, registered or certified mail, return receipt requested. Notice is effective upon receipt. Notice to Licensor shall be addressed to Larry R. Pettit, Carillon Financials Corp., Carillon Towers, 13601 Preston Road, Suite 300E, Dallas Texas, 75240-4988 or such other person or address as Licensor may designate. Notice to Licensee shall be addressed to \_\_\_\_\_, or such other person or address as Licensee may designate.
- f. The Licensed product shall be delivered F.O.B. Dallas, Texas.

**17. Attorney's Fees.**

Each party in any litigation arising out of or relating to this Agreement will be responsible for paying its own attorney fees and expenses, including attorneys' fees and expenses in connection with any trial, appeal, or petition for review.

**18. Venue.**

This agreement shall be deemed to have been executed in the State of Texas and will be governed by and construed in accordance with the substantive laws of the State of Texas. Venue of any litigation between the parties shall be in Dallas County, Texas.

Accepted on behalf of \_\_\_\_\_

By: \_\_\_\_\_  
Officer of Corp.

Title:  
Date:  
Address:

Accepted on behalf of Carillon Financials Corp.

By: \_\_\_\_\_  
Larry R. Pettit  
Title: President  
Date: