

**RESOLUTION OF THE BOARD OF TRUSTEES OF  
THE SURFSIDE HOMEOWNERS ASSOCIATION**

**AUTHORIZING THE PURCHASE OF SOFTWARE  
FOR ACCOUNTING AND METER READING  
FROM BIAS SOFTWARE**

**NUMBER:** 2014-11-02

**WHEREAS**, Surfside Homeowners Association (Surfside) is a public water system authorized by Chapter 70.119A RCW, and

**WHEREAS**, RCW 70.119A.180 "Water Use Efficiency" requires all Public Water Systems to develop water distribution system leakage standards to ensure that appropriate steps to reduce water distribution system leakage rates shall be less than ten percent of the total water produced as compared to the total water delivered are in place, and

**WHEREAS**, WAC 246-290-810 "Water Use Efficiency Program" requires all Public Water System to be metered and that the meters be read and that the meter reads be recorded, organized and analyzed to accurately determine the percentage of water leaked in the distribution system, and

**WHEREAS**, A specialized software program will provide greater accuracy and greatly reduce the time required to record, organize and analyze meter reads by Surfside Water Department staff who are responsible for providing timely and accurate reports on distribution system leakage rates to the Department of Health, and

**WHEREAS**, Surfside's Business Office is using an antiquated accounting software system that is no longer supported by its developer, and

**WHEREAS**, BIAS Software (BIAS), a Washington State corporation headquartered in Spokane Washington, offers tailored software designed for local governments and municipalities that includes the specialized meter read management and accounting features adequate for Surfside's Business Office at a

reasonable cost compared to other similar software suites investigated by Surfside staff, and

**WHEREAS**, BIAS, Software is utilized by many local governments and municipalities on North Beach Peninsula, Pacific County and surrounding areas (e.g. Seaview Sewer District, Chinook Water District, North Beach Water District, Pacific County Fire District #1, City of Montesano (Grays Harbor), City of McCleary (Grays Harbor), City of Oakville (Grays Harbor), Town of Cathlamet (Wahkiakum County), City of Garibaldi (Tillamook County, Oregon), now, therefore,

**BE IT RESOLVED**, by the Board of Trustees of the Surfside Homeowners Association as follows:

**SECTION 1. Order Form.** Authorize the President of the Board to execute the Order Form attached hereto and incorporated herein as Exhibit A.

**SECTION 2. Master Subscription Agreement.** The Board of Trustees recognizes that by authorizing the President of the Board to execute the Order Form referenced in Section 1 above that they accept the terms and conditions of Master Subscription Agreement attached hereto and incorporated herein as Exhibit B to govern Surfside's acquisition and use of BIAS's services.

**SECTION 3. Cost of Acquisition, Implementation, and Use of Software.** The total cost of the acquisition, implementation, and use of the software suite that consists of the following Modules; GL/AP/Budgeting; Utility Billing (meter read management), Payroll, and Cash Receipting; will be \$22,051.99.

**SECTION 4. Annual Service Fee.** BIAS provides support services described in Section 4 of the Master Subscription Agreement referenced in Section 3 above. BIAS will invoice Surfside annually for the support services. The support service fees for 2015 will be \$3,645.00. The support service fee will be prorated, on a quarterly basis, from the date of acceptance of the implementation of the software. Thereafter, BIAS will invoice Surfside an annual service fee based on the level of service required by Surfside as described in the Master Subscription Agreement.

**SECTION 5. Payment for the Acquisition, Implementation Use, and Annual Service Fee.** The cost of acquisition, implementation, and use of the

software suite will be paid in five equal payments of \$4,210.40. The first payment will be made in 2015 with subsequent payments being made in 2016, 2017, 2018, and 2019.

The annual service fee will be paid annually as invoiced by BIAS.

Funds for the 2015 cost of acquisition, implementing, and use of the BIAS software will be allocated from the 2015 operating budget contingency account and thereafter each year accounts will be created in the budget for 1) "software annual maintenance & training expense" to budget for the annual service fee; and 2) a temporary liability account "software subscription debt expense" for the annual payment that will be retired when the software subscription debt is paid off.

**ADOPTED BY**, the Board of Trustees of the Surfside Homeowners Association, Pacific County, Washington at its regular meeting November 15, 2014.

VOTE: YES  NO  ABSTAIN  ABSENT

Kirby Smith, President: Kirby Smith

VOTE: YES  NO  ABSTAIN  ABSENT

James Flood, Vice President: James A. Flood

VOTE: YES  NO  ABSTAIN  ABSENT

John Williams, Secretary: John Delane Williams

VOTE: YES  NO  ABSTAIN  ABSENT

Chris Hanson, Treasurer: Chris Hanson

VOTE: YES  NO  ABSTAIN  ABSENT

Valerie Harrison, Trustee: Valerie Harrison

VOTE: YES  NO  ABSTAIN  ABSENT

Don Sheldon, Trustee: Don Sheldon

VOTE: YES  NO  ABSTAIN  ABSENT

Larry Amundson, Trustee: Larry Amundson

VOTE: YES  NO  ABSTAIN  ABSENT

Jim Romaggi, Trustee: Jim Romaggi

VOTE: YES  NO  ABSTAIN  ABSENT

David Olson, Trustee: David L. Olson

Total Votes: Yes: 4

No: 2

Abstain: 0

Absent: 0

I John Delane Williams, Board Secretary for the Surfside

Board of Trustees, hereby certify that the above tabulation of votes on Resolution

number: 2014-11-02 is accurate.

Signed:

John Delane Williams 2/21/2015  
Board Secretary Date

Order form for: **Surfside Homeowners Association**

Order Expiration: **December 7, 2014**

Prepared on: **November 7, 2014**

New Purchase Amount: **\$22,051.99**

Payment Option: **5 Years**  
 (Years) **0% Financing**

Annual Service Fee: **\$3,645.00**

Yearly Payment: **\$4,410.40**

**ORDER FORM**

**Order Prepared For:**

**Order Prepared By:**

Company: **Surfside Homeowners Association**  
 Contact: **Laura Frazier**  
 Address: **31402 H Street**  
**Ocean Park, WASHINGTON 98640**  
 Phone: **(360) 665-4171**  
 Email: **laura@surfsideonline.org**

Company: **BIAS Software**  
 Contact: **Mark Felchlin**  
 Address: **327 E Pacific**  
**Spokane, Washington 99202**  
 Phone: **509.443.3332**  
 Email: **mark@biassoftware.com**

**ORDER DETAILS**

Modules					
Product	Remarks	Description	Qty.	Unit Price	Extended Price
100 - Cash Receipting		Cash Management Only	1	\$2,500.00	\$1,800.00
100 - Financial		One-time Costs	1	\$6,400.00	\$2,900.48
100 - Utility Billing		One-time Costs	1	\$8,500.00	\$5,801.25
100 - Payroll		One-time Costs	1	\$6,900.00	\$5,800.14
<b>Subtotal:</b>				<b>\$24,300.00</b>	<b>\$16,301.87</b>

Events/Training					
Product	Remarks	Description	Qty.	Unit Price	Extended Price
BIAS Rally		2015 BIAS Conference	1	\$350.00	\$0.00
<b>Subtotal:</b>				<b>\$350.00</b>	<b>\$0.00</b>

IT Services					
Product	Remarks	Description	Qty.	Unit Price	Extended Price
Data Import - Financial		One-time Costs	1	\$500.00	\$100.00
Data Import - Payroll		One-time Costs	1	\$500.00	\$500.00
Data Import - Utilities		One-time Costs	1	\$750.00	\$300.00
<b>Subtotal:</b>				<b>\$1,750.00</b>	<b>\$900.00</b>

Misc					
Product	Remarks	Description	Qty.	Unit Price	Extended Price
Perv. SQL Licenses 1 User	4 - Concurrent Users	One-time Costs	4	\$250.00	\$1,000.00
UniPass License 1 User	4 - Concurrent Users	One-time Costs	4	\$250.00	\$1,000.00
<b>Subtotal:</b>				<b>\$500.00</b>	<b>\$2,000.00</b>

Labor					
Product	Remarks	Description	Qty.	Unit Price	Extended Price
Training/Setup - Financial		One-time Costs	1	\$840.00	\$760.03
Training/Setup - Payroll		One-time Costs	1	\$1,260.00	\$760.03
Training/Setup - Utility Billing		One-time Costs	1	\$1,260.00	\$760.03
Training/Setup - CR		One-time Costs	1	\$840.00	\$570.02
<b>Subtotal:</b>				<b>\$4,200.00</b>	<b>\$2,850.11</b>

<b>Subtotal:</b>	<b>\$32,600.00</b>
<b>Discount Amount (Total Price – Extended Price):</b>	<b>(\$10,548.01)</b>
<b>Pay in full Discount:</b>	<b>(\$1,102.60)</b>
<b>Grand Total (w/o Tax):</b>	<b>\$20,949.39</b>

If the Order Form is executed and/or returned to BIAS Software by the Customer after the Start Date above, BIAS may adjust the terms, without increasing the Total Price, based upon the date BIAS installs the licenses.

Prices above don't include any taxes that may apply. This is not an invoice.

**YOU'RE INVITED**  
 Come see what BIAS Community is all about!

**BIAS Rally:**  
 Tuesday, February 17<sup>th</sup> – Friday, February 20<sup>th</sup>  
 more info [www.biassoftware.com/rally](http://www.biassoftware.com/rally)

**Sign Up:** Contact Sue at 509.443.3332

**Contract Special Terms**

During the Contract Term and for one year thereafter, Customer shall not disclose the pricing or terms hereunder to any third party without BIAS prior written consent.

**PAYMENT OPTIONS:**

Payment options are listed on first page or are available upon request.

**Remarks**

Please feel free to contact us if you have any questions about our quote.

Upon signature by Customer and submission to BIAS, this Order Form shall become legally binding and governed by the Master Subscription Agreement between BIAS and Customer unless otherwise agreed by BIAS and Customer.

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Signature:

## MASTER SUBSCRIPTION AGREEMENT

This agreement governs your acquisition and use of our services.

By accepting this agreement, either by clicking a box indicating your acceptance or by executing an order form that references this agreement, you agree to the terms of this agreement. If you are entering into this agreement on behalf of a government entity or other legal entity, you represent that you have the authority to bind such entity and its affiliates to these terms and conditions, in which case the terms "you" or "your" shall refer to such entity and its affiliates. If you do not have such authority, or if you do not agree with these terms and conditions, you must not accept this agreement and may not use the services.

### AGREEMENT:

- 1. Defined Terms.** Certain terms used in this Agreement, including order forms, have defined meanings, which are provided in Section 15, and in other Sections herein. Definitions of specifically defined terms (appearing in quotation marks and capitalized where defined herein) shall apply whether or not the term is capitalized.
- 2. Grant of License.** In consideration of this agreement and the Order Forms we will (a) make the Services and Content available to You, (b) provide our standard support for the Purchased Services, and/or upgraded support if purchased, (c) use commercially reasonable efforts to make the online Application Services available 24 hours a day, 7 days a week, except for (i) planned downtime (of which will give 24 hour notice and which We shall schedule to the extent practicable during the weekend hours), and (ii) any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, or denial of service attack.
- 1. Ownership; Proprietary Protection.** This Agreement does not provide Licensee with title to or ownership of the Software, but only a right of limited use. Licensor shall have sole and exclusive ownership of all right, title and interest in and to the Software and User Materials, all copies thereof, all derivative works, unique design concepts, and all related material generated from the Software including material displayed on the screen such as icons, screen displays, etc. (including ownership of all copyrights, trademarks and other intellectual property rights pertaining thereto), in any media now existing or subsequently developed, whether created by Licensor or any other party, subject to the rights of Licensee expressly granted herein.
- 2. Confidential Information; Non-Disclosure.** Licensee acknowledges that the Software and User Materials, and all underlying ideas, algorithms, concepts, procedures, processes, principles, know-how, and Licensor's methods of business and technical operation (collectively referred to as "Confidential Information") are confidential and contain trade secrets. Licensee shall not use, disclose or cause disclosure of, or distribute any Confidential Information, directly or indirectly, without the prior written consent of Licensor, except that Licensee is authorized to disclose Confidential Information to Licensee's employees or agents as required for Licensee's use of the Software as authorized by this Agreement or as required by Law, which obligation shall survive the termination of this License. All of the Licensed Modules have Security Key Words assigned to them, and the Licensor agrees not to disclose these Key Words to any Third Party. Licensee shall indemnify Licensor for damages or costs incurred by Licensor as a result of the unauthorized use, disclosure or distribution of any Confidential Information by Licensee or any of Licensee's employees or agents.
- 3. Custom Modifications.** Custom modification requests will be considered. A quote for programming and training for these modifications will be provided to the Client. BIAS Software will make a reasonable and good faith effort to comply with such requests but shall retain sole discretion to decide whether and when such services can be provided.



# MASTER SUBSCRIPTION AGREEMENT



## 4. Support Services. Basic support services provided by the Vendor shall consist of the following:

- a. **Unlimited Remote Support Services.** BIAS Software will provide a toll-free number and remote access software for Client use to contact any BIAS-trained operator during normal business hours (8:00 am – 5:30 pm PST), excluding major national holidays.
- b. **Error Corrections.** BIAS agrees to use all diligent effort to correct verifiable and reproducible errors within a reasonable time period, after being reported to BIAS. The correction will be considered 'fixed' when the Application functions as intended.
- c. **State and Federal Regulations.** BIAS will provide updates required to conform to State and Federal regulations, including current tax tables, W2, and 1099 forms. Programming required to conform to local government ordinances will be subject to additional charges.
- d. **Exceptions** – the following services and issues are **not** covered by or included in the Service Agreement
  - a. **Misuse.** Service or support required resulting from deliberate misuse of licensed modules.
  - b. **On-Site Services.** On-site support and training will be charged at the current fee schedule, if required.
  - c. **Balanced Books.** On-site or off-site services for balancing Client books are outside this agreement and subject to our standard Fee Schedule.
  - d. **Extended or Emergency Technical Support.** BIAS Software will charge standard Professional Service rates when the Client is not properly staffed or trained and must complete time-consuming support issues such as payroll or utility billing.
  - e. **Third-Party Hardware or Software.** BIAS Software is not responsible for supporting or maintaining any software or hardware not supplied by the Vendor. BIAS Software does not guarantee compatibility with printers, hardware or third-party software.
  - f. **Security of Financial Information.** It is understood that the security of financial information stored within the Bars Integrated Accounting System, (BIAS,) (Hereinafter referred to as the "Program,) or generated by the Program and stored in an electronic or paper format, is the sole responsibility of the Client and its related entities and affiliates. BIAS Software or its assignees shall not be held responsible for the theft, misappropriation, loss, or misuse of personal or entity related financial information, utility billing records, or any other financial information stored in Client controlled electronic media or physical storage locations. Client acknowledges that Client is solely responsible for the Client's security procedures, including but not limited to password security, encryption of sensitive information, background checks, proper handling of payroll ACH files, physical custody of cash, internal audit procedures and processes, annual reporting, and proper training in security and backup procedures. In addition, the Client and its related entities and affiliates agree to indemnify and hold harmless BIAS Software or its assignees from all costs, damages, expenses, and attorneys' fees incurred in an event of any security breach, theft, misappropriation, loss, misuse of personal or entity related financial information, or other related incident.
  - g. **New Products.** New module releases along with the associated training and implementation costs.
  - h. **Significant Program Upgrades (Traditional User Only).** Significant program upgrades are identified by version numbering changes in digits to the left of the decimal point (X.00). These upgrades, due to their complexity, are subject to additional fees.
  - i. **Data Integrity.** (Non-BIAS Hosted Users) Power outages, surges, spikes, brownouts and other changes in the electrical current may corrupt and damage data. BIAS Software assumes no liability for any data corruption or loss due to inadequate protection, lack of data backups, or computer system malfunctions.

## 5. Fees.

- a. **Fees.** You will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services and Content purchased and not actual usage, (ii) payment obligations are non-

cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.

- b. **Invoicing and Payment.** Purchased Services shall be paid yearly by January 31<sup>st</sup> of the current year unless otherwise stated in the Order Forms.
- c. **Overdue Charges.** If any invoiced amount is not received by Us by the due date, then without limiting our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5%.
- d. **Suspension of Service.** If we don't receive payment for invoiced services within 90 days we'll suspend your account.
- e. **Taxes.** Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Section 5, We will invoice You and You will pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority
- f. **Service Fees.** Service fees are included in the Order Forms.
- g. **Key Personnel Replacement and "New User Training".** Qualified training for new users is very important. BIAS Software will require "New User Training" in key positions including Finance Directors, Accounting Clerks, Utility Billing Clerks and Payroll Clerks. Clients with excessive turnover will also be required to receive additional training.
  - i. **\$895 (\$495 1-2 Modules) (Price Subject to Change) includes:**
    - 1. New User Processing Guides.
    - 2. Training Video Library.
    - 3. Assist in accounting activities twice.
    - 4. 6 Months "New User Support.
- h. **Professional Services.** for Clients with active Order Form (Prices Subject to Change):
  - i. \$47.50 per hour for Bookkeeping Services
  - ii. \$105 per hour for Accounting Services
  - iii. \$190 per hour for Programming

**6. Licensee's Cooperation.** The Licensee is responsible for selecting operator(s) who are qualified to operate the Software and are familiar with the information, calculations, and reports that serve as input and output. Any data entry errors are the responsibility of the Licensee and the Licensor does not assume the cost of any necessary servicing, repair or correction. Licensee acknowledges that successful installation, implementation and use of the Software cannot be accomplished by Licensor's efforts alone, and requires substantial effort and cooperation by Licensee. Both Licensor and Licensee shall at all times use their best efforts to actively participate and cooperate in data conversion, system installation, implementation, training and use, shall provide each other accurate and timely information, and shall afford each other reasonable access to information and facilities. All substantive communication between Licensor and Licensee will take place between Licensor and Licensee's Project Manager.

**7. Acceptance Testing Period.** Upon completion of implementation of each application, Licensor shall give written notice to Licensee that installation of the Application at the Initial Installation site(s) is completed, and that Licensee has achieved Live Status as to the Application (such times also referred to as "go live date(s)" in Licensor's Project Schedule, as shall be completed by the parties promptly after execution of this Agreement). Licensee shall be deemed to have accepted the Application thirty (30) days after Licensor's notice, unless, during that thirty (30) day period (the "Acceptance Testing Period"), an Error occurs in the operation of the Application, and, by the end of the Acceptance Period, Licensee gives Licensor written notice of non-acceptance describing the Error in reasonable detail. If Licensee gives a proper notice of non-acceptance to Licensor, then:

- a. **Investigation.** Licensor shall investigate the reported Error. Licensee shall provide to Licensor reasonably detailed documentation and explanation, together with underlying data, to substantiate the Error and to assist Licensor in its efforts to diagnose, reproduce, and if necessary correct the Error.
- b. **Material Failure Found.** If an Error exists, Licensor shall, within thirty (30) days (or such longer period as may be reasonable under the circumstances) after receipt of Licensee's notice of non-acceptance, correct the Error so that the Application functions in Material conformity with the Specifications. Upon correcting the Error within such period Licensor shall notify Licensee in writing that the Error has been corrected and another Acceptance Testing Period shall begin in accordance with this Section 7.
- c. **No Error Found.** If there was no Error, or an identified failure to perform was not attributable to a defect in the Application or an act or omission of Licensor, then Licensor shall give written notice to Licensee explaining its determination in reasonable detail, and Licensee shall have thirty (30) days to respond with additional documentation or written explanation regarding the Error. If Licensee provides such response, Licensor shall be afforded thirty (30) days to review the response and, if necessary, attempt to correct the Error. If Licensee does not provide such response within thirty (30) days, then Licensee shall be deemed to have accepted the Application as of the date of Licensor's notice.

**8. Term: Default; Opportunity to Cure.** This Agreement is effective as of the Effective Date and shall continue until terminated. The License shall terminate upon default, cancellation, repudiation or rejection of this Agreement by either party. A party shall be considered in default only if the party, thirty (30) days after receiving written notice from the other party identifying with reasonable specificity a Material failure to comply with any term or condition contained herein (including without limitation Licensee's failure to pay any fees or charges due under this Agreement or any related Purchased Services, and Licensor's breach of the limited warranty provided in Section 10), has not cured such failure or breach. In the event of termination other than termination resulting from a default by Licensor, no License Fees or other Fees then paid or payable shall be waived or refunded, and any License Fees then unpaid shall be immediately payable in full.

**9. Limited Warranty.** LICENSOR WARRANTS THAT IT HAS TITLE TO THE SOFTWARE AND THAT IT HAS FULL AUTHORITY TO GRANT THIS LICENSE TO LICENSEE. LICENSOR ALSO WARRANTS THAT, AS TO EACH APPLICATION, FOR A PERIOD OF NINETY (90) DAYS FROM THE DATE OF LICENSEE'S ACCEPTANCE OF THE APPLICATION, THE APPLICATION WILL FUNCTION WITHOUT ERROR. LICENSOR MAKES NO WARRANTY REGARDING THE USABILITY OR CONVERTABILITY OF ANY OF LICENSEE'S DATA, THE SUITABILITY OF THE SOFTWARE FOR LICENSEE'S NEEDS, OR ANY PERFORMANCE PROBLEM, CLAIM OF INFRINGEMENT OR OTHER MATTER ATTRIBUTABLE TO ANY USE OR MODIFICATION OF THE SOFTWARE, OR COMBINATION OF THE SOFTWARE WITH ANY OTHER SOFTWARE OR COMPUTER PROGRAM OR COMMUNICATIONS DEVICE, NOT EXPRESSLY AUTHORIZED BY LICENSOR IN WRITING. DETERMINATION OF BREACH OF THE FOREGOING LIMITED WARRANTY OR DEFAULT UNDER THIS SECTION 10 SHALL BE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF SECTION 8, AND UPON RECEIPT OF WRITTEN NOTICE OF BREACH OF WARRANTY LICENSOR SHALL BE AFFORDED A PERIOD OF THIRTY (30) DAYS TO CURE THE REPORTED ERROR, FAILURE OR OTHER BREACH. LICENSEE AGREES THAT THE FOREGOING LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OF LICENSOR AND LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS OR ADEQUACY FOR ANY PARTICULAR PURPOSE OR USE, QUALITY OR PRODUCTIVENESS, COMPATIBILITY, DESIRED RESULTS, OR CAPACITY.

**10. Limitation of Remedies and Liability.** The cumulative liability of Licensor to Licensee for all claims relating to the Software and any services rendered hereunder or in Purchased Services, arising under or relating to this or any related

agreement or warranty (including without limitation the limited warranty provided pursuant to Section 10), or otherwise in contract, tort, strict liability, indemnity or any cause of action whatsoever, shall in all events be limited to the total amount of the Fees paid to Licensor under this Agreement for the relevant Application(s) and related services. In no event shall Licensor be liable for any consequential, indirect, special or incidental damages (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss), whether arising out of contract, tort, warranty or otherwise, even if Licensor has been advised of the possibility of such potential loss or damage. The foregoing limitation of liability shall apply regardless of the success or effectiveness of other remedies. The Fees herein and terms hereof have been agreed to by Licensor in reliance on the allocation of risk and limitation of liability set forth in Section 5 and this Section 10.

**11. Venue: Governing Law.** Exclusive venue for any dispute between the parties arising out of or relating to this Agreement shall be in the Federal District Court for the District of Eastern Washington, or, if Federal jurisdiction is not available, the Spokane County Superior Court, Washington. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington, as such laws apply to a contract made and performed in such state, without regard to conflicts of law provisions.

**12. Entire Agreement: Construction Licensor and Licensee Representations.** This Agreement is the complete and exclusive statement of the agreement between Licensor and Licensee and supersedes all prior and contemporaneous negotiations, discussions, proposals and understandings, Oral, written or implied, including those involving any agent of either party, relating to the subject matter herein.

- a. No representations or statements made by either party or either party's agents not expressly set forth or referenced in the Agreement shall be binding on either party. Rights, obligations and warranties under this Agreement extend to Licensee and Licensor only, and no other person shall be considered a third party beneficiary of this Agreement or be otherwise entitled to any rights or remedies under this Agreement.
- b. No provision of this Agreement shall be construed in favor of or against any party because one party or its professional advisors participated in the preparation of this Agreement.
- c. Licensee represents and warrants that it possesses sufficient mastery of the principles of accounting to use the Software for its intended purpose, and Licensee acknowledges that it is solely Licensee's responsibility to develop and institute the use of manual and other appropriate controls to validate the accuracy of the data generated by the system and ensure that Licensee's books balance; review proof lists and reports to validate the accuracy of reports and statements; verify that all users of the Software are properly and sufficiently trained and experienced; and verify that a functioning archival system is in place, and that the data base is archived to a removable medium on a daily basis.

**13. Modification: No Waiver.** The terms of this Agreement may only be modified, expanded or added to by a written agreement executed by the parties. No oral communication between the parties or their agents before or after execution of this Agreement shall be binding upon either party unless the parties expressly agree in writing to the terms of such communication. No waiver by either party of any breach of any term or condition hereof shall be effective or enforceable unless made in writing signed by the party, and no waiver shall be interpreted as a continuing waiver or a waiver of any future obligation.

**14. Attorneys Fees.** If any suit, action, or other proceeding shall be instituted relating to any term or condition of this Agreement or relating to any of the rights, duties, or obligations arising under it, the prevailing party shall be entitled to recover from the other party and the other party agrees to pay to the prevailing party, whether or not the matter proceeds

to final judgment or decree, in addition to costs and disbursements allowed by law, such sum as the trial and each appellate court may adjudge reasonable as an attorney's fee in such suit, action, or other proceeding, and in any appeal thereof including. Such sum shall include an amount estimated by the court as the reasonable costs and fees to be incurred by the prevailing party in collecting any monetary judgment or award or otherwise enforcing each order, judgment, or decree entered in such suit, action, or other proceeding.

**15. Definitions.** As used in this Agreement, including the Attachments hereto, the following terms shall have the following meanings.

- a. **"Agreement"** means this Master Subscription Agreement.
- b. **"Order Form"** means an ordering document specifying the Services to be provided hereunder that is entered into between you and us or any of Our Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.
- c. **"Purchased Services"** means Services that you or Your Affiliate purchase under an Order Form.
- d. **"Cure"** as applied to a Software or Application Error shall include the provision of alternate, but functionally equivalent and no less effective or efficient, functions or means.
- e. **"Error"** as applied to the Software or an Application means a reproducible failure to perform in accordance with the Specifications in some MATERIAL respect attributable to a defect in the Software or Application or to an act or omission of Licensor.
- f. **"Material"** as applied to the Software or an Application, shall mean a significant or substantial alteration or effect on the function or output thereof.
- g. **"Specifications"** means the written (both hard copy and electronic text files) description of the functions, capacity, performance and features of the Software as delivered by Licensor to Licensee under this Agreement (including, without limitation, any such description in a written response to RFP or RFI delivered by Licensor to Licensee, in a Licensor product brochure provided by Licensor specific to the Software, or in written correspondence from Licensor to Licensee).
- h. **"Software,"** at times also referred to as the "Application," means the version of the BIAS Software, Inc. software packages, applications and interfaces selected by Licensee, listed on Attachment A: Purchase Order as licensed modules (each an 'Application'), current at the time of signing this Agreement, and shall include any Licensee Modifications and Licensor Modifications provided by Licensor to Licensee.
- i. **"User Materials"** means all written and electronic documentation, manuals and materials provided by Licensor to Licensee for use in connection with the Software.
- j. **"Security Keywords"** All Licensed Modules have confidential user-rights keywords assigned to them, and the Licensee agrees not to disclose these keywords to any Third Party.