

## CUSTOM PRODUCT END USER LICENSE AGREEMENT

By utilizing any component of a Company developed product, the Licensee agrees to be bounded by the terms of this EULA.

### RECITALS

- A. This End-User License Agreement (EULA) is a legal agreement between Custom Computer Specialists, Inc. ("Company") located at 70 Suffolk Court, Hauppauge, NY 11788 and any client ("Licensee") utilizing a Company developed customization any of which are referred to the "Product". A Product list is provided in Exhibit A.
- B. Company or a Company authorized service provider provides certain services to implement and customize the Product.
- C. Company and Licensee desire to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the terms and conditions hereinafter stated, it is agreed as follows:

### 1.0 Grant of License

- 1.1 **Type of License.** Subject to the terms and conditions hereof, Company agrees to grant Licensee a non-exclusive, non-transferable, non-sublicensable, right and license to the Product and related documentation ("Documentation"). Licensee shall use the Product and the Documentation solely for its own internal use and for the purposes for which such Product and Documentation were designed.

### 2.0 Ownership and Protection

- 2.1 **Title; Ownership.** Licensee acknowledges that the Product; all source code, object code, class libraries, user interface screens, algorithms, development frameworks, repository, system designs, system logic flow, and processing techniques and procedures related thereto; the Documentation, any system user documentation, or other documentation related thereto; any copies and derivatives of any of the foregoing, in whole or in part; as well as all copyright, patent, trademark, trade secret and other proprietary rights in any of the foregoing; are and shall remain the sole and exclusive confidential property of Company. Licensee further acknowledges that any reports or other data generated by the Product regarding traffic flow and/or system loads are the exclusive property of Company and may be used, and Licensee hereby specifically authorizes the use of such reports and/or other data, by Company in any manner that it deems to be appropriate.

- 2.2 **Protection of Product and Documentation.** Licensee shall not allow, and shall not allow any third party to:

- 2.2.a adapt, modify, change, maintain, translate, decompile, disassemble, reconstruct, or reverse engineer the Product or the Documentation, or any portion thereof;
- 2.2.b identify or discover any source code of the Product;
- 2.2.c distribute, sell or sublicense copies of the Product or the Documentation or any portion thereof;
- 2.2.d create copies of the Product or the Documentation except to make a copy of any program which is required as an essential step in its utilization or to make an archival or back-up copy of the Product; or
- 2.2.e incorporate any portion of Product into or with any other Products, or create any derivative works of the Product or Documentation.

- 2.3 **Confidentiality.** Licensee agrees that the Product contain proprietary information, including trade secrets, know-how and confidential information that are the exclusive property of Company. During the period this Agreement is in effect and at all times after its termination, Licensee and its employees and agents shall maintain the confidentiality of this information and not sell, license, publish, display, distribute, disclose or otherwise make available this information to any third party nor use such information other than to inform permitted users of the conditions and restrictions on the use of the Product or the Documentation set, and to the extent permitted by law, Licensee will not disclose the terms and conditions of this Agreement without the prior written consent of Company.

### 3.0 Payment

- 3.1 **Payment Terms.** Licensee will pay Company the License Fees as described in the applicable services agreement.
- 3.2 **Taxes.** All amounts set forth for payment are exclusive of applicable sales and similar taxes and it shall be Licensee's responsibility to add to the amounts payable, and to pay all such taxes, if applicable.

### 4.0 Indemnification; Warranties

#### 4.1 Indemnifications.

- 4.1.a If Licensee notifies Company in writing and gives Company sole control over the defense and all related settlement negotiations, Company will defend, hold harmless and indemnify Licensee against any damages finally awarded or amounts paid in settlement as a result of any claim or threat of claim brought by a third party against Licensee to the extent based on an allegation that: (i) Product for which Licensee has licensed from Company infringes any U.S. patent, copyright, trademark, trade secret or other proprietary right of a third party, or (ii) a defective Product directly caused death or personal injury; provided that Licensee did not alter, modify, or otherwise change the Product or software that gave rise to such claim.

- 4.1.b To the extent permitted by law, Licensee will defend, hold harmless and indemnify Company against any claim or threat of claim brought by a third party against Company arising out of the acts or omissions of Licensee or its employees, excluding acts or omissions expressly required or prescribed by this Agreement.

- 4.1.c Licensee will defend, hold harmless and indemnify Company against any claim or threat of claim brought by a third party against Company to the extent based on an allegation that Licensee Content infringes any U.S. patent, copyright, trademark, trade secret or other proprietary right of a third party

- 4.1.d If either party seeks indemnification provided for in this Section, each party seeking indemnification will cooperate with and provide reasonable assistance in the defense or settlement of any claim or legal proceeding. Licensee and Company will not make public any terms, or the mere existence, of any settlements.

- 4.1.e THE FOREGOING STATES THE ENTIRE LIABILITY AND OBLIGATION OF COMPANY WITH RESPECT TO ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT OF THE PRODUCT OR ANY PART THEREOF, OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT.

#### 4.2 Warranties.

- 4.2.a **Operational Warranty.** Company warrants that, during the ninety (90) day period (the "Warranty Period") commencing on the delivery date of the Product to Licensee, the Product will operate in substantial conformity with the Documentation when used in strict compliance therewith. This warranty is contingent upon Licensee's installation of all corrections, enhancements, updates and new releases provided by Company to Licensee and the absence of damage or abuse to the Product.

- 4.2.b **Breach of Operational Warranty.** Notwithstanding the foregoing, Licensee acknowledges that it is solely responsible for having the appropriate compatible network(s) and operating system environment(s), and as Licensee's sole and exclusive remedy for any breach of this warranty, Company shall, at its sole option, within a reasonable period of time, provide all reasonable programming services to correct programming errors in the Product, replace the Product or terminate this Agreement and refund to the Licensee the license fees paid to Company under this Agreement for the defective Product, as set forth in section 6.2(c) of this agreement, refunding the unamortized portion (assuming straight line amortization) of the annual license fees paid. Any professional services provided under this Agreement are provided "as is" without representation or warranty of any kind or nature.

- 4.2.c **Limitation.** EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH 4, COMPANY MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES OF QUALITY OR PERFORMANCE, OR AS A RESULT OF A COURSE OF DEALING OR USAGE OF TRADE, WITH RESPECT TO THE PRODUCT AND ANY MAINTENANCE, SUPPORT OR OTHER SERVICES.

- 5.0 **Limitations of Liability.** IN NO EVENT WILL COMPANY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE, SUCH AS LOST BUSINESS PROFITS. COMPANY'S TOTAL LIABILITY WILL BE LIMITED TO THE LICENSE FEES ACTUALLY PAID BY LICENSEE TO COMPANY FOR THE PRODUCT, SUBJECT HOWEVER TO A TWELVE (12) MONTH STRAIGHT LINE DEPRECIATION COMMENCING ON THE DATE OF DELIVERY OF THE PRODUCT

### 6.0 Agreement Term and Termination

- 6.1 **Agreement Term.** The term of this Agreement (the "Agreement Term") shall begin upon the latest date indicated on the Services Agreement ("Effective Date"), and shall remain in effect until terminated pursuant to Section 6.2.

- 6.2 **Agreement Termination.** This Agreement may be terminated as follows:

- 6.2.a either party may terminate this Agreement, with or without cause, with no less than thirty (30) days written notice.
- 6.2.b either party may terminate this Agreement if one party's actions expose the other party to any violation of law and fails to cure such actions within 15 days of notice thereof;
- 6.2.c either party may terminate this Agreement and any other active agreement with the other party if the other party fails to fully perform any material obligation under this Agreement with 30 days to cure;
- 6.2.d notwithstanding the foregoing, if the Licensee violates the provisions of Sections 2.0 of this Agreement the Company

may terminate this Agreement immediately without notice.

In the event of termination of this Agreement by the Company pursuant to Section 6.2(a) prior to an anniversary date the Company shall refund the unamortized portion (assuming straight line amortization) of the annual license fees paid. In the event of termination of this Agreement by the Company pursuant to Sections 6.2(b), 6.2(c) or 6.2(d) prior to an anniversary date, the Company shall be entitled to prepaid license fees for the balance of the year of termination.

In the event of termination of this Agreement by the Licensee pursuant to Section 6.2(a) prior to an anniversary date the Company shall be entitled to prepaid license fees for the balance of the year of termination. In the event of termination of this Agreement by the Licensee pursuant to Section 6.2(b) or 6.2(c) Company shall refund the unamortized portion (assuming straight line amortization) of the annual license fees paid.

- 6.3 **Responsibilities in the Event of Termination.** Upon any termination of this Agreement and/or the license to use the Product, Licensee shall cease to use the Product and shall return to Company the Product and all copies thereof and all proprietary and confidential property of Company. Licensee shall expunge all copies of the Product from its computer(s) and server(s) and shall provide a certificate of an officer of Licensee stating compliance with the preceding sentence. Company shall also have such other legal and equitable rights and remedies to which it may be entitled with respect to Licensee's failure to comply with the provisions of this Agreement.

- 6.4 **No Liability for Termination.** Except as provided for in this Agreement, neither party shall be liable to the other for damages of any kind, including incidental or consequential damages, damages for loss of prospective business or loss of continuing business, or otherwise which arise due to the expiration or termination of this Agreement. This does not relieve either party from responsibility for damages caused by its actions or breaches of the Agreement, but only for damages related to or resulting from the expiration or termination of the business relationship.

- 6.5 **Survivorship.** Those sections that by their nature survive expiration or termination of this Agreement will survive such expiration or termination.

### 7.0 Proprietary Rights (Where applicable)

- 7.1 **Licensee Content.** Licensee shall be solely responsible for providing, updating, uploading and maintaining the Product and any and all files, pages, data, works, information and/or materials on, within, displayed, linked or transmitted to, from or through the Product, including without limitation, trade or service marks, images, photographs, illustrations, graphics, audio clips, video clips, e-mail or other messages, metatags, domain names, software and text (the "Licensee Content"). The Licensee Content shall also include any registered domain names provided by Licensee or registered on behalf of Licensee in connection with the Application Hosting Services.

- 7.2 **Grant of Use.** In consideration of Company's satisfactory performance of all obligations of this Agreement, for the term of this Agreement, Licensee grants to Company a nonexclusive, worldwide and royalty-free "Grant of Use" to copy, display, use and transmit on and via the Internet the Licensee Content, solely for the benefit of Licensee and in accordance with Company's performance or enforcement of this Agreement.

- 7.3 **Alterations.** Except as provided herein or by law, Company may not alter, modify, change, remove or disable access to all or any portion of the Product or Licensee Content stored on the hosted environment (referenced in section 8.0).

- 7.4 **Ownership of Licensee Content.** Company acknowledges that the Licensee Content is owned solely by the Licensee. Following termination of this Agreement, Licensee shall remove or request that the Company remove on a fee for service basis, all Licensee Content from Company Products and thereafter expunge all copies of the Company Products from its computer(s) and server(s) and provide a certificate of an officer of Licensee confirming compliance with the same as required by paragraph 6.3 of this agreement. Company further warrants that it shall not lease, sell, rent or otherwise disclose Licensee Content to any third party without prior consent of the Licensee.

### 8.0 Application Hosting (Where applicable)

- 8.1 Licensee is responsible for providing and maintaining the required server environment. This includes hardware, all supporting software, server security, and managing end-user access.

#### 8.2 Excluded Services

- 8.2.a Hardware and software support of the server environment.
- 8.2.b Support of Client Desktops
- 8.2.c Support or diagnosis of Local Area Network connectivity
- 8.2.d Local Area Network device configuration such as proxy servers

### 9.0 General Terms and Conditions

- 9.1 **Assignment.** Licensee shall not, voluntarily or involuntarily, sublicense, sell, assign, give or otherwise transfer this Agreement. Any such transfer or attempted transfer shall be null and void. Company has the right to assign or otherwise transfer its rights and obligations under any of this Agreement, whether voluntarily, involuntarily, or by operation of law.
- 9.2 **Governing Law.** This Agreement will be governed and interpreted under the laws of the state of New York, U.S.A., without regard to its conflict of laws provisions. Any action arising out of or related to this Agreement must be brought within one (1) year from the first date such action could have been brought, despite any longer period provided by statute. If a longer period is provided by statute, the parties hereby expressly waive it.

- 9.3 **Amendments; Waiver.** This Agreement shall not be amended or modified except in writing by duly authorized representatives of the parties that refer specifically to this Agreement. The failure of either party to enforce at any time or for any period of time the provisions hereof shall not be construed to be a waiver of such provisions or of the right to enforce each and every such provision.

- 9.4 **Severability.** If a court of competent jurisdiction holds that any provision of this Agreement is invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect, and the parties will replace the invalid or unenforceable provision with a valid and enforceable provision that achieves the original intent of the parties and economic effect of the Agreement.

- 9.5 **Headings and Construction.** Paragraph headings are for reference only and will not be considered as parts of this Agreement. Wherever the singular is used, it includes the plural, and, wherever the plural is used, the singular is included.

- 9.6 **Force Majeure.** Except for the obligation to make payments, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, acts of terrorism, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the actions or inactions of Company), provided that the delayed party: (i) gives the other party prompt notice of such cause, and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.

- 9.7 **Entire Agreement.** This Agreement supersedes all previous agreements and representations of, between or on behalf of the parties in regard to the subject matter herein. Any document instrument, or agreement issued or executed contemporaneous or subsequent to this Agreement shall not alter the terms and conditions of this Agreement. This Agreement contains all of Company's and Licensee's agreements, warranties, understandings, conditions, covenants and representations in regard to the subject matter herein. Neither Company nor Licensee will be liable for any warranties, understandings, conditions, covenants or representations not expressly set forth or referenced in this Agreement. Licensee acknowledges that Company reserves the right to refuse any different or additional provisions in purchase orders, invoices or similar documents, and such refused provisions will be unenforceable.

- 9.8 **Notices.** Any notice under this Agreement must be in writing and will be deemed given upon the earlier of actual receipt or ten (10) days after being sent by first class mail, return receipt requested, to the addresses set forth in the Services Agreement. Either party may give notice of its change of address for receipt of notices by giving notice in accordance with this section.

- 9.9 **Applicable Law.** Company complies with applicable laws governing online privacy, including the Child Privacy Protection and Parental Empowerment Act, the Family Educational Right to Privacy Act and the Children's Online Privacy Protection Act. Licensee may review these laws and their related regulations by logging on to the U.S. Federal Trade Commission's website at <http://www.ftc.gov>.

- 9.10 **Export Rules.** Licensee agrees that the Product will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws")

**EXHIBIT A  
PRODUCT LIST**

<i>Product</i>	<i>Description</i>
Data Extracts	Ad-hoc and/or automated data extracts using SQL Server
Data Imports	Ad-hoc and/or automated third party data imports using SQL Server
Data Views	Custom SQL data views
Campus Scheduled Tasks	Custom data tasks invoked by the Infinite Campus Task Scheduler or equivalent package.
Data Updates	Ad-hoc or automated data updates.
Email Workflows	Email alert tasks
CMS Reports	Custom Managed Services Report collection
Tableau Library of Workbooks	Tableau Data visualizations based on Infinite Campus or other data sources
Custom Report Viewer	Custom report output generator and viewer
Custom Reports	Custom developed report utilizing Crystal Reports or MS SQL Reporting Services.
Campus Data Health Check	Data verification and analysis.
Campus Backpack	Publishing tool for content sharing on the Portal