

**SOFTWARE LICENSE AGREEMENT**



**Name of Client:** \_\_\_\_\_ **Effective Date:** \_\_\_\_\_

**Street Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Telephone No.:** \_\_\_\_\_ **Fax:** \_\_\_\_\_ **Contact Name:** \_\_\_\_\_

THIS AGREEMENT is made as of the Effective Date indicated above by and between Get Digital Data, LLC, an Indiana corporation, with offices at 200 South Park Boulevard, Greenwood, IN 46143 (“LICENSOR”), and the above-named Client (“LICENSEE”) (collectively, the “PARTIES”). This Agreement applies to software and data products provided by LICENSOR (collectively referred to herein as “Licensed Software”).

**WITNESSETH:**

WHEREAS, LICENSOR is the owner of, or has acquired rights to, certain Software and Documentation as defined in Exhibit A attached hereto (the “Licensed Software”);

WHEREAS, LICENSEE desires to use such Licensed Software; and

WHEREAS, LICENSOR desires to grant to LICENSEE and LICENSEE desires to obtain from LICENSOR a non-exclusive license to use the Software and related Documentation solely in accordance with the terms and on the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, the parties, each intending to be legally bound hereby, do promise and agree as follows.

**1. DEFINITIONS**

- A. “Designated Equipment” shall mean the hardware products identified on “Exhibit A” attached hereto with which the Software is licensed for use. Exhibit A may be amended from time to time by the parties in writing.
- B. “Documentation” shall mean all online product specifications, user documentation, if any, and other related materials pertaining to the Software which are furnished to LICENSEE by LICENSOR in connection with the Software.
- C. “License Fee” shall mean the amount specified in Exhibit A.
- D. “License Term” shall mean the period of time specified in Exhibit A.
- E. “Software” shall mean the computer programs in the form listed in Exhibit A and any subsequent error corrections or updates supplied to LICENSEE by LICENSOR pursuant to this Agreement.
- F. “Territory” shall mean the country, countries, or other regions identified in Exhibit A.

**2. LICENSE GRANT**

LICENSOR hereby grants to LICENSEE a non-exclusive right and license to use the Software in the Territory specified in Exhibit A on the number of primary systems of Designated Equipment identified on Exhibit A hereto for the License Term specified in Exhibit A. The Software shall be used only on such primary systems if they are operating properly. If any primary system is down, the Software may be used on a backup system for that primary system.

**3. DELIVERY**

A. LICENSOR shall deliver to LICENSEE the software and applicable documentation in the manner described in Exhibit A.

**4. MODIFICATIONS**

A. *Error Corrections and Updates.* LICENSOR will provide LICENSEE with error corrections, bug fixes, patches or other updates to the Software licensed hereunder to the extent available in accordance with LICENSOR's release schedule during the term of this Agreement.

B. *Other Modifications.* LICENSEE may, from time to time, request that LICENSOR incorporate certain features, enhancements or modifications into the Software. LICENSOR may, in its sole discretion, undertake to incorporate such changes into new versions of the Software.

C. *Title to Modifications.* All such error corrections, bug fixes, patches, updates or other modifications shall be the sole property of LICENSOR.

**5. COPIES**

A. *Printed Matter.* Except for Documentation made publicly available for use by customers with LICENSOR's Software, no other Documentation which is provided by LICENSOR, if any at all, pursuant to this Agreement in human readable form, such as written or printed documents, shall be copied in whole or in part by LICENSEE without LICENSOR's prior written agreement. Additional copies of printed materials may be obtained from LICENSOR at the charges then in effect, where applicable.

**6. LICENSE FEES AND PAYMENT**

A. *License Fee.* In consideration of the licenses granted herein, LICENSEE shall pay the License Fee or other consideration for the Software and Documentation as set forth herein. All amounts payable hereunder by LICENSEE shall be payable in United States funds without deductions for taxes, assessments, fees, or charges of any kind. Payment shall be made to LICENSOR in accordance with the License Fee Payment terms described in Exhibit A.

B. *Taxes and Other Charges.* LICENSEE shall be responsible for paying all (i) sales, use, excise, value-added, or other tax or governmental charges imposed on the licensing or use of the Software or Documentation hereunder, (ii) freight, insurance and installation charges, and (iii) import or export duties or like charges.

**7. PROTECTION OF SOFTWARE**

A. *Proprietary Notices.* LICENSEE agrees to respect and not to remove, obliterate, or cancel from view any copyright, trademark, patent, confidentiality or other proprietary notice, mark, or legend appearing on any of the Software or output generated by the Software, and to reproduce and include same on each copy of the Software.

B. *No Reverse Engineering.* LICENSEE agrees not to modify, reverse engineer, disassemble, or decompile the Software, or any portion thereof.

C. *Ownership.* LICENSEE further acknowledges that all copies of the Software in any form provided by LICENSOR or made by LICENSEE are the sole property of LICENSOR and/or its suppliers. LICENSEE shall not have any right, title, or interest to any such Software or copies thereof except as provided in this Agreement, and further shall secure and protect all Software and Documentation consistent with maintenance of LICENSOR's proprietary rights therein.

**8. CONFIDENTIALITY**

A. *Acknowledgement.* LICENSEE hereby acknowledges and agrees that the Software and Documentation constitute and contain valuable proprietary products and trade secrets of LICENSOR and/or its suppliers, embodying substantial creative efforts and confidential information, ideas, and expressions. Accordingly,

LICENSEE agrees to treat (and take precautions to ensure that its employees treat) the Software and Documentation as confidential in accordance with the confidentiality requirements and conditions set forth below.

B. *Maintenance of Confidential Information.* Each party agrees to keep confidential all confidential information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that neither party shall have any such obligation with respect to use or disclosure to others not parties to this Agreement of such confidential information as can be established to: (1) have been known publicly; (2) have been known generally in the industry before communication by the disclosing party to the recipient; (3) have become known publicly, without fault on the part of the recipient, subsequent to disclosure by the disclosing party; (4) have been known otherwise by the recipient before communication by the disclosing party; or (5) have been received by the recipient without any obligation of confidentiality from a source (other than the disclosing party) lawfully having possession of such information.

C. *Injunctive Relief.* LICENSEE acknowledges that the unauthorized use, transfer or disclosure of the Software and Documentation or copies thereof will: (1) substantially diminish the value to LICENSOR of the trade secrets and other proprietary interests that are the subject of this Agreement; (2) render LICENSOR's remedy at law for such unauthorized use, disclosure or transfer inadequate; and (3) cause irreparable injury in a short period of time. If LICENSEE breaches any of its obligations with respect to the use or confidentiality of the Software or Documentation, LICENSOR shall be entitled to equitable relief to protect its interests therein, including, but not limited to, preliminary and permanent injunctive relief.

D. *Survival.* LICENSEE's obligations under this Section will survive the termination of this Agreement or of any license granted under this Agreement for whatever reason.

## **9. WARRANTIES; SUPERIOR RIGHTS**

A. *Ownership.* Except for any rights as set forth herein, LICENSOR represents its belief that it is the owner of the entire right, title, and interest in and to Software, and that it has the sole right to grant licenses there under, and that it has not knowingly granted licenses there under to any other entity that would restrict rights granted hereunder except as stated herein.

B. *Limited Warranty.* LICENSOR represents and warrants to LICENSEE that the Software, when properly installed by LICENSEE and used with the Designated Equipment, will perform substantially as described in LICENSOR's then current Documentation for such Software during the period this Agreement is in effect.

C. *Limitations.* Notwithstanding the warranty provisions set forth herein, all of LICENSOR's obligations with respect to such warranties shall be contingent on LICENSEE's use of the Software in accordance with this Agreement and in accordance with LICENSOR's instructions as provided by LICENSOR in the Documentation, as such instructions may be amended, supplemented, or modified by LICENSOR from time to time. LICENSOR shall have no warranty obligations with respect to any failures of the Software which are the result of accident, abuse, misapplication, extreme power surge or extreme electromagnetic field.

D. *LICENSEE's Sole Remedy.* LICENSOR's entire liability and LICENSEE's exclusive remedy shall be, at LICENSOR's option, either: (1) a refund as follows: if within thirty (30) days of contract signing, a full refund of the entire License Fee paid; if after thirty (30) days of contract signing, a partial refund of only the License Fee paid for usage during the last thirty (30) days; or (2) repair or replacement of the Software; provided LICENSOR receives written notice from LICENSEE during the warranty period of a breach of warranty. Any replacement Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

E. *Disclaimer of Warranties.* LICENSOR DOES NOT REPRESENT OR WARRANT THAT ALL ERRORS IN THE SOFTWARE AND DOCUMENTATION WILL BE CORRECTED. THE WARRANTIES STATED IN THIS SECTION ARE THE SOLE AND THE EXCLUSIVE WARRANTIES OFFERED BY LICENSOR. THERE ARE NO OTHER WARRANTIES RESPECTING THE SOFTWARE AND DOCUMENTATION OR SERVICES PROVIDED HEREUNDER, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF DESIGN, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF LICENSOR HAS BEEN INFORMED OF SUCH PURPOSE. NO AGENT OF LICENSOR IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF LICENSOR AS SET FORTH HEREIN.

G. *Limitation of Liability.* LICENSEE ACKNOWLEDGES AND AGREES THAT THE CONSIDERATION WHICH LICENSOR IS CHARGING HEREUNDER DOES NOT INCLUDE ANY CONSIDERATION FOR ASSUMPTION BY LICENSOR OF THE RISK OF LICENSEE'S CONSEQUENTIAL OR INCIDENTAL DAMAGES WHICH MAY ARISE IN CONNECTION WITH LICENSEE'S USE OF THE SOFTWARE AND DOCUMENTATION. ACCORDINGLY, LICENSEE AGREES THAT LICENSOR SHALL NOT BE RESPONSIBLE TO LICENSEE FOR ANY LOSS-OF-PROFIT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE LICENSING OR USE OF THE SOFTWARE OR DOCUMENTATION. Any provision herein to the contrary notwithstanding, the maximum liability of LICENSOR to any person, firm or corporation whatsoever arising out of or in the connection with any license, use or other employment of any Software delivered to LICENSEE hereunder, whether such liability arises from any claim based on breach or repudiation of contract, warranty, tort or otherwise, shall in no case exceed the actual price paid to LICENSOR by LICENSEE for the Software whose license, use, or other employment gives rise to the liability. The essential purpose of this provision is to limit the potential liability of LICENSOR arising out of this Agreement. The parties acknowledge that the limitations set forth in this Section are integral to the amount of consideration levied in connection with the license of the Software and Documentation and any services rendered hereunder and that, were LICENSOR to assume any further liability other than as set forth herein, such consideration would of necessity be set substantially higher.

## **10. INDEMNIFICATION**

A. LICENSOR shall indemnify, hold harmless and defend LICENSEE against any action brought against LICENSEE to the extent that such action is based on a claim that the Software, when used in accordance with this Agreement, infringes the intellectual property rights of a third party and LICENSOR shall pay all costs, settlements and damages finally awarded; provided, that LICENSEE promptly notifies LICENSOR in writing of any claim, gives LICENSOR sole control of the defense and settlement thereof and provides all reasonable assistance in connection therewith. If any Software is finally adjudged to so infringe, or in LICENSOR's opinion is likely to become the subject of such a claim, LICENSOR shall, at its option, either: (1) procure for LICENSEE the right to continue using the Software (2) modify or replace the Software to make it noninfringing, or (3) provide a partial refund that includes the License Fee paid for usage in the prior thirty (30) days. LICENSOR shall have no liability regarding any claim arising out of: (a) use of other than a current, unaltered release of the Software unless the infringing portion is also in the then current, unaltered release, (b) use of the Software in combination with non-LICENSOR software, data or equipment if the infringement was caused by such use or combination, (c) any modification or derivation of the Software not specifically authorized in writing by LICENSOR or (d) use of third party software. THE FOREGOING STATES THE ENTIRE LIABILITY OF LICENSOR AND THE EXCLUSIVE REMEDY FOR LICENSEE RELATING TO INFRINGEMENT OR CLAIMS OF INFRINGEMENT OF ANY COPYRIGHT OR OTHER PROPRIETARY RIGHT BY THE SOFTWARE.

B. Except for the foregoing infringement claims, LICENSEE shall indemnify and hold harmless LICENSOR, their officers, agents and employees from and against any claims, demands, or causes of action whatsoever, including without limitation those arising on account of LICENSEE's modification or enhancement of the Software or otherwise caused by, or arising out of, or resulting from, the exercise or

practice of the license granted hereunder by LICENSEE, its sublicensees, if any, its subsidiaries or their officers, employees, agents or representatives.

**11. GOVERNMENT CONTRACTS**

If the Software or Documentation to be furnished hereunder are to be used in the performance of a government contract or subcontract, the software shall be provided on a "restricted rights" basis only and LICENSEE shall place a legend, in addition to applicable copyright notices, in the form provided under the governmental regulations. LICENSOR shall not be subject to any flow down provisions required by the governmental customer unless agreed to by LICENSOR in writing.

**12. TERMINATION**

Either party may terminate this Agreement on thirty (30) days written notice to the other party in the event of a breach of any provision of this Agreement by the other party, provided that, during the thirty (30) days period, the breaching party fails to cure such breach.

**13. POST TERMINATION RIGHTS**

A. Upon the expiration or termination of this Agreement, at the request of LICENSOR, LICENSEE shall provide written confirmation that the Software has been uninstalled.

B. Upon the expiration or termination of this Agreement, all rights granted to LICENSEE under this Agreement shall forthwith terminate and immediately revert to LICENSOR and LICENSEE shall discontinue all use of the Software and the like.

**14. INFRINGEMENTS**

A. LICENSOR shall have the right, in its sole discretion, to prosecute lawsuits against third persons for infringement of LICENSOR's rights in the Software that are related to this Agreement with LICENSEE or are otherwise brought to LICENSOR's attention by LICENSEE.

B. LICENSEE agrees to fully cooperate with LICENSOR in the prosecution of any such suit. LICENSOR shall reimburse LICENSEE for the expenses incurred as a result of such cooperation.

**15. INDEMNITY**

A. LICENSOR agrees to defend, indemnify and hold LICENSEE, its officers, directors, agents and employees, harmless against all costs, expenses and losses (including reasonable attorneys' fees and costs) incurred through claims of third parties against LICENSEE based on a breach by LICENSOR of any representation and warranty made in this Agreement.

B. LICENSEE agrees to defend, indemnify and hold LICENSOR, its officers, directors, agents and employees, harmless against all costs, expenses and losses (including reasonable attorneys' fees and costs) incurred through claims of third parties against LICENSOR based on a breach by LICENSEE of any representation made in this Agreement, or otherwise by any action of LICENSEE that is not covered by the indemnification provisions of LICENSOR in the Agreement.

**16. FORCE MAJEURE**

Neither party shall be liable for any loss or delay resulting from any force majeure event, including acts of God, fire, natural disaster, terrorism, labor stoppage, war or military hostilities, or inability of carriers to make scheduled deliveries, and any payment or delivery date shall be extended to the extent of any delay resulting from any force majeure event.

**17. NOTICES**

A. Any notice required to be given pursuant to this Agreement shall be in writing and mailed by certified or registered mail, return receipt requested or delivered by a national overnight express service.

B. Either party may change the address to which notice or payment is to be sent by written notice to the other party pursuant to the provisions of this paragraph.

**18. JURISDICTION AND DISPUTES**

A. This Agreement shall be governed by the laws of Indiana.

B. All disputes hereunder shall be resolved in the applicable state or federal courts of Indiana. The parties consent to the jurisdiction of such courts, agree to accept service of process by mail, and waive any jurisdictional or venue defenses otherwise available.

**19. AGREEMENT BINDING ON SUCCESSORS**

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns.

**20. WAIVER**

No waiver by either party of any default shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of this Agreement.

**21. SEVERABILITY**

If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from the Agreement.

**22. ASSIGNABILITY**

The license granted hereunder is personal to LICENSEE and may not be assigned by any act of LICENSEE or by operation of law unless in connection with a transfer of substantially all the assets of LICENSEE or with the consent of LICENSOR.

**23. PUBLICITY**

LICENSOR may include LICENSEE and LICENSEE's logo on its client lists on LICENSOR's web site; on advertising materials; in presentations made to shareholders, prospects, clients and stock analysts; provided no representation, express or implied, is or will be made as to LICENSEE's opinion of LICENSOR's Software (including but not limited to by way of predictions or projections of future business).

**24. INTEGRATION**

This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents that may be in conflict therewith.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**LICENSOR**

**LICENSEE**

**Get Digital Data, LLC**

**Company:** \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: \_\_\_\_\_

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

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

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

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

**EXHIBIT A**

**ENCODE CENTER SOFTWARE TERMS**

The parties agree to the following Addendum containing additional terms and conditions related to the above-referenced Software License Agreement. Terms not defined in this Exhibit shall have the meaning given them in the above-referenced Software License Agreement between the parties (the "Agreement"). This Exhibit is not effective until (i) the Agreement is signed by both parties, and (ii) the Exhibit is attached to the Agreement.

A. **Software.** "Software" shall mean the product referred to as LICENSOR's "Encode Center Bulk CD Ripping software". Software provides numerous CD ripping and data lookup features and operates with a number of CD hardware devices, as described in the applicable online Documentation.

B. **Delivery of Software and Documentation.** LICENSOR shall deliver to or make available for download by LICENSEE a copy of the Software licensed hereunder in object code form, suitable for installation. LICENSOR shall deliver to or make available for download by LICENSEE an electronic copy of the Documentation which describes the specifications for operating the Software, if applicable.

C. **License Term.** The initial term of this Agreement shall begin on the Effective Date and shall continue for a period of ninety (90) days ("Schedule Initial Term"). Following the Schedule Initial Term, this License Term will automatically renew in one month increments. The Schedule Initial Term and all renewal terms shall be referred to as the "License Term." The Software may be used by LICENSEE for a period not to exceed the License Term. Either party may terminate this Agreement at any time after the Schedule Initial Term by providing the other party with thirty (30) days written notice.

D. **License Fee.** The License Fee shall be a one time lump sum fee of \$2,999 (USD) for each computer identified in Section F of this Exhibit, plus a monthly subscription fee of fifteen cents (\$.15 USD) per database lookup, unless otherwise purchased from Get Digital Data or one of Get Digital Data's authorized resellers.

E. **License Fee Payment.** Unless LICENSEE is has applied for and is approved for billing arrangements with LICENSOR, the lump sum shall be charged to LICENSEE's credit card upon execution of this

Agreement and the monthly License Fee shall be charged to LICENSEE's credit card promptly after the end of the applicable month once the number of database lookups for the month can be determined.

F. **Designated Equipment.** The Software can be installed on \_\_\_\_ computer(s). These are collectively referred to as "Designated Equipment".

G. **Copies of Software.** Except as specifically set forth herein, any Software provided in machine readable form may not be copied by LICENSEE in whole or in part, except for LICENSEE's backup or archive purposes. LICENSEE agrees to maintain appropriate records of the number and location of all copies of the Software and make such records available upon LICENSOR's request. LICENSEE further agrees to reproduce all copyright and other proprietary notices on all copies of the Software in the same form and manner that such copyright and other proprietary notices are originally included on the Software.

H. **Territory.** Territory shall mean the United States.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum to the Agreement as of the date first written above.

**LICENSOR**

**LICENSEE**

**Get Digital Data, LLC**

**Company:** \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: \_\_\_\_\_

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

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

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

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