Please complete the following license agreement and support agreement and send to:

 email: support@blackwood-systems.com

mail:

 BlackWood Systems, Inc.

 14300 N Northsight Blvd – Suite 208

 Scottsdale, AZ 85260

 Contact Dale Wood

 Phone 602-569-8766

Please include a return mailing address for the completed forms.

If you have any questions, please send an email to support@blackwood-systems.com.

BlackWood Systems, Inc.

Software License Agreement

This Agreement ("Agreement") is entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and between

BlackWood Systems, Inc. 14300 N Northsight Blvd, Suite 208, Scottsdale, AZ 85260 ("BlackWood") and

 (Licensee"),

for a software license for the BlackWood Product (check) : \_X\_ BWMOMI

**Definitions**. The capitalized terms used herein are defined as follows:

* **Documentation:** All standard user documentation supplied to the Licensee by BlackWood for the programs.
* **Fee**: The License fees payable by Licensee for the products specified on Licensee's purchase order (or other such order method) as accepted by BlackWood.
* **Updates**: All improvements, extensions, updates and other changes to the product made generally available by BlackWood without a separate charge to Licensee of the Product(s) which are under a current Support Agreement.
* **Product(s)**: The Program listed above and it’s Documentation.
* **Program(s)**: The computer software programs identified on the Licensee's purchase order, as accepted by BlackWood, and updates furnished by BlackWood.
* **Server System:** The HPE NonStopTM System the Product is licensed to operate on.
* **Server Program**: The portion of the Program that resides on the Server System.
* **Client Program**: The portion of the Program that resides on the PC (If used by that Product).
* **Warranty Period**: A 1 year period commencing on the date of invoice, includes Standard Support.
* **Standard Support**: Phone and Email support based on BlackWood's standard business hours (Mon-Fri 8:00am-5:00pm AZ Time) with a best effort response time of 4 hours.
1. **License Rights.** Subject to the terms and conditions of this Agreement, BlackWood hereby grants to Licensee a personal, non-exclusive, perpetual and non-transferable license and right to use the Product solely for Licensee's own internal processing and computing needs. Such use of the Product shall be limited to the Server System the product is licensed for. Licensee shall not: (a) adapt, modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Products or any part thereof; (b) make unauthorized copies of the Products, in whole or in part, excluding an archival copy; (c) export the Products in contravention of United States Bureau of Export Administration laws or regulations; or (d) sublicense the Product or transfer Licensee’s rights to a third party, without prior written consent from BlackWood.
2. **Payment.** The Fee shall be invoiced upon shipment of the Products to Licensee and shall be payable within the terms of the invoice. The Fee does not cover or include any federal, state, local or other taxes, including, but not limited to, sales, use, excise, and property taxes or amounts levied in lieu thereof, all of which shall be the liability solely of Licensee; provided that Licensee shall have no responsibility for taxes based on the net income of BlackWood.
3. **Password**. Passwords are used and are issued for each Server System to control the operation of the product. Upon receipt of purchase order (or other such order method) acceptable to BlackWood, a temporary password allowing operation of the product for 90-days will be issued. Upon payment, a permanent password will be issued for the Server Program. This password will entitle the Licensee to perpetually operate the Product and apply 1 year of Updates commencing from the date of invoice. After 1 year, the Server Program will continue to operate but will not allow the application of further Updates. BlackWood cannot insure that the Product will continue to operate without Updates, if the Server System orClient Program operating system or hardware is upgraded. Upon payment of the fees for Support, as described in Attachment A, a new Password shall be issued by BlackWood to Licensee which will entitle the Licensee to perpetually operate the Product and apply Updates for the 1 year period following such payment.
4. **Acceptance**. BlackWood shall deliver to Licensee one copy of machine-readable object code for the Programs and Passwords for each licensed Server System and related Documentation. Licensee shall be deemed to have accepted the Product upon receipt.
5. **Warranties**. BlackWood warrants that it has the right to grant to Licensee the licenses contemplated by this Agreement. BlackWood furthermore warrants that during the Warranty Period the Programs will conform in all material respects to the Documentation. BlackWood does not warranty that the Products will meet the Licensee's requirements, that operation of the Products will be uninterrupted or error-free, or that all errors will be corrected. Licensee's sole and exclusive remedy for a breach of this warranty shall be limited to (a) correction of defects for which BlackWood receives written notice during the warranty period; or (b) if such defect cannot be corrected, to terminate this Agreement and return the Product(s) to BlackWood for a full refund. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, BlackWood MAKES NO ADDITIONAL WARRANTIES, GUARANTEES OR REPRESENTATIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
6. **Limitation of Liability**. EACH PARTY’S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF THE LICENSE FEE PAID BY THE LICENSEE. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR TORT DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM DELAY OR LOSS OF PROFITS, BUSINESS OR GOODWILL, WHETHER OR NOT BlackWood OR LICENSEE HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES.
7. **Indemnity.** If notified promptly in writing of any action brought against Licensee based on a claim that Licensee's use of the Products infringes the right of a third party, BlackWood will defend such action (to the extent based upon such claim of infringement) at its expense and pay the costs and damage awarded in any such action, provided that BlackWood shall have sole control of defense and negotiations for settlement or compromise. If, the Products or any portion thereof are determined in such action to infringe upon any third party right, BlackWood may, at its option and expense, replace or modify the Programs to eliminate the infringement or grant Licensee a refund equal to the depreciated value of the Programs (based on a 36 month straight line method) upon return of the same to BlackWood. To the extent that any alterations or modifications of the Products have prejudiced BlackWood, BlackWood shall have no liability under this section if the infringement claim is based on use of Products, which are altered or modified in any way, other than modifications made by BlackWood.
8. **Termination.** If Licensee breaches terms or conditions set forth in this Agreement, BlackWood shall have immediate right to terminate this Agreement. If either party breaches any other material term or condition of this Agreement and such failure continues for 30 days following written notice from the other party, this Agreement may be terminated by such other party by written notice of termination to the breaching party. For greater certainty, a termination of this Agreement by Licensee as a result of a breach by Blackwood shall not constitute a termination of Licensee’s perpetual right to the continued, uninterrupted, and quiet use of the licensed Products as set forth herein.
9. **Confidentiality.** Licensee hereby agrees that: (a) the Products with appropriate proprietary or confidential legends are the confidential property of BlackWood; and (b) Licensee shall maintain such confidentiality. Licensee shall use the same degree of care to protect the confidentiality of the Products as Licensee uses to protect Licensee’s own confidential information, but in any case, not less than a reasonable degree of care. Licensee agrees to undertake whatever action is necessary to remedy any breach of Licensee's confidentiality obligations or any other unauthorized use or disclosure of the Products by Licensee, its employees, or its agents. Licensee further agrees not to remove or destroy any proprietary or confidential legends or markings placed upon or contained within the Products. Licensee acknowledges and agrees that BlackWood claims that the Products with appropriate proprietary or confidential legends, including all copies, are the exclusive property of BlackWood, are proprietary to BlackWood and that title and full ownership rights remain with BlackWood. The Confidentiality requirements of this Agreement will terminate if the confidential property: 1) is now available or becomes available to the public without breach of this Agreement, 2) is lawfully obtained from a third party or parties without a duty of confidentiality, 3) is disclosed by BlackWood to a third party without a duty of confidentiality, 4) is known to the Licensee prior to disclosure or 5) is at any time developed by the receiving party independently of any disclosure(s) from BlackWood. All confidential requirements will expire five years after acceptance by Licensee. In addition to the foregoing contained in this Section, the parties hereby agree that either party's confidential information shall also include information relating to the disclosing party's business or financial affairs, such as financial results, business methods, pricing under this Agreement, and information relating to the Server System the Client Program and the Server Program, and all other information designated at the time of disclosure as confidential. The parties agree to maintain the confidentiality of the other party's confidential information, as described above, and to protect as a trade secret any portion thereof by preventing any unauthorized copying, use, distribution, installation, transfer or possession of such confidential information in its possession. Each party agrees to maintain at least the same procedures regarding the other party's confidential information that it maintains with respect to its own confidential information and trade secrets.
10. **Miscellaneous.**
* **Disaster Recovery Systems:** Temporary passwords will be available upon reasonable written request to Licensee in support of Disaster Recovery Systems. Licensee must be under an active Software Support agreement. Such passwords will be of a limited duration, typically two weeks.
* **Amendment and Waiver:** This agreement may not be amended except by a written instrument signed by an authorized representative of BlackWood and Licensee. The waiver by either party of any default by the other shall not be construed as a waiver of any subsequent defaults of the same or different kind.
* **Assignability and Binding Effect:** Except as expressly set forth within this Agreement, neither party may transfer or assign, directly or indirectly, this Agreement or its rights and obligations hereunder without the express written permission of the other party, not to be unreasonably withheld; provided, however, that both parties shall have the right to assign or otherwise transfer this Agreement to any parent, subsidiary, affiliated entity or pursuant to any merger, consolidation or reorganization, provided that all such assignees and transferees agree in writing to be bound by the terms of this Agreement prior to such assignment or transfer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.
* **Publicity**: Neither party shall issue any press release or any other public statement regarding the nature of this Agreement or the relationship of the parties without the written approval of the other party.
* **Notice:** Any notice or other communication by either party hereunder shall be in writing, and shall be deemed to have been given when delivered personally, by confirmed facsimile, by overnight courier, or by registered or certified mail, at the address described above or any other address designated by a party in writing.
* **Entire Agreement:** This agreement and all attachments hereto constitute the entire agreement between the parties with respect to the subject matter hereof and supercedes all prior and/or contemporaneous agreements and representations between them, whether written or not.
* **Limitation of Actions:** No causes of action, regardless of form, arising out of or related to this Agreement may be brought by either party more than one year after such cause of action arises.
* **Severabilty:** If any provision of the Agreement is held by a court of competent jurisdiction to be unenforceable, the other provisions of this Agreement will remain in full force and effect.
* **Governing Law:** The validity, construction and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, excluding that body of law applicable to choice of law. The parties consent and submit to the jurisdiction and venue of the state and federal courts located in Maricopa County of the State of Arizona to determine the validity, construction and performance of this Agreement.
* **Support:** See attachment A

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IN WITNESS WHEREOF, the undersigned have executed this Agreement and acknowledge that they have read and understand the warranty disclaimers and limitations of liability set forth in sections 5 and 6 hereof, as of the date first above written.

**BlackWood Systems, Inc.: Licensee:**

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Authorized Signature Authorized Signature

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Date Signed Date Signed

BlackWood Systems, Inc.

Software Support Agreement (Attachment A)

1. **Program Updates**
* Software support entitles the user to Updates generally made available by BlackWood for the period of the Software Support Agreement. A new password will be issued for every renewal of the Software Support Agreement to permit the application of Updates. Updates may require changes to the Server System, Client System software and/or configuration support files. Updates also require a shutdown and restart of the Programs.

1. **Support Levels.**
* **Standard Support**. Phone and Email support based on BlackWood's standard business hours (Mon-Fri 8:00am-5:00pm AZ Time) with a best effort response time of 4 hours, excluding National holidays.
1. **Pricing**.
* Please request current pricing.
* All charges are payable in United States currency.
* The charges under this agreement are a net amount and are payable in full to BlackWood without deduction for any taxes, and Licensee shall pay any taxes, tariffs, or duties, now or hereafter imposed, based on this Agreement, exclusive of any income taxes of BlackWood, directly to the relevant authorities, or reimburse BlackWood for the same in the event that BlackWood pays any such taxes, tariffs, or duties.
* Pricing for subsequent years Software support is subject to change, but a renewal price increase will not exceed the previous year’s price by more than 5%, provided coverage has not lapsed. Pricing may exceed 5% if software options are added to the product.
1. **Licensed Server Systems**.
* The following systems have been licensed for use of the Product and will have a Software Support Agreement. Please note that the actual System Serial Number is usually a letter followed by 5-6 digits.

System Serial Number System location (address) Product

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