



EMPHASYS SOFTWARE AGREEMENT

This Agreement is entered into on the date set forth below, by and between Emphasys Computer Solutions, Inc. having its principal place of business in Pembroke Pines, FL (hereinafter Emphasys); and the County of Monterey having its principal place of business at 168 West Alisal St. 1st Floor Salinas CA 93901 (hereinafter Licensee).

1. LICENSED SOFTWARE

- 1.1. Emphasys grants to Licensee a nonexclusive, nontransferable, non-assignable, non-perpetual, license to use the software identified in Exhibit A ("Licensed Software"), provided to Licensee as Software-as-a-Service ("SaaS"), and Emphasys, as authorized agent, grants to Licensee a nonexclusive, nontransferable, non-assignable, non-perpetual, license to use the software described in Exhibit A ("Other Licensed Software"). The license is solely for Licensee's own use for its internal data processing operations and is delivered to Licensee in an Emphasys provided hosted environment (SaaS), purchased and delivered hereunder. Licensee agrees to abide by all terms and conditions as required by the manufacturers of the Other (Third Party) Licensed Software.

2. PROPRIETARY INFORMATION & NON-DIS-CLOSURE

- 2.1. Licensed Software, including source code and Support Services, and all documents related thereto, constitutes proprietary information and trade secrets to Emphasys or to the principals for whom Emphasys is the authorized agent. Title and full ownership, including any modifications or revisions thereto, shall at all times remain with Emphasys or its principal.
- 2.2. Licensee may not make copies of the Licensed Software except for backup, archival, emergency recovery purposes or to replace a worn copy. If this Agreement is terminated, all such copies must be destroyed and the Licensed Software returned to Emphasys.
- 2.3. Licensee agrees that it will not allow others to reverse engineer, disassemble, de-compile or in any way tamper with the Licensed Software.
- 2.4. Licensee shall take all reasonable steps to ensure that all Licensed Software, in whatever form, and all documents relating thereto, are held in confidence by Licensee, its employees and consultants and are not disclosed or made available to any third party not licensed by Emphasys, without the prior written consent of Emphasys. Licensee shall instruct in writing all parties having access to the Software of their obligations under this Article.

- 2.5. In the event of Licensee's breach of this Article, as determined by Emphasys, Emphasys shall have the right to enjoin Licensee from further breach and obtain such relief as may be determined by a court of competent jurisdiction.

3. PAYMENT TERMS

- 3.1. Licensee agrees to pay 100% of the amounts listed in this Agreement for Services upon delivery of such Services by Emphasys.
- 3.2. Emphasys shall submit to the Licensee an invoice which shall set forth the License and Service Fee claimed by Emphasys for Service performed, and the Licensee shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice. In any case, the Licensee shall clear the outstanding invoice sent by Emphasys within sixty (60) days from the receipt of invoice by Licensee. All amounts shall be in US dollars unless otherwise noted. Emphasys accepts all major credit cards.
- 3.3. Emphasys shall have the right to withhold services and be held harmless in the event scheduled payments due hereunder remain outstanding for a period longer than thirty days from the due date. In addition, Licensee shall be responsible for paying for any third party collection or legal costs incurred by Emphasys as a result of additional collection efforts. Finally, Emphasys reserves the right to cancel Licensee's license for Licensed Software, after written notice of 30 days, for any material breach by Licensee or if any charges called for herein, which are not reasonably disputable and are in excess of \$10,000, remain unpaid for a period of ninety (90) days beyond the due date. Cancellation for any reason shall not affect the sums due hereunder or any additional remedies provided by law or equity.
- 3.4. Any sales-related taxes, whether specifically identified in this Agreement or not, which are imposed currently or in the future, by any authority with the power of taxation in connection with this Agreement, shall be paid by Licensee. If Licensee is exempt from taxation, Licensee shall provide Emphasys with a Certificate of Exemption upon request.

4. **WARRANTY**

- 4.1. Emphasys warrants that it is the owner of the Licensed Software and Documentation and that Emphasys has the right to sublicense such Licensed Software or Other Licensed Software, as applicable. Emphasys further warrants that no portion of the Licensed Software or Documentation infringes on the intellectual property rights of any third party. Emphasys will indemnify and hold harmless Licensee, its affiliates and each of their respective officers, directors, affiliates, owners, employees and agents ("Indemnitee") from any loss, liability, damage, or expense, including, but not limited to, costs of defense resulting from any claims, demands, or actions brought against Indemnitee based on a claim or allegation that the Licensed Software or Documentation infringes or misappropriates a patent, copyright, trade secret, information, or any other rights of any third party. Emphasys shall have the right to direct the defense strategy and to select their legal representation. The affected Indemnitee, however, shall give Emphasys prompt written notice of any such claim and shall cooperate in the defense of such claims, demands or actions.
- 4.2. Emphasys warrants that the Software will be free from defects in material and workmanship and shall substantially comply with Emphasys' then current documentation. The warranty period of thirty (30) days commences immediately following initial Software installation.
- 4.3. These warranties will only be valid when the Software is used by Licensee in an appropriate and reasonable manner consistent with normal usage and management of such Software. The exclusive remedy of Licensee for breach of these warranties is that Emphasys shall be required to correct, repair, adjust or modify the Software if such defect in material or workmanship occurs and is reported by Licensee in writing within the appropriate warranty period. Emphasys shall not be responsible or liable for damage to the Software caused by Licensee, acts of God, the tampering with or modification of the Software by anyone other than Emphasys' authorized personnel, or damage to the Software occurring by virtue of electrical malfunctions or external factors over which Emphasys has no control.
- 4.4. These warranties do not extend to any Software to which repairs or modifications have been performed by Licensee or persons not authorized by Emphasys, unless such repairs were performed with the prior written consent of Emphasys.

- 4.5. Emphasys warrants that all Services provided pursuant to this Agreement will be performed in a workmanlike manner in accordance with reasonable commercial standards. This warranty shall extend for thirty days following completion of the particular Service, and Emphasys shall correct all Services not so performed if brought to Emphasys' attention in writing within the warranty period.
- 4.6. Emphasys provides no warranties for hardware Equipment and related system software beyond that provided by the manufacturer.
- 4.7. THE WARRANTIES PROVIDED IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE FACE HEREOF, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

5. **LIMITATION OF LIABILITY**

- 5.1. Emphasys shall not be liable to Licensee or any other person for any claim or damages arising directly or indirectly from the furnishing of Equipment, Software, Services, or any documentation relating to such Equipment, Software or Services provided hereunder or from any other cause, except for claims arising from the negligence or willful misconduct of Emphasys or Emphasys' employees, agents or subcontractors. Liability of Emphasys for negligence shall in no event exceed the total price of the item of Equipment, Software Module, or particular Service that is the subject of the claim. Except for acts of willful misconduct, in no event shall Emphasys be liable to Licensee or any third party for indirect, incidental, special, consequential, or exemplary damages of any kind arising out of the existence, furnishing, functioning or the use of the Equipment, Software or Services provided hereunder, even if Emphasys has been advised of the possibility of such damages.

6. **AGREEMENT**

- 6.1. The Agreement between Licensee and Emphasys consists of the following documents and all attachments thereto, which are hereby incorporated by reference. If there is any conflict between the documents, the following order of precedence shall govern:
- 6.2. The contents herein, as may be modified in accordance with Article 9.5, including all Exhibits.
- 6.3. Emphasys' proposal, hereinafter referred to as Exhibit A, License and Service Fees.

7. SUPPORT

- 7.1. Emphasys shall provide Support included as part of the annual SaaS fees, commencing on the Effective Date. This Agreement shall automatically renew for additional terms of one (1) year each unless either party provides the other with written notice of termination at least one hundred twenty (120) days prior to the expiration date of the initial term or of any subsequent one-year term. SaaS Fees are based on a 5 year term.
- 7.2. Effect of Termination. Upon termination of this Agreement the Licensee shall immediately cease all use of the Licensed Software, and within thirty (30) days of the termination date the Licensee shall (1) uninstall the Licensed Software from all of the Licensee's computers, and (2) provide written notice to Emphasys attesting to the removal of the Licensed Software, (the "Termination Procedures"). In the event that the Licensee fails to complete the Termination Procedures in a timely manner, the Licensee agrees to pay for the continued use of the Licensed Software, and Licensee shall pay Emphasys on the first of each month a monthly fee equal to one-twelfth (1/12) of the SaaS Fee multiplied by 115%, until such a time that the Licensee has satisfactorily completed the Termination Procedures.
- 7.3. Termination Audit. For a period of three (3) years after the termination of this Agreement Emphasys shall have the right to inspect the Licensee's computers and premises to ensure that the Licensee has fully and completely satisfied the Termination Procedures. In the event that the Licensed Software is discovered on any of the Licensee's computers or devices, the Licensee agrees that the presence of the Licensed Software shall be de facto evidence of the Licensee's continued use of the Licensed Software and the Licensee's violation of the Termination Procedures. In the event that the Licensed Software is discovered on any of the Licensee's computers or devices, the Licensee agrees to pay Emphasys a fee for the continued de facto use of the Licensed Software; such fee shall be equal to 125% of the SaaS Fee for period beginning on the termination date and ending on the date on which the audit was completed.
- 7.4. The prices of this agreement are outlined in Exhibit A, License and Service Fees.
- 7.5. Emphasys agrees to provide Standard Support, as defined in this Agreement, for the Licensed Software licensed to Licensee. Emphasys agrees to provide Standard Support to enable the Licensed Software to perform substantially without interruption and error, and in Substantial Compliance with the then current Documentation and the then current Mandated Changes.
- 7.6. Emphasys is to provide support to Licensee for technical issues arising from the Licensed Software malfunctioning relative to the functionality described in the Documentation. Any additional services to support Licensee are outside the scope of this Agreement.
- 7.7. "Software for Life": Licensee shall be entitled to Upgrades without having to repurchase Emphasys proprietary software licenses. During the term of this Agreement, Licensee shall be entitled to any substantially equivalent future Upgrades of that originally licensed module at no additional license fee, provided that all related SaaS Fees have been paid since the original licensing of that module. Licensee is responsible for purchasing any third party required product (hardware or software) and Services required to properly implement the Upgrade.
- 7.8. Audits: During the term of this Agreement and for three (3) years after termination or expiration, Licensee will maintain complete records regarding software modules installed or purchased, or any other measure upon which SaaS fees are based. Upon reasonable notice to Licensee, Emphasys may audit, at Emphasys' expense, Licensee's unit counts, software modules installed, and other relevant measures and supporting records to determine its compliance hereunder.
- 7.9. **Standard Support** means the following services shall be provided by Emphasys to Licensee at no additional cost to Licensee:
- 7.9.1. Technical troubleshooting and assistance with Licensed Software in order to restore the Licensed Software's functionality to its operational condition prior to any known errors and to comply with related published Documentation, the current published software manuals and Mandated Changes.
- 7.9.2. Corrections of errors, interruptions, malfunctions or defects in the Licensed Software to enable the Licensed Software to substantially conform to published Documentation.
- 7.9.3. Assistance with errors caused by routine Software Fixes or Enhancements that are correctly installed, as directed in writing by Emphasys.

8. RESPONSIBILITIES OF LICENSEE

- 8.1. **Request for Service.** At any time, Licensee may report its request for service using Emphasys' dedicated support 800-support number or e-mail. If Licensee believes that the Support Event is a High priority, Licensee shall make every reasonable effort to determine if the event is hardware or software-related prior to requesting support from Emphasys.

- 8.2. **Standard Required Information.** When contacting Emphasys for Standard Support, Licensee shall provide the following information: Licensee name, phone and contact person, the name of the Licensed Software module (e.g., General Ledger, etc.), the menu item that was selected and the exact difficulty that was experienced. Licensee understands and agrees that its full cooperation and assistance are necessary for Emphasys to properly respond to a request for service. Licensee is responsible for notifying Emphasys of any Licensed Software problems and providing written documentation of Licensed Software problems with specific examples.
- 8.3. **Install Latest Third Party Software.** Licensee agrees to install in their live environment the latest released version of Third Party Software that is used by and compatible with the Licensed Software within two (2) years of general release by said third party. During such two (2) year period, Emphasys shall use its Best Efforts to continue to support the Licensed Software using Licensee's version of the Third Party Software. In the event a Third Party Software product or version thereof is discontinued, phased-out or no longer supported by its owner, Emphasys' obligation to support that Software shall cease.
- 8.4. **Reasonable Access.** Licensee agrees to provide those Emphasys personnel involved with the operation and support of the Licensed Software reasonable access to perform activities necessary to fulfill its obligations under this Agreement. Licensee will also provide its own Internet access and connection. Such provision shall be operable prior to initial software installation and shall remain operable for the duration of Emphasys' obligation to Licensee for Support Services.
- 8.5. **Data for Support.** Licensee will make available to Emphasys, on a reasonable basis, data necessary for the successful support of the Licensed Software. All such data shall be considered to be Licensee's Proprietary Information, and Emphasys shall retain same in strict confidence and shall not use or disclose such Proprietary Information except to the extent necessary to perform services hereunder.
- 8.6. **Modifications by Licensee.** In no event shall Emphasys be liable or responsible for correcting any errors or damage resulting from changes or modifications to the Licensed Software made by Licensee.
- 8.7. **Designated Licensee Contact.** It is the intent that only Licensee designated contacts or, in their absence, their assignees initiate support calls to Emphasys.

9. GENERAL

- 9.1. **Site Location:** The Equipment and Software shall be located at the following address: Microsoft Azure Hosting Site.
- 9.2. **Export:** The Equipment and Licensed Software furnished by Emphasys herein and any direct products thereof are presently considered licensable commodities and are regulated by the U.S. Department of Commerce. In order to either export said commodities from the United States or to re-export same from any country, a valid license from the U.S. Department of Commerce is required. Diversion contrary to United States Law is prohibited.
- 9.3. **Assignment:** The rights under this Agreement shall not be assigned by Licensee without the written consent of Emphasys.
- 9.4. **Complete Agreement:** This Agreement, including all Exhibits, constitutes the entire agreement between the parties and supersedes all prior or contemporaneous understandings or agreements whether written or oral, regarding the subject matter hereof.
- 9.5. **Modification:** This Agreement may not be modified, except by an instrument in writing signed by a duly authorized representative of each party.
- 9.6. **Severability:** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 9.7. **Waivers:** Any waivers by either party of a breach of any provision to this Agreement shall not operate as, or be construed as, a waiver of any other provision of this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.
- 9.8. **Arbitration:** All disputes, with the exception of the injunctive and other relief referred to in Article 2.5, above, arising out of or relating to this Agreement or a material breach thereof, will be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as supplemented by the Computer Guide, if then in existence. Judgment upon the award rendered by the arbitrator may be entered in any Court having jurisdiction thereof. The parties shall jointly request the American Arbitration Association to submit a panel of three arbitrators, each of which is listed on the Computer Arbitration Panel and at least one of which shall be an attorney in good standing.

9.9. Force Majeure: In the event of any cause beyond the control of either party, such party shall not be liable for any delay in the performance of, or failure to perform, this Agreement. Without limiting the generality of the foregoing, such causes include acts of God or the public enemy, fires, floods, storms, earthquakes, riots, strikes, lockouts, quarantines, wars or war operations or other causes which could not, with reasonable diligence, be controlled or prevented by the party affected.

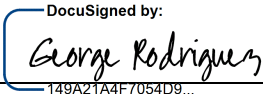
9.10. Notices: All notices, requests, demands or other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given when mailed by certified mail or when delivered in person to the parties who have executed this Agreement.

9.10.1. Jurisdiction: The parties agree that this Agreement will be entered into in the State of California, that both parties are subject to the jurisdiction of the state and federal courts in California, and that such courts shall have exclusive jurisdiction over any case or controversy arising out of, or in any way relating to, this Agreement or to the relationship created hereunder. The parties further agree that the laws of the State of California and of the United States shall govern the construction and interpretation of this Agreement and shall apply in any such case or controversy. Headings: The paragraph headings used herein are for convenience of reference only and shall in no way be deemed to define, limit or add to any of the provisions hereof.

IN WITNESS WHEREOF the parties hereunto have caused this Agreement to be executed by their duly authorized representatives, the later of such dates shall be the "Effective Date".

Emphasys Computer Solutions, Inc.

Licensee

By: 
Name: George Rodriguez
Title: Portfolio Manager
Date: 6/21/2023 | 12:30 PM PDT

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A
to
EMPHASYS SOFTWARE AGREEMENT

By and Between
Emphasys Software. and Monterey County, CA, Licensee
Effective Date _____

1. **SaaS Licensed Software:**

Investment Management (SaaS)

General Ledger Interface Module
Creation and export of journal entries
Earnings Allocation
Market Pricing – Once per month pricing of portfolio

Debt Management (SaaS)

General Ledger Interface Module
Creation and export of journal entries

2. **Authorized Users:** 8 user access Investment Management, 6 user access Debt Management

Any other Software licensed during the Term as described in this Exhibit, any amendment hereto or any purchase order issued by Licensee and accepted by SymPro.

3. **SaaS and Service Fees:**

SaaS and Service Fees:

Total SaaS Fee	\$49,960
Pro-rated 8/1/2023 – 6/30/2024	\$45,797

Annual Maintenance and Support, Hosting	Inc
Includes MFA	

Setup, Training & Implementation*	\$19,600
Four days implementation, consulting & training. Includes Interfaces to new GL	

* Travel expenses (if necessary) are not included

Yearly SaaS Fee

Year 2 (7/1/2024 – 6/30/2025)	\$52,458
Year 3 (7/1/2025 – 6/30/2026)	\$55,081
Year 4 (7/1/2026 – 6/30/2027)	\$57,835
Year 5 (7/1/2027 – 6/30/2028)	\$60,727

Options:

\$15,000 for additional services over a 5-year term at \$250 per hour
Additional users can be added for \$480/user/year.

4. **Payment Schedule:**

SaaS fees will be invoiced upon execution of this agreement.
Professional service fees and training will be invoiced as services are performed.

Description of Services to be provided:

1) **Transition from on-premise to SymPro Cloud**

Implementation & Training

Services include:

- Backing up of your current SymPro application & data
- Creating your client environment.
- Deploy into cloud based hosted environment.
- Test the connection.
- Work with the end users to get connected to the cloud-based environment.
- Training

\$4,000 – Invoiced in Year 1

2) **New Interfaces: SymPro Investment & Debt Systems to Oracle Cloud**

Discovery, Development, Implementation, Project Management & Training

Services include:

- Spec out new file extracts.
- Develop new extract mapping.
- Produce sample test files.
- Configure new account strings.
- Deploy to Monterey County
- Training

\$15,600 – Invoiced in Year 2

Exhibit B
to
EMPHASYS SOFTWARE AGREEMENT

By and Between
Emphasys Software and Monterey County, CA, Licensee
Effective Date _____

Annual Support and Maintenance Plan

The following SymPro Support and Maintenance Plan applies as of the Effective Date. Emphasys reserves the right to change this Plan at any time, with 60 days written notice. All changes will be posted at its website: www.sympro.com and will become effective as of the next Renewal Term. However, any Support and Maintenance Plan will include at least the following essential elements:

- Priority service from technical support and client service representatives
- Free SymPro version corrections and enhancements released in the license and service term
- Access to the SymPro Internet Site for Support (www.sympro.com)
- Unlimited telephone technical support in the following areas:

Loading and configuring of SymPro Software

Operational Questions, including standard SymPro reports

Data entry support for all investment types supported within SymPro, including:

Investments

- Certificates of Deposits
- Negotiable Certificates of Deposits
- Checking Accounts
- Commercial Paper
- Commercial Paper Discount
- United States Treasury Issues, Coupon & Discount
- Federal Agency Issues, Coupon & Discount
- Rolling Repurchase Agreements
- GNMA, Pass Through
- Bankers Acceptances
- Corporate Bonds
- Medium Term Note

Debt

- Serial Bonds
- Term Bonds
- Discount Bonds
- Variable Rate Coupon
- Commercial Paper
- Commercial Paper Discount
- Medium Term Notes

Tele-consultation is provided during normal business hours (6:30AM TO 5:00PM – Pacific Time), Monday through Friday for questions dealing with the operations of the Licensed Software on Designated Equipment. Support issues may be reported via voicemail (510-655-0900 Selection 2), fax (510-655-4064), or email (support@sympro.com), 24 hours a day. Answers to “Frequently Asked Questions” are available at www.sympro.com, 24 hours a day. The resolution of some issues may require that Licensee provide Emphasys with a copy of Licensee’s data. Licensee agrees to provide Emphasys with a copy of their data for the purpose of resolving Licensee’s issue and Emphasys agrees to maintain full confidentiality of any required data and will use it only for the resolution of the Licensee’s issue.

Not Included: Consulting on issues concerning investment accounting matters, specific financial or investment matters, research on investments not supported within the Licensed Software, or data entry for investments not supported in the Licensed Software system are not i