CXM SW LICENSE AGREEMENT

THIS CXM SW LICENSE AGREEMENT GOVERNS THE USE OF CO-NEXUS' PROPRIETARY SOFTWARE. CO-NEXUS AND THE "END USER" HEREBY AGREE AND ACCEPT ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT. BY INSTALLING OR USING THE CO-NEXUS PRODUCT(S), OR AUTHORIZING OTHERS TO DO SO, YOU, ON BEHALF OF YOURSELF AND THE ENTITY FOR WHOM YOU ARE INSTALLING OR USING THE PRODUCT(S) (HEREINAFTER REFERRED AS "END USER"), AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND CREATE A BINDING CONTRACT BETWEEN YOU AND CO-NEXUS INC. ("CO-NEXUS"). ANY USE OF THE PRODUCT(S) WILL CONSTITUTE YOUR ASSENT TO THE TERMS OF THIS AGREEMENT (OR RATIFICATION OF ANY PREVIOUS CONSENT).

Section 1.   **Definitions**

As used in this Agreement, the following terms have the meanings given to them below:

"Agreement" means this Software License Agreement.

"Confidential Information" means any information in any form relating to the terms of this Agreement (except for the existence of this Agreement, which is not Confidential Information), or relating directly or indirectly to research or development by, accounting for, or the marketing or the business of either party or its suppliers or customers; or disclosed by either party to the other on the express basis that such information is confidential; or which might reasonably be expected by either party to be confidential in nature; provided that where information relates exclusively to one party, nothing in this Agreement shall require that party to maintain confidentiality in respect of that information. Co-nexus' Confidential Information includes, without limitation, the details of the Licensed Software, user documentation, training materials and any security procedure information delivered to you.

"License" means the limited license to Use the Licensed Software under this Agreement.

"Intellectual Property" means patents, brand names, registered designs, trade marks (including logos and trade dress), domain names, copyrights, rights in computer software and databases, rights in inventions, confidential information, know-how and trade secrets and all other intellectual property, in each case whether registered or unregistered (including applications for the grant of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

"Licensed Software" means the Co-nexus CXM branded products or other Co-nexus developed software programs purchased by End User, including, without limitation, (1) any instructions or statements in machine readable form, including source and object code; (2) any related materials, documentation and listings whether in machine readable form or in printed form, (3) any updates or new versions of such software released from time to time and made available to you by Co-nexus, including any copy or partial copy of the same, (4) all derivative software, applications and documentation based on or derived from the Licensed Software; (5) all operating, user and technical manuals; and (6) all copies of the foregoing.

"Use" means to copy, load, execute, access, run, store, and display the Licensed Software in accordance with this Agreement and any user documentation.

Section 2.   Software License

Section 2.1   Grant of License. Co-nexus grants End User a perpetual, non-exclusive, non-transferable License to Use the Licensed Software to do the following ("Permitted Use"):

(a) Use the Licensed Software on the number of End User's computers as specified on the System Description set forth on Order Form utilized by the CXM Authorized Dealer ;

(b) Copy the Licensed Software only for purposes of backup and disaster recovery;

(c) Use any printed materials solely to support the use by End User of the Licensed Software;

(d) Use the Licensed Software solely for End User's internal business purposes, and

(e) Use the Licensed Software in accordance will local, State and Federal laws and ordinances.

Section 2.2   OMITTED

Section 2.3   Copying. End User shall not copy the Licensed Software, except for one (1) copy solely for internal back-up purposes.

Section 2.4   License Restrictions. End User and its employees and agents shall:

(a) Not reproduce, publicly display or perform, modify, de-compile, disassemble, reverse engineer, merge or de-code the Licensed Software;

(b) Maintain the Licensed Software in safe custody, and prevent any unauthorized use, reproduction, distribution or publication of the Licensed Software; and

(c) Not loan, rent, lease, license, sublicense, assign or otherwise transfer the Licensed Software. This license extends to third parties/agents that use the software on behalf of the End User.

Section 2.5   Ownership and Compliance

(a) Title. Title and ownership rights to the Licensed Software shall remain with Co-nexus and its licensors. All Intellectual Property rights arising out of any modifications (whether or not authorized pursuant to this Agreement) to the Licensed Software shall, upon their creation, vest solely in Co-nexus or its licensors.

(b) Compliance. End User shall be responsible for the Permitted Use of the Licensed Software by End User's employees, subcontractors or agents who have access to the Licensed Software and End User shall ensure that all such persons are instructed to comply with the terms of this Agreement. End User shall ensure that its Use of the Licensed Software does not infringe on the intellectual property rights of any person. End User shall promptly notify Co-nexus of any unauthorized use of the Intellectual Property by others as soon as End User becomes aware of such use.

(c) Audit. End User shall permit Co-nexus, upon reasonable request and during normal business hours to audit End User's use of the Licensed Software and verify compliance with the terms and conditions hereof. Co-nexus shall be entitled, upon reasonable advanced notice to End User, to remotely access the Licensed Software 24 hours a day, seven days a week for these purposes.

(d) OMITTED

Section 3.   Warranties and Remedies

(a) Warranty. Co-nexus warrants that it has full power and authority to enter into this Agreement and to grant the License to End User. For a period of one (1) year from the date of delivery of the Licensed Software to End User, Co-nexus warrants that the Licensed Software will substantially perform according to its documentation if properly used in accordance with the software specifications. THIS LIMITED WARRANTY AND THE REMEDIES IN THIS SECTION 3 BELOW SHALL BE CO-NEXUS' SOLE OBLIGATION, AND END USER'S SOLE REMEDY, FOR A FAILURE OF THE LICENSED SOFTWARE TO CONFORM TO ITS DOCUMENTATION. WARRANTY CLAIMS ARE TO BE PURSUED WITH CO-NEXUS, AND/OR ITS SUCCESSORS AND NOT AGAINST ANY CO-NEXUS SOFTWARE LICENSOR.

(b) Warranty Exclusions. Co-nexus shall not be responsible for, and End User shall release Co-nexus from, any warranty claims caused by negligent use, misuse, tampering or modification of the Licensed Software by End User or any third party, the incompatibility of the Licensed Software with End User's systems or factors beyond the reasonable control of Co-nexus. Co-nexus makes no warranties that the Licensed Software will record and preserve every call in its entirety. Call recording performance may be affected by a number of factors over which Co-nexus has no control.   CO-NEXUS MAKES NO OTHER WARRANTY FOR THE LICENSED SOFTWARE; THESE WARRANTIES ARE INSTEAD OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(c) Warranty Claims. End User shall notify Co-nexus of any claim under this warranty and Co-nexus shall, at its option, either create a workaround for the defective software or replace the

Licensed Software. Co-nexus may perform any workaround either on-site or off-site and shall be obligated to complete any such workaround during Co-nexus normal business hours. Additional services not covered under warranty or expedited warranty claims shall be billed to End User at Co-nexus' standard after-hours rates.

(d) Intellectual Property Indemnification

(i) Indemnity. Co-nexus shall indemnify End User from any action brought against End User based on a claim that the Licensed Software infringes any duly issued patent or any copyright in the United States. This obligation shall not extend to: (a) infringement arising out of unauthorized Use of the Licensed Software, (b) modification of the Licensed Software after its delivery to End User, (c) the combination of any Licensed Software with any programs or data not provided by either Co-nexus or End User, or (d) any work delivered by Co-nexus derived from End User specifications.

(ii) Method. Co-nexus will pay all damages and costs attributable to an action under Section 3(d)(i) finally awarded against End User; provided that, Co-nexus is promptly notified in writing and furnished a copy of each communication, notice or other action relating to the alleged infringement and is given authority, information and assistance (at Co-nexus' expense) necessary to defend or settle such claim.

(iii) Cure Right. If any of the Intellectual Property becomes, or in the opinion of Co-nexus is likely to become, the subject of a claim of infringement under Section 3(d)(i), then Co-nexus shall, at its sole option: (a) obtain for End User the right to use such Intellectual Property free of any such infringement, (b) replace the Licensed Software with non-infringing substitute items that substantially comply with the requirements of the Licensed Software, or (c) refund the portion of the purchase price for the system attributable to the Licensed Software less the value of End User's prior use calculated using a three (3) year depreciation schedule. THE FOREGOING INDEMNITY SHALL BE END USER'S SOLE REMEDY AND CO-NEXUS' SOLE LIABILITY FOR THE INFRINGEMENT OF PATENTS AND COPYRIGHTS RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

(iv) Limitations. The indemnity in this Section 3(d) shall not apply: (A) to any claim based upon a version of the Licensed Software which is not supported by Co-nexus, (B) if the infringement would have been avoided by the use of a supported version; (C) to any modification or alteration to the Licensed Software made by you or others; and (D) to a use of the Licensed Software in a manner not contemplated by this Agreement or other than pursuant to the documentation of the Licensed Software.

(e) Compatibility. End User shall have the sole responsibility to ascertain whether its operating environment is compatible with the Licensed Software. Co-nexus shall not be responsible for the cost of any modifications necessary to achieve compatibility. Co-nexus and End User may agree to such additional modifications of the Licensed Software to achieve compatibility, the cost of which shall be borne by End User at Co-nexus ' prevailing rates and charges.

(f) Remedies. End User's sole remedy for a breach of warranty under this License shall be as set forth in Section 3(c). End User's sole remedy for any claim of breach of a representation or warranty with respect to Intellectual Property shall be the intellectual property indemnification set forth in Section 3(d). These limitations shall apply regardless of the form of action, whether in contract, or in tort, including negligence. NEITHER PARTY SHALL BE LIABLE HEREUNDER FOR ANY DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, LOSS OF BUSINESS OR INDIRECT, INCIENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. CO-NEXUS SHALL NOT BE RESPONSIBLE FOR ANY DAMAGES CLAIMED BY END USER BASED ON THIRD PARTY CLAIMS.

Section 4.   Other Services

If Co-nexus provides services outside the coverage of Co-nexus' warranty hereunder, End User will be billed for such services at Co-nexus' standard rates and charges, including all reasonable out-of-pocket expenses. Upon End User's request, Co-nexus will provide additional training and consulting services in accordance with Co-nexus' then current policies and fees for such services.

Section 5. **Termination**

Co-nexus may terminate this Agreement and revoke this License if End User breaches any of the terms of this Agreement, which breach shall not have been cured after ten (10) days' written notice. Upon revocation, End User shall immediately stop using the Licensed Software and return to Co-nexus or destroy (followed by written confirmation of the same), all copies of the Licensed Software, as Co-nexus may direct.

Section 6. **Term of License**

This License commences upon the date End User purchases the license from the authorized Co-nexus dealer. The term of the License shall be perpetual, subject to termination by Co-nexus under Section 5.

Section 7. **General**

(a) Confidentiality. Each party shall maintain as confidential at all times and shall not at any time, directly or indirectly disclose or permit to be disclosed to any person (except its employees and authorized agents, and in such cases, only on a need-to-know basis) or to use for itself, any Confidential Information (whether disclosed before or after this Agreement is signed), except: as required by law; or is already or becomes public knowledge otherwise than as a result of a breach by the party disclosing or using that Confidential Information; or as authorized in writing by the party to which that information relates; or to the extent necessary to obtain legal or other advice.

(b) Notices. Any notice or other communication to be given under this Agreement may be in writing and delivered by hand, e-mail or facsimile to the parties at the addresses specified in this Agreement.

(c) Waiver. No waiver of a breach of any provision of this Agreement shall constitute a waiver of any other breach of such provision or of other provisions.

(d) Severability, Counterparts. If any provision of this Agreement is declared invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect. This Agreement may be executed in multiple counterparts and by facsimile.

(e) Entire Agreement. This Agreement, the System Description and/or the Extended Maintenance Agreement represent the entire agreement between End User and Co-nexus regarding the subject matter set forth herein. As such, it supersedes all prior agreements and understandings, whether oral or written, regarding such subject matter. No change or modification of this License shall be valid unless it is in writing, signed by both parties.

(f) Governing Law/Dispute Resolution. This Agreement shall be governed by the laws of the state of Texas without giving effect to its conflicts of laws provisions. The U.N. Convention on Contracts for the International Sale of Goods is specifically disclaimed. Any controversy or claim between the parties out of or relating to this Agreement shall be settled by binding arbitration in Houston, Texas in accordance with the rules then prevailing of the American Arbitration Association. The arbitration award shall be subject to the limitations on remedies set forth herein.

(g) Assignment. End User shall not assign, sublicense or transfer, directly or indirectly, this Agreement or the License without the prior written consent of Co-nexus.