



INNERGY®

INNERGY MASTER SUBSCRIPTION AGREEMENT

WITNESSETH:

WHEREAS, INNERGY has developed a product which shall provide custom state-of-the-art job shop information management software and web applications for the comprehensive management of businesses in the woodworking industry (collectively, the “Software”);

WHEREAS, INNERGY and Licensee are entering into a software-as-a-service agreement whereby INNERGY would grant to Licensee a non-exclusive, revocable license to use the Software together with supporting services therefor (as set forth in specific order documents, the “Order Form”) **NOW, THEREFORE**, in consideration of the mutual covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, it is agreed that:

ARTICLE 1 DEFINITIONS

Capitalized terms used by not defined herein shall have the meanings ascribed to them in the Order Form. As used herein the following capitalized terms shall have the following definitions:

Affiliate means any business entity of which Licensee owns, directly or indirectly through an Affiliate, more than 50% of all the voting interests or, if more, such percentage as shall be required to exercise control of the management of such entity. “Affiliate” also includes any business entity that owns 100% of the voting interests of Licensee, and all of that entity’s Affiliates.

Confidential Information means commercial or technical proprietary, trade secret, or confidential information marked as such by the disclosing party, including without limitation the Documentation and the Software Versions whether or not marked as confidential.

Documentation shall mean the documentation of the Software provided by INNERGY to end users in any medium.

Subscription Start Date shall mean the date on which INNERGY shall commence delivery of the Software, as set forth in Section 2.1 herein below.

Intellectual Property Rights shall mean all industrial, intellectual property, or other proprietary rights established in the United States or throughout the world whether protectable by statute, at common law or in equity.

Licensee shall mean Licensee and its Affiliates.

Release shall mean the general distribution of an initial or new and upgraded version of the Software.

Software shall mean the version and corresponding releases of the INNERGY solution made available to the Licensee for use under this agreement.

Third Party Software shall mean software programs, processes and methodologies not created by INNERGY, whether or not supplied by INNERGY, by Licensee or by others

ARTICLE 2 LIMITED REVOCABLE LICENSES

2.1. **Initial Sign Up Fee and Subscription Start Date.** Licensee hereby agrees to pay INNERGY a fee in the amount designated in Exhibit B ("Sign Up Fee") upon execution and delivery of this Agreement. Further, upon execution and delivery of this Agreement, Licensee shall provide INNERGY with written notice of the Subscription Start Date.

2.2. **Grant of License.** INNERGY hereby grants to Licensee, subject to the terms and conditions of this Agreement, a nonexclusive, revocable, personal, non-transferable and non-assignable, limited right and license to use the Software. No express or implied license or right of any kind is granted to Licensee regarding the Software or the trademarks or service marks of INNERGY, including, but not limited to, any right to know, use, produce, receive, reproduce, copy, market, sell, distribute, transfer, translate, modify, or adapt the Software or create derivative works based on the Software or any portions thereof, or obtain possession of any source code or other technical material relating to the Software, except as expressly authorized herein. Licensee is not authorized to, and covenants that it will not, disassemble, decompile or reverse engineer the Software nor suffer the same by any person with access to the Software through Licensee.

2.3 **Use of Licensees Logo and Trademark.** Licensee hereby grants to INNERGY for the term of this Agreement and subject to the terms and conditions hereof, a non-exclusive, revocable, personal, royalty-free, non-transferable and non-assignable worldwide limited right and license to Licensee's name, logo and trademark on INNERGY's website and promotional materials in any format, including without limitation materials promoting the Software. Licensee shall remain the exclusive owner of its name, logo and trademark. INNERGY's use of Licensee's name, logo and trademark shall inure to the benefit of Licensee.

ARTICLE 3
LICENSEE'S RESPONSIBILITIES

3.1. **File Conversion.** INNERGY assumes no responsibility under this Agreement for converting Licensee's data files for use with the Software.

3.2. **Backup; Supporting Environment.** Licensee alone is responsible for obtaining and maintaining proper Third Party Software for use with the Software, including, without limitation, operating systems, networks, security configurations, databases and other utilities, including appropriate virus protection and firewalls, for the computer system on which the Software operate.

ARTICLE 4
SUPPORT

4.1. **Support Services.** During the Term of this Agreement (as defined in Article 10 hereinbelow), INNERGY shall provide the following services, collectively referred to as the "Support Services:"

4.1.1. **Help Desk.** INNERGY shall during regular business hours maintain a help desk for the Software accessible by telephone or electronic mail staffed by persons who are fully versed in the Software and the support programs for each.

4.1.2. **Online Support.** INNERGY shall provide Licensee with online access to troubleshooting documentation, "how-to" videos, and tutorials through INNERGY's website.

4.1.3. **Releases.** INNERGY shall provide Licensee with all Releases that INNERGY may issue from time to time, including, without limitation, maintenance patches and bug fixes, at no additional cost to Licensee. All Releases received by Licensee shall be subject to the terms, conditions, restrictions and covenants of this Agreement.

4.1.4. **Hosting.** INNERGY shall provide hosting services to Licensee with respect to the Software. Licensee shall not have the option to use a third-party host for the Software.

4.1.5. **Executive Forum.** INNERGY shall admit Licensee into INNERGY's Executive Forum, through which INNERGY shall from time to time provide woodworking-focused educational programs. The Executive Forums are generally hosted each quarter, the date and time of which shall be subject to change in INNERGY's sole and reasonable discretion.

ARTICLE 5
PROPRIETARY RIGHTS

5.1. **Ownership.** INNERGY retains sole and exclusive ownership of all right, title, and interest in and to the Documentation and Software, and all modifications and enhancements thereof (including, without limitation, ownership of all Intellectual Property Rights pertaining thereto), and all copies thereof in any medium, subject only to the License. Licensee shall retain sole and exclusive ownership of their data. INNERGY provides several opportunities throughout the software for the Licensee to export or download their data out of the Software.

5.2. **Modifications.** No right is conferred upon Licensee to make or require modifications to the Software. Licensee shall be expected to provide INNERGY with substantive and constructive suggestions and proposed modifications with respect to the features and functionality of the Software. The parties agree that INNERGY may solicit such suggestions and proposals from the Licensee throughout the advancement process of the Software. INNERGY may solicit and Licensee shall provide such suggestions through a variety of media, including without limitation, (1) a product road mapping webtool, (2) periodic videoconferencing, (3) surveys, and/or (4) telephonic communication. INNERGY shall have the right but not the obligation, in its sole discretion, to implement or decline to implement such suggestions and proposals. All modifications to the Software shall be owned by INNERGY and shall be included within the scope of the License.

ARTICLE 6 NONDISCLOSURE AND CONFIDENTIALITY

6.1. **Nondisclosure Obligations.** Licensee and INNERGY acknowledge that either party may disclose Confidential Information to the other in the course of the performance of this Agreement. Both parties agree that each has an obligation not to disclose to third parties such Confidential Information, and to prevent such disclosure by its employees, agents and contractors, and not to use such Confidential Information other than for the purpose of performance under this Agreement without the prior written consent of the other party, which may be withheld, conditioned or delayed. No termination or expiration of these obligations, however, will act to modify or void any provisions herein restricting use of or access to the Software.

6.2. **Injunctive Relief.** Each party acknowledges that, in the event of breach of any of the foregoing provisions of this Article, the other party will not have an adequate remedy in money or damages. INNERGY and Licensee shall therefore be entitled to apply for an injunction against any such breach by the other from any court of competent jurisdiction immediately upon request, and each agrees not to assert as a defense in any such proceeding the availability of an adequate remedy at law.

6.3. **Survival.** These obligations in this Article 6 will survive for a period of five (5) years following the termination of this Agreement or, with respect to the Software and Documentation, trade secrets and copyrighted materials, the longest period allowed by applicable law.

ARTICLE 7
INTELLECTUAL PROPERTY CLAIMS

7.1. **Definitions.** As used in this Article, “Third Party IPR” means a copyright, trademark, trade secret, confidentiality right, patent or other proprietary right of a third party; provided, however, with respect to patents, “Third Party IPR” shall be limited to United States patents issued on or before the date of this Agreement. As used in this Article “Claim” means any written assertion of legal liability or possible legal liability (such as one appearing in a cease and desist letter or other communication) or any filed lawsuit directed to Licensee.

7.2. **Indemnification.** INNERGY warrants that it is the owner or otherwise has the right to license the Software to Licensee. Licensee’s exclusive remedy for breach of this warranty shall be as follows: During the Term of this Agreement, INNERGY agrees to defend Licensee against and indemnify Licensee against any final, non-appealable judgment based upon any Claim made by a third party unrelated to Licensee asserting that Licensee’s use of any of the Software as licensed by this Agreement infringes such person’s Third Party IPR. The defense and indemnity obligations in this Article do not apply, however, to any Claim for infringement of Third Party IPR to the extent that the Claim arises from (a) use of the Software outside the scope of use identified herein or in the Documentation, (b) use of the Software with other items unless specifically recommended by INNERGY as a combination, (c) the use of software not produced by INNERGY, provided the Software themselves would not be infringing or, (d) use by Licensee of a version of the Software that has been superseded. If a claim for Third Party IPR infringement is asserted, or if INNERGY believes one is likely, INNERGY shall have the right, but not the obligation, at its sole option, to (i) procure a license for Licensee from the person claiming or likely to claim the infringement, (ii) modify the allegedly infringing Software to avoid the claim of infringement and make it available to Licensee at no extra cost, or (iii) require Licensee to migrate to another, non-infringing version of the Software.

THIS ARTICLE 7 SETS FORTH THE ENTIRE LIABILITY OF INNERGY WITH RESPECT TO INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

ARTICLE 8
WARRANTIES

8.1. Warranty.

8.1.1. Disclaimer of Warranty against Material Defects. Due to the complex and constantly evolving nature of the Software, INNERGY expressly and to the extent permitted under the applicable

laws disclaims any and all warranties that the Software shall be free of material defects and will operate without error or that all errors will be corrected. INNERGY does not guarantee results.

8.1.2. Viruses, etc. INNERGY will use commercially reasonable efforts to endeavor to prevent infections of the media containing the Software from worms, Trojan horses or other viruses; however, INNERGY does not provide any warranties against such infections or viruses. EXCEPT AS EXPRESSLY SET FORTH HEREIN, INNERGY MAKES NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, OR SUPPORT SERVICES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, ACCURACY, OR FITNESS FOR A PARTICULAR PURPOSE. ARTICLE 9 LIMITATION OF LIABILITY INNERGY

ARTICLE 9 LIMITATION OF LIABILITY

INNERGY shall not be liable for consequential, exemplary, incidental, special, indirect or punitive damages or costs, including, without limitation, loss of profits or loss of goodwill, arising from or related to a breach of this Agreement or the operation or use of any the Software or services, including, without limitation, such damages as damages arising from loss of data or programming, loss of revenue or profits, failure to realize savings or other benefits, damage to equipment, and claims against licensee by any third person, even if INNERGY has been advised of the possibility of such damages. In no event will INNERGY's total cumulative aggregate liability for damages, regardless of the form of action, whether in contract, in equity, at law, warranty, negligence, strict liability, tort or otherwise, exceed the Down Payment Fee.

ARTICLE 10 TERM AND TERMINATION

10.1. **Term.** This Agreement and the License shall commence on the Effective Date and shall continue following the Subscription Start Date under the Order Form document unless and until terminated pursuant to the terms of this Article 10 ("Term").

10.2. **Termination by INNERGY.** INNERGY may terminate this Agreement, the License, and other rights herein upon a failure by Licensee to observe any covenant or agreement of Licensee in this Agreement which is not cured within the prescribed cure period, or for any reason upon thirty (30) days written notice to Licensee. Upon such termination, Licensee shall cease to utilize the Software and Documentation. This termination right shall be in addition to and not in limitation of any other remedies provided herein, at law, or in equity. INNERGY may terminate the License and other rights herein if

Licensee uses, copies, or modifies the Software or if Licensee transfers possession of any portion of the Software to any other party in any way not expressly authorized by INNERGY. Licensee's rights herein and in the Software shall terminate without notice or a cure period in the event of the dissolution or termination of existence of Licensee.

10.3. **Termination by Licensee.** Provided Licensee is not in default under any of the terms and conditions of this Agreement, Licensee may terminate this Agreement at any time by providing thirty (30) days written notice to INNERGY. No later than ten (10) business days following INNERGY's receipt of such termination notice from Licensee. Licensee may terminate this Agreement for any reason by providing thirty (30) days written notice to INNERGY. In the event of such termination, Software License Fees paid to INNERGY prior to such termination date shall be non-refundable. Notwithstanding any contrary provision herein, the Sign Up Fee shall be deemed non-refundable as of 6 months from the Contract Execution Date.

10.4. **Right to Cure.** In the event of any default or breach of this Agreement or any other agreement relating to the subject matter hereof, the breaching party shall be entitled to written notice of breach and an opportunity to cure such breach within thirty (30) days of notification of such breach, except that there shall be no notice required or cure period for a failure to make a payment when due or a default involving the unauthorized use or disclosure of Confidential Information.

ARTICLE 11 MISCELLANEOUS

12.1. **Governing Law; Dispute Resolution; Prevailing Party.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, excluding such laws as would require the application of the laws of another jurisdiction. In the event of any dispute between the parties relating to this Agreement, the parties agree to the jurisdiction of the District Court in and for Benton County, Minnesota or the United States District Court for the District of Minnesota, as applicable, and further agree that the said courts will be convenient forums. If either party brings legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover its expenses (including reasonable attorneys' fees) incurred in connection with the action and any appeal.

12.2. **Entire Agreement; Amendment.** This Agreement expresses the entire agreement of the parties with respect to the subject matter herein, and all previous written or oral understandings are merged herein. No amendment or modification of this Agreement shall be binding unless in writing and signed by an authorized representative of INNERGY and Licensee.

12.3. **Assignment.** Neither this Agreement nor any rights of Licensee herein may be assigned, sublicensed or transferred, voluntarily or involuntarily or by operation of law, by Licensee without the

prior written consent of INNERGY, which consent may be withheld in INNERGY's sole discretion. No partner, stockholder, joint venturer or member of Licensee shall acquire any license or other rights herein or in the Software upon the dissolution or termination of existence of Licensee.

12.4. **Notices.** Any notices required or permitted under this Agreement shall be in writing and delivered in person or sent by registered or certified mail, return receipt requested, with proper postage affixed, or sent by recognized international courier such as UPS, Fedex or DHL, addressed as follows:

If to INNERGY:

INNERGY
Attn: Mr. Marc Sanderson
500 W. 5th St., Suite 1100
Austin, TX 78701

Either party may change its notice address by notice given in accordance with the provisions in this section. Notice shall be effective when received or upon refusal of receipt.

12.5. **Severability.** In the event that any provision herein is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other provision herein.

12.6. **Relationship of Parties.** INNERGY and Licensee are contracting parties only. Neither the making of this Agreement nor the performance of its provisions shall be construed to constitute either party an agent employee or legal representative of the other party for any purpose whatsoever, nor shall this Agreement be deemed to establish a joint venture or partnership.

12.7. **Third-Party Beneficiaries.** No person, firm or entity not a party to this Agreement is intended to be a beneficiary of any provision herein, including any warranty provision.

12.8. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.