

## 1CRM Software License Agreement Version 1.6

BY INSTALLING OR USING THE 1CRM SOFTWARE (THE "SOFTWARE"), YOU ARE AGREEING ON BEHALF OF THE ENTITY LICENSING THE SOFTWARE ("COMPANY") THAT COMPANY WILL BE BOUND BY AND IS BECOMING A PARTY TO THIS AGREEMENT. IF COMPANY DOES NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, DO NOT INSTALL OR USE THE SOFTWARE. ALL WARRANTY EXCLUSIONS IN PARAGRAPH 4 SHALL BE BINDING ON COMPANY IF COMPANY INSTALLS OR USES THE SOFTWARE. COMPANY HAS NOT BECOME A LICENSEE OF, AND IS NOT AUTHORIZED TO USE THE SOFTWARE UNLESS AND UNTIL IT HAS AGREED TO BE BOUND BY THESE LICENSE TERMS. YOU MAY CONTACT US BY VISITING OUR WEB SITE AT WWW.1CRM.COM.

### 1. The License

1.1 Grant to Company. Subject to Company's payment of any applicable fees for the number of Licensed Users and compliance with the terms and conditions of this Agreement, 1CRM Corp. grants Company a non-exclusive, non-transferable, non-sub-licensable license for the duration of the license subscription purchased to use the object code and the source code form of the Software, internally for the collection and processing of Company's data by the number of Licensed Users. A "Licensed User" means a Company employee who has been authorized by Company to use the Software per the terms of this Agreement. Company may modify the Software for their own exclusive use subject to the restrictions in Section 1.3.

1.2 The Software. The term "Software" includes the portions of **1CRM Startup Edition, 1CRM Startup+ Edition, 1CRM Professional Edition, 1CRM Enterprise Edition, 1CRM Customer Portal, 1CRM Finance**, and any other software products introduced by 1CRM Corp., using the **1CRM** name, or using the **info@hand** name, that are proprietary technology of 1CRM Corp. The term "Software" does not include the portions that have been published under the Sugar Public License or a license approved as an Open Source License by the Open Source Initiative. The term "Software" also includes any other programs, tools, internet-based services, components and any "updates" (for example, Software maintenance, service information, help content, bug fixes, maintenance releases, updates etc.) of the Software that 1CRM Corp. provides or makes available to you after the date you obtained your initial copy of the Software. During the term of an active **1CRM License Subscription**, you are entitled to download updates to the Software that 1CRM Corp. generally makes available to other users of the Software. Certain Software may be accompanied by, and will be subject to, additional terms.

#### 1.3 Restrictions.

- i. Company shall not, and shall not allow third parties to, directly or indirectly, sublicense, resell, rent, lease, distribute, assign, or otherwise transfer rights to the Software or use the Software for timesharing or service bureau purposes.
- ii. Company shall not remove, deface or obscure any copyright, trademark or other proprietary notice contained in the Software. Company agrees not to remove 1CRM Corp. copyright statements from source code files or screen displays.
- iii. Company shall not transfer, transmit, export, or re-export the Software or portion thereof in violation of any export control laws or regulations administered by the U.S. Commerce Department or any other government agency.
- iv. The Software includes modules that report the number of authorized Users and permit 1CRM Corp. to monitor certain usage of the Software ("License Monitoring Software") which is fundamental to the business of 1CRM Corp. Notwithstanding the terms of this Agreement, neither the Company nor the Users may modify any portion of the License Monitoring Software, or facilitate Software use by more the number of Licensed Users.
- v. The violation of of any of these restrictions shall be deemed a material breach of this Agreement and 1CRM Corp. may immediately terminate this Agreement and seek compensation.

- vi. Notwithstanding anything to the contrary in this Agreement, the Company may maintain one secondary installation ("Sandbox") of the Software solely for the purpose of testing by internal technical support staff actions such as upgrades and data imports before they are applied to the primary installation.

**1.4 Proprietary Rights.** 1CRM Corp. and its licensors shall own all right, title, and interest in and to the Software, technology, information, code or software provided to Company, including all aspects, portions, copies or modifications thereof. The Software is licensed, not sold, and 1CRM Corp. reserves all rights and licenses not expressly and unambiguously granted to you in Section 1.1 above. The Software is protected by copyright, trade secret and other intellectual property laws. 1CRM Corp. and its licensors own the title, copyright, and other worldwide intellectual property rights in the Software and all copies of the Software. This Agreement does not grant you any rights to trademarks or service marks of 1CRM Corp.

**1.5 Grant to 1CRM Corp.** Company grants to 1CRM Corp. a non-transferable, non-exclusive, license to reproduce and display Company's logos, trademarks, trade names and similar identifying material so that 1CRM Corp. may refer to Company as a user of the Software should 1CRM Corp. so desire, such as on 1CRM Corp. websites, in press releases and in other marketing materials.

## **2. Services, Fees and Payment.**

**2.1 Software Licensing Fees.** Company shall pay any Software license fee due to 1CRM Corp. in consideration for the license granted in Section 1.1 above. Payment shall be due and payable in accordance with the payment terms negotiated between 1CRM Corp. and Company.

**2.2 Maintenance and Support.** Maintenance and support services shall be provided by 1CRM Corp. or its agents or partners as part of license subscriptions, in accordance with the terms as detailed on the web site at <http://www.1crm.com>, which terms may change from time to time at the sole discretion of 1CRM Corp.

**2.3 Records Retention.** Company shall maintain accurate records necessary to verify the number of Licensed Users, the number of copies made of the Software, and the version number of the Software in use. Upon the reasonable written request of 1CRM Corp. or 1CRM Corp.'s authorized agent, but no more than twice per year, Company shall provide 1CRM Corp. or 1CRM Corp.'s authorized agent with the number of current Licensed Users of the Software and the networks the Licensed Users are utilizing within ten (10) days of a written request for such information. If upon providing such records to 1CRM Corp., Company discovers that Company is exceeding the number of Licensed Users that Company has paid for, Company shall immediately notify 1CRM Corp. Company shall pay 1CRM Corp. the fees for the additional license subscription required upon receipt of an invoice from 1CRM Corp.

## **3. Confidentiality.**

**3.1 Definitions.** Each party may disclose (each a "Disclosing Party") certain Confidential Information to the other (each a "Receiving Party"). "Confidential Information" shall mean this Agreement and any and all information provided by the Disclosing Party to the Receiving Party which is marked as confidential or which is provided under circumstances where the Receiving Party should reasonably understand the confidential nature of the information. Confidential Information shall include without limitation the Software, trade secrets, proprietary information, ideas, works of authorship, know-how, processes and any other information or data related to the future, and proposed products and services of the Disclosing Party, business and contractual relationships (including the terms of this Agreement), business forecasts, sales and merchandising, and marketing plans. Confidential Information shall not, however, include any information that the Receiving Party can establish through its written records or credible evidence (i) was public domain prior to the time of disclosure; (ii) becomes publicly known and made generally available after disclosure through no action or inaction of the Receiving Party; (iii) is in the possession of the Receiving Party, without confidentiality restrictions, at the time of disclosure as shown by the Receiving Party's files and records immediately

prior to disclosure, or (iv) is independently developed by the Receiving Party without the use of any Confidential Information.

**3.2 Non-use and Nondisclosure.** The Receiving Party agrees not to use any Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. The Receiving Party agrees not to disclose any Confidential Information to third parties or to employees or contractors of the Receiving Party, other than those of its employees or contractors who are required to have access to such information in order to fulfill the Receiving Party's obligations under this Agreement. Notwithstanding the foregoing, either party may disclose the general terms and conditions of this Agreement to potential acquirers or investors and their respective agents upon prior written permission of the other party. The Receiving Party may disclose Confidential Information without any liability hereunder pursuant to any applicable law, regulation, court order or document discovery request, provided that prior written notice of such disclosure is furnished to the Disclosing Party as soon as reasonably practicable in order to afford the Disclosing Party an opportunity to seek a protective order against such disclosure.

**3.3 Maintenance of Confidentiality.** The Receiving Party agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Disclosing Party's Confidential Information. Without limiting the foregoing, the Receiving Party shall take at least those measures that it takes to protect its own most highly confidential information and in no event less than reasonable industry standards. The Receiving Party shall reproduce any proprietary rights notices on any approved copies, in the same manner as set forth in or on the original. The Receiving Party shall immediately notify the Disclosing Party in the event of any unauthorized use or disclosure of the Confidential Information.

#### **4. Infringement and Disclaimer of Warranty.**

**4.1 Infringement.** During any term of this Agreement, if any portion of the Software (except for third party software) is held by a court of competent jurisdiction to infringe any third party intellectual property rights and Company incurs a liability or expense as a result of such holding, then Company's sole remedy shall be, and 1CRM Corp. will, at its option: (i) obtain the right for Company to continue to use the Software consistent with this Agreement; (ii) modify the Software so that it is non-infringing; or (iii) replace the infringing component with a non-infringing component, or (iv) refund all of Company's money paid under this Agreement during the prior twelve (12) months and all of Company's rights and licenses under this Agreement shall automatically terminate.

**4.2 As Is/Disclaimer of Warranty.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, ALL SOFTWARE, INFORMATION, TECHNOLOGY AND SERVICES PROVIDED BY 1CRM CORP. AND ITS LICENSORS ARE PROVIDED AND LICENSED "AS IS" WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, 1CRM CORP. AND ITS LICENSORS EXPRESSLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO SUCH SOFTWARE, INFORMATION, TECHNOLOGY AND SERVICES. 1CRM CORP. DOES NOT WARRANT OR GUARANTEE THAT THE USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

1CRM CORP. AND ITS LICENSORS MAKE NO WARRANTY REGARDING FREEDOM FROM BUGS. THE SOFTWARE AND ANY RELATED SERVICES OR CONTENT ARE DESIGNED TO OPERATE AND PROVIDE INFORMATION WITH THE UNDERSTANDING THAT 1CRM CORP. AND ITS SUPPLIERS ARE NOT ENGAGED IN RENDERING LEGAL, ACCOUNTING OR OTHER PROFESSIONAL SERVICE. IF LEGAL ADVICE OR OTHER EXPERT ASSISTANCE IS REQUIRED, THE SERVICE OF A COMPETENT PROFESSIONAL SHOULD BE SOUGHT. 1CRM CORP. EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES THAT YOUR USE OF THE SOFTWARE WILL SATISFY ANY STATUTORY OR REGULATORY OBLIGATIONS, OR WILL

ASSIST WITH, GUARANTEE OR OTHERWISE ENSURE COMPLIANCE WITH ANY APPLICABLE LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA"), THE GRAMM-LEACH-BLILEY ACT OF 1999, THE SARBANES-OXLEY ACT OF 2002, OR OTHER FEDERAL PROVINCIAL OR STATE STATUTES OR REGULATIONS. YOU ARE SOLELY RESPONSIBLE FOR ENSURING THAT YOUR USE OF THIS SOFTWARE, RELATED SERVICES OR CONTENT IS IN ACCORDANCE WITH APPLICABLE LAW. IT IS YOUR RESPONSIBILITY TO KEEP ABREAST OF CHANGES IN LAWS, REGULATIONS AND ACCOUNTING PRACTICES THAT AFFECT YOU AND YOUR BUSINESS.

## **5. Limitation of Liability.**

5.1 Limitation of Liability. IN NO EVENT WILL 1CRM CORP. GROUP BE LIABLE FOR ANY AMOUNTS IN EXCESS IN THE AGGREGATE OF THE AMOUNTS PAID TO 1CRM CORP. UNDER THE TERMS OF THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, 1CRM CORP. AND ITS DIRECTORS, EMPLOYEES, DISTRIBUTORS, SUPPLIERS AGENTS OR RESELLERS (COLLECTIVELY, "1CRM CORP. GROUP") SHALL NOT IN ANY EVENT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OR FOR ANY DAMAGES RELATING TO LOSS OF BUSINESS, TELECOMMUNICATION FAILURES, THE LOSS, CORRUPTION OR THEFT OF DATA, VIRUSES, SPYWARE, LOSS OF PROFITS OR INVESTMENT, TAX POSITIONS TAKEN BY YOU, USE OF THE SOFTWARE WITH HARDWARE OR OTHER SOFTWARE THAT DOES NOT MEET 1CRM CORP.'S SYSTEMS REQUIREMENTS OR THE LIKE, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF 1CRM CORP., ITS SUPPLIERS OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME PROVINCES AND STATES DO NOT ALLOW THE LIMITATION AND/OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN 1CRM CORP. AND YOU. 1CRM CORP. WOULD NOT BE ABLE TO HAVE PROVIDED THIS SOFTWARE OR SERVICES WITHOUT SUCH LIMITATIONS.

## **6. Term and Termination.**

6.1 Term. This Agreement shall commence on the day Company accepts the license terms and shall remain in effect until terminated in accordance with this Section, and so long as Company stays compliant with all applicable fees due to 1CRM Corp. In the event of non-payment hereunder, 1CRM Corp. may suspend performance of all its obligations to Company until such time as all amounts owing (including interest) have been fully paid.

6.2 Termination. Either party may terminate this Agreement if the other party materially breaches its obligations hereunder and, where such breach is curable, such breach remains uncured for thirty days following written notice of the breach given to the breaching party. Upon breach by Company, Company shall cease use of the Software, return all materials provided by 1CRM Corp. to Company, purge Company's system and records of the Software, including copies made, and if requested by 1CRM Corp. or 1CRM Corp.'s authorized agent, certify that Company has destroyed the Software in writing to 1CRM Corp.

6.3 Survival Clause. Sections 1.4, 2.1 & 2.2 (for any payments owed as of the termination date), 3, 4, 5, 6, and 7 shall survive any termination or expiration of this Agreement.

## **7. General.**

7.1 Relationship. For all purposes of this Agreement each party shall be and act as an independent contractor and not as partner, joint venture, or agent of the other and shall not bind nor attempt to bind the other to any contract.

7.2 Force Majeure. Except as otherwise expressly provided in this Agreement, neither party shall be liable for any breach of this Agreement for any delay or failure of performance resulting from any cause beyond such party's reasonable control, such as: weather, strikes or labor disputes, war, terrorist acts, riots or civil disturbances, governmental regulations, acts of civil or military authorities, or acts of God provided that the party affected takes all reasonably necessary steps to resume full performance.

7.3 Assignment. Company may not assign or otherwise transfer by operation of law or otherwise this Agreement or any rights or obligations herein without the prior express written consent of 1CRM Corp., which will not be unreasonably withheld. This Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and permitted assigns.

7.4 Modifications. No changes, modifications, or waivers are to be made to this Agreement unless evidenced in writing and signed for and on behalf of both parties.

7.5 Severability. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

7.6 Notice. Unless otherwise expressly provided herein to the contrary, any notices which are required to be given hereunder shall be deemed sufficiently given or rendered if, in English in writing, and given for all purposes (i) on the delivery date if delivered by confirmed facsimile; (ii) on the delivery date if delivered personally to the party to whom the same is directed; (iii) one business day after deposit with a commercial overnight carrier, with written verification of receipt; or (iv) five business days after the mailing date, whether or not actually received, if sent by Canada post, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available. In the case of 1CRM Corp., such notice will be provided to 1CRM Corp., 688 Falkland Road, Victoria, BC, Canada V8S 4L5. In the case of Company, notice shall be sent to the address on the purchase order if there is one, or to any address reasonably obtained by 1CRM Corp.

7.7 Choice of Law. This Agreement shall be governed by the laws of the Province of British Columbia. Any legal action or proceeding relating to this Agreement shall be instituted in a provincial or federal court in Victoria, British Columbia, and each party hereby submits to the personal jurisdiction of such courts.

7.8 Complete Understanding. This Agreement (together with the exhibits, and other appendices attached hereto or specifically incorporated herein by reference) constitutes the complete understanding of the parties, and supersedes all prior or contemporaneous agreements, discussions, negotiations, promises, proposals, representations, and understandings (whether written or oral) between the parties, with regard to the subject matter hereof. The terms and conditions of this Agreement may not be superseded by, and shall prevail exclusively over, any written instrument submitted by You, including a purchase order, and You hereby disclaim any terms therein, except for terms therein relating to product description, quantity, pricing, shipment and delivery. This Agreement may be executed in counterparts or by facsimile, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

7.9 Company Outside Canada. If Company is located outside Canada, then the provisions of this Section shall apply: (i) If Company is purchasing licenses directly from 1CRM Corp. and if 1CRM Corp. and Company are not located in the same country, then, if any applicable law requires Company to withhold amounts from any payments to 1CRM Corp. hereunder, Company shall effect such withholding, remit such amounts to the appropriate taxing authorities and promptly furnish 1CRM Corp. with tax receipts evidencing the payments of such amounts, and the sum payable by Company upon which the deduction or withholding is based shall be increased to the extent necessary to ensure that, after such deduction or withholding, 1CRM Corp. receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount 1CRM Corp. would have received and retained absent such required deduction or withholding; (ii) the parties confirm that this Agreement and all related documentation is and will be in the English language; (iii) Company is responsible for complying with any local laws in its jurisdiction which might impact its

right to import, export or use the Software, and Company represents that it has complied with any regulations or registration procedures required by applicable law to make this license enforceable.

Company Name: \_\_\_\_\_

Terms Agreed By:

Print Name: \_\_\_\_\_

Position/Title: \_\_\_\_\_

May bind the company: Circle (Yes) (No)

Signature: \_\_\_\_\_

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