

PAN AMERICAN HEALTH ORGANIZATION
PROPRIETARY SOFTWARE LICENSE AGREEMENT

This License Agreement (the "Agreement") is made as of _____, (the "Effective Date") by and between the **Pan American Health Organization**, Regional Office for the Americas of the World Health Organization, an international organization with a principal place of business at **525 Twenty-third Street, N.W., Washington, D.C. 20037-2895**, U.S.A. ("PAHO"), and _____, with a principal place of business at _____, ("Licensee").

1. GRANT OF RIGHTS

1.1 License. PAHO hereby provides Licensee with a nonexclusive and nontransferable license, without the rights to grant sublicenses, to use the Software, Data files and related materials described in Exhibit A to this Agreement. Licensee acknowledges that the license granted by this Agreement does not include any upgrades, modifications or enhancements to or new releases or versions of the Software, Data Files or related materials described in Exhibit A unless the Licensee has entered into an Annual Support Agreement with PAHO.

1.2 Use of Software and Data Files. Licensee agrees to use the Software, Data Files and related materials solely for its own internal purposes or to produce postedited translations for third parties. Licensee may not make available to third parties access to the Software, Data Files and related materials, including but not limited to access through terminals, processors or communications networks owned, controlled or operated by Licensee, without PAHO's prior written consent. Licensee may not: (i) rent or lease the Software and Data Files; and (ii) use the software in any manner that infringes the intellectual property rights of PAHO.

1.3 Designated Location. Licensee agrees to install the Software and Data Files, and to use the Software, Data Files and related materials, solely at its principal place of business on: (choose one)

- a single standalone PC.
- a local area network. The software shall be capable of supporting ____ simultaneous users.
- a single Intranet server

1.4 Equipment Specifications. Licensee agrees to install the Software and Data Files only on equipment that meets the minimum hardware requirements and specifications set forth in Chapter 1 of the Administrator's Manual.

1.5 Modifications; Agreement Not to Reverse Compile. Licensee agrees that it will not, and will not permit others to: (i) in any way modify or prepare derivative works of the Software; and (ii) reverse assemble, reverse compile or otherwise obtain access to the source code of the Software.

1.6 Copies. PAHO will deliver to Licensee one copy of the Software, Data Files and related materials described in Exhibit A to this Agreement to Licensee. Licensee may make one copy of the Software and related materials solely for its own archival and backup purposes, except that Licensee may make additional copies of the User Guide solely for its internal use. Licensee may also make a reasonable number of additional copies of the Data Files for archival purposes. Except as provided in this Section 1.6, Licensee shall not, nor permit any third party to, make any copies of the Software.

2. INSTALLATION, TRAINING AND SUPPORT

2.1 Training. PAHO offers three-day and five-day optional training courses which will be conducted on mutually acceptable dates and times.

- a. Should the course take place at the Licensee's principal place of business (as set forth above), an unlimited number of users may participate and Licensee is responsible for any expenses incurred by PAHO staff presenting the training course. Should the exclusive training course take place at PAHO's principal place of business (as set forth above), a maximum of two of Licensee's staff members may participate. These private courses are offered at a fee of **\$2,500.00** (three-day course) or **\$4,000.00** (five-day course).
- b. PAHO also offers training courses that are shared with users from other institutions. These shared courses, which take place at PAHO's principal place of business, are offered at a fee of **\$400.00** per person for a three-day course; and at **\$600.00** per person for a five-day course.
- c. Any training beyond the training specified in this Section 2.1 will be provided by PAHO at an additional charge.

2.2 Installation. The Software and Data Files will be deemed to have been installed as of the end of the second business day after its receipt by Licensee (the "Installation Date").

2.3 Support. PAHO will provide technical support via telephone, electronic mail and/or online meeting at no additional charge for a period of 30 days following the Installation Date (the "Initial Support Period"). After the expiration of the Initial Support Period, any additional technical support will be provided by PAHO according to the terms of the Annual Support Agreement or at its discretion on a time and materials basis. Licensee acknowledges that PAHO will not provide technical support for dictionary updating implemented by Licensee unless at least one member of Licensee's staff has completed the training course described in Section 2.1 hereunder.

3. PAYMENTS

3.1 Licensee Fee. In consideration of the License granted herein, Licensee agrees to pay PAHO a total license fee of _____ on execution of this Agreement.

3.2 Taxes. In addition to the amounts, specified herein, Licensee agrees to pay any and all applicable sales, use, withholding or excise taxes imposed in connection with the licenses granted to Licensee pursuant to the Agreement or Licensee's use of the Software and Data Files.

3.3 Terms of Additional Payment. Except as otherwise provided in Section 3.1 above, terms of payment are net 30 days from the date of PAHO's invoice. If any sums due to PAHO from Licensee hereunder are not paid when due, Licensee agrees to pay all of PAHO's reasonable costs of collection, including but not limited to attorney's fees, as well as a finance charge in the amount of 1.5% per month on the overdue amount from the due date until the date of payment.

4. WARRANTIES; DISCLAIMER; LIMITATION OF LIABILITY

4.1 Limited Warranty of Performance. PAHO warrants that the Software and Data Files will, under normal use, perform substantially in accordance with the standards set forth in Section 1.0 of the User Guide (the "Specifications") during the Initial Support Period and during periods covered by an Annual Support Agreement. PAHO's warranty is expressly conditioned on Licensee's observance of all operating, security and data control procedures set forth in the User Guide and Administrator's Manual. Licensee acknowledges that the quality of any output resulting from the use of the Software and Data Files is dependent upon the quality of the data input, which is the sole responsibility of Licensee. Accordingly, Licensee acknowledges that PAHO provides no warranty with respect to the quality or accuracy of the output generated by the Software and Data Files or the contents of the Data Files.

4.2 Exclusive Remedy. In the event that the Software does not perform substantially in accordance with Specifications, Licensee will immediately notify PAHO of the material failure according to the notice procedure set forth in the User Guide, giving a complete description of the problem. Upon receipt of such notice, PAHO's sole obligation under the warranty will be to use reasonable efforts to correct the problem described by Licensee. If the problem is not due to the malfunctioning of the Software, PAHO may, at its discretion, charge Licensee on a time and materials basis for its resources spent to correct the problem.

4.3 Disclaimer. THE LIMITED WARRANTY SET FORTH ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE AND ANY OTHER MATERIALS FURNISHED TO LICENSEE HEREUNDER, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

4.4 Limitation of Liability. PAHO's liability to Licensee and its officers and employees for any claim arising under this Agreement, regardless of the form of action (including, but not limited to, actions for breach of contract, negligence, strict liability, rescission, and breach of warranty) will not exceed the lesser of (1) the total license fee actually paid to PAHO pursuant to Section 3.1, or (2) the actual damages sustained by Licensee.

4.5 No Consequential Damages. IN NO EVENT SHALL PAHO BE LIABLE TO LICENSEE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUES AND LOSS OF PROFITS, EVEN IF PAHO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4.6 Licensee Indemnity. Licensee, not PAHO, will be responsible in all respects for all data uses and data transmissions made in connection with Licensee's use of the Software and Data Files. Licensee agrees to indemnify and hold PAHO harmless from and against all losses, damages and expenses, including reasonable attorneys' fees, in connection with any claims brought against PAHO, its officers, directors and employees arising from Licensee's use or modification of the Software and Data Files.

4.7 Acknowledgement. Licensee acknowledges that PAHO has set its fees and entered into this Agreement in reliance on the disclaimer of warranty and limitations of liability set forth in this Section 4 and that the same form an essential basis of the bargain between the parties.

5. PROTECTION OF PROPRIETARY RIGHTS

5.1 Acknowledgment of Proprietary Materials; Limitations on Use. Licensee acknowledges that the Software, Data Files and related materials and all trade secrets, copyrights, patents and other intellectual property rights therein are owned by PAHO and are protected by the copyright laws of the United States and other countries. Licensee further acknowledges that the Software, Data Files and related materials embody valuable confidential and trade secret information of PAHO. Licensee agrees to hold the Software, Data Files and related materials in confidence and agrees not to use, copy, or disclose, nor permit any of its personnel to use, copy or disclose the Software, Data Files and related materials for any purpose that is not specifically authorized under this Agreement.

5.2 Proprietary Markings. Licensee agrees to ensure that all copyright, trademark and other proprietary notices of PAHO affixed to or displayed on the Software, Data Files and related materials will not be removed or modified. Licensee agrees to include all such copyright, trademark or other proprietary notices on any and all copies of the Software, Data Files and related materials made by Licensee in accordance with this Agreement.

5.3 Injunctive Relief. Licensee recognizes and acknowledges that any use or disclosure of the Software and Data Files by Licensee in a manner inconsistent with the provisions of this Agreement may cause PAHO irreparable damage for which remedies other than injunctive relief may be inadequate, and Licensee agrees that in any request to a court of competent jurisdiction by PAHO for injunctive or other equitable relief seeking to restrain such use or disclosure, Licensee will not maintain that such remedy is not appropriate under the circumstances.

6. TERM AND TERMINATION

6.1 Term. This Agreement will commence on the Effective Date and, unless terminated in accordance with the terms hereof, will continue in effect indefinitely.

6.2 Termination for Cause. PAHO has the right to terminate this Agreement if, after 30 days written notice to Licensee, any of the following conditions has not been cured by Licensee:

- (i) Licensee fails to pay any amounts due hereunder to PAHO when due;
- (ii) Licensee uses or copies, or permits a third party to use or copy, the Software and Data Files in any manner or for any purpose not authorized hereunder; or
- (iii) Licensee is otherwise in breach of this Agreement in any material respect.

6.3 Effect of Termination. Upon termination of this Agreement, Licensee agrees to cease using the Software, Data Files and related materials and to deliver to PAHO all copies in any form, including partial copies, of the Software, Data Files and related materials in its possession or under its control and to certify in writing to PAHO that no copies have been retained by it. All provisions of this Agreement relating to protection of proprietary information and materials will remain in full force and effect and survive termination of this Agreement.

7. GENERAL

7.1 Notices. All notices and other communications in connection with this Agreement shall be made in English. All notices and other communications in connection with this Agreement, other than the notices specified in Section 4.2 above, shall be made in writing and shall be sent to the respective parties at the following addresses, or to such other addresses as may be designated by the parties in writing from time to time in accordance with this Section 7.1 by registered or certified air mail, postage prepaid, or by express courier service, service fee prepaid, or by facsimile transmission with a hard copy to follow by air mail or express courier service in accordance with this Section 7.1.

TO PAHO: Pan American Health Organization
525 Twenty-third Street, N.W.
Washington, D.C. 20037-2895

Attention: Chief of Administration
Fax: (202) 974-3663

and Legal Affairs
Fax: (202) 974-3609

TO LICENSEE: _____

Attention: _____

With copy to: _____

All notices shall be deemed received (i) if given by hand, immediately; (ii) if given by air mail, 5 business days after posting; (iii) if given by express courier service, the date of receipt in the jurisdiction of the recipient; or (iv) if given by facsimile transmission, upon receipt thereof by the recipient's facsimile machine, as indicated either in the sender's identification line produced by the recipient's facsimile machine or in the sender's transmission confirmation report as produced electronically by the sender's facsimile machine.

7.2 Limitation of Action. No action, regardless of form, arising out of this Agreement, may be brought by either party more than 1 year after the cause of action has accrued, except that an action for non-payment may be brought within 1 year of the date of last payment.

7.3 Arbitration. If any dispute, claim or controversy shall arise between the parties under this Agreement, then the parties shall attempt in good faith to resolve such dispute by negotiation. In the event that such dispute cannot be resolved within thirty (30) days after written notice to the other party thereof, the parties expressly agree that, at the option of either party, in either party's sole and absolute discretion, any dispute shall be settled by binding arbitration in accordance with the UNCITRAL Arbitration Rules. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

7.4 Privileges and Immunities. NOTHING IN OR RELATED TO THIS LICENSE AGREEMENT SHALL BE DEEMED TO CONSTITUTE ANY WAIVER, EXPRESS OR IMPLIED, OF THE IMMUNITIES, PRIVILEGES, EXEMPTIONS AND FACILITIES ENJOYED BY PAHO OR BY LICENSEE UNDER INTERNATIONAL LAW, INTERNATIONAL CONVENTIONS OR AGREEMENTS, OR THE DOMESTIC LEGISLATION AND LAWS OF ITS MEMBER STATES.

7.5 Partial Invalidity. If any provision of this Agreement or the application thereof to any party is declared void, illegal or unenforceable, the remainder of this Agreement will be valid and enforceable to the extent permitted by applicable law. In such event, the parties agree to use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by the applicable law, achieves the purposes intended under the invalid or unenforceable provision.

7.6 Waiver of Compliance. Any failure by any party to this Agreement to enforce at any time any term or condition under this Agreement will not be considered a waiver of that party's right thereafter to enforce each and every term and condition of this Agreement.

7.7 Scope of Agreement. This Agreement constitutes the complete and exclusive statement of the terms and conditions between PAHO and Licensee covering the performance of this Agreement and cannot be altered except in writing and executed by an authorized representative of each party.

7.8 Governing Law. This Agreement shall be governed by and construed according to international laws and treaties, federal law, and, to the extent not inconsistent with the foregoing, the laws of the District of Columbia, without giving effect to the laws, rules or regulations of the District of Columbia regarding conflict of laws.

7.9 Assignment. This Agreement is not assignable by Licensee by operation of law or otherwise without prior written permission of PAHO.

7.10 Force Majeure. Neither party will be responsible for any delay or nonperformance resulting from acts beyond the control of such party, provided that the nonperforming party uses reasonable efforts to avoid or remove such causes of nonperformance and continues performance hereunder with reasonable dispatch whenever such causes are removed.

7.11 Integration. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes all other agreements, oral and written, heretofore made with respect to the subject matter of this Agreement.

7.12 Language. Licensee acknowledges that a translated version of this English language Agreement is provided to Licensee for convenience only. Accordingly, in the event of any ambiguity or contradiction between different language versions of this Agreement, this English language version shall prevail.

The parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

PAHO:

LICENSEE:

By: _____
(Signature)

By: _____
(Signature)

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**Exhibit A to Software License Agreement:
Description of Deliverables**

Software:

English-Spanish and Spanish-English translation software programs
Supporting software set forth in Appendix A of the Administrator's Manual

Data Files:

English source dictionary data file (English-Spanish translation)
Spanish target dictionary data file (English-Spanish translation)
Spanish source dictionary data file (Spanish-English translation)
English target dictionary data file (Spanish-English translation)

Related Materials:

PAHO Machine Translation System User Guide (User Guide) on line
PAHO Machine Translation System Administrator's Manual (Administrator's Manual)
English-Spanish Dictionary Manual on line

Hardware security device. **PAHO WILL REPLACE A DEFECTIVE OR OTHERWISE INOPERABLE SECURITY DEVICE ONLY UPON ITS RECEIPT OF THE LICENSEE'S DEFECTIVE DEVICE. LICENSEE ACKNOWLEDGES AND AGREES THAT, UNLESS IT RETURNS ITS EXISTING SECURITY DEVICE TO PAHO, LICENSEE MUST PURCHASE AN ADDITIONAL LICENSE (AT THE FEE SET FORTH IN SECTION 3.1 OF THE AGREEMENT) FOR EACH ADDITIONAL SECURITY DEVICE IT WISHES TO OBTAIN.**