

## **GAS MANager License Agreement**

This Software License Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ between Custom Data Centre Ltd., Stettler, a corporation incorporated under the laws of Alberta (“Licensor”) and Licensee (as defined in Schedule “A” hereto).

### **BACKGROUND:**

- A. Licensor has made a substantial investment in the development of the computer software, database and reports and in the development of the Documentation as described in Schedule “A” hereto GAS MANager.
- B. Licensor is entitled to license others to use GAS MANager.
- C. The Licensee wishes to use GAS MANager, and Licensor has agreed to license such use, pursuant to the terms of this agreement.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration (the receipt and adequacy of which are hereby acknowledged), Licensor and Licensee (collectively, the “Parties” and individually, a “Party”) agree as follows:

1. **PERMITTED USE.** Subject to the terms of this agreement, Licensor hereby grants to Licensee a personal, non-transferable and non-exclusive license to use GAS MANager, solely in executable code format, and the Documentation provided therewith, solely for Licensee’s own internal business purposes. If Licensee wishes to access the database simultaneously on multiple computers, Licensee must obtain a Network license. Licensee’s right to use GAS MANager and the Documentation is limited to those rights expressly set out herein. Licensee shall not use GAS MANager, in whole or in part, on behalf of or for the benefit of any other Person, including an affiliate of the Licensee, without purchasing additional licenses from the Licensor.
2. **RESTRICTIONS ON USE.** Licensee shall:
  - a) not copy GAS MANager except to copy it onto a hard drive attached to the computer(s) being used by or on behalf of Licensee and to copy GAS MANager solely for backup purposes;
  - b) not assign this agreement or transfer, lease, export or grant a sublicense of GAS MANager or the license contained herein to any Person except as and when authorized to do so by Licensor in writing;
  - c) not reverse engineer, decompile or disassemble GAS MANager;
  - d) not use GAS MANager except as authorized herein;
  - e) take all reasonable precautions to prevent third parties from using GAS MANager in any way that would constitute a breach of this agreement including, without limitation, such precautions as Licensee would otherwise take to protect its own proprietary software or hardware or information. For the purposes of this agreement, “Person” includes an individual, corporation, partnership, joint venture, trust, unincorporated organization, the Crown or any agency or instrumentality thereof or any other entity recognized by law.
3. **LICENCE AND ANNUAL LICENCE FEE.** Licensee shall pay the license fee for the use of GAS MANager for the term of this agreement (the “License Fee”) as well as an annual license fee for subsequent one (1) year periods for so long as Licensee uses GAS MANager. The License Fee and all Annual License Fees shall be paid directly to Licensor in accordance with the payment terms set out in Schedule “A”. Annually, on the anniversary date of this agreement, Licensor may, in its sole discretion, increase the Annual License Fee upon two months’ prior written notice thereof. The Annual License Fee shall increase at a rate of no more than 10% in any one (1) year period. The Licensee may, at its option, discontinue subscribing for the Services on any anniversary date of this agreement upon thirty (30) days prior written notice thereof. Otherwise, Licensee shall continue to use GAS MANager for additional one (1) year periods and shall pay the Annual License Fee for GAS MANager by the first Business Day of each additional one year period. Overdue License and Annual License Fees shall accrue interest from the relevant due date until the date that payment is received at the rate specified by the Licensor. For the purposes of this agreement, Business Day means any day other than a Saturday, Sunday, statutory or civic holiday in Stettler, Alberta.

4. **OWNERSHIP AND COPYRIGHT.** Licensor is the owner of all intellectual property rights in GAS MANager, related written materials, logos, names and other support materials provided pursuant to the terms of this agreement. No title to the intellectual property in GAS MANager or in any physical media provided therewith is transferred to the Licensee by this agreement. Licensor will defend Licensee against any claim that GAS MANager infringes a patent, copyright, trade mark or other intellectual property right of any third party and Licensor will pay resulting costs, damages and reasonable legal fees finally awarded, provided that:
- a) Licensee promptly notifies Licensor in writing of the claim; and
  - b) Licensor has sole control of the defense and all related settlement negotiations.
  - c) If such claim has occurred, or in Licensor's opinion is likely to occur, Licensee agrees to permit Licensor at its option and expense, either to procure for Licensee the right to continue using GAS MANager or to replace or modify the same so that it becomes non-infringing without loss of functionality.
  - d) Licensor shall have no obligation to defend Licensee or to pay costs, damages or legal fees for any claim based upon:
    - i) use of other than a current unaltered release of GAS MANager, if such infringement would have been avoided by the use of a current unaltered release thereof; or
    - ii) the combination, operation or use of any GAS MANager furnished hereunder with non-Licensor software or related materials if such infringement would have been avoided but for such combination, operation or use.

The foregoing states the entire obligations of Licensor with respect to infringement of proprietary or intellectual property rights of third parties.

5. **CONFIDENTIAL INFORMATION.** Each of the Parties shall use reasonable efforts (and, in any event, efforts that are no less than those used to protect its own confidential information) to protect from disclosure the confidential information of the other. Each of the Parties shall divulge such confidential information only to its employees or agents who require access to it for the purposes of this agreement or as otherwise provided in this agreement. In any event, the Licensee shall only allow access to the confidential information of Licensor to those individuals who have first signed an appropriate confidentiality covenant and acknowledgment. This Section shall survive the termination of the Agreement. For the purposes of this Section 5, "confidential information" means all data and information which when it is disclosed by a Party is designated as confidential and shall include GAS MANager and any other proprietary and trade secrets of Licensor to which access is obtained or granted hereunder to Licensee; provided, however, that confidential information shall not include any data or information which
- a) is or becomes publicly available through no fault of the other Party,
  - b) is already in the possession of the Party prior to its receipt from the other Party,
  - c) is independently developed by the other Party,
  - d) is rightfully obtained by the other Party from a third party,
  - e) is disclosed with the written consent of the Party whose information it is, or
  - f) is disclosed pursuant to court order or other legal compulsion.
6. **TERMINATION.** This agreement is effective from the date it is executed by each of the Parties until terminated. Licensee may terminate this agreement at any time by destroying all copies of GAS MANager. Licensor may terminate this agreement on notice to Licensee if Licensee fails to comply with any of its terms. Such termination by Licensor shall be in addition to and without prejudice to such rights and remedies as may be available to Licensor including injunction and other equitable remedies. Upon receipt by Licensee of written notice of termination from Licensor or termination by Licensee, Licensee shall immediately:
- a) cease using GAS MANager;
  - b) return to Licensor all copies of GAS MANager, (or destroy all copies thereof in Licensee's possession); and
  - c) within ten (10) days thereafter, provide to Licensor, in such form as is satisfactory to Licensor, a sworn statement confirming that Licensee has complied with the foregoing.

The provisions of Sections 4 to 8 and 10 to 11 herein shall survive the termination of this agreement.

7. **MAINTENANCE AND SUPPORT.** For the first year of this agreement, upon paying the License Fee, and for each year thereafter, provided that Licensee continues to pay the Annual License Fee, Licensor shall provide the following maintenance and support services (the "Services") for GAS MANager if the Licensee is not otherwise in breach of the provisions of this agreement:
- a) provision to the Licensee of such enhancements or modifications to GAS MANager as Licensor may from time to time make available to its Licensees generally but excluding the provision to the Licensee of any New Version of GAS MANager (a "New Version" being a version of GAS MANager which, in Licensor's determination, provides additional functions and features beyond those provided by GAS MANager licensed hereunder); and
  - b) the services of a qualified representative of Licensor to attempt to correct or bypass defects or errors in GAS MANager that have been brought to the prompt attention of Licensor by the Licensee or other users of GAS MANager.
  - c) Telephone Support includes Licensee having direct telephone access to employees of Licensor who have the necessary technical expertise and experience to understand and consider Licensee's inquiries concerning the failure of GAS MANager to work pursuant to Licensee's Specifications and to clarify Documentation that is either insufficient or unclear. Such direct telephone access shall be available Monday through Friday, exclusive of statutory holidays, from 8:00 a.m. to 4:30 p.m. Licensor shall be obligated to respond to such inquiry as soon as is practically possible but, in no event, shall an initial phone back take more than one (1) business day to provide. In the event that the ultimate response is not satisfactory to Licensee, acting reasonably, or is not otherwise provided within four (4) Business Days, then Licensor shall provide Remote Support, if applicable.
  - d) Remote Support. Should GAS MANager not operate substantially in conformance with the Licensor's Specifications in all material respects, Licensor will use its best efforts to repair GAS MANager remotely at no additional charge to Licensee. In order to receive the Remote Support service, Licensee acknowledges that it must have a licensed copy of "pcAnywhere", as well as, at a minimum 28,800 baud modem. A high-speed Internet connection is the preferred method of providing Remote Support.
  - e) Notwithstanding the foregoing, Licensor may, charge a fee at its then standard rates to provide Telephone and/or Remote Support which are required due to:
    - i) failure due to operator errors;
    - ii) failure to maintain GAS MANager at such version or release of GAS MANager provided by Licensor or such updated version or release thereof as is provided by Licensor to Licensee, from time to time, at no additional charge as part of the Maintenance Services or otherwise;
    - iii) modification of GAS MANager by Licensee; or
    - iv) GAS MANager being transferred to a different networking environment or hardware configuration without the prior written consent of Licensor;
    - v) failure of Licensee to provide a suitable Operating Environment as defined in Schedule "A" or as instructed by Licensor.

Should Licensee otherwise request the Services or request any service that is not a part of the Services, then Licensor may comply with such request, at its discretion, at its fees then in effect therefor and such fees shall be paid by Licensee within thirty (30) days of the date of invoice therefor.

8. **DELIVERY, INSTALLATION, TRAINING, AND DATA CONVERSION.**

- a) As indicated in Schedule "A", Licensor shall deliver that version of the executable object code for GAS MANager and number of copies of Additional Co-op Licenses to the Licensee (together with such Documentation as is reasonably required by Licensee to operate GAS MANager in the manner contemplated hereunder).
- b) Installation and Training services are provided at an hourly rate as indicated on Schedule "A". Travel time and expenses are not included in the hourly rate.
- c) Data conversion requests along with data layout and format specifications are to be forwarded to the Licensor. Upon review of the request, the Licensor will inform the Licensee of data conversion options.

9. **ACCEPTANCE TEST.** Within thirty (30) days of the delivery of GAS MANager to Licensee, Licensee shall conduct such tests as it deems appropriate, acting reasonably, to determine, whether GAS MANager performs in accordance with the “Key Features”, operating on a computer that meets or exceeds the recommended Operating Environment as outlined in Schedule “A”. Licensee shall advise Licensor in writing within such thirty (30) day period as to whether it accepts GAS MANager. If Licensee notifies Licensor that it does not accept GAS MANager within such thirty (30) day period:
- a) Licensor shall only be entitled to the license fee(s) which was paid or payable upon the execution of this Agreement; and
  - b) Licensee shall return forthwith all of GAS MANager; and
  - c) Licensee shall remove from all computers GAS MANager; and
  - d) with the exception of the confidentiality obligations as set out herein, any and all further obligations of both parties shall be terminated from the date of receipt of such notice.
  - e) If the Licensee fails to give Licensor notice of acceptance or non-acceptance of GAS MANager before the expiry of the thirty (30) day acceptance test period or if the Licensee uses GAS MANager being tested or any part thereof for billing purposes before giving Licensor notice of acceptance or non-acceptance, the Licensee shall be deemed to have accepted GAS MANager. The acceptance date shall then be deemed to be the earlier of the date that the acceptance test period expires or GAS MANager is first used for production purposes.
  - f) For the purposes of acceptance testing and warranty, “Key Features” means the features for the design, performance, operation and maintenance of GAS MANager published by Licensor in the GAS MANager User’s Guide provided to the Licensee.
10. **NOTICE.** Any notice or other communication required or permitted to be given hereunder or for the purposes hereof to any party shall be in writing and shall be sufficiently given if delivered personally to such Party, or if sent by prepaid registered mail or if transmitted by facsimile transmission to such Party:
- a) in the case of a notice to Licensor:  
Box 460  
Stettler, Alberta  
T0C 2L0  
Attention: Manager  
Telephone No. (403) 742-2144  
Fax No. (403) 742-8416
  - b) in the case of a notice to Licensee at the address and facsimile number noted in Schedule “A” hereto; or at such other address or facsimile number as the Party to whom such notice is to be given shall have last notified (in the manner provided herein) the Party giving such notice. Any notice delivered to the Party to whom it is addressed as provided herein shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day, then the notice shall be deemed to have been given and received on the Business Day next following such day. Any notice mailed to a Party shall be deemed to have been given and received on the fifth Business Day next following the date of its mailing provided that no postal strike is then in effect or comes into effect within four (4) Business Days after such mailing. Any notice transmitted by facsimile shall be deemed given and received on the day of its transmission if such day is a Business Day and if not, then on the next day that is a Business Day.
11. **LIMITED WARRANTY.** Licensor warrants that, for a period of ninety (90) days from the date of acceptance of GAS MANager by Licensee, GAS MANager, when properly installed, will perform substantially in accordance with the Key Features. If GAS MANager does not so perform during such period, Licensor will use reasonable efforts to correct, at no cost to Licensee (other than reasonable travel expenses to the Licensee’s site, if necessary), programming errors in GAS MANager to make GAS MANager so perform provided that:
- a) GAS MANager has been properly used by Licensee in accordance with the documentation furnished by Licensor to Licensee in connection therewith;
  - b) Licensee notifies Licensor of the programming errors and describes with specificity the nature of the suspected errors and of the circumstances in which they occur;
  - c) Licensor, using reasonable efforts, is able to confirm the existence of the programming errors; and
  - d) Licensee or any third party has not changed or modified GAS MANager.

- 12. **LIMITATION OF REMEDIES AND DAMAGES.** Subject to Section 9 hereof, Licensor’s entire liability and Licensee’s exclusive remedy under this agreement shall be:
  - a) if Licensor is in breach of the Limited Warranty, to require Licensor to replace any defective media or to correct any defects and make any modifications which are necessary to cause GAS MANager to conform in all material respects to the Documentation; or
  - b) the termination of this agreement.

In the event of any such termination, Licensor shall not be liable in the aggregate for any damages which exceed the amount paid hereunder by Licensee to Licensor as License Fees.

In no event shall Licensor be liable for indirect, special, incidental, or consequential damages, even if advised of the possibility of such damages.

- 13. **GAS MANager MERELY A TOOL.** GAS MANager is intended to be a tool to assist the Licensee and is not a substitute for the decision of the Licensee or any of its employees. The information provided by GAS MANager is based on certain assumptions which may not apply in Licensee’s particular circumstances.

- 14. **IRREPARABLE HARM.** Licensee acknowledges and agrees with Licensor that the breach by it of any of the provisions of this agreement would cause serious and irreparable harm to Licensor which could not adequately be compensated for in damages and in the event of a breach by Licensee of any of such provisions, Licensee hereby consents to an injunction being issued against it restraining it from any further breach of such provision, but such action shall not be construed so as to be in derogation of any other remedy which Licensor may have in the event of such a breach.

- 15. **FORCE MAJEURE.** Except as expressly provided otherwise in this agreement, dates and times by which any Party is required to render performance under this agreement or any schedule hereto shall be postponed automatically to the extent and for the period that such Party is prevented from meeting them by reason of any cause beyond its reasonable control (other than lack of funds), provided the Party prevented from rendering performance notifies the other Party immediately and in detail of the commencement and nature of such cause and the probable consequences thereof, and provided further that such Party uses its reasonable efforts to render performance in a timely manner utilizing to such end all resources reasonably required in the circumstances, including obtaining supplies or services from other sources if same are reasonably available.

- 16. **MISCELLANEOUS.** This agreement, including all Schedules attached hereto, is the entire agreement between Licensee and Licensor pertaining to Licensee’s right to use GAS MANager and supersedes all prior or collateral oral or written representations or agreements related thereto. This agreement shall be governed by the laws of the Province of Alberta, Canada. Except as otherwise provided herein, no term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

IN WITNESS WHEREOF the Parties have duly executed this agreement.

**Licensee Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Print** \_\_\_\_\_

**Licensor Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Print** \_\_\_\_\_

**GAS MANager SCHEDULE "A"**  
**ADDITIONAL TERMS**

1. LICENSEE

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

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

2. DESCRIPTION OF LICENSED SOFTWARE

- GAS MANager program, GAS MANager Billing program, any optional GAS MANager programs, and related support files
- GAS MANager Database
- GAS MANager Reports
- GAS MANager User's Guide

3. LICENSE FEES (Taxes not included)                      License Fee                      Annual License Renewal Fee

Single User Version                      \$ \_\_\_\_\_                      \$ \_\_\_\_\_

Network Version                      \$ \_\_\_\_\_                      \$ \_\_\_\_\_

Additional Co-ops (Number: \_\_\_\_\_ )                      \$ \_\_\_\_\_                      \$ \_\_\_\_\_

4. ADDITIONAL FEES

Installation                      \$ \_\_\_\_\_ (Taxes, travel time and expenses not included.)

Training                      \$ \_\_\_\_\_ (Taxes, travel time and expenses not included.)

5. OPERATING ENVIROMENT

The use of GAS MANager is expressly limited to the following computer type:

- Minimum Requirements
  - IBM (or IBM compatible) personal computer with:
    - Intel Pentium 4 (or comparable) Processor.
    - 1024 MB RAM.
    - Microsoft Windows XP Professional Operating System.
- Recommended
  - IBM ( or IBM compatible) personal computer with:
    - Intel Pentium 4 (or comparable) Processor.
    - 2048 MB RAM.
    - Microsoft Windows XP Professional Operating System.

It is the responsibility of the Licensee to maintain the Microsoft Windows Operating System(s) through the application of any Patches and/or Service Packs made available by Microsoft.