

ATTACHMENT A TO SP4000016073

M·A·P·P·S™ Software License Agreement

10/16/2008

M·A·P·P·S™ SOFTWARE LICENSE AGREEMENT

This software license agreement (the "Agreement") is entered between Magellan Consulting, Inc. ("Magellan" or Licensor), a Texas corporation with a principal place of business at 602 W. Semands, Conroe, Texas 77301, and Kutztown University (Licensee) with a principal place of business at Kutztown University, Kutztown, PA 19530. This Agreement shall be effective on ~~October 1, 2008~~ ("Effective Date").

upon execution of this agreement

1. Definitions:

a) "Product" shall mean the licensed software program **M·A·P·P·S™**, including the application, maintenance enhancements, and all associated documentation including but not limited to user manuals and instructional training course materials. For purposes of this Agreement the license granted hereunder shall apply to the Product in object code form only, unless otherwise specifically set forth herein.

b) "Derivative Work" shall mean a work that is based upon or incorporates the Product, in whole or in part, such as a revision, modification, translation, condensation, expansion, compilation, or any other form in which the Product may be recast, transformed, included or adapted, and if prepared without first obtaining Magellan's prior written authorization shall constitute an infringement of Magellan's intellectual property rights.

c) "Effective Date" shall mean the date of execution of the software license agreement between Kutztown University and Magellan.

2. Grant:

a) Magellan hereby grants to Licensee a perpetual nonexclusive, nontransferable license for the use of the Product subject to the terms and conditions of this Agreement. Licensee agrees to use the Product for its internal business purposes only, and Licensee shall have no right to sublicense, resell, lease, or transfer such Product. Licensee shall have no right to, and agrees not to, disassemble, reverse compile, or reverse engineer the Product. Except as expressly permitted pursuant to the license granted herein, Licensee agrees not to modify any Product. Licensee shall have the right to use only one copy or image of the Product.

b) In the event Licensee contracts with a third party for product integration services or outsourcing of its internal information management system, such third party may have access to the Product licensed herein provided (i) written approval is granted by Magellan; (ii) use by the third party is restricted to providing integration or outsourcing services to Licensee; and (iii) the third party agrees to comply with the licensing terms herein. Licensee acknowledges and agrees that breaches by the third party shall be deemed to be breaches by Licensee under this Agreement.

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3. Title and Proprietary Information:

a) The license granted herein only grants Licensee the right to use the Product under the terms, conditions, and restrictions specified in this Agreement, and Licensee does not, and shall not, acquire any right, title, or interest in the Product or documentation, Derivative Works, or any copyrights or other intellectual property rights therein, which shall at all times remain the property of Magellan or relevant third party. It is understood and agreed, between Magellan and Licensee, that the Product and all related documentation have been developed, acquired, and maintained by Magellan on a confidential basis as Magellan's valuable trade secrets. Licensee agrees to preserve the confidential nature of these trade secrets and Licensee shall not permit the use or copying of the Products or documentation by, or disclose any information relating to the Product or documentation to, any third party, except as permitted under Section 2.b of this Agreement. Licensee acknowledges that Magellan's rights in and to the Product are unique and financial remedies will be insufficient to compensate Magellan for any infringement of those rights. Magellan shall be entitled to seek injunctive relief and other equitable relief to protect, maintain, defend, enforce, and preserve those rights, in addition to any other remedy that may be available.

b) This section 3 shall survive the expiration or termination of this Agreement.

4. Payment and License Type:

a) In consideration of fees paid through the services contract for the Facilities Assessment, the initial License Fee is waived. Upon the execution of this Agreement, Licensee agrees on the following charges as a basis for the License Fee:

The retail value of the **M·A·P·P·S™** application is based on **3 cents** per square foot and an initial database for **1,998,696** square feet housed in the application database. The retail value at the time of the effective date is established at **\$59,960**. This retail License Fee will be used to establish the basis for the annual Support, Maintenance, and Enhancement Plan. Square footage housed in addition to the **1,998,696** square feet may be subject to additional license cost based on **2 cents** per additional square foot.

Any services associated with implementation, integration, customization, or additional training not specifically called out in this agreement will be subject to a separate agreement.

b) Taxes imposed by government agencies, with the exception of franchise taxes and taxes based upon the net income of Magellan, whether based upon the Product, its use, or this Agreement (including sales and use taxes) are the additional obligation of Licensee. Should Licensee claim a tax-exempt status, a copy of the exemption shall be supplied to Magellan.

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c) Application customization, integration, or report customization requested by Licensee (and not part of a Magellan initiated enhancement or New Release) may be provided, on an hourly basis, at the rate of \$150 per hour.

5. Support, Maintenance, and Enhancement Plan:

Magellan has established a Support, Maintenance, and Enhancement Plan (the "Plan"). If Licensee is enrolled in the Plan, Magellan shall:

- a) Supply code corrections to Licensee in order to bring such Product into conformity with the operating specifications for the most current version of the Product unless such malfunctions shall have been caused by Licensee's modifications of the Product or unless Licensee's modifications prohibit or hamper such corrections.
- b) Provide Licensee with telephone support to answer operational questions and to report irregularities with the Product. Such services are available during normal business hours defined as 8:00 a.m. to 5:00 p.m. CST, Monday through Friday, excluding regularly scheduled holidays of Magellan.
- c) Supply, so long as commercially feasible, updated Products as required to operate under new releases of the operating system and other system software designed for Product.
- d) Supply extensions, enhancements, and other changes which Magellan deems to be logical improvements or extensions ("New Releases") to the Products and which Magellan elects to generally furnish without additional charge to licensees enrolled in the Plan. Licensee shall receive one (1) copy of each New Release, at no additional charge.
- e) Replace the Product at no charge if the media becomes destroyed or damaged to such an extent that the Product becomes unusable.

Magellan shall have no support obligations under the Plan with respect to (i) Products which are modified by or on behalf of Licensee; (ii) malfunctions caused by the use or operation of the Product with any hardware, software, or media not authorized by this Agreement; and (iii) versions of the Product that are more than twelve months older than the most recent generally available release of the Product.

The charge for Magellan's Support, Maintenance, and Enhancement Plan shall be due as follows: Licensee, under a perpetual license, is automatically enrolled by Magellan in the Plan for the duration of the first year. Thereafter, and approximately sixty (60) days prior to the expiration of the applicable annual maintenance period, Magellan shall invoice Licensee for the next year of the Plan. The annual fee for Plan renewal shall be **20% of the then current license fee retail price of the Product**. Magellan shall discount this fee an additional 20% due to the lack of need

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for training of University personnel. The 2008-2009 annual fee of **\$9,593** will be capped, for a period of two years from the Effective Date of ~~October 1, 2008~~.

Licensee, under a perpetual license, may cancel its enrollment in the Plan by giving notice of such cancellation at least thirty (30) days prior to the anniversary date of the Plan. Licensee may re-enroll in the Plan by paying a reinstatement fee equal to the total Plan fees that would have been paid to Magellan had Licensee not terminated Plan services or the then current licensee fee for the applicable Product, whichever is less. In addition to the reinstatement fee, Licensee must pay the annual charge for the first year on the Plan in advance.

Magellan does not maintain nor distribute a data dictionary or table relationship model. While the SQL database can be accessed by the user from other databases and can be used for query and report writing purposes outside the M·A·P·P·S™ user interface, Magellan does not support this activity nor does Magellan warrant the data integrity from changes that are caused by direct SQL database manipulation by the user.

6. **Termination:**

a) Magellan shall have the right to terminate this Agreement without further obligation or liability to Licensee if (i) Licensee is delinquent in making payments of any license fees due under this Agreement and continues to be delinquent for a period of thirty (30) days after the due date of such payment; (ii) Licensee commits any other material breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by Magellan of such breach; or (iii) a petition alleging insolvency is filed by or against the Licensee, or a receiver is appointed for any part of the Licensee's business, or its assets are assigned for the benefit of creditors.

b) Upon expiration or termination of this Agreement, the license and all other rights granted to Licensee hereunder shall immediately cease, and Licensee shall immediately: (i) return the Product to Magellan together with all reproductions of the Product and all copies of documentation or other materials associated with the Product; (ii) purge all copies of the Product or any portion thereof from all computers, CPUs, Network devices, computer storage devices or other media on which Licensee has placed or permitted others to place the Product; and (iii) give Magellan written certification that Licensee has complied with all of its obligations under parts (i) and (ii) of this paragraph. Magellan's termination of the Agreement and/or repossession of the Product shall be without prejudice to any other remedies that Magellan may lawfully have.

c) The provisions of this Section 6 shall survive expiration or termination of this Agreement.

7. **Limited Warranty:**

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a) Magellan warrants that the Product or update of the Product delivered to Licensee under this Agreement will perform in all material respects with the published specifications of the Product for a period of one year commencing on the Effective Date and additionally for as long as the Support, Maintenance, and Enhancement Plan is in place. In the event the Product fails to perform as stated herein, and upon written notice to Magellan within the warranty period, Magellan shall either (1) repair at its facilities any material defect in the Product or (2) replace the Product to comply with those published specifications. If neither option (1) nor (2) is commercially feasible, the license granted herein shall be rescinded and Magellan shall refund Licensee the applicable license fees subsequent to Licensee's compliance with items (i), (ii), and (iii) of Paragraph 6.b. This warranty is contingent upon proper use of the Product in the appropriate operating environment. The foregoing states Licensee's sole remedy under the warranty.

b) Magellan does not warrant that the functions contained in the Product or in any update will meet the requirements of Licensee or that the operation of the Product or update will be error free. The warranty does not cover any copy of the Product or update which has been altered or changed in any way by Licensee or any third party, their employees, or agents. Magellan is not responsible for problems which occur as a result of the use of the Product in conjunction with other software or hardware which is incompatible with the operating system for which the Product license is being acquired. The above warranties are made in lieu of all other express warranties, oral or written. Only an authorized officer of Magellan may make modifications to this warranty or additional warranties binding on Magellan, and such modifications or additional warranties must be in writing. Accordingly, additional statements such as those made in advertising or presentations, oral or written, do not constitute warranties by Magellan and should not be relied upon as such. MAGELLAN GRANTS NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES (i) OF MERCHANTABILITY, (ii) OF FITNESS FOR A PARTICULAR PURPOSE, OR (iii) ARISING FROM USAGE OF TRADE OR COURSE OF DEALING OR PERFORMANCE.

c) Licensee for the duration of the warranty period and the Support, Maintenance, and Enhancement Plan, will provide online remote access to Licensee's server for the purposes of conducting updates, support, database backups, analysis, repairs, modifications to the application and the supporting data, and any other such activities deemed by Magellan to be necessary for the continued operation of the application. Should the Licensee desire not to provide remote access, Licensee shall reimburse reasonable and customary travel expenses for any support activities that must be performed on site at the Licensee's location.

8. **Limitation of Liability:** In no event shall Magellan be liable in contract or in tort for loss of revenues, profits, goodwill, lost computer time, damage or loss of data, or any indirect, incidental, punitive, or consequential damages suffered or incurred by Licensee in connection with or arising from this Agreement, including any Product

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licensed hereunder or benefits provided under the Plan. Magellan's liability for damages resulting from or relating to the Product or the use thereof shall not exceed the License Fee. Magellan's liability for damages resulting from or relating to the Plan, including the benefits provided there under shall not exceed the amount paid by Licensee during the previous twelve-month period under the Plan. Magellan's liability shall be further limited to direct damages suffered by Licensee. This Agreement shall not be deemed or construed to create any enforceable right in any third party.

9. Indemnification for Infringement:

a) Magellan will defend and hold harmless, at its own expense, any infringement claim, demand, suit, or action by a third party against Licensee for any actual or alleged infringement or violation of any patent, copyright, trade secret, or other proprietary rights asserted by any third party in an action by such third party against Licensee attributable to Licensee's use of the Product. Magellan shall also indemnify Licensee against any loss or damages finally awarded (without right of appeal) against Licensee or settlement as a consequence of such claim, demand, action, or suit. Notwithstanding anything to the contrary contained herein, Magellan shall have no obligation whatsoever under this Section 9.a for any claim, demand, action, or suit with respect to any modifications to the Product by or on behalf of Licensee, or arising out of the unauthorized combination, operation, or use of the Product by Licensee. In the event that an injunction or order is issued by a court of competent jurisdiction against Licensee's use of the Product resulting from an infringement claim to which Magellan's defense and indemnity duties apply, or if in Magellan's opinion the Product is likely to become the subject of a claim of infringement of copyright, patent, trade secret, or other proprietary right of a third party, Magellan shall have the option (i) to procure for Licensee's benefit the right to continue using the Product, or (ii) to replace or modify the Product so that it becomes non-infringing, unless replacement or modification would adversely affect the specifications for the Product. If either option (i) or (ii) are not commercially feasible, Magellan shall terminate the license for Product by written notice to Licensee and refund the License Fee paid prorated over a sixty (60) month period, beginning on the Effective Date. The License Fee paid by Licensee shall be the basis for calculating the applicable prorated refund. This Section 9.a states Magellan's entire liability for infringement.

b) Magellan's obligation of indemnity and defense set forth above are conditioned on (i) the Licensee having provided prompt written notice of the claim to Magellan sufficient for Magellan to file its timely response, (ii) Magellan having the ~~sole~~ right to conduct and control the defense and settlement of the claim, in its discretion, and (iii) the Licensee shall provide assistance at Magellan's expense in connection with such defense as reasonably requested by Magellan.

See Attachment B

c) This Section 9 shall survive the expiration or termination of this Agreement.

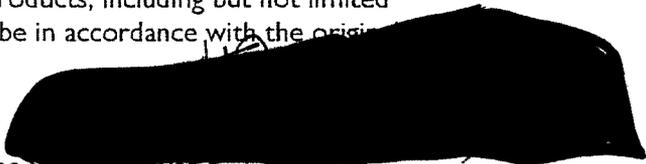
10. Export Restrictions:

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Licensee agrees not to export or re-export, or permit exportation or re-exportation of the Product outside of the country in which Licensee first receives the Product without the permission of Magellan and the United States Office of Export Administration and other appropriate governmental agencies of the United States.

11. Third Party Software Products:

Licensee may be responsible for the procurement of third party software products and Magellan grants no third party software sublicenses under this Agreement. The terms governing licensing of third party software products, including but not limited to restrictions on use, warranty, and support shall be in accordance with the original manufacturer's license agreement.



12. Governing Law:

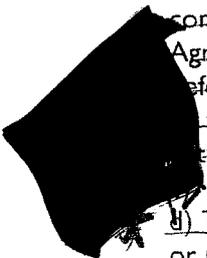
This Agreement shall be governed by the laws of the State of Texas.

13. General:

a) Licensee's rights in and to Product as a result of this Agreement may not be assigned, subleased, sold, or otherwise transferred, voluntarily or by operation of law without prior written consent of Magellan.

b) This Agreement shall constitute the entire agreement between the parties and shall not be modified except by written amendment signed by the parties hereto.

c) Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. The negotiation shall be attended by representatives of Licensor with full decision-making authority, and by representatives of Licensee with full decision-making authority to approve of a settlement reached at negotiation. Failing resolution, and prior to the commencement of depositions in litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Mediator certified by the State of Texas. The mediation shall be attended by representatives of Licensor and Licensee with full decision-making authority to approve of any settlement reached at mediation.



d) ~~The party prevailing in any action or proceeding between the parties arising under or relating to this Agreement or the subject matter hereof shall be entitled to recover the reasonable attorneys fees and expenses in addition to costs of suit and such other recovery and relief as may be authorized by law.~~

e) Notices to either party shall be in writing to the address indicated in this Agreement, and deemed effective when received, or twenty four hours following the date of postmark, if sent by prepaid certified mail, return receipt requested.

Handwritten signature/initials

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f) Should any provision of this Agreement be invalid, ineffective, or unenforceable under present or future laws, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

g) No failure or delay on the part of either party in the exercise of any right, power, or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy preclude other or further exercise thereof, or the exercise of any other right, power, or remedy.

IN WITNESS WHEREOF, the parties have duly executed this Agreement by their respective representatives as of the date first written above.

Licensee:
Kutztown University

P.O. Box 730
Kutztown, Pennsylvania 19530

Licensor:
Magellan Consulting, Inc.
Donald T. (Sam) Wilson Jr.
President
602 W. Semands
Conroe, TX 77301

By: _____
Name: _____

Title: _____

By: _____

Name: Donald T. (Sam) Wilson Jr.

Title: President

ATTACHMENT B TO SP4000016073

IN ADDITION TO THE MARKED CHANGES ON ATTACHMENT A (MAPPS SOFTWARE LICENSE AGREEMENT ,) THE FOLLOWING EXCEPTIONS HAVE BEEN MADE TO ATTACHMENT A:

1. Section 9 (**Indemnification for Infringement**) paragraph b, section (ii) has been revised to read: “**Magellan having the right to conduct the defense and settlement of the claim, in its discretion , and,** “. The remainder of this paragraph remains unchanged.
2. Section 12 (**Governing Law**) is revised to read: This agreement shall be governed by the laws of the **Commonwealth of Pennsylvania**.
3. Section 13 (**General**), **paragraph b**) is revised to read: “This Agreement and the terms of service contract SP4000016073 constitute the entire agreement between the parties and shall not be modified except by written amendment signed between the parties hereto.”
4. Section 13 (**General**) **paragraph c**): The 3rd and 4th sentences have been deleted and replaced with the following language: “**Failing such resolution, such disputes shall be filed with the Pennsylvania Board of Claims.**”
5. Paragraph d) of Section 13 is deleted in its entirety.

THE FOLLOWING EXCEPTIONS HAVE BEEN MADE TO COMMONWEALTH TERMS, STD-274

1. Section 5 (**Post-Consumer Recycled Content**) does not apply to this contract and is hereby deleted.
2. Section 8 (**Payment**) : Paragraph b is hereby deleted
3. Section 10 (**Warranty**) is hereby deleted and replaced by Contractor’s Limited Warranty clause (Section 7) reflected in Attachment A.
4. Section 12. (**Ownership Rights**) is hereby deleted.
5. Section 16 (**Default**) **paragraphs b and c are** deleted.
6. Section 25 (**Hazardous Substances**) does not apply to this contract and is hereby deleted.
7. Pages 13-26 (**Exhibits A-1 through A-8**) do not apply to this contract, and are hereby deleted.