

MicroData Group, Inc.  
Smart PC Assistant / Basic Care Client-Software License Agreement

PLEASE READ THIS CLIENT-SOFTWARE LICENSE AGREEMENT (HEREINAFTER REFERRED TO AS THE "AGREEMENT") CAREFULLY. TO COMPLETE YOUR ORDER FOR THE CLIENT SOFTWARE, YOU (HEREAFTER REFERRED TO AS "YOU" &/OR "YOUR") MUST ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT BY ELECTRONICALLY SELECTING THE BOX MARKED "I ACCEPT". THIS AGREEMENT GOVERNS YOUR USE OF THE MICRODATA GROUP, INC. CLIENT-SOFTWARE AND ALL RELATED COMPONENTS AND/OR MODULES. IT IS STRONGLY RECOMMENDED THAT YOU PRINT AND RETAIN A COPY OF THIS AGREEMENT FOR YOUR RECORD, YOU MAY FIND A VERSION OF THIS AGREEMENT POSTED AT THE FOLLOWING URL [WWW.SMARTPCASSISTANT.COM/LEGAL/LEGAL.HTM](http://WWW.SMARTPCASSISTANT.COM/LEGAL/LEGAL.HTM)

IF YOU DO NOT AGREE AND/OR REJECT THIS LICENSE AGREEMENT YOU SHALL NOT BE CHARGED A FEE OR YOU ARE ENTITLED TO A FULL REFUND OF ANY PREPAID LICENSE FEES.

### **Definitions**

"Licensed Product(s)" means either the Smart PC Assistant client-software or Basic Care ARIES client-software as developed by MicroData Group, Inc., a USA corporation (hereinafter referred to as "MicroData"), in machine-readable form of the object code, associated modules, user documentation, user manuals, installation guides, training materials, Updates, Upgrades, New Releases, products and maintenance, ordered by You and provided by MicroData while this Agreement is in effect.

"Smart PC Assistant client-software" and "Basic Care ARIES client-software," are used interchangeably throughout this document and are intended to refer to the same software code. The products are differentiated in name for marketing purposes.

"Update(s)" and/or "Upgrade(s)" means a subsequent release of a particular Licensed Product, which provides patches, fixes, modifications, error corrections or enhanced functionality and for which MicroData does not charge a license or other additional fee to You for that Licensed Product.

"New Release(s)" means a Licensed Product with greater or different capability than the Licensed Products and for which MicroData charges a separate and/or additional license fee.

### **License Grant & Restrictions**

License Grant. The Licensed Product(s) are licensed only and are not sold to You. MicroData hereby grants, and You accept, a non-exclusive, non-assignable, non-transferable, non-sublicensable, limited license to use the Licensed Products in machine readable form only, and to utilize the Licensed Product(s), for Your individual use only in the manner in which such License Products were intended for the term indicated when You downloaded the Licensed Products from MicroData's web pages and/or purchased the License Products from MicroData (hereinafter referred to as the "Term"). You may make one (1) copy of the Licensed Product(s) solely for backup purposes. You may use the Licensed Product(s) within or in

conjunction with any other software, subject to the terms and conditions contained herein, and any use shall always remain subject to this Agreement.

License Restriction. You shall display and retain MicroData's and/or its suppliers' copyright, trademark, proprietary, or confidentiality statement and other notices on any portion of the Licensed Products however such Licensed Products are used. You shall (i) not attempt to reverse engineer, decompile, disassemble, or attempt to derive the source code of the Licensed Product or any portion thereof, or otherwise derive its source code; (ii) not modify, port, translate, localize or create derivative works of the Licensed Product; (iii) not disclose the results of any performance tests or qualitative analysis on the Licensed Product(s) to any third party without the prior written consent of MicroData; (iv) not use the Licensed Product(s) on a server, ("server" shall mean a system that is used to access or is accessed by and/or store data for multiple personal computers); (v) not use the Licensed Product(s) in a way that (a) infringes on the intellectual property rights of any third party or any rights of publicity or privacy; (b) violates any law, statute, ordinance or regulation (including but not limited to the laws and regulations governing export/import control, unfair competition, anti-discrimination and/or false advertising); (c) is defamatory, trade libelous, unlawfully threatening, or unlawfully harassing; (d) is obscene, pornographic or indecent in violation of applicable law; or (e) to propagate any virus, worms, Trojan horses or other programming routine intended to damage any system or data; (vii) not use the License Product(s) in any application that may involve risks of death, personal injury, severe property damage or environmental damage, or in any life support applications, devices or systems and (vii) not use a total number of licenses in excess of the total amount allocated to You. The license granted hereunder is specific to You only, and is not transferable to any other person or business entity, including subsidiaries and successors-in-interest to You, without the prior written consent of MicroData.

### **Evaluation Period & Privacy**

Fees. Commencing upon Your completion of the installation of the Licensed Products You shall be allowed to use the Licensed Products with any charges deferred for the number of days indicated when you downloaded the Licensed Products from MicroData's web pages and/or purchased the Licensed Products from MicroData (hereinafter referred to as the "Evaluation Period"). After the Evaluation Period, You shall automatically be charged all applicable fees for the License Products based upon the posted pricing at the time you downloaded the Licensed Products.

Privacy Policy. All use by MicroData of personal information collected from You through, or arising from, Your registration of the Licensed Products, shall be done in accordance with applicable privacy legislation and MicroData's privacy policy, which is currently located at <http://www.microdata.com/privacy.htm>. Upon Your completion of the installation of the Licensed Products, You grant permission to MicroData to verify Your personal information, including all information pertaining to Your credit card with the appropriate credit agency and/or other applicable administrative organization.

### **Termination & Suspension**

Termination for Breach. MicroData may, by written notice to You, which may include electronic mail (email), terminate this Agreement, including all licenses granted

hereunder, if any of the following event(s) occurs: (a) the failure of You to pay MicroData in full for any fee(s) and/or charge(s) due to MicroData if payment is not rendered within ten (10) days after the payment was due; (b) any breach of any material term or obligation of this Agreement if not remedied within thirty (30) days after written receipt of notice; (c) any material breach of license grants, license restrictions, intellectual property rights, or confidentiality provisions provided herein effective immediately upon receipt of notice from MicroData; or (d) the insolvency of You.

### **Export Controls; EU Data Protection Act**

European Union Data Protection Act. In accordance with Commission Decision 2001/497/EC of 15 June 2001 on standard contractual clauses for the transfer of personal data to third countries, under Directive 95/46/EC - O.J. L 181/19 of 4.7.2001, the Annex titled "Standard Contractual Clauses" is hereby incorporated by reference in its entirety. With respect to such Annex the "data exported" shall be defined as "You" and the "data importer" shall be defined as "MicroData". You may find a complete version of the text either at [www.europa.eu.int/comm/internal-market/en/dataprot/news/clauses2faq](http://www.europa.eu.int/comm/internal-market/en/dataprot/news/clauses2faq).

Export Controls. You understand that the Licensed Products are subject to regulation by agencies of the United States Government as well as the laws and regulations of other applicable countries which prohibit export, importation or diversion of certain technological products or services to certain countries and individuals. You hereby specifically agree to comply in all respects with such export, re-export, and/or import restrictions. You further agree not to export/import or attempt to export/import the Licensed Products without the prior written consent of MicroData. You may not export/import or re-export/import the Licensed Software (or provide to a national of) countries in the US Government Country Group E: 1 or E: 2 without a license or license exception from the U.S. Department of Commerce nor otherwise violate any provisions of U.S. export laws.

### **Intellectual Property Rights**

Intellectual Property Rights. All intellectual property rights in and to the Licensed Products shall remain the property of MicroData (and/or its suppliers if applicable), exclusively. You shall have no right in or to the Licensed Products except as expressly set forth in this Agreement. Intellectual property includes, but is not limited to, patents, inventions, invention disclosures, Marks (as defined below), trade secrets, know-how, formulae and processes, software programs, proprietary data and databases, copyrights and all other similar items of intellectual property, whether registered or unregistered, including any rights created thereof, all proceeds thereto, and the right to sue for past, present and future infringements. All rights not expressly granted hereunder by MicroData are reserved for MicroData (and/or its suppliers if applicable). MicroData retains the rights in and title to its respective trade names, trademarks, service marks, logos, domain names and other branding elements and identifiers (the "Marks"), and any other intellectual property previously or generally developed by MicroData or its affiliates. You shall not copy, use, display, distribute or transfer the Marks or other Intellectual Property of MicroData, except as expressly provided by this Agreement.

### **Intellectual Property Infringement**

Intellectual Property Indemnification. MicroData will defend, at its own expense, any action against You based upon a claim that a Licensed Product(s) infringes a United States patent or United States copyright or involves misappropriation of a trade secret. MicroData will pay such damages or costs as are finally awarded against You for such infringement or misappropriation provided that You give MicroData: (a) prompt written notice of any such action and of all prior related claims; (b) sole control of the defense and settlement of such action; and (c) full cooperation in any defense or settlement. MicroData shall not be liable for any fees, costs or damages incurred without such prior written notice, control and cooperation. Notwithstanding the foregoing, MicroData shall have no liability for any claim of infringement of a patent, copyright or other intellectual property right or trade secret misappropriation, based upon the use of any Licensed Product (a) with any other product not supplied and or approved by MicroData; (b) in any manner or purpose for which the Licensed Product was not designed (including changes to the Licensed Product); (c) if the infringement or misappropriation would have been avoided by Your use of the most current version of the Licensed Product; or (d) which have been modified by anyone other than MicroData.

Exclusive Intellectual Property Infringement Remedy. Should any Licensed Product become, or in MicroData's sole opinion be likely to become, the subject of a claim of infringement or trade secret misappropriation as set forth herein, MicroData shall, at its option and expense: (a) obtain for You the right to continue using the Licensed Product; (b) replace or modify the Licensed Product so its use becomes non-infringing or otherwise lawful; or (c) terminate the license granted hereunder with respect to the infringing Licensed Product(s) and refund the license fee paid by You for the infringing Licensed Product(s), less a reasonable allowance for past use. THIS SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY INFRINGEMENT.

### **Limited Warranty & Disclaimer**

Licensed Product(s) Limited Warranty. MicroData warrants that the Licensed Product(s) will conform substantially in accordance with its documentation for ninety (90) days from delivery. If MicroData confirms a defect reported by You in the unaltered Licensed Product(s), MicroData will use commercially reasonable efforts to remedy the nonconformance. MicroData does not warrant that the operation or utilization of any Licensed Product(s) will be uninterrupted or error free, nor does it guarantee that its remedial efforts will correct any nonconformance. Corrections will be warranted for the remainder of the original warranty period. If any Licensed Product fails to comply with any warranty set forth in this Section and MicroData does not remedy such failure as required by this Section, MicroData' obligation and liability, and Your exclusive remedy, for such failure shall be limited to the refund of the license and maintenance fees paid within the last 2 month period prior to such failure or ten (\$10.00) US dollars whichever is less, excluding reasonable amounts for past use, for such Licensed Products, upon the return of such Licensed Products to MicroData, in which event this Agreement shall terminate with respect to such Licensed Products. You expressly recognize and acknowledge that such limitation of liability is an essential part of this agreement and is an essential factor in establishing the price of the License Products. THIS SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY.

DATA CONTENT DISCLAIMER. YOU EXPRESSLY RECOGNIZE THAT MICRODATA DOES NOT CREATE, OPERATE, CONTROL OR ENDORSE ANY DATA, INFORMATION, THIRD-PARTY PRODUCTS, PROCESSED BY THE LICENSED PRODUCTS OR SERVICES PROVIDED VIA ANY LICENSED PRODUCTS HEREUNDER, INCLUDING BUT NOT LIMITED TO INFORMATION OBTAINED. MICRODATA DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION OR ENDORSEMENT TO YOU OR ANY THIRD PARTY WHATSOEVER WITH REGARD TO ANY DATA, INFORMATION, PRODUCTS OR SERVICES PROVIDED IN CONJUNCTION WITH THE LICENSED PRODUCTS, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF: 1) MERCHANTABILITY; 2) FITNESS FOR A PARTICULAR PURPOSE; AND 3) NON-INFRINGEMENT. MICRODATA SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY COST OR DAMAGE ARISING EITHER DIRECTLY OR INDIRECTLY FROM ANY LOSS OF DATA.

GENERAL DISCLAIMER. MICRODATA MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, WRITTEN OR ORAL, EXCEPT AS EXPRESSLY STATED HEREIN. ADDITIONALLY, MICRODATA DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED AND IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND FREEDOM FROM INFRINGEMENT WITH RESPECT TO ALL LICENSED PRODUCTS, UPDATES, UPGRADES, NEW RELEASES AND ALL OTHER PRODUCTS, SERVICES, MATERIALS AND OTHER ITEMS FURNISHED UNDER, OR IN CONNECTION WITH, THIS AGREEMENT.

### **General Limitation of Liability**

Limitation of Liability. MicroData's (and its suppliers') entire liability, and Your exclusive remedy, for any and all claims arising under or in connection with this Agreement or related to any item or service provided under or in connection with this Agreement, regardless of the form of the action (including negligence), whether in breach of warranty, contract, tort, strict liability or otherwise, shall be limited to ten (\$ 10.00) US dollars. You expressly recognize and acknowledge that such limitation of liability is an essential part of this agreement and is an essential factor in establishing the price of the License Products.

EXCLUSION OF DAMAGES. IN NO EVENT SHALL MICRODATA (NOR ANY OF ITS SUPPLIERS) BE LIABLE FOR DAMAGES RESULTING FROM LOSS OF DATA, LOST PROFITS, BUSINESS INTERRUPTION, LOST REVENUE, OR LOST BUSINESS, IN CONNECTION WITH THE USE OF ANY LICENSED PRODUCT OR ANY OTHER ITEM OR SERVICE PROVIDED UNDER THIS AGREEMENT, NOR FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, NOR FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY PRODUCT, SERVICE OR OTHER ITEM PROVIDED UNDER THIS AGREEMENT, WHETHER IN BREACH OF WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE (INCLUDING NEGLIGENCE), EVEN IF MICRODATA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **General**

Assignment. Neither this Agreement nor any of Your rights or obligations under this Agreement shall be assigned or transferred by You without the prior written consent of MicroData and any attempted assignment or transfer without such consent shall be voidable by MicroData upon notification. You agree that this Agreement binds

You and each of Your employees, agents and persons associated with You, including Your affiliated and subsidiary firms, corporations and other organizations.

Force Majeure. MicroData shall not be liable for any failure or delay in performing services or any other obligation under this Agreement, nor for any damages suffered by You by reason of such failure or delay, which is, indirectly or directly, caused by strike, riot, natural catastrophe or other act of God, or any other cause beyond MicroData's reasonable control.

Limitations Period. Neither party may bring any action under this Agreement for any cause whatsoever more than two (2) years after the occurrence giving rise to such cause of action; provided however, that this Section shall not apply to any action brought by MicroData to protect its intellectual property rights or confidential information.

No Waiver. If either party fails to perform any of its obligations hereunder and the other party fails to enforce the provisions relating thereto, such party's failure to enforce this Agreement shall not prevent its later enforcement.

Severability. If any provision of this Agreement is determined by a court to be, or becomes, invalid, unenforceable or illegal, such provision shall be (a) modified to be made valid, enforceable and legal in such a manner as to best effectuate the intent of the parties on the date hereof or (b) deemed eliminated where such modification is not practicable; the remainder of this Agreement shall remain in effect in accordance with its terms as modified by such modification or deletion.

Notices. All notices and correspondence under this Agreement shall be in writing and shall be delivered by personal service, confirmed facsimile, express courier, or certified mail, return receipt requested, to the addresses first set forth herein, or at such different address as may be designated by such party by written notice to the other party from time to time. All notices shall be deemed received and effective upon receipt if delivered personally or sent by express courier or confirmed facsimile, and seven (7) days after mailing if sent by certified mail.

Governing Law for US Citizens/Entities. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, excluding its rules regarding conflict of laws. The parties mutually agree and submit to jurisdiction in the federal or district courts of Essex or Suffolk Counties, Massachusetts. The parties expressly agree that the U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Both parties shall comply with all applicable administrative and export/import laws, including but not limited the Foreign Corrupt Practices Act, the U.S. Export Administration Regulations and the U.S. International Traffic in Arms Regulations, as the same may be amended from time to time.

Governing Law for Non-US Citizens/Entities. You agree to submit all disputes arising out of or relating to this Agreement to final binding arbitration in accordance with the then-existing Commercial Rules of the American Arbitration Association, before a single arbitrator selected from the American Arbitration Association. All arbitration proceedings shall be held within the Commonwealth of Massachusetts. The parties expressly agree that the U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Both parties shall comply with all applicable administrative and export/import laws, including but not limited the Foreign Corrupt Practices Act, the U.S. Export Administration Regulations and the

U.S. International Traffic in Arms Regulations, as the same may be amended from time to time

Irreparable Harm. You acknowledge that Your breach of this Agreement may cause irreparable harm to MicroData and You agree that MicroData shall be entitled to injunctive relief in the event of such a breach.

Modifications & Enforceability. No modification of this Agreement shall be binding upon either party unless made in writing and signed by an authorized representative of MicroData and You. If any provision of this Agreement is held unenforceable for any reason whatsoever, the unenforceable provision will be construed in accordance with applicable law as nearly as possible to reflect the original intent, and all other provisions will remain in full force and effect.

Survival. The following Sections shall survive the expiration or termination of this Agreement: Section "Intellectual Property Rights"; Section "Intellectual Property Infringement"; Section "Limited Warranty & Disclaimer"; Section "General Limitation of Liability"; and Section "General."

Limited Use. The Software is a "Commercial Item," as that term is defined at 48 C.F.R 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. 12.212 and 48 C.F.R. 227.7202, as applicable. Consistent with 48 C.F.R. 12.212, 227.7202-1 through 227.7202-4, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end-users (a) only as Commercial Items and (b) with only those rights as are granted to all other end-users pursuant to the terms and conditions herein. The Licensed Products and the Documentation have been developed at private expense and are sold commercially to the general public. They are provided under any U.S. government contracts or subcontracts with the most restricted and the most limited rights permitted by law and regulation. Whenever so permitted, the government and any intermediate buyers will obtain only those rights specified in our standard commercial license. Thus, the Licensed Products referenced herein, and the Documentation provided by MicroData hereunder to any agency of the U.S. Government or U.S. Government contractor or subcontractor at any tier shall be subject to the maximum restrictions on use as permitted by FAR 52.227-19 (June 1987) or DFARS 227.7202-3(a) (Jan. 1, 2000) or successor regulations. Manufacturer is MicroData Group, Inc. located at 100 Cummings Center, Suite 146N, Beverly, Massachusetts United States, 01915.