

ZOBRIO® LICENSE AGREEMENT

This Zobrio® License Agreement (“Agreement”), effective as of April 03, 2015 (the “Effective Date”) is entered into by and between ZOBRIO, INC., a Delaware corporation (“ZOBRIO”) and the customer identified below (“Customer”).

Customer Information:

Full Legal Name: Town of Chilmark Massachusetts

Billing Address: 401 Middle Road Chilmark, MA 02535

Installation Address: Same

Primary Contact: **Tim Carroll, Executive Secretary**

Email: **execsec@chilmarkma.gov**

Phone: **(508)645-2106**

Billing Contact: Same

Start Date: June **1, 2015** Length of Initial Term of License: **12 months**

TERMS AND CONDITIONS

1. Grant of License.

1.1. Subject to the terms and conditions of this Agreement and Customer’s compliance therewith, during the Term (as defined below), ZOBRIO grants Customer a non-exclusive, non-transferable, non-sublicensable limited license to use the Software for the sole purpose of Customer’s business operations for the original installation site. Customer shall pay ZOBRIO based upon the number of Customer’s end users which intend to use the Software concurrently. For this Agreement, that number shall be indicated in either the / an proposal, quote or invoice issued by ZOBRIO in connection with this Agreement. The number of concurrent users of the Software shall be limited to that number. “Software” means the Zobrio® Software used in the fields of revenue management, human resources management, financial management and computer networking management, including error fixes, updates and other releases provided by ZOBRIO pursuant to this Agreement.

1.2. All title and copyrights in and to the Software, and any copies of the Software are owned by ZOBRIO. Customer shall have no access to the source code of the Software. As between the parties, (i) ZOBRIO retains all right and title, including patents, copyrights and trade secret rights, in and to the Software; and (ii) Customer has no right, title or interest in or to the Software except the license expressly granted in this Section 1. Customer shall not permit any employee or agent to (a) produce, manufacture, distribute or otherwise copy the Software;

(b) reverse engineer, disassemble, unbundle or decompile the Software in whole or in part or otherwise attempt to determine or discern source code for any part or all of the Software; (c) alter or modify the Software in any way; or (d) use the Software beyond the scope of the license in Section 1.1. Customer agrees to promptly notify ZOBRIO of, and to assist ZOBRIO with respect to any infringement or unauthorized use of such proprietary rights of which Customer is aware or reasonably suspects. Customer shall not remove, alter, cover or obscure any copyright, trademark or other notice placed by ZOBRIO on or within the Software.

1.3. Unless Customer separately contracts with ZOBRIO for same, Customer shall be responsible for all networking and infrastructure work/requirements. Customer will be provided a list of hardware and network requirements and assumptions for use of the Software. Customer is expected to make sure that all requirements and assumptions are met.

1.4 If the Microsoft® SQL Server instance on which the Software is installed is on Customer's premises, Customer shall purchase and shall own the Microsoft® SQL Server license. If the Software is purchased by Customer as a service and the Microsoft® SQL Server instance on which the Software is installed is not on Customer's premises, the Microsoft® SQL Server license shall not need to be purchased by the Customer. After the termination or expiration of this Agreement, data previously contained in the Software will be accessible by Customer for a period of one hundred eighty (180) days in a format determined by ZOBRIO. Notwithstanding the foregoing, any provision of data migration services by ZOBRIO shall be paid for by Customer to ZOBRIO at ZOBRIO's then current rates for same.

1.5 Upon request, ZOBRIO will use commercially reasonable efforts to be available on a contracted basis to help Customer export data to a format specified by Customer. This service will be at ZOBRIO's then current rate.

1.6 Customer must, at all times, maintain anti-virus protection on its computers with a valid license therefor and must make sure the anti-virus software is kept up to date.

2. Term and Termination.

2.1 The software license under this Agreement begins on the Effective Date and continues for number of months indicated on the first page summary hereof or in either the / an proposal, quote or invoice issued by ZOBRIO in connection with this Agreement (the "Initial Term"). The term shall be automatically renewed for like periods (each, a "Renewal Term") if neither party gives written notice to the other of cancellation of the term on or before sixty (60) days prior to the expiration of the then current term (the Initial Term and each Renewal Term, collectively, the "Term"). Ninety (90) days or more prior to the expiration of the then current Term, ZOBRIO shall give Customer written notice of any new fees and charges which will apply during the immediately following Renewal Term. Customer's renewal of the Term, whether by action or inaction, shall constitute Customer's acceptance and agreement to pay such new pricing. If ZOBRIO fails to give such notice and the Term is renewed, pricing shall remain the same and no new pricing shall apply during that Renewal Term.

2.2 ZOBRIO may terminate the Term of this Agreement (i) upon sixty (60) days written notice prior to the end of the current term; (ii) immediately upon notice if Customer breaches this Agreement (including by not making any payments required hereunder) and fails to cure such breach within ninety (90) days after receiving written notice thereof, provided that if any payment remains outstanding for ninety (90) days, the Term of this Agreement will terminate without further notice to Customer; (iii) if Customer becomes or is declared insolvent, makes a general assignment for the benefit of creditors, suffers a receiver to be appointed for it, enters into an agreement for the composition, extension or readjustment of all or substantially all of its obligations, files a voluntary petition in bankruptcy, or has an involuntary petition in bankruptcy filed against it, which petition is not dismissed with prejudice within sixty (60) days after the filing thereof; or (iv) at any time upon the mutual agreement of ZOBRIO and Customer.

2.3 Upon the expiration or termination of the Term of this Agreement, (i) Customer shall provide ZOBRIO with remote access to Customer's computer network and any computer on which the Software or any portion thereof is installed (including the SQL Server) so that ZOBRIO may remove the Software and Customer shall further allow ZOBRIO to make such inspections as ZOBRIO feels necessary to ensure all software is removed; (ii) Customer must, at Customer's costs, discontinue the use of and deliver to ZOBRIO the Software and, if applicable, the Hardware; (iii) Customer shall, at Customer's cost, return to ZOBRIO any and all documentation related to the Software and, if applicable, the Hardware; and (iv) Customer must pay ZOBRIO for all fees and charges incurred under this Agreement through the date of the expiration or termination of this Agreement. Notwithstanding anything to the contrary contained within this Agreement, this provision is specifically enforceable by ZOBRIO in any court of competent jurisdiction under Section 10.4.

2.4 If the Term of this Agreement is terminated or expires and Customer desires to re-instate the Term of this Agreement, Customer will be required to pay a re-instatement fee which will include, but not be limited to, the payment of all fees from the point of last payment made by Customer to ZOBRIO to the current date as if the Term of this Agreement had not expired or terminated.

2.5 Sections 9 and 10 of this Agreement shall survive the expiration or termination of the Term of this Agreement.

3. Installation of Software and Hardware. ZOBRIO shall provide installation for the Software and any hardware expressly to for the installation fees indicated in either the / an proposal, quote or invoice issued by ZOBRIO in connection with this Agreement. Notwithstanding the foregoing, any estimates, time frames or quotes provided by ZOBRIO are subject to adjustment based on changes in scope or the required level of effort involved, delays in Customer making available personnel or performing its responsibilities, the testing and validation process, and other circumstances outside of ZOBRIO's reasonable control.

4. Software Support Coverage.

4.1 Telephone Assistance. A 1-800-number will be provided to the Primary Contact of Customer (listed above) to enable communication with a ZOBRIO software specialist during

the hours of 7:00 am Central Standard Time to 6:00 pm Central Standard Time, Monday through Friday, exclusive of legal holidays. ZOBRIO will assist Customer in identifying, verifying and resolving problems in the software covered hereunder as soon as practicable.

4.2 Enhancements deemed necessary by ZOBRIO to Software will be made generally available during the Term at no additional cost. Customer shall provide such access and shall cooperate as requested by ZOBRIO to provide such enhancements.

5. Service Limitations.

5.1 This Agreement does not cover and ZOBRIO shall not be responsible for (i) any problem resulting from the misuse, alteration, damage or unauthorized modification of the Software; (ii) any hardware or installation of same; (iii) any problem resulting from the use of the Software with such other programming or equipment to the extent such combination has not been expressly supplied, identified as compatible, approved or required by ZOBRIO; (iv) maintenance of software or hardware other than the Software; (v) any commercial software required for use of the Software; (vi) modification of existing software or other modifications to Customer's network that were not previously approved by ZOBRIO; (vii) correction of problems associated with operator error or negligence; (viii) correction of problems caused by data generated by systems not covered by this Agreement; (ix) conversions for changes to the database structure or Software; or (x) training for new employees. However, Customer may separately contract with ZOBRIO for many of these services, additional fees will apply.

5.2 If specific Software service not covered by this Agreement is requested, the service may be provided at ZOBRIO's per-call rates and terms then in effect.

5.3 Software service does not include providing operating supplies or accessories.

6. Version of Software. Customer agrees to maintain the Software at a release level that is within two releases of the current version. Customer shall grant ZOBRIO such access and such cooperation as requested by ZOBRIO to update Software.

7. Optional Hardware Lease and Other Agreements.

7.1 The hardware to be leased by Customer (the "Hardware"), if any, shall be listed in the correlating Hardware Lease entered into between Customer and ZOBRIO (the "Hardware Lease") and/or the Managed Services Agreement, if any, entered into between Customer and ZOBRIO (the "Managed Services Agreement"). If there shall be a conflict between this Agreement and a Hardware Lease or Managed Services Agreement with respect to the Hardware or any part thereof, the Hardware Lease and Managed Services Agreement shall prevail. If there shall be a conflict between this Agreement and the Hardware Lease or Managed Services Agreement, if any, with respect to the Software or any part thereof, this Agreement shall prevail.

7.2 If the lease under this Section 7 remains in good standing, ZOBRIO will schedule a Hardware refresh on a four (4) year cycle. At such time, the applicable Hardware Lease and Managed Services Agreement shall be updated as needed.

8. Software and Other Fees. Subject to any adjustments which would apply in Renewal Terms pursuant to Section 2.1 hereof, Customer shall pay ZOBRIIO the license fees for the Software, and any additional fees, including without limitation, installation fees and amounts, as reflected in either the / an proposal, quote or invoice issued by ZOBRIIO in connection with this Agreement, in the Equipment Lease (if any) and in the Managed Services Agreement (if any). ZOBRIIO reserves the right to modify the fees for licenses and support offerings upon no less than two (2) months prior notice to Customer. Customer shall pay all applicable taxes or duties imposed under the authority of any foreign, federal, state or local taxing jurisdiction except taxes on ZOBRIIO's net income. Customer shall not reduce any fees or charges owed to ZOBRIIO as a result of any such taxes or duties.

9. Limitation of Liability and Warranty.

9.1. Notwithstanding anything to the contrary contained within this Agreement, ZOBRIIO's liability to Customer (whether in contract or tort), for damages of any nature, shall not exceed the total charges paid or payable during one year under this Agreement and ZOBRIIO shall not be responsible in any manner for any action or inaction of any third party including, without limitation, any third party hosting service or provider. For any portion of the fees that are paid in advance, only that portion of such fees that are for an applicable year will be considered.

9.2. No action (whether in contract or tort), arising out of the performance of services under this Agreement, may be brought by either party more than twelve (12) months after the cause of action accrues except actions for nonpayment or infringement of intellectual property rights brought by ZOBRIIO.

9.3. In no event will ZOBRIIO be liable for any loss of use, data or revenue or any special, indirect or consequential damages.

9.4. ZOBRIIO WARRANTS THAT IT WILL USE COMMERCIALY REASONABLE BEST EFFORTS TO PERFORM MAINTENANCE SERVICES UNDER THIS AGREEMENT IN A DILIGENT MANNER, EXCEPT AS SET FORTH HEREIN, ZOBRIIO DISCLAIMS ALL WARRANTIES EITHER EXPRESSED OR IMPLIED INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. Miscellaneous.

10.1 Customer may not assign or transfer this Agreement or otherwise convey, delegate or sublicense any rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of ZOBRIIO. The rights and duties of the parties hereto will bind and inure to the benefit of their respective permitted successors and assigns. Any attempted assignment in violation of the provisions of this Section will be null and void.

10.2 The parties are independent contractors. This Agreement shall not be construed to and does not create a relationship of agency, partnership, employment or joint venture. Neither party shall have the authority to bind the other party without the prior written consent of the party who is sought to be bound.

10.3 Neither party to this Agreement shall be liable to the other party for any failure or delay in fulfilling an obligation hereunder, if said failure or delay is attributable to circumstances beyond its control, including acts of God, fire, terrorism, power failure, labor dispute or government measure (“Force Majeure”). The parties agree that the deadline for fulfilling the obligation in question shall be extended for a period of time equal to that of the continuance of the Force Majeure.

10.4 This Agreement will be governed and construed in accordance with the substantive laws of the Commonwealth of Massachusetts, without regard to conflict of laws principles. The parties hereby consent and submit to personal jurisdiction in the Commonwealth of Massachusetts with venue in Dukes County, Edgartown, Massachusetts. The parties expressly consent to jurisdiction in such courts.

10.5 All notices permitted or required under this Agreement shall be in writing and shall be effective upon receipt. Notices shall be sent to the address in the signature block for ZOBRIO, the address listed as the "Billing Address" above and such other address as a party shall notify the other party of in writing.

10.6 The provisions of this Agreement are severable. If any provision of this Agreement, or portion thereof, is determined by a court to be illegal or unenforceable, such determination shall not affect any other provision(s) of this Agreement. In the case of such determination, the parties will replace the commercial benefits of the impaired provision in compliance with applicable law.

10.7 This Agreement along with the Hardware Lease (if any) and the Managed Services Agreement (if any) shall constitute the entire agreement between the parties with respect to the subject matter hereof and shall replace all prior promises or understandings, oral or written. This Agreement may only be amended by written agreement duly executed by authorized representatives of the parties. The terms and conditions of this Agreement shall prevail over any contrary or additional terms in any purchase order or other ordering document provided by Customer. A waiver of any provision of this Agreement must be in a writing signed by the waiving party. This Agreement may be executed in one or more counterparts, by facsimile or otherwise, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Notwithstanding anything to the contrary contained within this Agreement, additional terms and conditions may be posted from time to time by ZOBRIO at URL of <http://www2.zobrio.com/tc> and such terms and conditions shall apply to this Agreement **and will be provided in written format to the customer.**

10.8 Headings used in this Agreement are for reference purposes only. The word “including” shall be read as “including without limitation.” No provision of this Agreement or any related document shall be construed against or interpreted to the disadvantage of any party

hereto by reason of such party having or being deemed to have structured or drafted such provision. Nothing in this Agreement is intended, nor shall it be construed, to create a right to enforce this Agreement by or on behalf of any person who is not a party to this Agreement.

10.9 It is expressly understood that if either party, on any occasion, fails to perform any term of this Agreement, and the other party does not enforce that term, the failure to enforce on that occasion shall not prevent enforcement on any other occasion.

10.10 As between Customer and ZOBRIO, Customer owns all of the data provided by it. Customer shall indemnify, defend and hold harmless ZOBRIO and each of its representatives and agents in connection with the content of any data or the violation by same of any third party's intellectual property rights.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

ZOBRIO:

Customer:

ZOBRIO, INC.

Treasurer, Chilmark, Massachusetts

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____
