



# **PARTNER**

**software**

## **PARTNER COMPLETE SOFTWARE LICENSE AGREEMENT**

This License Agreement ("Agreement") is between Partner Software, Inc., P.O. Box 748, Athens, GA 30603-0748, a Georgia Corporation with its principal place of business at 125 West Washington Street, Suite 700, Athens, Georgia 30601 ("Partner") and

The City of Gillette (WY) - Electrical Services Division  
City West Building  
611 North Exchange Avenue  
Gillette, Wyoming 82717  
United States

Partner is a manufacturer and copyright holder for Software known as Partner Complete ("Platform") and associated applications. Licensee is an entity seeking and shall pay fees to gain limited use of said Software and various support through this License Agreement. In consideration of the mutual promises and benefits of the parties hereto, the sufficiency of which are hereby acknowledged, Partner and Licensee agree as follows:

1. **THE SOFTWARE.** Partner owns or shall own copyrights to certain software ("the Software"), which in this case have been developed by Partner or shall be

developed by Partner through customization of Partner's pre-existing Software product(s). The Software consists of the following:

+ *Partner Complete*

- + Hub-Server software that manages centralized applications, data, and interfaces essential to the Partner System. The Hub also serves as the master installation for configuring the Partner System and the primary update source for a customer.
- 7 Update Automated update infrastructure for software, data, and configuration of the Partner System. Updates are incremental, centrally administered, and distributed over standard networks.
- + Map Publisher Map data publisher for the Partner System. Imports a variety of CAD, GIS, and data and converts it to Partner's ROVER format, optimized for efficient updating and display and compatible with a variety of operating systems and devices. Allows configuration of symbology, data fields, scaling, and other behaviors within reason.
- + Map Viewer End-user software platform for map-based applications. The Map Viewer provides a unified and simple interface to all Partner applications.
- 7 GPS Integration Basic integration with GPS through standard NMEA or limited Trimble integration.
- + Drawing A sketching tool for temporary redlining and markup in the Partner Map viewer. Supports a variety of printing, plotting, and export options.
- 7 Filter Table-A dynamic database viewer that allows you to sort and manage the data contained with Partner Complete, regardless of module. It also allows for simple one button exports to CSV, HTML, Google, Graphs, or a mapbook. In addition, you can save often-used queries for permanent use.
- + Current and Historical Syncing A light weight data merge that allows the field computer to view and modify a local copy of the master Partner Complete database for easily updating records from a local computer. This allows the end user to take either the currently active records for field use or the entire database for management and reporting.

- + Overview-Aggregates all Partner Complete records into a graphical map interface that allows the user to find a specific inspection quickly and easily, as well as gives the user a dynamic view of its entire system for management.
- + Hosted Hub-Partner provides and maintains an offsite, hosted server to communicate with field computers and mobile devices.
- + Live Two-Way Synchronization-Provides the software infrastructure for live data to be collected, viewed, and edited by the computers in the field. This is a software infrastructure only and does require a hardware conduit capable of TCP/IP connection.

•• *Additional Products*

- + Field Design-Map-based design client that can be configured to interface with the utility's accounting and GIS systems.
- , Aerial Photography- Configuration of Partner Complete Platform to format and display customer-provided aerial photography. [Included in the Partner Complete Platform.]
- + Partner Mobile- Configuration of Partner Complete Platform to publish and update maps for an iPad®, iPhone®, or iPod touch®.
- , Staker Proposed Jobs Mapset- Partner provides five default mapsets capable of displaying queried job information from specific fields in the Partner database.
- + Spec Book Report. (NR)- Configured from RUS Spec Book images or custom photo images supplied by the client. [Note: There is no scope document for Spec Book Report.]

This license does not include specific configurations for the Partner Complete System. Licensee acknowledges that Partner retains all intellectual property rights to all of the work done on behalf of the Licensee by Partner, including all customized solutions and configurations prepared for the customer by Partner, and that, upon failure to pay the annual license fee, said license will be revoked and this Agreement terminated.

2. **GRANT OF LICENSE.** Partner grants Licensee a non-exclusive, non-assignable, and non-transferable license to use the Software during the license period within the limitations set forth herein. Use of the Software (the license) shall be subject to the following limitations.

(a) **GEOGRAPHY.** The use of the software is limited to working with information directly related to the Licensee's facility equipment and background information for the service area. Licensee may use the Software and distribute the Software across its organization and existing territories for use within the other limitations. Licensee shall provide to Partner, at Partner's request, a list indicating the number and identifying information of computers on which Partner Software System has been installed in the field and in offices.

(b) **COPIES.** Licensee shall not, except as authorized herein, make, have made, or permit to be made any copies of the Software. Copying shall be permitted for distribution consistent with (a) above and (c) below and for backup and archival purposes necessary in connection with such permitted use. Each such copy shall be verbatim, containing all copyright notices, proprietary notices or other notices of credit appearing in the original latest version of the Software.

(c) **CONFIDENTIALITY.** Licensee agrees that it shall not allow use of the Software by entities not licensed by Partner for use of it. Licensee may demonstrate use of the Software but shall not submit the Software to anyone for analysis or unsupervised demonstrative use. Licensee may allow limited use of the Software by Licensee's contractors acting within their contract with Licensee to whom such disclosure is necessary to the use for which rights are granted hereunder

3. **SOFTWARE UPDATES.** The Licensee will have access to software updates through the annual license fee. There may be additional fees for complex non-standard, and other updates, which updates shall be scoped and quoted pursuant to a service

order.

4. FEES FOR STANDARD SOFTWARE MODEL. Purchases made pursuant to Partner's standard licensing model (as outlined in any attached or future Purchase Order or Service Order) shall be governed by the terms of this Article 4, subject to the additional terms in Article 6. For such purchases, Licensee shall pay fees for license of the Software ("License Fee"). There is an initial license fee for acquiring the software and a mandatory annual license fee. These fees are enumerated in a Purchase Order Agreement.

4.1 Support Included: The annual license fee includes software updates and telephone and email support. License fees do not include configuration and service. Support for Partner products that have been installed, configured or modified by third parties may entail additional charges.

4.2 License Fee Subject to Change: After the first anniversary of this Agreement, the license fee may be subject to change at Partner's discretion.

4.3 Platform and Application Fees: Platform and Application Fees are due and payable to Partner pursuant to the attached Purchase Order Agreement.

4.4 Annual License Fees: The annual license fees are set forth in the attached Purchase Order Agreement. The annual license fees set forth in the attached Purchase Order Agreement will be prorated for the first year and will be invoiced as due and payable the first day of the month following installation of the product by Licensee or the first day of the month after the one (1) year anniversary of this Agreement, whichever first occurs.

4.5 Installation: Unless otherwise agreed to and amended in this Agreement, the Licensee shall have one (1) year from the calendar date of signing to install the software included in this Agreement. If the Licensee opts not to install any software purchased in this Agreement within this time-frame, Partner may, at its sole discretion, install the software on Licensee's system or invoice the Licensee for the software as if it had been installed. When the products include training or workflow, the client will not be moved into standard support unless and until that training is complete.

5. **FEES FOR SUBSCRIPTION SOFTWARE MODEL.** Purchases made pursuant to Partner's subscription software licensing model (as outlined in any attached or future Purchase Order or Service Order) shall be governed by the terms of this Article 5, subject to the additional terms in Article 6. For such purchases, Licensee shall pay fees for license of the Software ("License Fee"). These fees are enumerated in a Purchase Order Agreement.

5.1 Support Included: The annual subscription fee includes software updates and telephone and email support. Such subscription fees do not include configuration and service. Support for Partner products that have been installed, configured or modified by third parties may entail additional charges.

5.2 Three (3) Year Subscription Term: Any partner Subscription Software License shall have a term of three (3) years, running from the date of signing. Subscription Software Licensing fees are subject to change beginning the fourth (4th) year upon thirty (30) days written notice to Licensee

5.3 Subscription Billable upon Invoice: Platform and Application Fees are billed on an annual basis and are due and payable to Partner pursuant to the appropriate Purchase Order Agreement.

5.4 Installation: Subscription fees begin upon signing, and Partner and Licensee will endeavor in good faith to expedite the installation of the software immediately after signing. Failure of Licensee to accept installation of any software purchased in this Agreement does not relieve Licensee of its obligation for Subscription

License Fees. When the products include training or workflow, the client will not be moved into standard support unless and until that training is complete.

6. Terms Common to both the Standard Software Model and the Subscription Software Model

6.1 Professional Services Fees: Necessary professional services fees (Including but not limited to workflows, configurations and training) are included and invoiced with initial purchase. Any fees due for professional services subsequently purchased will be due upon invoice.

6.2 Additional Service Orders: Service orders and additional orders for training shall be commemorated in writing by Partner and are deemed accepted upon signature by licensee. All service orders and orders for training (including attachments) shall be subject to all of the terms and conditions of this Software License Agreement.

6.3 Interest on Unpaid Invoices: All fees due under this Agreement shall accrue interest at twelve percent (12%) per annum after thirty (30) days have elapsed after the due date for payment of same. Said accrual shall not waive Partner's right to immediately seek recovery of same.

6.4 Acceptance of Services. Services (including but not limited to workflows, configuration and training) included in the purchase package must be undertaken within one (1) calendar year from the date of signing. If services are not undertaken within one (1) calendar year, the deposit will be forfeit and services will be charged at then-current pricing.

7. EXPECTATIONS. Licensee agrees to allow Partner to install Partner's current standard remote access software to allow efficient support service. Licensee acknowledges that a Partner Hub requires its own dedicated machine {whether a dedicated server or a virtual machine). Licensee agrees to provide a computer (whether a dedicated server or a virtual machine) to house a test Hub system to facilitate upgrades and to reduce possible user interruptions. Licensee acknowledges that

Partner's software products are created for design and observational purposes and may not be considered an approved or certified reference for actual construction or engineering equipment or procedures. Licensee acknowledges that Partner is not responsible for validity of Licensee's underlying data or mapping model(s), and that Partner's software will not be responsible for live updates. Licensee agrees that any operating systems it deploys on its hardware in conjunction with Partner products will be currently supported by its vendor(s), and that it will update to current systems as older operating systems are deprecated by said vendor(s). Licensee acknowledges that its failure to utilize a current and supported operating system will make all support custom and subject to Partner's pricing; that such failure may make support impossible; and that failure may create security problems which cannot be mitigated. [Example: Microsoft has deprecated and no longer supports its Windows XP operating system. Any support calls related to Partner would be billed at Partner's standard rate; there is no guarantee that support would be successful; and the customer is responsible for security issues because the operating system will have no security upgrades.]

8. **TRANSFER OF RIGHTS.** Licensee may not assign or transfer its rights under this Agreement without the prior written consent of Partner except that Licensee may assign to any corporate affiliate without Partner's consent provided that Licensee remains the guarantor of all of its obligations under this Agreement. This Agreement shall be binding on any successors in interest of the parties and on any subordinate or affiliated entities of the parties.

9. **TERMINATION.** Partner may only terminate this Agreement as a result of a breach of this Agreement after failure to cure. Licensee may terminate the contract for any reason after having provided thirty (30) days written notice to Partner. Upon any termination, Licensee shall return the Software (including any modifications and configurations) to Partner and shall



otherwise immediately purge, erase, and delete the Software from all internal computer or external medium controlled by Licensee or its contractors and shall 'Within ten (10) days thereof remit all remaining license fees, together with any interest due, to Partner. While paid annual license fees are non-refundable, customer will have no further financial obligation to Partner Software after the termination date.

10. **WARRANTIES.** The Software is provided "AS IS." ALL WARRANTIES, EXPRESS OR IMPLIED, ARE EXCLUDED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL PARTNER BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES THAT ARE IN ANYWAY RELATED TO OR ACCOUNT OF OR ARISING FROM USE OF THE SOFTWARE, TO LICENSEE OR TO THIRD PARTIES.

11. **DEFAULTS.** If Licensee fails to abide by the obligations of this Agreement, including but not limited to (1) the obligation to make payments as outlined in this Agreement or any subsequent, ancillary or additional Agreement with Partner when due; (2) the timely provision of information by Licensee to Partner which information is reasonably necessary for Partner's development of the Software pursuant hereto; or (3) in the event completion of the project becomes technically not feasible, then Partner shall have the option to cancel this Agreement by providing thirty (30) days ("grace period") written notice to Licensee. Licensee, in the event such breach is curable, shall then have the option of preventing the termination of this Agreement by taking corrective action that cures the default, if such corrective action is taken prior to the end of the grace period, proof of the cure or correction to Partner is submitted to Partner to Partner's satisfaction therewith, and if there are no other defaults during such time period.

ANY LIABILITY OF PARTNER ARISING FROM OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LIABILITIES FOR DAMAGES OR ATTORNEY'S FEES, OR UPON TERMINATION, WHETHER A DISPUTE ARISES AND IS ARBITRATED OR OTHERWISE RESOLVED, SHALL BE LIMITED TO A MAXIMUM OF RETURN OF AMOUNTS PAID BY LICENSEE DIRECTLY TO PARTNER AS PART OF THE LICENSE FEES EXCLUDING HOURLY FEES FOR ADDITIONAL SERVICES REQUESTED AND PROVIDED IN THE CALENDAR YEAR IN WHICH THE DISPUTE AROSE.

12. **ARBITRATION.** All disputes under this Agreement, other than non-payment by Licensee that cannot be resolved by the parties, shall be submitted to arbitration under the rules and regulations of the American Arbitration Association. Either party may invoke this paragraph after providing thirty (30) days written notice to the other party. All costs of arbitration shall be divided equally between the parties. Any award may be enforced by a court of law.

13. **APPLICABLE LAW.** The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the Sixth Judicial District, Campbell County, Wyoming. The parties intend and agree that the City does not waive governmental immunity by entering into this Agreement and specifically retains governmental immunity and all defenses available to it pursuant to WYO. STAT. §§ 1-39-101-121 and all other applicable law.

14. **ENTIRE AGREEMENT.** By signing below the customer understands the requirements and options presented in all of the attached Addenda. This Agreement, together with any and all such appendices and other attachments referenced herein, constitutes the entire Agreement between Partner and Licensee and supersedes all proposals, oral and written, between the parties on this subject. Licensee acknowledges that Scope documents will evolve as new versions of licensed products are released, and

the parties agree that such new versions of attached Scope documents shall replace and supersede attached versions as Licensee accepts upgrades of licensed products and receives new Scope documents.

15. **FORCE MAJEURE EVENT.** In the event that either party is unable to perform any of its obligations under this Agreement because of natural disaster or acts of war or terrorism, ongoing obligations under this Agreement (except any obligation for payment) shall be suspended for the duration of said event. Delays in delivery due to Force Majeure Events shall automatically extend any delivery date for a period equal to the duration of such event.

16. **MISCELLANEOUS.** No waiver of any breach hereof or default hereunder shall be deemed a waiver of any subsequent breach or default of the same or similar nature. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby. This Agreement shall not be more strictly construed against one party or the other on account of drafting. Any notices given pursuant to this Agreement shall be in writing.

17. **Governmental Immunity.** The City does not waive governmental immunity by entering into this Agreement and specifically retains all immunities and defenses available to them pursuant to Wyo. Stat. §§ 1-39-101-121 and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of governmental immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental immunity shall be construed in favor of governmental immunity

**WHEREUPON** the parties set their hands and affix their seals as follows:

THE CITY OF GILLETTE (WY) - ELECTRICAL SERVICES DIVISION

\_\_\_\_\_  
Signature

Seal

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

PARTNER SOFTWARE, INC.

\_\_\_\_\_  
Signature

Seal

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date