



Product License, Warranty and Support Agreement

This Software Product License, Warranty and Support Agreement (collectively, with the Purchase Agreement (defined below), the "Agreement") is incorporated into and made a part of the Purchase Agreement between eGenuity, LLC and CUSTOMER (the "Purchase Agreement"). This Agreement additionally applies to any and all CUSTOMERS who utilize eGenuity, LLC products.

The parties hereby agree as follows:

1. **Product(s).** eGenuity sells point-of-sale hardware and software solutions for the car wash, quick lube, and automotive repair industries ("Approved Uses"). CUSTOMER has purchased the solution ("Product") described in the Purchase Agreement which is made a part of this Agreement. The terms and conditions of CUSTOMER'S use of the Product and eGenuity's obligations with respect to the Product are set forth below.

2. **Grant of License.**

(A) *License for Use.* In accordance with the terms herein, for so long as CUSTOMER is current with respect to all payments due under the Purchase Agreement, eGenuity grants to CUSTOMER, and CUSTOMER accepts from eGenuity, a non-exclusive, nonsublicensable, and non-transferable license (the "License") to use the current version of the software described in the Purchase Agreement (the "Software") solely for the Approved Uses. CUSTOMER shall not have the right to assign, sublicense, sell, or transfer the License to any third-party or use the Software or Product in any location or manner not described in the Purchase Agreement.

(B) *Alteration of Product(s).* CUSTOMER shall make no changes, additions or deletions in the Product(s) without eGenuity's prior written approval. CUSTOMER acknowledges that the eGenuity products are configurable by the CUSTOMER and that these configurations can and will alter the

functionality of the Product. CUSTOMER also acknowledges that the settings and configurations can result in the Software functioning in an infinite number of operations. eGenuity will only assist in the configuration process and will not be responsible for ensuring that the Product is optimally configured.

(C) *Delivery of Product(s).* Upon signing the Purchase Agreement, eGenuity shall deliver the Product(s) to CUSTOMER in a manner to be mutually agreed upon. eGenuity shall make updates or enhancements of the Product(s) available to CUSTOMER as such updates or enhancements are developed, and all the terms of the License shall be applicable to such updates or enhancements of the Product; provided that eGenuity shall not be obligated to provide any update or enhancement to CUSTOMER if CUSTOMER has breached the Agreement and such breach is uncured.

3. **Term.** This Agreement is effective upon execution of the Purchase Agreement. The Support Term shall begin as of the date upon which the Product(s) have been installed and are operational (either being used by customers or capable of performing substantially as intended) at the CUSTOMER's business locations (herein after referred to as the "Go Live Date"). Furthermore, the Go Live Date shall not be affected by adjustments to or optimizing the configuration settings. The support payments due pursuant to this Agreement shall become payable commencing upon the Go Live Date for each of the CUSTOMER's locations. The initial term (the "Initial Term") of this Agreement is for a period of 12 months commencing on the execution of the Purchase Agreement and ending on the twelfth (12th) month after the Go Live Date for the last installed business location occurs. This Agreement shall automatically and successively renew for 12-month periods unless terminated by either party by serving

the other party with written notice of non-renewal not less than thirty (30) days before the expiration of the current term (the Initial Term and all subsequent renewal terms, collectively, the "Term"). Upon termination of this Agreement, either by expiration of the term or as a result of a breach of the Agreement, eGenuity will uninstall and remove the Product from all computers located at authorized locations specified in the Purchase Agreement.

4. Price.

(A) *Generally.* The CUSTOMER agrees to pay the License Fee and the monthly Support Fee, Data Fees when applicable, plus the amounts due for any hardware or additional software purchased from eGenuity, as further described in the Purchase Agreement. Fees may be adjusted from time-to-time with notice to CUSTOMER not less than sixty (60) days prior to the end of the then current Term.

(B) *Late Fees.* CUSTOMER agrees to pay a late fee at an annual rate equal to eighteen percent (18%) of the unpaid amount due, accruing and compounding daily, commencing immediately after such payment(s) is due. Failure of CUSTOMER to make timely payment to eGenuity pursuant to the terms of this Agreement shall be considered an act of default on the part of the CUSTOMER, and eGenuity shall have the right (in addition to all other remedies herein or at law) to terminate this Agreement immediately.

(C) *Additional Matters.* The billing address for each of the CUSTOMER's authorized locations shall be specified in the Purchase Agreement. If CUSTOMER chooses to pay the License Fee(s) and monthly Support Fee(s) via credit card payments, CUSTOMER shall utilize the secure eGenuity eCommerce Portal for complete payment.

5. Proprietary Nature of Products.

(A) *Generally.* The Product(s) and all programs developed hereunder and all copies thereof are proprietary to eGenuity and title thereto remains in eGenuity at all times. All applicable rights to patents, copyrights, trademarks

and trade secrets in the Product(s) or any modifications made at CUSTOMER's request are and shall remain the property of eGenuity. CUSTOMER shall not sell, transfer, publish, disclose, display or otherwise make available the Product(s) or copies thereof to others. CUSTOMER agrees to secure and protect each module, software product, documentation and copies thereof in a manner consistent with the maintenance of eGenuity's rights therein and to take appropriate action by instruction or agreement with its employees or consultants who are permitted access to each program or software product to ensure that the rights of eGenuity in the Product are protected in a commercially reasonable manner. CUSTOMER may make copies of the Software solely for back-up purposes, and all copies of the Software so made by CUSTOMER are and shall remain property of the eGenuity.

(B) *Copyrights.* eGenuity is the sole owner and proprietor of the copyrights to said Product(s). CUSTOMER shall take all reasonable and necessary measures to protect eGenuity's copyright in the Product(s) while in possession of said Product(s) by complying with all applicable domestic and international copyright laws.

(C) *Trademarks.* eGenuity, eLube, and ezWash and associated colophons are trademarks of eGenuity and eGenuity owns all title, goodwill and interest therein. eGenuity shall have the right to review and approve in advance any use by CUSTOMER of eGenuity trademarks in the packaging, advertising and promotion of work generated by eGenuity's Product(s) (hereinafter referred to as "Promotion Materials") and CUSTOMER shall provide eGenuity a reasonable opportunity to review the CUSTOMER Promotion Materials prior to CUSTOMER using the Promotion Materials.

6. **Confidential Information.** Each party hereto acknowledges that it may gain access to Confidential Information, as hereinafter defined, of the other party and agrees that it will not divulge, furnish, publish or use for its benefit or for the direct or indirect benefit of

any other person or entity, whether or not for monetary gain, other than as expressly provided herein, any Confidential Information of the other party. Each party will exercise a high degree of care to prevent the unauthorized dissemination, disclosure or use of any Confidential Information and, except with the prior written consent of the disclosing party hereunder, will not make or allow any disclosure of the Confidential Information to any third party.

CUSTOMER is hereby permitted to use the Confidential Information of eGenuity to use the Product(s) and in connection therewith may disclose such information to those of its employees who require such disclosure to use the Product(s).

For purposes of this Agreement, the term "Confidential Information" shall mean (1) all information related to the Product(s), the business and operations and other business information of each of the parties hereto, (2) any proprietary information that is disclosed by one party to the other party, including without limitation software layout and design, all graphical interfaces and database design, software plans and specifications, and any related information, materials, or documents in any form, and (3) any other information disclosed by one party to the other party which, if in writing, is marked as "confidential," or, if such information is disclosed orally, is followed within a reasonable time by a writing indicating that such orally disclosed information is confidential. Confidential Information shall not include information which: (a) is or becomes part of the public domain through no act or omission attributable to the receiving party hereunder, or (b) is released after prior written authorization without confidential restriction by the disclosing party.

7. **Reservation of Rights.** All other rights whether now existing or which may hereafter come into existence, which are not expressly granted to CUSTOMER, herein are reserved to eGenuity and may be exercised, sold, licensed, or otherwise disposed of by eGenuity at any time. eGenuity retains all other rights to and multimedia uses of the Product, including but not limited to hand-held computer, on-line commercial databases, all CD-ROM

and DVD uses, CD-ROMXA, CD-I, DVI, audio, abridgment or condensation, translation and all forms of book publication. This Agreement shall in no way limit eGenuity's right to license the Product(s) to other users.

8. **Warranties.**

- (A) *Standard of Performance.* eGenuity warrants that Product(s) will conform, as to all substantial operational features, to eGenuity's current published specifications when installed and will be free of defects which would substantially affect system performance.
- (B) *Intellectual Property.* The intellectual property comprising the Product and the Software is either owned by eGenuity or eGenuity may lawfully use and license such intellectual property in the manner contemplated by this Agreement.
- (C) *Claim of Defect.* The CUSTOMER must notify eGenuity in writing of any Product or Software defect claim, within three hundred sixty-five (365) days of the Go Live Date or delivery of any subsequent modifications to the Product(s). If eGenuity determines that the Software is defective, eGenuity's sole obligation under this warranty shall be to remedy such defect such that the Product performs in accordance with all published specifications and documentation describing the functionality of the Product. If eGenuity determines that the hardware is defective and CUSTOMER has timely notified eGenuity of the defect, eGenuity will promptly send, upon return of the defective hardware to eGenuity, a new replacement for the defective hardware.
- (D) *Modification.* If any modifications are made to the Products by CUSTOMER during the warranty period, any warranty provided pursuant to this Agreement shall immediately be terminated. Modifications to the Product to address any defects, errors or issues caused by CUSTOMER errors or changes to the settings of Customer's system shall be billed at eGenuity's standard time and materials charges.
- (E) **eGenuity Limited Warranty.** The warranties of eGenuity described herein are limited warranties and is the only warranty made by eGenuity.

eGenuity makes and CUSTOMER receives no other express or implied warranty. eGenuity shall have no liability whatsoever with respect to its obligations under this agreement for consequential, exemplary, or incidental damages - even if eGenuity has been advised of the possibility of the occurrence of such damages. eGenuity expressly excludes all warranties of fitness for a particular purpose and warranties of merchantability. The stated express warranty is in lieu of all liabilities or obligations of eGenuity for damages arising out of or in connection with the delivery, use, or performance of the Product.

(F) *CUSTOMER Warranty.* CUSTOMER warrants and represents that if CUSTOMER should modify the Product in a manner which violates any copyright, patent, process, idea, method, device or any other right of any party, CUSTOMER shall indemnify eGenuity for all damages, costs and expense (including reasonable attorney fees) which it may incur as a result of such modification.

9. **Installation.** CUSTOMER acknowledges that installation requires the commitment of human and other resources by eGenuity and its agents, independent contractors and third-party-vendors and that delays are costly to those parties. CUSTOMER is aware of these costs and, upon scheduling installation with eGenuity, its agents, independent contractors and/or third-party vendors. CUSTOMER agrees that eGenuity has the right to charge CUSTOMER a commercially reasonable fee for all delays caused by Customer, for which the above—referenced parties have not received as least two (2) weeks prior written notice.
10. **Support and Service.** As part of this Agreement, CUSTOMER agrees to pay for (and eGenuity agrees to provide) the following support for the Product(s):
- (A) *Toll-Free Number.* CUSTOMER will be provided with a toll-free number for responses to support questions for the duration of this Agreement during eGenuity's normal business hours.
- (B) *Problem Resolution Timing.* eGenuity

will make every effort to resolve problems in an expedient manner, but guarantees no time-line for problem resolution.

- (C) *Problem Diagnosis.* eGenuity support may lead the Customer-user through corrective action over the telephone to determine problem origin and ascertain corrective steps with the Product to a reasonable degree. eGenuity is not obligated to resolve issues involving third-party hardware and accepts no liability for Product damage due to faulty or malfunctioning equipment owned by the CUSTOMER or damage caused by CUSTOMER's personnel or contractors.
- (D) *Required Training.* If at any time during the Term eGenuity reasonably believes that telephone support assistance is insufficient to resolve continued problems with the product, eGenuity reserves the right to require the CUSTOMER to purchase a training session or support services from eGenuity.
- (E) *Product(s) Updates.* CUSTOMER expressly authorizes, permits and allows or will authorize, permit or allow eGenuity staff, personnel, agents, consultants or other designees of eGenuity reasonable access to computers, terminals, servers or other hardware necessary to install Product(s) updates, modifications, and enhancements.
- (F) *Vehicle Data.* eGenuity may provide CUSTOMER with a vehicle data (such as CHEK-CHART, CarFax, NexPart or other data sources) for the duration of this Agreement. CUSTOMER indemnifies and holds eGenuity harmless against all liability arising from any errors, mistakes, defects or malfunctions resulting from the use of said program.
- (G) *Network Version.* If eGenuity's Product(s) include(s) an eGenuity approved network (LAN) version, this Agreement shall include full support as detailed herein. eGenuity shall not provide assistance with initial set-up, preparation, connectivity, maintenance or compatibility questions on networks that are not supported, installed, or approved by eGenuity. Additionally, with respect to networks not supported, installed, or approved by eGenuity, CUSTOMER acknowledges that

eGenuity requires the establishment of proper connectivity by CUSTOMER in order for eGenuity to provide proper support for the Product(s).

- (H) *Audit of Product(s) Use.* eGenuity shall have the right to audit the use by the CUSTOMER of the Product(s) covered by this Agreement at any reasonable time after delivery of reasonable notice.
- (I) *Database Backups.* CUSTOMER is solely responsible for database backups. eGenuity is not responsible for any loss of data that may occur as a result of natural disaster, fire, acts of God, hardware failure or any other reason. Any restoration work needed by CUSTOMER shall be billed at an hourly rate.

11. **Incorporation of Third-Party Agreements.**

CUSTOMER acknowledges that eGenuity integrates component parts into its Products that are manufactured and/or produced by various third parties and that eGenuity uses or may use third-parties for installation of its Products.

12. **Indemnification.**

(A) *Hold Harmless.* CUSTOMER shall indemnify, defend, protect and hold eGenuity harmless from any and all claims arising from CUSTOMER's use of the Product(s) or from the conduct of its business and shall further indemnify, defend and hold eGenuity harmless from and against any and all claims arising from any breach or default in the performance of any obligation on CUSTOMER's part to be performed under this Agreement or arising from any negligence of CUSTOMER or any of its agents, contractors, employees or invitees and from any and all costs, attorney fees, expenses and liabilities incurred in the defense or any such claim or any action or proceeding brought thereon. After the Go Live Date, CUSTOMER hereby assumes all risk of damage to Product(s), and CUSTOMER hereby waives all claims in respect thereof against eGenuity.

(B) *Litigation.* With respect to any suit, claim demand or action against eGenuity for which eGenuity is indemnified by CUSTOMER pursuant to this Section 12, eGenuity may elect either to undertake the defense thereof with counsel of its

own choosing or to notify CUSTOMER to undertake the defense. In either case CUSTOMER shall bear the costs and expense of the settlement and/or defense thereof. Should eGenuity undertake the defense, and should CUSTOMER nevertheless wish to be represented in the matter by attorneys of its own choosing, CUSTOMER shall bear the expenses of its own attorney. CUSTOMER may in any case and at any time settle any such claim provided, however, that CUSTOMER shall in no event impose any obligations on eGenuity as part of any such settlement. Any settlement by eGenuity of a claim hereunder shall be subject to the approval of CUSTOMER, such approval shall not be unreasonably withheld.

(C) *Tort Liability.* CUSTOMER agrees that eGenuity's liability arising out of contract, negligence, and strict liability in tort or warranty shall not exceed any amounts payable by CUSTOMER under this Agreement.

13. **Defaults and Remedies.**

(A) *Damages for Default.* Default shall be defined as an act by either party which breaches or otherwise fails to comply with the terms of this Agreement. Upon the event of default and in addition to any other remedies provided herein, eGenuity shall have the right to recover from CUSTOMER the following damages:

- (1) All unpaid fees and charges due to eGenuity under the terms of this Agreement; and
- (2) Reasonable attorney fees incurred in connection with the default, whether or not any litigation is commenced.

(B) *General Remedies.* In the event of default by one party, except as limited or provided herein otherwise, the other party shall have any remedy provided under the law and in equity, plus reasonable attorney fees and court costs as provided herein. No right or remedy conferred in this Agreement upon or reserved to eGenuity is exclusive of any right or remedy herein or permitted in law or in equity, but each shall be cumulative of every other right or remedy given hereunder or now or

hereafter existing at law or in equity (or by statute or otherwise).

(C) *Termination.* eGenuity may terminate this Agreement by delivery of written notice to CUSTOMER if CUSTOMER causes an event of default and does not cure such breach within thirty (30) days of receipt of written notice of such breach from eGenuity. Termination of this Agreement under any provision of this section shall not relieve CUSTOMER of the obligation to pay any monies then due or which become due during the remainder of the Term from CUSTOMER to eGenuity.

14. **Amendment.** eGenuity shall have the right to alter terms to this Agreement without providing any notice to CUSTOMER and CUSTOMER agrees to be bound by changes made hereto by eGenuity.

15. **General Provisions.**

(A) *Severability.* The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

(B) *Time of Essence.* Time is of the essence.

(C) *Notice.* Any notices provided under this Agreement shall be in writing and given to the other party at the party's address set forth above, or at such other address as a party may designate in a notice. All writings shall be sent by certified, return-receipt U.S. mail, postage prepaid. Refusal by a party to accept delivery of a notice shall not defeat the giving of a notice.

Notice to eGenuity shall be sent to: ATTN: Legal Department, eGenuity, LLC, 134 East Jackson Street, Monroe, Indiana 46772.

(D) *Fully Integrated Agreement.* This Agreement is fully integrated and contains all of the terms between the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective and neither of the Parties shall be entitled to use rely on parol evidence regarding prior agreements unless said evidence is incorporated herein.

(E) *Waivers.* No waiver by eGenuity of any provision hereof shall be deemed a

waiver of any other provision hereof or of any subsequent breach by CUSTOMER of the same or any other provision. eGenuity's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of eGenuity's consent to or approval of any subsequent act by CUSTOMER. The acceptance of payments hereunder by eGenuity shall not be a waiver of any preceding breach by CUSTOMER of any provision hereof, other than the failure of CUSTOMER to pay the particular fees so accepted, regardless of eGenuity's knowledge of preceding breach at the time of acceptance of such payment.

(F) *Binding Effect and Choice of Law.* This Agreement shall bind the parties, their personal representatives, successors and assigns. This Agreement shall be governed by the laws of the state of Indiana, and not by the laws of the State where the CUSTOMER or its authorized locations are situated.

(G) *Informal Resolution.* As a condition precedent to any mandatory arbitration, or court action, the parties shall first require an informal meeting of personnel from eGenuity and the CUSTOMER to meet and attempt to address the dispute to a mutual resolution. If the personnel designated by the Parties are unable to compromise and resolve the disputed issues, then eGenuity and the CUSTOMER shall designate senior level executives to convene for the purpose mutually resolving the disputed issues. If any disputed issues are resolved by either personnel or senior level executives, the resolution shall be reduced to writing and signed by authorized representatives.

(H) *Jurisdiction and Venue.* The Parties agree and consent to the personal jurisdiction of the State of Indiana and further consent to having established minimum contact with the State of Indiana to confer personal jurisdiction. Further, the Parties agree and consent that if any litigation is initiated, venue and forum for such dispute shall be exclusively venued in the federal and state courts located in Adams County, State of Indiana.

- (I) *Corporate Authority.* If CUSTOMER is a corporation, limited liability company, or partnership, each individual executing this Agreement on behalf of said corporation, company or partnership represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of said corporation, company or partnership in accordance with a duly adopted resolution of the Board of Directors (or its equivalent) of said corporation, company or partnership or in accordance with the bylaws of said entity, and that this Agreement is binding upon said entity in accordance with its terms.
- (J) *Agency/Partnership.* Nothing in this Agreement shall be construed to make either party the agent of the other for any purpose whatsoever. Neither party is authorized to enter into any contract or assume any obligation for the other. Nothing in this Agreement shall be construed to establish a partnership or joint venture between eGenuity or CUSTOMER.
- (K) *Non-assignment.* CUSTOMER shall not have the right to assign, sublicense, sell, contract, or transfer this Agreement or any of its rights granted herein without the prior written consent of eGenuity. Any purported assignment, transfer, sublicense, sale, contract or transfer in violation of this Section 17(j) shall be void ab initio.
- (L) *Content on Display Screen.* CUSTOMER, in the event that eGenuity is programming information for screen display at CUSTOMER's locations, shall provide eGenuity with a written copy of the display CUSTOMER wants on its display screen. CUSTOMER is required to approve the content prepared by eGenuity to ensure accuracy and appropriateness for CUSTOMER's location(s). eGenuity shall have no liability, responsibility or duty to CUSTOMER for any display on CUSTOMER's screen(s) that has been approved by CUSTOMER. In the event CUSTOMER is programming the content for its display screen(s) at its location(s), eGenuity shall have no liability, responsibility or duty to CUSTOMER regarding its screen display content.
- (M) *PCI and PA-DSS.* Except as otherwise expressly set forth herein, CUSTOMER acknowledges and agrees that it is solely responsible for meeting any and all relevant Payment Card Industry ("PCI") and Payment Application Data Security Standard ("PA-DSS") requirements and other data-security requirements throughout its enterprise. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, WITH THE SOLE EXCEPTION OF THE PCI PA-DSS CERTIFICATION OF THE SOFTWARE, EGENUITY MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION WHATEVER WITH RESPECT TO THE PCI OR PA-DSS COMPLIANCE OR DATA-SECURITY STATUS OF THE SOFTWARE, COMPUTER OR TELECOMMUNICATIONS NETWORK OR EQUIPMENT, BUSINESS PROCESSES OR PROCEDURES (WHETHER OR NOT RELATED TO THE SOFTWARE), OR ANY OTHER ELEMENT OF CUSTOMER'S ENTERPRISE.
16. **Taxes.** The CUSTOMER's purchase of the products and services described herein may be subject to past, current, or future taxes based on the laws in CUSTOMER's state. By electronically signing the Purchase Agreement, CUSTOMER agrees to be solely responsible for the payment of all applicable taxes arising out of its purchase of eGenuity Products.
19. **Electronic Transaction/Signature.**
- This Agreement is governed by the laws of the State of Indiana, which, by virtue of the Uniform Electronic Transactions Act, electronic signatures (defined as, an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record) demonstrate and shall be conclusive to CUSTOMER's assent to the terms contained herein-above. The CUSTOMER, by entering into a Purchase Agreement via electronic signature with eGenuity expressly assents to the terms of this Agreement as sent assent shall be conclusive.