



SDS E-Business Server® End User License Agreement

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THIS SOFTWARE, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF CUSTOMER IS ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, CUSTOMER REPRESENTS AND WARRANTS THAT CUSTOMER HAS FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS.

IF CUSTOMER DOES NOT AGREE TO THESE TERMS;

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE SOFTWARE; AND
- PROMPTLY RETURN THE SOFTWARE AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM CUSTOMER ACQUIRED THEM

1) Definitions

- Authorized Partner means any SDS distributor, reseller, or other business partner.
- Grant Letter means a confirmation notice letter issued electronically by SDS to Customer confirming Software and Support purchased by Customer including the applicable product entitlement, as defined in the Product Entitlement Definitions (further described at Section 3(a) below) and containing download details. The terms of the Grant Letter are hereby incorporated by reference.
- Documentation shall mean program documentation, user manuals, handbooks, and other materials describing the use, design, installation, operation, and maintenance of the Software.
- SDS means J.W. Lampi, Inc. d/b/a/ Software Diversified Services, a Minnesota corporation, with offices located at 1322 81st Ave. NE, Minneapolis, MN 55432 USA.
- Software means the E-Business Server software program in object code format licensed by SDS and purchased from SDS or its Authorized Partners, including Upgrades.
- Subsidiary refers to any entity controlled by Customer through greater than fifty percent (50%) ownership of the voting securities.
- Support or Technical Support means the support services offered by SDS for the support and maintenance of the Software further specified in the SDS Technical Support and Maintenance Terms. The provisions of the SDS Technical Support and Maintenance Terms are hereby incorporated by reference and can be found at <https://www.sdsusa.com/ebusiness/agreements>.
- Upgrade means any and all improvements in the Software which are made generally available to SDS's customer base as a part of purchased Support and which are not separately priced or marketed by SDS.

2) License Grant

Subject to the terms and conditions of this Agreement, SDS hereby grants Customer a non-exclusive, non-transferable right to use the Software listed in the Grant Letter solely for Customer's own internal business operations. For the purpose of this Agreement, use of the Software means to access, install, download, copy, or otherwise benefit from using the Software.

Customer is not granted rights to Upgrades unless Customer has a current support license or a service subscription.

Customer acknowledges that the Software and all related information are proprietary to SDS and its suppliers.

3) Copy and Use Terms

- a) Product Entitlement. The use of the Software depends on the licenses purchased and is subject to the Product Entitlement Definitions set forth at <https://www.sdsusa.com/ebusiness/agreements> on the date of Customer's Grant Letter. The provisions of the Product Entitlement Definitions are hereby incorporated by reference.
- b) Multiple Platforms/Bundles. If the Software is used on multiple platforms or if Customer receives the Software bundled with other software, the total Software usage may not exceed Customer's product entitlement, as specified in the Customer's Grant Letter.
- c) Term. The license is effective for a limited time ("Term") if such a Term is set forth in the Grant Letter; otherwise, the license shall be perpetual.
- d) Production License. A Production License allows Customer to download, install, maintain, and operate SDS E-Business Server in their regular operating environment.
- e) Non-Production License. A Non-Production License allows Customer to copy E-Business Server, then install and use it for development and testing purposes.
- f) Disaster Recovery. The Customer has the right to install, operate, and maintain one disaster recovery implementation of SDS E-Business Server on disaster recovery equipment. Further terms and corresponding definitions are available in the Disaster Recovery Licensing Policy set forth at <https://www.sdsusa.com/ebusiness/agreements>.
- g) Subsidiaries. Customer may permit use of the Software in accordance with the terms of this Agreement by a Subsidiary only for as long as such entity remains Customer's Subsidiary. Customer shall be responsible and fully liable for each Subsidiary's compliance with or breach of the terms of this Agreement.
- h) Managing Party. If Customer enters into a contract with a third party in which the third party manages Customer's information technology resources ("Managing Party"), Customer may transfer installation, operation, and maintenance responsibilities to such Managing Party, provided that (a) Customer maintains current maintenance and upgrade coverage, to be paid in advance annually, (b) the Managing Party only uses the Software for Customer's internal operations and not for the benefit of another third party or the Managing Party; (c) the Managing Party agrees to comply with the terms and conditions of this Agreement, and (d) Customer provides SDS with written notice that a Managing Party will be using the Software on Customer's behalf.
- i) General Restrictions on Use. The Software is protected by copyright as a collective work and/or compilation, pursuant to U.S. copyright laws, international conventions, and other copyright laws. Customer may not modify, publish, transmit, participate in the transfer or sale of, reproduce (except as provided in the Terms of Use), create derivative works based on, distribute, perform, publicly display, or in any way exploit the Software, any of the Content or Services offered therein, or any code or other materials incorporated therein, in whole or in part. SDS reserves all rights to the Software. Customer may not download, copy, publish, or use any part of the Software or its code without the express written consent of SDS or from the copyright holder identified in such Software's copyright notice. Production and Non-Production-licensed Software must contain all trademark, copyright, and proprietary information for E-Business Server. Customer may not, nor allow any third party to: (i) decompile, disassemble, or reverse engineer the Software, except to the extent expressly permitted by applicable law, without prior written consent from SDS; (ii) remove any product identification or proprietary rights notices of the Software or Documentation; (iii) lease, lend, or use the Software for timesharing or service bureau purposes; (iv) modify or create derivative works of the Software, (v) except with prior written permission from SDS, publish any performance or benchmark tests or analysis relating to the Software; or (vi) otherwise use or copy the Software except as expressly provided herein.
- j) Trademarks. SDS claims trademark rights to "SDS," "Software Diversified Services," "SDS E-Business Server," and any other words, slogans, logos, designs, or text eligible for trademark protection (collectively, the "Trademarks"). SDS reserves all rights to the Trademarks and Customer acknowledges that SDS has not granted to Customer any rights or license to the Trademarks.

4) Technical Support and Maintenance

The SDS Technical Support and Maintenance Terms apply if Customer has purchased Support. After the support or service subscription period specified in the Grant Letter has expired, Customer has no further rights to receive any Support, including Upgrades and technical support of any kind.

5) Limited Warranty and Disclaimer

- a) Limited Warranty. SDS warrants that at the purchase date and for a period of sixty (60) days thereafter (“Warranty Period”), the Software licensed hereunder (including Upgrades provided within the Warranty Period for the remainder of the Warranty Period) will perform substantially in accordance with the Documentation.
- b) Exclusive Remedy. In case of any breach of the above limited warranty, SDS will (a) repair or replace the Software or (b) if such repair or replacement would in SDS’s opinion be commercially unreasonable, refund the price paid by Customer for the applicable Software. This remedy is further limited by the provisions of Section 6 below.
- c) Exclusion of Warranty. The above Limited Warranty will not apply if: (i) the Software is not used in accordance with this Agreement or the Documentation; (ii) the Software or any part thereof has been modified by any entity other than SDS; or (iii) a malfunction in the Software has been caused by any equipment or software not supplied by SDS or by any other contributing factors outside of SDS’s control.
- d) Disclaimer. THE ABOVE WARRANTIES ARE CUSTOMER’S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. Except for the limited warranty set forth above, THE SOFTWARE IS PROVIDED "AS IS" AND SDS MAKES NO WARRANTY OR GUARANTEE AS TO ITS USE OR PERFORMANCE AND DOES NOT WARRANT OR GUARANTEE THAT THE OPERATION OF THE SOFTWARE WILL BE FAILSAFE, UNINTERRUPTED, OR FREE FROM ERRORS OR DEFECTS, OR THAT THE SOFTWARE WILL PROTECT AGAINST ALL POSSIBLE THREATS.
- e) Exceptions. Some states or jurisdictions do not allow the exclusion of express or implied warranties, so the above disclaimer may not apply to Customer. IN THAT EVENT SUCH EXPRESS OR IMPLIED WARRANTIES SHALL BE LIMITED IN DURATION TO THE WARRANTY PERIOD (OR THE MINIMUM PERIOD REQUIRED BY THE APPLICABLE LAW).

6) Limitation of Remedies and Damages

Under no circumstances and under no legal theory, whether in tort, contract, or otherwise, shall SDS be liable to Customer for any indirect, special, incidental, or consequential damages, damages for loss of profits, loss of goodwill, loss of personnel salaries, work stoppage, and/or computer failure or malfunction, and/or costs of procuring substitute software or services.

Regardless of whether the claim for such damages is based in contract, tort, and/or any other legal theory, in no event shall SDS’s aggregate liability to Customer for direct damages exceed the lesser of:

- a) the amount of total fees paid or payable by Customer for the Software giving rise to such claim during the 12 months immediately preceding the event giving rise to such claim, or
- b) the applicable SDS list price, at the date of the purchase, for the Software giving rise to such claim ordered by Customer during the 12 months immediately preceding the event giving rise to such claim, even if the other party has been advised of the possibility of such damages.

No provision of this Agreement shall exclude or limit in any way Customer’s liability for excess usage of, and/or any breach of SDS’s intellectual property rights in the Software.

The limitation of liability in this section is based on the fact that end users and customers use their computers for different purposes. Therefore, only Customer can implement backup plans and safeguards appropriate to Customer’s needs in the event an error in the Software causes computer problems and related data losses. For

these business reasons, Customer agrees to the limitations of liability in this section and acknowledges that without Customer agreement to this provision, the fee charged for this Software would be higher.

7) Customer Release and Indemnification

- a) By using the Software, Customer releases SDS, its officers, directors, employees, agents, subsidiaries, joint ventures, and other related parties from claims, lawsuits, demands, injuries, and damages of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with the Software. Customer waives its statutory rights provided by state law prohibiting the release of unknown claims. This waiver shall specifically include the waiver of rights provided under California Civil Code Section 1542 and other such statutes governing transactions in other states.
- b) Customer will indemnify and hold SDS, its parents, subsidiaries, affiliates, officers, independent contractors, employees, and agents harmless from and against all damages, costs, and expenses (including reasonable attorneys' fees), incurred in connection with, relating to, or arising from any claim or demand made by Customer, other users of the Software, or any third party arising from (i) Customer's use of or access to the Software, (ii) Customer's violation of the terms of this Agreement, or (iii) the infringement by Customer or Customer's agents, representatives, employees, or independent contractors of any intellectual property or other right of any person or entity. Customer hereby releases SDS from any and all claims, suits, injury, damages, and liability arising from, relating to, or in connection with the acts or omissions of SDS, its directors, officers, employees, independent contractors, and agents, as well as other users or of any other third parties, including, without limitation, any liability relating in any way to the Software.

8) Third party claims

- a) SDS shall defend and hold Customer harmless from any claim by a third party that the Software infringes any U.S. patents, copyrights, or trade secrets of that third party, provided: (i) SDS is notified promptly, and in any event no later than within 14 days upon Customer receipt of notice of the claim; (ii) SDS receives reasonable cooperation from Customer necessary to perform SDS's obligations hereunder; and (iii) SDS has sole control over the defense and all negotiations for a settlement or compromise of the claim. The foregoing obligation of SDS does not apply with respect to Software or portions or components thereof: (i) not supplied by SDS; (ii) used in a manner not expressly authorized by this Agreement or the relevant Documentation (iii) made in accordance with Customer's specifications; (iv) modified by anyone other than SDS, if the alleged infringement relates to such modification; (v) combined with other products, processes, or materials where the alleged infringement would not exist but for such combination; or (vi) where Customer continues the allegedly infringing activity after being notified thereof and provided with modifications that would have avoided the alleged infringement.
- b) In the event the Software is held by a court of competent jurisdiction to constitute an infringement or use of the Software is enjoined, SDS shall, at its sole option, do one of the following: (i) procure the right to continue use of the Software; (ii) provide a modification to the Software so that its use becomes non-infringing; (iii) replace the Software with software which is substantially similar in functionality and performance; or (iv) if none of the foregoing alternatives is reasonably available to SDS, SDS shall refund up to 3 times the annual revenue received from Customer. This Section states SDS's sole liability and Customer's exclusive remedy for intellectual property infringement claims.

9) Termination

Without affecting Customer's payment obligations, Customer may terminate Customer's license at any time by uninstalling the Software. SDS may terminate Customer's license in the event Customer materially breaches the terms of this Agreement and Customer fails to cure such breach within thirty (30) days of receiving notice of such breach. Upon such termination Customer shall promptly return or destroy all copies of the Software and Documentation.

10) Additional Terms

- a) Evaluation Software. If the Software has been identified as "Evaluation Software", then the provisions of this section apply and shall supersede any other conflicting term of this agreement. Customer's royalty free, non-transferable, limited license to use the Evaluation Software, for evaluation purposes only, is limited to thirty

(30) days unless otherwise agreed to in writing by SDS. The Evaluation Software may contain errors or other problems that could cause system or other failures and data loss. Consequently, Evaluation Software is provided to Customer "AS IS" and SDS disclaims any warranty or liability obligations of any kind. Any information about the Evaluation Software gathered from its use shall be used solely for evaluation purposes only and shall not be provided to any third parties. The restrictions described in Section 3(i) apply. If Customer fails to destroy the Evaluation Software after the evaluation period has expired, SDS may, at its discretion, invoice Customer in an amount equal to the SDS List Price for the Evaluation Software and Customer shall pay such invoice upon receipt. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, SDS'S LIABILITY AND THAT OF ITS SUPPLIERS AND AUTHORIZED PARTNERS SHALL BE LIMITED TO THE SUM OF FIFTY (50) DOLLARS OR THE EQUIVALENT IN LOCAL CURRENCY IN TOTAL.

- b) Beta Software. If the Software has been identified as "Beta" Software, then the provisions of Section 9(a) above shall apply. SDS has no obligation to further develop or publicly release the Beta Software. If requested by SDS, Customer will provide feedback to SDS regarding testing and use of the Beta Software, including error or bug reports. Customer agrees to grant SDS a perpetual, non-exclusive, royalty-free, worldwide license to use, copy, distribute, make derivative works, and incorporate the feedback into any SDS product at SDS's sole discretion. Upon receipt of a later unreleased version of the Beta Software or release by SDS of a publicly released commercial version of the Beta Software, Customer agrees to return or destroy all earlier Beta Software received from SDS.
- c) "Free" or "Open Source" Software. The Software may include programs or code that are licensed under an Open Source Software ("OSS") license model. Nothing in this agreement limits any rights under or modifies the terms of those OSS licenses. Customer shall not take any action that will cause SDS Software or Documentation to be subject to an OSS license unless that Software or Documentation was already subject to an OSS license. OSS programs and code are subject to the terms, conditions, and obligations of the applicable OSS license, and are SPECIFICALLY EXCLUDED FROM ALL WARRANTY AND SUPPORT OBLIGATIONS DESCRIBED ELSEWHERE IN THIS AGREEMENT.

11) Notice to United States Government End Users

The Software and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation." Any use, modification, reproduction, release, performance, display, or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

12) Privacy; Collection of Personal or System Information

- a) The Software does not collect or send any data or information from Customer's system.
- b) SDS may request system information during the diagnostic stage of the support process or to verify Customer's compliance to Customer's product entitlement (further described in Section 12 below).
- c) SDS does not collect and will not request personally identifiable information from Customer beyond that which is the minimum required to perform standard business operations in the Software license acquisition, renewal, and support phases.
- d) SDS will only collect and use personally identifiable information in accordance with the SDS Privacy Policy available on the SDS website (<https://www.sdsusa.com/privacy>). By entering into this Agreement or using the Software, Support, or service subscription, the Customer agrees to the SDS Privacy Policy.

13) Audit

SDS may, at its expense, upon reasonable prior written notice to Customer and during standard business hours, audit Customer with respect to Customer's compliance with the terms of this Agreement no more than once per year. Customer understands and acknowledges that SDS utilizes a number of methods to verify and support software use by its customers. These methods may include technological features of the Software that prevent unauthorized use and provide Software deployment verification. Upon reasonable request, Customer will

provide a system-generated report verifying Customer's Software deployment, such request to occur no more than two (2) times per year. SDS will not unreasonably interfere with the conduct of Customer's business.

14) Export Controls

Customer acknowledges that due to the nature of the Software, the Software is subject to U.S. and, when applicable, European Union export regulations. Customer shall comply with applicable export and import laws and regulations for the jurisdiction in which the Software will be imported and/or exported. Customer shall not export the Software to any individual, entity, or country prohibited by applicable law or regulation. Customer is responsible, at Customer's own expense, for any local government permits, licenses, or approvals required for importing and/or exporting the Software. For additional information regarding exporting and importing the Software, see <https://www.sdsusa.com/ebusiness/agreements>. SDS reserves the right to update this website from time to time at its sole discretion.

15) Governing Law

This Agreement will be governed by and construed in accordance with the substantive laws in force in the State of Minnesota. This Agreement will not be governed by the conflict-of-laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Uniform Computer Information Transactions Act as enacted shall not apply. The parties agree that the venue for any legal action related to or arising from this Agreement shall be in the Minnesota state District Court for Hennepin County, Minnesota, or the Federal District Court for the District of Minnesota, although any party seeking injunctive relief may bring an action therefore in such other Court as may be necessary to secure enforceable injunctive relief. The parties stipulate to personal jurisdiction in Minnesota.

16) Confidentiality

Each Party hereto acknowledges that by reason of its relationship with the other party hereunder, it may be possible to receive confidential information and materials concerning the other party's business, technology, and/or products that is confidential and of substantial value to the other Party, which value could be impaired if such information were disclosed to third parties ("Confidential Information"). Written or other tangible Confidential Information must at the time of disclosure be identified and labeled as Confidential Information belonging to the disclosing Party. When disclosed orally or visually, Confidential Information must be identified as confidential at the time of the disclosure, with subsequent confirmation in writing within fifteen (15) days after disclosure. Each Party agrees that it will not use in any way for its own account or the account of any third party, such Confidential Information, except as authorized under this Agreement, and will protect Confidential Information at least to the same extent as it protects its own Confidential Information and to the same extent that a reasonable person would protect such Confidential Information. Neither Party may use the other Party's Confidential Information except to perform its duties under this Agreement. The Confidential Information restrictions will not apply to Confidential Information that (i) is already known to the receiving Party, (ii) becomes publicly available through no wrongful act of the receiving Party, (iii) is independently developed by the receiving Party without benefit of the disclosing Party's Confidential Information, (iv) has been rightfully received from a third party not under obligation of confidentiality, or (v) is required to be disclosed by law, provided the Party compelled to disclose the Confidential Information provides the Party owning the Confidential Information with prior written notice of disclosure adequate for the owning Party to take reasonable action to prevent such disclosure, where reasonably possible. Unless otherwise agreed to by both Parties, upon termination of this Agreement or an applicable Addendum, each Party will return the other Party's Confidential Information.

17) Miscellaneous

- a) Except for actions for nonpayment or breach of SDS's proprietary rights in the Software and Documentation, no action, regardless of form, arising out of this Agreement may be brought by either party more than 2 years after a party knew or should have known of the claim.
- b) Any exhibits to this Agreement are hereby made a part hereof. Defined terms used in the exhibits shall have the meanings given to them in this Agreement unless otherwise stated in the exhibit(s) where the terms are used.

- c) This Agreement, including all documents incorporated by reference, represents the entire agreement between the parties and expressly supersedes and cancels any other communication, representation, or advertising whether oral or written, on the subjects herein. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legatees, representatives, successors, and assigns. Notwithstanding the preceding sentence or any other provision of this Agreement, Customer may not assign or transfer any of Customer's rights or obligations under this Agreement to any third party without the prior written consent of SDS. This Agreement shall be construed and interpreted in accordance with the laws of the State of Minnesota, USA, to the exclusion of the conflict-of-laws provisions thereof.
- d) Only a written instrument executed by both parties hereto may modify this Agreement. If Customer issues an order to an Authorized Partner or to SDS, and the terms and conditions of the order conflict with the terms and conditions of a) this Agreement or b) the Grant Letter, then the terms and conditions specified in this Agreement and in the Grant Letter shall control. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of SDS. No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by SDS. No failure on the part of a party hereunder to exercise and no delay in exercising any rights hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any rights hereunder preclude any other or further exercise thereof or the exercise of any other right. Remedies herein provided are cumulative and not exclusive of any other remedy provided by law.
- e) All provisions of this Agreement are separable, so if any provision of this Agreement is held to be ineffective by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect unless the invalidated provision is so fundamental to this Agreement that the remaining provisions do not reflect the parties' intent.
- f) All notices, requests, demands, and determinations for SDS under this Agreement (other than routine operational communications) shall be sent to the applicable entity address on the first page of this Agreement addressed to "Attention: Legal Department."