

USER AGREEMENT FOR EXERCISE BUILDER[®] 2008 SOFTWARE

This agreement is between Oak Ridge Institute for Science and Education (ORISE), a U.S. Department of Energy (DOE) facility managed by Oak Ridge Associated Universities, having a principal place of business at P.O. Box 117, Oak Ridge, Tennessee, 37831-0117 and USER as identified in Exhibit A. The parties hereby agree as follows:

1. Definitions:

1.1 Software:

"Software" means all or a portion of the software in object code form specifically identified in Exhibit A, which ORISE has developed in conjunction with and for the Emergency Management Issues Special Interest Group (EMI SIG) with financial support from the Department of Energy, Office of Emergency Management and Policy, NA-41. The software is owned by ORISE, including any modifications, improvements and re-releases provided by ORISE to USER.

1.2 Designated Site:

"Designated Site" means the location at which the Software will be used, as identified in Exhibit A.

1.3 Information:

"Information" means data, algorithms, formulas, computations, instructions and/or statements communicated in any form, including but not limited to oral, written, graphic, photographic, optic, electronic, magnetic, or electromagnetic media.

1.4 Documentation:

"Documentation" means all or a portion of the documentation provided with and relating to the Software.

1.5 Proprietary Information:

"Proprietary Information" means that Information including Software which ORISE desires to protect against unrestricted disclosure or competitive use, and which is designated as such in writing by ORISE or is disclosed orally and reduced to tangible form pursuant to this Agreement.

1.6 Use:

"Use," "to Use," or "Using" means utilizing Software in the course of internal operations of the USER.

1.7 User:

"User" means any individual authorized to use Software.

1.8 Responsible Person:

"Responsible Person" means the person, as identified in Exhibit A, supervising Software's use at the Designated Site. Such supervision includes determination of the machines it is installed on, designation of the persons permitted to use it, communication of progress of use to ORISE through the EMI SIG, and, generally, ensuring that conditions of this Agreement are met.

2. USER Rights and Obligations:

2.1 Grant of Permit:

Subject to the conditions herein, ORISE hereby grants to USER a non-transferable, non-exclusive, site permit to use the Software at the Designated Site. Software, Documentation, and Proprietary Information of ORISE shall be used only by Users and only at the Designated Site except as provided under this Agreement. USER agrees not to include the Software in an on-line commercially available

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terminal service established to offer service to individuals who are not part of the USER's organization without written approval from ORISE. However, the USER may provide the Software as part of an on-line service offered wholly for the use of the USER's employees.

2.2 No Transfer:

This Agreement, the Software, Documentation, and Proprietary Information provided by ORISE to USER and any rights granted hereunder, may not be assigned or otherwise transferred, in whole or in part, by USER.

2.3 Copy for Internal and Backup Purposes Only:

USER is hereby granted the right to reproduce the Software for internal and backup purposes only. USER shall not copy for, distribute to, or disclose to any third party the Proprietary Information, the Software, or the Documentation, in whole or in part, without prior written authorization of ORISE.

2.4 Reverse Engineering

USER agrees to not alter, modify, adapt the software or documentation for any purpose, including, but not limited to, translating, reverse engineering, decompiling, disassembling, or creating derivative works.

3. ORISE Rights and Obligations:

3.1 Delivery:

ORISE shall be responsible for providing the Software on CD-ROM to the approved USER at no charge. This will be sent usually within ten (10) days after USER signs this Agreement and it is accepted by ORISE. Transfer will be by a mailed copy on CD-ROM.

3.2 ORISE Ownership:

Nothing in this Agreement shall affect ORISE's exclusive ownership of the Software. The use granted hereby shall at all times be subject to all patents, trademarks, copyrights and any property or other rights of ORISE relating to the Software.

3.3 Documentation:

ORISE will provide a copy of the Documentation for each USER listed by name on a written request from the Responsible Person to ORISE. Such requests may be submitted at various times throughout the term of this Agreement. Documentation may be transferred from one USER to another, and USER may itself make copies of the Documentation.

3.4 Maintenance and Support:

ORISE will provide USER any updates to the software or documentation when they are available at no charge. ORISE will provide USER a phone number and an e-mail address for contacting ORISE with questions about the software.

4. Term and Termination:

4.1 Effective Date:

This Agreement shall become effective on the date a fully signed copy of the Agreement is received by ORISE.

5. Limited Warranty:

5.1 Warranty of Title:

ORISE warrants that it has the right to grant a permit to use the Software to USER and that it has the right and power to enter into this Agreement.

5.2 Disclaimer of Warranties:

The Software is provided "AS IS" WITHOUT WARRANTY OF ANY KIND AND ORISE FURTHER DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF DESIGN, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE PROGRAM IS WITH USER. ORISE DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET USER REQUIREMENTS OR THAT THE OPERATION OF THE PROGRAM WILL BE UNINTERRUPTED OR ERROR FREE.

5.3 Limitation of Liability:

IN NO EVENT WILL ORISE BE LIABLE TO USER FOR ANY DAMAGES, INCLUDING LOST PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE.

6. General Provisions:

6.1 Permit Number:

For tracking purposes, this Agreement will be assigned the permit number set forth in Exhibit A. This number should be cited in all correspondence between the parties relating to this Agreement.

6.2 Severability:

If any of the provisions, or portions thereof, of this Agreement are invalid under any applicable statute or rule of law, then, that provision notwithstanding, this Agreement shall remain in full force and effect and such provision shall be deemed omitted.

6.3 Integration:

This Agreement, including all Exhibits, which are hereby incorporated by reference herein, constitutes and expresses the entire agreement and understanding between the Parties and supersedes all previous communications, representations, or agreements, whether written or oral, with respect to the subject matter hereof.

6.4 Modification:

This Agreement may not be and shall not be deemed or construed to have been modified, amended, rescinded, canceled, or waived, in whole or part, except by written instruments signed by the Parties.

Exhibit A to Agreement

Software: Exercise Builder® 2008

Permit #: _____ (to be assigned by ORISE)

Responsible Person: _____

Name: _____

Company Name: _____

Address:

Telephone: _____

E-mail address: _____

Designated Site (if different from above):

Signed: _____

Printed Name: _____

Title: _____

USER agrees to provide feedback as follows:

- A. Reasonably prompt notification of any difficulties USER has with the software, including but not limited to bugs in the program.
- B. Any requests for enhancements to the software, including but not limited to expanded documentation, new features, or other enhancements.

Please print and fax (865-576-9383) or mail a signed copy of the USER AGREEMENT FOR EXERCISE BUILDER® 2008 SOFTWARE to:

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