

# COMPUTER ACCESS AGREEMENT

## ARTICLE I: BASICS

1) **PARTIES:** This computer access agreement, (hereinafter referred to as "AGREEMENT"), is entered into between LILIAN G. TSANG, the Standing Chapter 13 Trustee of the Fresno Division of the Eastern District of California, (hereinafter referred to in this AGREEMENT as "TRUSTEE"), and \_\_\_\_\_ (hereinafter referred to in this AGREEMENT as "USER").

2) **AGREEMENT:** This AGREEMENT constitutes a limited license to USER and is revocable at any time, for any reason with or without cause, without notice to USER, and at the sole discretion of TRUSTEE. Limited license is hereby granted upon execution by both parties to USER for limited and controlled access to the auxiliary computer system of TRUSTEE, via USER'S modem and communications software, for the convenience of USER and TRUSTEE, and for the sole purpose of obtaining public information of the type normally provided by voice telephone calls to TRUSTEE'S office. Access to the main computer system of TRUSTEE is not offered, nor is it part of the AGREEMENT.

3) **ENTIRE AGREEMENT:** This AGREEMENT constitutes the entire agreement between the parties. No oral or other written covenants, terms, express conditions, or implied conditions exist. In the event that the parties desire to modify this AGREEMENT, they both must execute a COMPUTER ACCESS AGREEMENT addendum or a new COMPUTER ACCESS AGREEMENT. If any part of this AGREEMENT is held by a court of law to be non-binding, the balance of the AGREEMENT shall remain in full force and effect.

4) **ASSIGNMENT OR SUBCONTRACT:** This AGREEMENT shall not be assigned, nor shall any use or access provided under this AGREEMENT be subcontracted or allowed to any person other than the parties and their employees.

5) **CHOICE OF LAW AND FORUM SELECTION:** The parties agree that this AGREEMENT shall be governed by the laws of the State of California. The parties consent to the jurisdiction of the courts of the State of California and the federal District Court of the Fresno Division of the Eastern District of California in the event an action is brought upon this AGREEMENT in those Courts. The parties agree that the courts in Fresno County are a convenient forum to litigate any disputes over this AGREEMENT and select these Courts as the forum for any such litigation.

6) **INDEMNIFICATION:** USER shall and hereby agrees to indemnify TRUSTEE for and to hold harmless from any claims, demands, or suits caused by USER'S failure to abide by the terms for use and access provided under this AGREEMENT. In the event that TRUSTEE sues for indemnification and USER is found liable, USER shall be liable for reasonable attorney's fees for said suit.

## ARTICLE II: ACCESS

7) **COMPUTER ACCESS NOT REQUIRED:** TRUSTEE is required by 11 U.S.C. §704(7), applied by 11 U.S.C. 1302(b)(1), to furnish such information concerning the estate and the estate's administration as is requested by a party in interest; TRUSTEE is not required to provide computer access. This AGREEMENT is to provide such access. USER may still request and receive information from TRUSTEE by means other than the access provided in this AGREEMENT.

8) **SYSTEM ACCESSED:** TRUSTEE maintains an auxiliary computer system with records of active Chapter 13 cases where he has been appointed TRUSTEE and records of some closed cases. These records are updated periodically, normally once per day. These records include case information, claim information, and records of receipts and disbursements. This AGREEMENT is to provide access to this system to USER.

9) **USER LIMITED:** USER will be limited to access cases where TRUSTEE knows USER is a party in interest. Information will be limited to information that TRUSTEE believes is appropriate for a party in interest. In the event that USER wants access to additional cases or additional information, USER may submit a written request, but TRUSTEE may refuse to furnish such information by computer access.

10) **LIMITATION ON USE OF INFORMATION:** The information is furnished by TRUSTEE and shall be used by USER solely for internal informational purposes and only in connection with specific TRUSTEE bankruptcy cases in which the USER is a party in interest or an agent or attorney of a party in interest. TRUSTEE shall have, at all times, the sole and exclusive right to custody and control of the information. USER shall not

a. use, or suffer any third party to use, the information for any unlawful, tortuous or malicious use; or

b. use, or suffer any third party to use, the information in connection with the sale or solicitation of sale of goods or services to or concerning any debtor, creditor, attorney, or other person or party whose name, address, or identity is first obtained from the information.

c. allow the use of information by third parties or provide the same to third parties except for agents or attorneys employed or potentially employed with respect to the cases involved.

11) **HOURS OF OPERATION:** TRUSTEE will allow continuous access to the auxiliary computer system, except when the system is having new data or programs added, is shut down for maintenance, or is without power or telephone connections for some other reason. USER may contact TRUSTEE to determine the length the system may not be in operation, and TRUSTEE may, but is not required to, advise USER in advance of any shutdown.

12) **TELECOMMUNICATIONS SOFTWARE:** TRUSTEE does not require USER to utilize any particular software for telecommunications.

13) **REGULATIONS BY TRUSTEE:** USER expressly acknowledges and agrees that TRUSTEE may, at any time, exercise control over the system and/or implement and enforce, without notice, such rules, regulations, guidelines, and restrictions as it sees fit with respect to the use of and access to the information by USER, including the following:

- a. Schedules, time limits, and timetables governing use of the System;
- b. Interruption or temporary termination of USER'S access to the system when and as deemed necessary by TRUSTEE for purposes of security, systems administration, or any other purpose;
- c. Automatic disconnection of USER from the system in the event the USER is connected to the system and inactive for periods of time deemed excessive by TRUSTEE.
- d. Termination and removal from the system of USERS who do not use the system for periods of time deemed appropriate by TRUSTEE.
- e. Such other rules, regulations, guidelines, and restrictions as TRUSTEE deems necessary or appropriate for any reason whatsoever.

14) **USER ID AND PASSWORD:** A name will be given to USER so they can enter it as a user ID, and a sequence of characters will be given to USER so they can enter it as a password. USER must keep record of these as they will need to know both login and password to have access to the auxiliary computer system. Both should be kept confidential.

15) **ACCESS INSTRUCTIONS:** TRUSTEE will provide instructions as to how to access the auxiliary system. Such instructions may be periodically updated.

16) **CORRUPTION OF THE INFORMATION:** USER shall not attempt to tamper with, corrupt, alter, or modify in any respect the information or any information, data, instructions, commands, or programs stored or contained in or generated by the System.

17) **DISCLOSURE AND DISCLAIMERS:** USER understands and acknowledges that the information:

- a. Is comprised of data from TRUSTEE'S computerized data base that has been transferred to a separate stand-alone computer within, in general, one to two business days of the close of business on any given TRUSTEE business day, and does not, therefore, represent the most timely or complete information available to TRUSTEE;
- b. Has, in many cases, been provided to TRUSTEE by third parties and/or has not been audited or verified by TRUSTEE staff;
- c. Does not necessarily reflect all work in process by TRUSTEE with respect to any particular case;
- d. May not reflect the most current information that has been received by TRUSTEE or filed with the Court.

Accordingly, TRUSTEE assumes no responsibility for the accuracy, completeness, or timeliness of the information and expressly DISCLAIMS ANY REPRESENTATION OR WARRANTY WHATSOEVER WITH INFORMATION AND WARRANTY OF FITNESS OF THE INFORMATION FOR ITS INTENDED PURPOSE. TRUSTEE expressly and specifically disclaims any responsibility or liability to USER or any third party on account of loss or damage arising from any error or omission of any kind in the information. USER, therefore, acknowledges that it should not rely on the information without independent verification from other sources from which it would customarily seek information were it not available hereunder (such as the Courts' dockets, pleading files, claims registers, etc.)

ARTICLE III: LIMITATIONS

18) **COPYRIGHTS:** TRUSTEE, companies providing software, and companies retaining hardware, retain copyrights or other proprietary rights in the auxiliary computer system, the software on the system, and the information stored on the system. USER may not infringe on these copyrights or other proprietary rights.

19) **ADMISSIBILITY:** TRUSTEE makes no representation or warranty as to the admissibility of the information in the auxiliary computer system as evidence in any judicial or administrative proceeding.

20) **REVOCAION OF PRIOR AGREEMENTS:** This AGREEMENT revokes any prior agreements between USER and TRUSTEE.

21) **BINDING BY CONTRACT:** Wherefore, TRUSTEE and USER agree to be legally and contractually bound by the foregoing terms, conditions, and covenants, as set forth above. As evidence of such AGREEMENT we affix our signatures and the date we signed below. Each respective agent signing on behalf of USER represents that the agent has full force and authority to so bind USER. This AGREEMENT is effective upon the signature of both parties and on the date the last signature is affixed.

User shall return this signed and dated agreement to the Chapter 13 Trustee's office by mail or fax. Upon receipt, the Systems Manager will assign the USER a User ID and Password. The TRUSTEE will sign and return a copy of the agreement to the USER along with the assigned User ID and Password.

**PLEASE COMPLETE THE FOLLOWING:**

Company Name: \_\_\_\_\_

Authorized User's Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City, State Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

\_\_\_\_\_  
Authorized User's Signature:

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Trustee Signature:

\_\_\_\_\_  
Date:

Mail to the Office of: Lilian G. Tsang  
Chapter 13 Standing Trustee  
P.O. Box 3051  
Modesto, CA 95353-3051

OR

Fax to: (209) 576-7984

OR

Email to: [info@mod13.com](mailto:info@mod13.com)