

San Diego Unified Port District

Document No. **55458**Filed **SEP 02 2009**

Office of the District Clerk

## END USER LICENSE AGREEMENT

**IMPORTANT-READ CAREFULLY:** This End-User License Agreement ("EULA") is a legal agreement between the San Diego Unified District ("District") and Cochran, Incorporated ("Vendor" or "Contractor" or "Consultant") for the software that accompanies this EULA, which includes computer software and may include associated media, printed materials, and "online" or electronic documentation for automating the control of Vendor's Shore Power Equipment ("Shore Power Software"). Certain of the terms of this EULA also applies to certain specified confidential information. DISTRICT AGREES TO BE BOUND BY THE TERMS OF THIS EULA BY USING THE SHORE POWER SOFTWARE.

1. GRANT OF LICENSE. Vendor grants District the following rights provided that District complies with all terms and conditions of this EULA:

1.1 Installation and use. Shore Power Software includes all computer-executable code provided by Vendor to District, including embedded system code, server code, and user-interface code. User-interface code includes a web-based interface for interacting with the Shore Power Equipment. Vendor will install the Shore Power Software. District may use the Shore Power Software solely as installed by Vendor.

1.2 Limited License Term. Vendor grants District a nonexclusive, limited, nontransferable license, with restrictions as described below, to use the Shore Power Software, in object code only, for the sole purpose of using and operating the Shore Power Equipment as documented in the SAN DIEGO UNIFIED PORT DISTRICT PURCHASE AGREEMENT FOR COMPLETE SHORE POWER SYSTEM. District may access the web-based interface from one or more end-user workstations at the licensed site, and may also allow users of the Shore Power Equipment to access the web-based interface from end-user workstations at the licensed site. Any use of the Shore Power Software by any other person, business, corporation, government organization or any other entity is strictly forbidden and is a violation of this Agreement. District is granted this license for the life of the Shore Power System.

1.3 No Ownership Rights. District is granted this license for the life of the shore power system.

2. RESERVATION OF RIGHTS AND OWNERSHIP. All rights not expressly granted to District in this EULA are reserved. The Shore Power Software is protected by copyright, trademark, trade secret, and other intellectual property laws and treaties. Vendor has the exclusive license to the copyright, and other intellectual property rights in the Shore Power Software. The Shore Power Software is licensed, not sold.

3. LIMITATIONS ON REVERSE ENGINEERING, DECOMPIATION, AND DISASSEMBLY. You may not, in whole or in part, copy, photocopy, reproduce, derive source code, modify, create derivative works based on the Shore Power Software, reverse engineer, decompile, or disassemble the Shore Power Software, except and only to the extent that such activity is necessary to use the Shore Power Software or is expressly permitted by applicable law notwithstanding this limitation.

4. **CONSENT TO USE OF DATA.** District agrees that Vendor and its affiliates may collect and use technical information gathered as part of the product support services provided to District, if any, related to the Shore Power Software. Vendor may use this information solely to improve its products or to provide customized services or technologies to District and will not disclose this information in a form that personally identifies District.

5. **ADDITIONAL SOFTWARE/SERVICES.** This EULA applies to updates, supplements, or add-on components, of the Shore Power Software that Vendor may provide to District or make available to District after the date District obtains its initial copy of the Shore Power Software, unless Vendor provides other terms along with the update, supplement, add-on component, or Internet-based services component.

6. **EXPORT RESTRICTIONS.** District acknowledges that the Shore Power Software is subject to U.S. export jurisdiction. District agrees to comply with all applicable international and national laws that apply to the Shore Power Software, including the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by U.S. and other governments.

7. **USE OF VENDOR INFORMATION.** All documents, including but not limited to Drawings, Shop Drawings, Record Documents, Technical Manuals, and Vendor O&M Manuals, and technical and business information and intellectual property in whatever form recorded (e.g., in writing, in documents or in physical objects such as prototypes or samples, electronic form, e.g., via electronic transmission or on computer readable media such as Flash memory, diskette, CD or DVD-ROM, etc.) that Vendor does not wish to disclose without restriction ("Information") during completion of the Work shall remain the property of the Vendor and may be used by the District only as follows. Such Information (a) shall not be reproduced or copied, in whole or in part, except for use as expressly authorized in this EULA or the San Diego Unified Port District Purchase Agreement For Complete Shore Power System Equipment Agreement; (b) shall, together with any full or partial copies thereof, be returned or destroyed when no longer needed, and (c) shall be disclosed only to employees or agents of the District with a need to know. The District shall take all reasonable precautions that its employees or agents do not disclose any Information to non-employees, including informing each person to whom Information is disclosed of its confidential and proprietary nature. The District, with written consent of the Vendor, may disclose Information to a third party only if the third party receiving the Information reads this Paragraph and, by receiving such Information, such person shall acknowledge and agree to abide by the District's obligations hereunder, in writing. The above restrictions on the use or disclosure of Information shall not apply to any Information that is: (a) already public knowledge at the time of disclosure or later becomes public knowledge through no fault of the District; (b) shown by the written records of the District to already have been possessed by or known to the District prior to its receipt of Information from the Vendor under this Agreement; (c) shown by the District's written records to have been independently developed by the District's personnel acting without knowledge of the Information; or (d) received by the District from a third party having no obligation of confidentiality to the Vendor. The obligations set forth in this Paragraph (Use of Vendor Information) survive termination of the EULA and the San Diego Unified Port District Purchase Agreement for Complete Shore Power System Equipment Agreement.

Information is subject to the above section if (a) it is in writing or other tangible form and marked as proprietary or confidential (or other appropriate legend) or (b) it is delivered orally and such oral information is summarized in writing by Vendor and marked proprietary or confidential (or other appropriate legend) and delivered to the District with thirty (30) days after disclosure thereof.

In accordance with this EULA, Vendor shall place in escrow a fully commented and documented copy of the Shore Power Software Graphical User Interface (GUI) in source code form, a listing thereof, and all relevant commentary, including explanation, flow charts, algorithms, and other documentation of the source code ("Commentary"), pursuant to the Technology Escrow Agreement. If Vendor corrects or

receives corrections to any defects in, or provides any revision to, the Shore Power Software GUI under this Agreement, Vendor shall furnish the Escrow Agent with a corrected or revised copy of the source code, revised listing thereof, and revised Commentary in accordance the Escrow Agreement.

Nothing herein shall be deemed to bar disclosure of Information by District to third parties, if such disclosure is required under any applicable law including but not limited to California Government Code Section 6200 et. Seq. and the California Constitution. The District shall provide notice to Vendor within two (2) working days of receipt of any legal request or process by which the District would be required to disclose the Information.

8. **TERMINATION.** Without prejudice to any other rights, Vendor may terminate this EULA if District fails to materially comply with the terms and conditions of this EULA. In such event, District must destroy all copies of the Shore Power Software and all of its component parts.

9. **LIMITED WARRANTY FOR SHORE POWER SOFTWARE.** Vendor warrants that the Shore Power Software will perform substantially in accordance with the accompanying materials for a period of ninety (90) days from the date of receipt. If an implied warranty or condition is created by District's state/jurisdiction and federal or state law prohibits disclaimer of it, District also has an implied warranty or condition, **BUT ONLY AS TO DEFECTS DISCOVERED DURING THE PERIOD OF THIS LIMITED WARRANTY** (ninety days). **AS TO ANY DEFECTS DISCOVERED AFTER THE NINETY-DAY PERIOD, THERE IS NO WARRANTY OR CONDITION OF ANY KIND.** Some states do not allow limitations on how long an implied warranty or condition lasts, so the above limitation may not apply to District. Any supplements or updates to the Shore Power Software, including without limitation, any (if any) service packs or hot fixes provided to District after the expiration of the ninety-day Limited Warranty period are not covered by any warranty or condition, express, implied or statutory.

10. **LIMITATION ON REMEDIES; NO CONSEQUENTIAL OR OTHER DAMAGES.** District's exclusive remedy for any breach of this Limited Warranty is as set forth below. Except for any refund elected by Vendor, **DISTRICT IS NOT ENTITLED TO ANY DAMAGES, INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL DAMAGES**, if the Shore Power Software does not meet Vendor's Limited Warranty, and, to the maximum extent allowed by applicable law, even if any remedy fails of its essential purpose. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to District. This Limited Warranty gives District specific legal rights. District may have other rights which vary from state to state. **DISTRICT'S EXCLUSIVE REMEDY.** Vendor's entire liability and District's exclusive remedy for any breach of this Limited Warranty or for any other breach of this EULA or for any other liability relating to the Shore Power Software shall be, subject to applicable law, repair or replacement of the Shore Power Software that does not meet this Limited Warranty. District will receive the remedy without charge. This Limited Warranty is void if failure of the Shore Power Software has resulted from accident, abuse, misapplication, abnormal use or a virus. Any replacement Shore Power Software will be warranted for the remainder of the original warranty period, and Vendor will use commercially reasonable efforts to provide District's remedy within a commercially reasonable time of District's compliance with Vendor's warranty remedy procedures.

11. **DISCLAIMER OF WARRANTIES.** The Limited Warranty that appears above is the only express warranty made to District and is provided in lieu of any other express warranties or similar obligations (if any) created by any advertising, documentation, packaging, or other communications. Except for the Limited Warranty and to the maximum extent permitted by applicable law, Vendor provides the Shore Power Software and support services (if any) **AS IS AND WITH ALL FAULTS**, and hereby disclaims all other warranties and conditions, whether express, implied or statutory, including, but not limited to, any (if any) implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of reliability or availability, of accuracy or completeness of responses, of results, of workmanlike effort, of

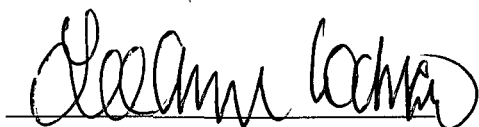
lack of viruses, and of lack of negligence, all with regard to the Shore Power Software, and the provision of or failure to provide support or other services, information, software, and related content through the Shore Power Software or otherwise arising out of the use of the Shore Power Software. ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT WITH REGARD TO THE SHORE POWER SOFTWARE.

12. APPLICABLE LAW. This EULA is governed by the laws in force in the State of California; and, in respect of any dispute which may arise hereunder, Vendor consents to the jurisdiction of any United States District Court in the state of California.

13. SEVERABILITY. If any provision of this EULA is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.

AGREED:

COCHRAN, INC:



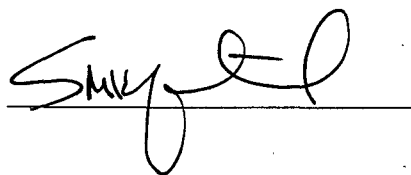
Signature

Name Leeanne Cochran

Title CEO  
Address 12500 Aurora Ave N  
Seattle, WA 98133

Date 8/14/09

SAN DIEGO UNIFIED PORT DISTRICT



Signature

Name STEPHEN M. KIRKPATRICK

Title CHIEF ENGINEER  
Address 3165 PACIFIC HWY  
SAN DIEGO CA 92161

Date 9-2-09

