

SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

IMPORTANT -- READ CAREFULLY: By clicking the "Yes" button, the user ("You") agree(s) to be bound by the terms of this License and Maintenance Agreement ("Agreement"). If You do not agree to the terms of this Agreement, You must promptly return all copies of the Software and accompanying Documentation to JDA Software, Inc. ("JDA") at the address on the Ordering Document to receive a refund or credit. The terms and conditions and those on any Ordering Document between You and JDA form the Agreement.

I. DEFINITIONS

"Documentation" means JDA's on-line user instructions and/or functional specifications, if applicable. The user instructions and functional specifications may be in electronic format within the Standard Software.

"Software" means the Standard Software, Updates, Documentation and any portion of the foregoing.

"Standard Specifications" means the functional specifications described in the Documentation.

"Standard Software" means the unmodified computer software, in object code form only, described in an Ordering Document signed by You and JDA.

"Updates" means all enhancements, program temporary fixes or patches, if any, to the Standard Software that are provided by JDA, when and if available, to its supported customers. Updates do not include products, features and modules that are separately marketed by JDA for an additional fee.

Terms not otherwise defined herein shall have the meanings given to them in the Ordering Document.

II. LICENSE

Subject to the terms and conditions of this Agreement and the Ordering Document, JDA grants You a nonexclusive, nontransferable license to use the Software in machine readable form in the Territory, solely for Your internal data processing operations for the duration of the License Term. If You license the Software for evaluation or demonstration use, such use shall be for non-commercial use only and You must not use the Software after the end of the License Term. Each copy of the Standard Software is restricted to residence and use on one single computer or workstation.

If, after the Effective Date, JDA grants You the right to make additional copies of the Standard Software, or delivers to You additional software (including but not limited to Updates), such software and any related Documentation will automatically be incorporated herein and form part of the Software. This provision will operate unless otherwise expressly agreed in writing by You and JDA at the time such additional rights are granted.

You may: use the Standard Software in a local area network or other multiprocessor

environment, provided You have paid the applicable fee and are authorized to do so by an Ordering Document; and make a reasonable number of copies of the Software and Documentation as is necessary to use the Software as authorized and limited pursuant to the applicable Ordering Document.

Except as expressly authorized herein, and as and to the extent specifically authorized under applicable law, You will not copy, translate, rent, lease, sublicense or otherwise transfer the Software; cause or permit reverse compilation or reverse assembly of all or any portion of the Software, provided that upon Your written request, JDA will provide necessary interface information to achieve interoperability of the Software with independently created computer programs on payment of JDA's reasonable fee; provide information processing, computer service bureau, computer time sharing or similar services to any other party, or operate the Software with a third-party's data. No license, right or interest in any JDA (or JDA licensor's) trademark, trade name, or service mark is granted hereunder. Any rights not explicitly granted herein are expressly reserved by and to JDA.

You acknowledge that the Software and all related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations and the applicable export controls of the Territory. You will comply strictly with all legal requirements established under these controls, cooperate fully with JDA in any official or unofficial audit or inspection that relates to these controls and not export, re-export, divert or transfer, directly or indirectly, any such item or direct products thereof to any country that is embargoed by executive order, unless You have obtained the prior written authorization of JDA and the U.S. Commerce Department and the applicable regulatory body in the Territory. Where applicable, You will obtain all licenses required to import the Software into the Territory, clear the Software through local customs promptly upon their arrival into the Territory, and pay all customs duties and other charges assessed on such importation into the Territory.

You will affix, to each full or partial copy of the Software made by You, all copyright and proprietary information notices affixed to the original.

JDA shall have the right, no more than once during each 6-month period, to request that You produce a written report, in a form satisfactory to JDA, of the scope of Your use of the Software, or to audit Your use of the Software. You will submit the report or agree to the audit no later than fifteen (15) days after the date of JDA's written request. If the report or audit reveals use of the Software beyond the scope permitted by this Agreement, You will promptly pay JDA the additional license fee for the additional use. JDA will bear the cost of the audit, except that if the audit reveals a use which would result in a license fee five percent (5%) or more in excess of the license fee payable under this Agreement, You will reimburse JDA for the reasonable cost of the audit.

III. MAINTENANCE

You may purchase JDA's standard maintenance services ("Maintenance"), which consist of the following: Updates to the Standard Software, when and if they become available; JDA's solution line telephone support; and JDA's solution line e-mail support. Any software, bug fixes, documentation, or other items provided as a part of Maintenance will automatically be licensed to You under this Agreement. Failure to purchase Maintenance for all modules of the Standard Software may result in incompatibility, for which You shall have no remedy and JDA shall have no obligation.

JDA will not provide any Maintenance for: Software which has been modified by You; Software modified by JDA for You, except as otherwise agreed in writing; problems caused by software not provided by JDA; equipment malfunction; or issues which have been addressed in an Update that You have elected not to apply.

Maintenance begins on the first day of the month after the Effective Date of the Ordering Document for an initial period of twelve (12) consecutive calendar months. After the initial period, Maintenance shall continue for consecutive annual renewal periods, unless canceled by either party on thirty (30) days' written notice prior to the beginning of the next renewal period. In the event that different components are on different billing cycles, JDA may consolidate and prorate at the time of selection of additional Maintenance.

A separate Maintenance fee is applicable to each copy of the Standard Software, including copies which You are authorized to make. You will not distribute or use any information or benefits obtained as a result of Maintenance to or for the benefit of any Standard Software for which the current Maintenance fee has not been paid. If this Agreement is terminated other than as a result of a material breach of this Agreement by JDA, and You thereafter desire to reinstate Maintenance, You must pay a reinstatement fee equal to one hundred fifty percent of the maintenance fee that would have been due during the period during which Maintenance was not provided.

IV. SERVICES

If You purchase services from JDA, including, without limitation, loading or installing the Standard Software, a business application analysis, programming services, training services, and/or data conversion services, the provisions to said services will be governed in detail by a separate, signed written services agreement.

V. LIMITED SOFTWARE WARRANTY, INDEMNIFICATION, DISCLAIMERS, LIMITATIONS

JDA warrants that the Standard Software will perform substantially in accordance with the Standard Specifications for a period of 90 days from the Effective Date (the "Warranty Period"). JDA's sole obligation for breach of this limited warranty is to repair or replace, at JDA's option, the defective Standard Software with one (1) copy of conforming Standard Software in a timely manner, provided You notify JDA of the deficiency within the Warranty Period, and have installed all Updates provided by JDA. The limited warranty set forth above will be null and void upon modification of the Standard Software by any party other than JDA and not approved in writing by JDA, or Your material breach of this Agreement. If You have licensed the Standard Software for evaluation or demonstration purposes, the Standard Software is provided to You "as is" without any warranty whatsoever.

JDA will defend, indemnify and hold You harmless against a claim that Your authorized and proper use or possession of the Software infringes a valid copyright of a third party in the Territory provided that: You notify JDA in writing within thirty (30) days of the claim; JDA has sole control of the defense and all related settlement negotiations; and You provide JDA with the assistance, information, and authority reasonably necessary to perform the above. JDA will have no liability for any claim of infringement resulting from: Your use of a superseded or altered release of some or all of the Software if infringement would have been avoided by the use of a subsequent unaltered release of the Software which is provided to You, or any information, design, specification, instruction, data, or Software not furnished by JDA.

If some or all of the Software is held or is believed by JDA to infringe a third party's copyright, JDA will have the option, at its expense, to either: modify the Software to be non-infringing while providing functionally equivalent performance; obtain for You a license to continue using the Software; or require that You return the infringing Software and all rights thereto, in which case this Agreement will terminate as to the infringing Software and You will be entitled to recover the fees paid by You for that portion of the Software depreciated over a five (5) year straight-line depreciation schedule from the Effective Date. THE FOREGOING PROVISIONS OF THIS PARAGRAPH CONSTITUTE THE ENTIRE LIABILITY AND THE EXCLUSIVE REMEDY FOR ANY CLAIM THAT THE SOFTWARE INFRINGES UPON OR MISAPPROPRIATES ANY INTELLECTUAL PROPERTY RIGHT IN THE TERRITORY. THE PRICES AND OTHER CHARGES CONTEMPLATED UNDER THIS AGREEMENT ARE BASED ON THE LIMITED WARRANTY, DISCLAIMER AND LIMITATION OF LIABILITY SPECIFIED IN THIS AGREEMENT AND SUCH CHARGES WOULD BE SUBSTANTIALLY HIGHER IF ANY OF THESE PROVISIONS WERE UNENFORCEABLE.

JDA DOES NOT MAKE ANY, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, CONDITIONS AND REPRESENTATIONS OTHER THAN THE WARRANTIES, CONDITIONS AND REPRESENTATIONS EXPRESSLY MADE IN THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OR ARISING BY USAGE OF TRADE OR COURSE OF DEALING, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND NON-INFRINGEMENT. JDA DISCLAIMS ANY WARRANTY AND DOES NOT REPRESENT THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE SOFTWARE WILL MEET ALL OF YOUR REQUIREMENTS. THE REMEDIES SET FORTH HEREIN WILL BE YOUR SOLE AND EXCLUSIVE REMEDIES.

You may use certain third party software or equipment in conjunction with the Software at your own risk. JDA MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE QUALITY, CAPABILITIES, OPERATIONS, PERFORMANCE OR SUITABILITY OF THE THIRD PARTY SOFTWARE OR EQUIPMENT, INCLUDING THE ABILITY TO INTEGRATE SAME WITH THE SOFTWARE. THE QUALITY, CAPABILITIES, OPERATIONS, PERFORMANCE AND SUITABILITY OF THE THIRD PARTY SOFTWARE OR EQUIPMENT LIE SOLELY WITH YOU AND THE VENDOR OR SUPPLIER OF SUCH THIRD PARTY SOFTWARE OR EQUIPMENT, AS THE CASE MAY BE.

THE AMOUNTS TO BE PAID TO JDA UNDER THIS AGREEMENT DO NOT INCLUDE ANY ASSUMPTION OF RISK AND JDA WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR (i) ECONOMIC, INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, WHETHER CLAIMED UNDER CONTRACT, TORT, BREACH, FAILURE OF WARRANTY OR ANY OTHER LEGAL THEORY OR (ii) LOSS OF OR DAMAGE TO YOUR DATA OR PROGRAMMING. THE MAXIMUM AGGREGATE LIABILITY OF JDA FOR ALL CLAIMS UNDER THIS AGREEMENT WILL BE ONE HUNDRED PERCENT (100%) OF THE FEE RECEIVED BY JDA FROM YOU FOR THE PRODUCT OR SERVICE WHICH IS THE SUBJECT OF SUCH LIABILITY.

THE WARRANTIES MADE IN SECTION V OF THIS AGREEMENT EXTEND ONLY TO YOU AND YOUR PERMITTED ASSIGNS.

ANY ACTION AGAINST JDA PERMITTED UNDER THIS AGREEMENT AND NOT BROUGHT WITHIN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION ACCRUES

WILL BE DEEMED BARRED.

VI. BREACH, TERMINATION, SURVIVAL

Upon any failure by either party to perform or comply with any of its obligations under this Agreement, including the obligation to make payments under this Agreement or any other agreement between You and JDA when due, which breach is not cured within thirty (30) days of receipt of written notice, the non-breaching party will have the right, without waiving any right or remedy otherwise available, to cease performance until such failure is remedied. Upon the termination of this Agreement, JDA will have the right to take immediate possession of the Software to the extent permitted by applicable law and You will discontinue exercising any rights granted hereunder, deliver to JDA all Software then in Your possession or control, including, without limitation, all copies and duplicates in whatever form, and certify that all materials required to be delivered to JDA have been delivered to JDA. Termination of this Agreement will be without prejudice to any rights of either party against the other and such termination will not relieve either party of any of its obligations to the other existing at the time of termination. Provisions concerning the parties' rights and obligations which by the content of the provision operate after termination or which are necessary to enforce any right will survive termination of this Agreement. Without limiting the foregoing, all obligations of confidentiality and limitations on liability will survive termination of this Agreement for the duration of JDA's copyright in the Software.

VII. FEES

License Fees, Maintenance Fees, and Service Fees are payable by You as set forth on the applicable Ordering Document(s). Unless otherwise noted, any specified license fee is for a single copy of the Standard Software.

VIII. MISCELLANEOUS

This Agreement will be governed by the internal laws of the State of Arizona, without reference to its choice of law rules, excluding the United Nations Convention on Contracts for the International Sale of Goods. All terms and conditions of this Agreement shall be deemed enforceable to the fullest extent permissible under applicable law. If a provision of this Agreement is held invalid under any applicable law, such invalidity will not affect any other provision of this Agreement and such invalid provision shall be deemed modified to the extent necessary to make it valid and enforceable or, if such provision cannot be so modified, it shall be deemed deleted from this Agreement. References to any legislation in this Agreement shall include any statutory reenactment or modification thereof (whether before or after the date of this Agreement).

Except, at the option of either party, for the right to apply to a court of competent jurisdiction for equitable relief, any controversy or claim arising out of or related to this Agreement or in connection with a breach of this Agreement ("Claim") will be settled by binding arbitration in Phoenix, Arizona under the rules of the International Arbitration Rules of the American Arbitration Association in effect at the time such Claim is submitted to arbitration, as modified by this Paragraph. The arbitrator(s) selected to arbitrate such Claim will be selected from a panel of persons having experience with and knowledge of the computer software business. Such arbitrator(s) will not, in any event, have any authority to make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The arbitral award may be entered as a judgment and enforceable by any court of competent jurisdiction.

You will reimburse JDA for all costs incurred in collecting delinquent payments of money owed under this Agreement, including but not limited to reasonable attorneys' fees. In addition to the foregoing, the prevailing party in any arbitration or litigation regarding a Claim or a claim for equitable relief, will be entitled as a matter of right and not within the discretion of the arbitrator or judicial officer, to recover its costs and expenses including, without limitation, attorneys' and witness' fees.

The failure of either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

If the performance of either party is delayed or prevented at any time due to circumstances beyond its control, including, without limitation, those resulting from labor disputes, fire, floods, riots, civil disturbances, weather conditions, control exercised by a governmental entity, unavoidable casualties or acts of God or a public enemy, performance will be excused until such condition no longer exists, except that this paragraph does not excuse the obligation of either party to make payments to the other party when due, nor does it excuse either party from its obligations set forth in this Agreement.

This Agreement and the Ordering Document(s) constitute the true will of the parties and the entire agreement between them concerning the Software, the license to use the Software, and the rights and obligations of the parties concerning the Software and supersede all previous proposals (both oral and written), negotiations, representations, commitments, writings, agreements, and all other communications between the parties. This Agreement may only be altered or modified by written instrument duly executed by both parties. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of any purchase order, the terms and conditions of this Agreement will control.

The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. You will not assign or sublicense, in whole or in part, any of its rights or obligations under this Agreement without the prior written consent of JDA, which consent will not be unreasonably withheld or delayed. Any prohibited assignment or sublicense of this Agreement will be null and void.

IX. CONFIDENTIALITY

The terms and conditions (including pricing) of this Agreement, along with any other information clearly marked "confidential" provided under this Agreement are confidential and will not be disclosed, orally or in writing by You to any third party without JDA's prior written consent. JDA represents that the Software contains valuable proprietary information, is confidential, and You will protect the Software with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which You use for Your information that You do not wish disclosed to the public. You may provide access to and use of the Software only to those third parties that provide services to You concerning Your use of the Software; have a need to use and access the Software for the exercise or performance of the rights and obligations granted or imposed under this Agreement; and have agreed to substantially similar nondisclosure obligations imposed by You as those contained herein.

Neither party will have any obligation of confidentiality with regard to information which is or becomes a part of the public domain through no act or omission of such party, was in such

party's lawful possession prior to the disclosure thereto and had not been obtained by such party either directly or indirectly from the disclosing party, is lawfully disclosed to such party by a third party without restriction on disclosure, is independently developed by such party, or is required to be disclosed by applicable law.

Both parties agree that if either party breaches any of its obligations of confidentiality, the other party may be irreparably harmed and in addition to all other remedies which such party may have, it may be entitled to relief in equity without the necessity of proof of actual damage.

Each party's obligations hereunder are in addition to, and not exclusive of, any and all of its other obligations and duties to the other party, whether express, implied, in fact or in law.

Send questions or comments to intactixweb@jda.com
Copyright (c) 2003 JDA Software Group, Inc. All rights reserved.