

SOFTWARE LICENSE AND SERVICES AGREEMENT

PLEASE READ THIS SOFTWARE LICENSE AGREEMENT CAREFULLY BEFORE PURCHASING THIS SOFTWARE. BY ACCESSING THIS SOFTWARE YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS LICENSE AGREEMENT. DO NOT INSTALL AND/OR USE THIS SOFTWARE IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT.

THIS SOFTWARE LICENSE AND SERVICES AGREEMENT (the "Agreement") is between JILL ADDISON, Inc., with its principal place of business at 9524 Sierra Vista Ave., La Mesa, CA 91941 ("JA"), and the customer completing the online Order Form ("Customer"), executed in conjunction with this Agreement.

The terms of this Agreement shall apply to each Program (as defined in Section 1.7 below) licensed by Customer hereunder and to all Services (as defined in Section 1.8 below) provided by JA to Customer under this Agreement. Customer and its Affiliates may place orders under this Agreement by signing or submitting Order Form(s) as defined in Section 1.6 below. When an Affiliate of the Customer identified above signs or submits an Order Form under the Agreement, the Affiliate shall be considered the Customer for purposes of such Order Form. The terms and conditions set forth in this Agreement and in any Order Form shall control in the event that there are different or additional terms set forth in any other purchase order submitted by Customer or acceptance form or invoice issued by JA. The terms and conditions of any Order Form shall incorporate the terms and conditions of this Agreement and shall control over any conflicting terms and conditions contained in this Agreement.

1. DEFINITIONS

- 1.1 "Affiliate(s)" shall mean, with respect to the Customer: (1) all business units and divisions of Customer, and (2) any entity controlled by, controlling, or under common control with Customer. Such entity shall be deemed to be an "Affiliate" only so long as such control exists. Upon request, Customer agrees to confirm the Affiliate status of a particular entity.
- 1.2 "JA Materials" shall mean any materials provided to Customer by JA in the course of performing Services other than Maintenance Services.
- 1.3 "Commencement Date" shall mean the date on which the Program(s) specified in an Order Form is first delivered to Customer.
- 1.4 "Documentation" shall mean JA's then current on-line help, guides, and manuals published by JA and made generally available by JA for the Programs. Documentation shall include any updated Documentation that JA provides with Updates.
- 1.5 "Maintenance Services" shall mean the services provided by JA pursuant to its then current maintenance service procedures.
- 1.6 "Order Form(s)" shall mean a document provided by JA to Customer by which Customer orders Program licenses and related Services and which is executed by the parties. Each Order Form shall incorporate this Agreement by reference.
- 1.7 "Program(s)" shall mean (i) the version of the JA software identified as Program(s) specified in an Order Form, and (ii) Updates to such Programs.
- 1.8 "Services" shall mean all services provided by JA under this Agreement, including Maintenance Services, the Programs, Documentation and JA Materials.
- 1.9 "Update(s)" shall mean subsequent releases of the Programs that JA makes generally available to its customers who are current on their Maintenance Services fees, and that (i) add new features, functionality, and/or improved performance; provided, however that Updates shall not include new or separate products which JA offers only for an additional fee to its customers generally, including those customers purchasing Maintenance Services.
- 1.10 "User(s)" shall mean the named or specified (by password or other user identification) individuals authorized by Customer to use Programs, regardless of whether the individual is actively using the Programs at any given time. Customer may replace authorized Users as necessary to reflect personnel changes provided that the number of individuals authorized to use the Programs does not exceed the maximum number of authorized Users at any time. User licensing is based on the number of Active Authorized Users stored within the licensed Program. Active Authorized Users shall not include test Users. The maximum number of Users that may use or access the Programs is specified in the Order Form. Users may include the employees of Customer or third parties; provided that such third party is limited to use of the Programs (i) only as configured and deployed by Customer, and (ii) solely in connection with Customer's internal business operations as conducted by or through such third party, including but not limited to the installation, administration or implementation of the Programs for Customer. Customer agrees that it is responsible for ensuring that any usage by its employees and any such third parties is in accordance with the terms and conditions of this Agreement.

2. LICENSE

2.1 License Grant. Subject to the terms and conditions of this Agreement, JA grants Customer the following worldwide, nontransferable, non-exclusive license to use the Programs and the Services, solely for the purpose of aiding Customer in their marketing efforts, (i) to use the Programs and subject to all of the terms of this Agreement; (ii) to use the Documentation as provided therein solely for purposes of supporting Customer's use of the Programs; (iii) to use the Programs that are development tools (i.e., the JA Tools Programs) solely in accordance with the Documentation to create materials that may be used solely with the Programs; (iv) to use the JA Materials solely for purposes of installing or operating the Programs; (v) to install, integrate, and implement the Programs or to have third parties do so for the Customer; (vi) (vii) to copy and to use, and to allow its Users to copy and to use, screen shots from the Programs licensed by Customer hereunder for the sole purpose of incorporating such screen shots into written end-user training materials prepared by Customer or a third party who is one of Customer's Users solely to train Customer's Users in the use of such Programs; (viii) to copy the Programs, and Documentation as reasonably necessary to support the maximum number of Users; and (ix) to make a reasonable number of additional copies of the Programs and Documentation solely for archival, emergency back-up, or disaster recovery purposes. With respect to any and all copies of the Programs and Documentation, Customer shall ensure that each copy contains all titles, trademarks, and copyright and restricted rights notices, and all such copies shall be subject to the terms and conditions of this Agreement. **THIS AGREEMENT IS NOT A SALE OF THE PROGRAM OR THE SERVICES.** JA retains exclusive title and ownership in the Programs and Services and all rights therein, except for those expressly granted to Customer by this Agreement.

2.2 License Restrictions. The rights granted in Section 2.1 are subject to the following restrictions: (i) Customer shall not sublicense, assign, transfer or alienate the Programs or Services; (ii) Customer may not use the Programs or Services as stand-alone applications; (iii) Customer may not reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code of the Programs or Services; provided that, if required under applicable law, upon Customer's request, JA shall provide information necessary for Customer to achieve interoperability between the Programs and other software for a nominal administrative charge; (iv) Customer shall not use the Programs that are development tools for general application development purposes; (v) Customer may not download any of the Programs or Services or data, other than explicitly downloadable forms, for any purpose, or otherwise convert the information and data contained in the Programs or Services, without first obtaining JA's express written permission; (vi) If Customer desires to sell, license or otherwise commercially exploit any of the data, information, or intellectual property contained in the Programs or Services, Customer must obtain a special, additional, express license from JA for that purpose; (ix) Customer may not modify, loan, distribute, or create derivative works, as that term is used in the copyright laws of the United States, anywhere in the world based upon the Programs or Services in whole or in part.

2.3 Retention of Rights. JA reserves all rights not expressly granted to Customer in this Agreement. Without limiting the generality of the foregoing, Customer acknowledges and agrees that: (i) except as specifically set forth in this Agreement, JA and its suppliers retain all rights, title and interest in and to the Programs and the Services, and Customer does not acquire any right, title, or interest to the Programs or the Services except as set forth herein, and (ii) any configuration or deployment of the Programs and the Services shall not affect or diminish JA's rights, title, and interest in and to the Programs and the Services. Nothing in this Agreement shall limit in any way JA's right to develop, use, license, create derivative works of, or otherwise exploit the Programs and the Services, or to permit third parties to do so.

2.4 Feedback. Any comments or materials sent to JA including feedback data, such as questions, comments, suggestions, or the like regarding the Programs and the Services (collectively "Feedback"), shall be deemed to be non-confidential. JA shall have no obligation of any kind with respect to such Feedback and shall be free to reproduce, use, disclose, exhibit, display, transform, create derivative works and distribute the Feedback to others without limitation. Further, JA shall be free to use any ideas, concepts, know-how or techniques contained in such Feedback for any purpose whatsoever, including but not limited to developing, manufacturing and marketing products incorporating such Feedback.

2.5 Residual Knowledge. JA retains the right to use Residuals in its business, but such right does not include a license to disclose Confidential Information of Customer in violation of this Agreement. "Residuals" mean general ideas, concepts, knowledge, skills, expertise, know-how and techniques relating to data processing, software, computer and other services related to the Programs and the Services, including the software and attendant documentation, that are retained in the minds of JA personnel.

3. EVALUATION OF THE PROGRAMS / COMPLIANCE

3.1 Evaluation of Programs. If Customer wishes to evaluate any Programs generally available from JA, Customer shall make a request to JA in writing. If JA agrees to permit such evaluation, JA shall confirm the duration and other terms of the evaluation in a letter referencing this Agreement provided, however, that Customer's right to use such Programs for no additional charge shall be: (i) subject to the terms of this Agreement, (ii) solely for the purpose of evaluating the Programs, and (iii) on an "AS IS" basis, without warranties or Maintenance Services of any kind.

3.2 Compliance. Customer shall be responsible to interface with their compliance department to get any needed approvals on these videos. JA will make reasonably-requested changes to the visual video content. This will most likely include disclaimer language that will be added as text. Any changes requested by your compliance department will be made solely by JA.

4. Services

4.1 Maintenance Services for Programs. Customer agrees to purchase Maintenance Services for the period specified in the applicable Order Form for each Program licensed pursuant to this Agreement.

4.2 Other Services. JA will provide other Services (other than Maintenance Services, which shall be provided as set forth in Section 4.1 above) subject to availability, in accordance with JA's Services price list in effect at the time such Services are ordered.

5. TERMINATION

5.1 Term. The initial term of this Agreement will begin on the Effective Date and remain in full force and effect for one (1) year. Upon expiration of the initial term, this Agreement will automatically renew for additional one (1) year renewal terms unless either party provides the other party written notice of non-renewal at least sixty (60) days prior to the expiration of the initial term or any renewal term.

5.2 Termination. Breach. A party may terminate this Agreement upon written notice in the event that the other party materially breaches any of its obligations (other than payment) under this Agreement and does not cure such breach within thirty (30) days following receipt of written notice from the non-breaching party specifying the breach. JA may terminate this Agreement upon written notice to Customer in the event Customer fails to pay any amount when due within five (5) days following Customer's receipt of written notice of such nonpayment.

5.3 Effect of Termination. If a Program license granted under this Agreement terminates, Customer shall (i) cease using the applicable Programs, Documentation, and related Confidential Information of JA, and (ii) certify to JA within thirty (30) days after termination that it has destroyed, or has returned to JA, the Programs, Documentation, related Confidential Information of JA, and all copies thereof, whether or not modified or merged into other materials. Upon termination of this Agreement, each party shall certify to the other party within thirty (30) days of termination that it has destroyed or returned to the other party all Confidential Information of the other party, and all copies thereof, whether or not modified or merged into other materials. Termination or expiration of this Agreement shall not preclude either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination or expiration relieve Customer's obligation to pay all fees that have accrued or are otherwise owed by Customer under this Agreement, including minimum transaction fees, for the remainder of the then-current term, which shall be due and payable upon

the early termination of this Agreement for any reason other than an uncured material breach by JA. In the event of termination of Maintenance Services, Customer shall be liable only for payment for Maintenance Services through the termination date and shall receive a pro-rata refund of any unused prepaid fees.

5.4 Survival. The parties' rights and obligations under Sections 2.2, 2.3, 5, 6.1, 7, 8 and 9 shall survive termination of this Agreement.

6. WARRANTIES AND REMEDIES

6.1 Indemnification.

A. Mutual Indemnity. Each party ("Indemnifying Party") hereby agrees to indemnify and hold harmless the other (including its affiliates) and their respective directors, officers, agents and employees (collectively, "Indemnified Party"), from and against all claims, liabilities, losses, damages, and expenses as incurred (including reasonable legal fees and disbursements of counsel), (collectively "Losses"), relating to or arising from any third party claims for personal injuries, death or damage to tangible personal and real property caused by the Indemnifying Party's willful misconduct.

B. Customer Indemnity. Excluding claims for which JA is obligated to indemnify Customer under Section 6.1C, Customer hereby agrees to indemnify and hold harmless the JA Indemnified Parties for all Losses relating to or arising out of Customer's access or use of the Programs and the Services, including any Excluded Claim and any Customer requested modifications to the Programs and the Services. The Customer shall not, however, be liable under the foregoing indemnity obligation to the extent that any such Losses are finally determined by a court of competent jurisdiction to have resulted primarily from the willful misconduct or fraudulent acts of JA in the performance of the Services.

C. JA Infringement Indemnity. JA will defend and settle at its own expense, and will indemnify Customer against any damages awarded to a third party against Customer to the extent that such damages result from a claim that the Programs and the Services (excluding all Customer requested modifications), when used for its intended purpose, infringes any U.S. patent issued as of the date of this Agreement, infringes any copyright or misappropriates any trade secret in any U.S. jurisdiction ("Infringement Claim").

D. JA Infringement Remedy. Should all or any part of the Programs and the Services (excluding all Customer requested modifications) become, or in JA's opinion be likely to become, the subject of an Infringement Claim, then Customer will permit JA, at JA' option and expense, to either: (i) procure for Customer the right to continue using the Programs and the Services; (ii) replace or modify the Programs and the Services so that its use becomes non-infringing, without materially impairing the functionality of the Programs and the Services; or (iii) terminate this Agreement or Customer's use of the Programs and the Services and refund the fees paid by Customer to JA for implementation of the Programs and the Services, provided that the amount of fees subject to the refund shall be amortized on a straight-line monthly basis over a three (3) year period. Sections 7.3 and 7.4 set forth Customer's sole remedy under this Agreement for any Infringement Claim.

E. Exceptions. JA's obligations set forth in Sections 6.1(C) and 6.1(D) shall not apply with respect to a claim which arises from any of the following (each an "Excluded Claim"): (i) the use of the Programs and the Services in a manner other than as permitted under this Agreement; (ii) use of the Programs and the Services in a manner other than as specified in the Documentation or as otherwise designed or intended; (iii) any unauthorized modification of or connection to the Programs and the Services (iv) the use, operation, or combination of the Programs and the Services with software, data, equipment, or materials not provided by JA; (v) Customer's continuance of allegedly infringing activity after being informed of the infringement and provided with modifications that would avoid the alleged infringement; or (vi) materials, data, information, directions or specifications provided by or on behalf of Customer to JA.

F. General. An Indemnifying Party will provide indemnification only if (i) the Indemnified Party notifies the Indemnifying Party promptly upon learning that the

claim might be asserted (provided, that, failure to timely provide such notice shall not diminish the Indemnifying Party's indemnification obligation except to the extent the Indemnifying Party's ability to defend such claim is materially prejudiced by such failure or delay), (ii) the Indemnifying Party has sole control over the defense of the claim and (iii) the Indemnified Party provides the Indemnifying Party with all reasonable assistance, information, and authority necessary to perform the above. The Indemnifying Party may not settle a claim without the consent of the Indemnified Party, which shall not be unreasonably withheld, delayed or conditioned.

6.2 Limited Warranties and Disclaimers

A. Program Warranty. JA warrants for one (1) year from the Commencement Date that each Program will perform in all material respects the functions described in the Documentation.

B. Media Warranty. JA warrants for ninety (90) days from the Commencement Date that the media upon which JA delivers Programs to Customer will be free of defects in materials and workmanship under normal use.

C. Anti-Virus and Disabling Code Warranty. JA warrants that it shall use reasonable technical means to detect computer viruses. JA further warrants that the Programs as delivered by JA do not contain any virus or computer software code, routines or devices (other than as set forth in the Documentation) designed to disable, damage, impair, erase, deactivate, or electronically repossess the Programs or other software or data.

D. Disclaimers. JA does not warrant that (i) the Programs will meet Customer's requirements, (ii) the Programs will operate in combinations with other hardware, software, systems or data not provided by JA (except as expressly specified in writing by JA in the Documentation) which Customer may select for use, (iii) the operation of the Programs will be uninterrupted or error-free, or (iv) all Program errors will be corrected; provided, however, that if Customer is current on Maintenance Services fees, JA shall be obligated to provide Maintenance Services. Notwithstanding any provision to the contrary, the Programs and the Services are distributed and provided "AS IS." THE WARRANTIES ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND JA AND ITS LICENSORS HEREBY DISCLAIM ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, QUALITY OF SERVICE AND ANY WARRANTIES ARISING FROM COURSE OF PERFORMANCE OR DEALING.

6.3 Exclusive Remedies. Customer must report in writing any breach of the warranties contained in Sections 6.2A, 6.2B, 6.2C and 6.2D to JA during the relevant warranty period, and Customer's exclusive remedy and JA's entire liability for any breach of such warranties shall be as set forth below:

A. Program Warranty. To use its commercially reasonable efforts to correct or provide a workaround for reproducible Program errors that cause a breach of this warranty, or if JA is unable to make the Program operate as warranted within a reasonable time considering the severity of the error and its impact on the Customer, Customer shall be entitled to return the Program to JA and recover the fees paid to JA for the Program license and any Services that directly relate to the Program license.

B. Media Warranty. The replacement of the defective media.

C. Anti-virus Warranty. The immediate replacement of all copies of the affected Programs in the possession of Customer with copies that do not contain such virus or disabling code. In addition, JA agrees to use commercially reasonable efforts to assist Customer in reducing the effects of such virus, if any, on the Programs.

7. LIMITATION OF LIABILITY

7.1 Exclusion of Consequential Damages. EXCEPT FOR BREACHES OF SECTION 9.1 HEREIN, IN NO EVENT SHALL CUSTOMER, JA, OR JA'S SUPPLIERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, provided however, that in the event Customer makes unauthorized copies of the Programs, JA shall be entitled to recover the full amount of any license fees that would relate to such copies.

7.2 Limitation of Direct Damages. Except for JA's obligations to indemnify Customer under Section 6.1, or for any breach of its Nondisclosure obligations

under Section 9.1, the aggregate and cumulative liability of JA and its suppliers for damages hereunder shall in no event exceed the amount of fees paid by Customer under this Agreement for the twelve (12) month period preceding the event giving rise to the claim, and if such damages relate to particular Program(s) or Services, such liability shall be limited to fees paid for the relevant Program(s) or Services giving rise to the liability. Except for its obligations to indemnify JA under Section 6.1, or any breach of the License Grant (Section 2.1), the License Restrictions (Section 2.2), its Payment Obligations (Section 8.1), and its Nondisclosure Obligations (Section 9.1), Customer's aggregate and cumulative liability for damages hereunder shall in no event exceed the amount of fees paid by Customer under this Agreement for the twelve (12) month period preceding the event giving rise to the claim.

8. PAYMENT PROVISIONS

8.1 Payments. In consideration of the license granted herein, Customer agrees to make the license fee payments set forth in Order Forms, which payments shall be nonrefundable and irrevocable except as otherwise provided in this Agreement. All payments hereunder shall be payable within thirty (30) days of Customer's receipt of JA's invoice unless otherwise set forth on the Order Form.

8.2 Taxes. Except to the extent that Customer has provided an exemption certificate, direct pay permit or other such appropriate documentation, JA shall add to each invoice any sales, use, excise, value-added, gross receipts, services, consumption and other similar transaction taxes however designated that are properly levied by any taxing authority upon the provision of the Programs and the Services, excluding, however, any state or local privilege or franchise taxes, taxes based upon JA's net income any taxes or amounts in lieu thereof paid or payable by JA in respect of the foregoing excluded items.

9. GENERAL TERMS

9.1 Nondisclosure. Each party may have access to information that is confidential to the other party ("Confidential Information"). Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. JA's Confidential Information shall include, but not be limited to, the Programs and Services, Documentation, JA Materials, formulas, methods, know how, processes, designs, new products, developmental work, marketing requirements, marketing plans, customer names, prospective customer names, and the terms and pricing under this Agreement, regardless of whether such information is identified as confidential. Customer's Confidential Information shall include, but not be limited to, its software programs, formulas, methods, know-how, processes, designs, new products, developmental work, marketing requirements, marketing plans, customer names, and prospective customer names, regardless of whether such information is identified as confidential. Confidential Information includes all information received from third parties that either party is obligated to treat as confidential. The terms of this Section 9.1 shall govern the exchange of Confidential Information between JA and Customer, and between JA and any Affiliate of Customer who has signed an Order Form hereunder, in any meetings held for the purpose of exploring a potential business transaction between JA and Customer or its Affiliates.

A party's Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; (iv) is independently developed by the other party without use of or reference to the other party's Confidential Information. In addition, if Customer recommends to JA additional features, functionality, or performance that JA subsequently incorporates into the Programs, then with respect to such recommendations, Customer hereby (a) grants JA a worldwide, non-exclusive, royalty-free, perpetual right and license to use and incorporate such recommendations into the Programs, and (b) acknowledges that the Programs incorporating such new features, functionality, or performance shall be the sole and exclusive property of JA and all such recommendations shall be free from any confidentiality restrictions that might otherwise be imposed upon JA pursuant to this Section 9.1.

Further, this Section 9.1 will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; *provided, however*, that a party who has been subpoenaed or otherwise compelled by a valid law or court order to disclose Confidential Information (the "responding party") shall first have given sufficient and prompt written notice to the other party of the receipt of any subpoena or other request for such disclosure; and shall have made a reasonable effort to obtain a protective order requiring that the Confidential

Information so disclosed be used only for the purposes for which the order was issued. Notwithstanding the foregoing obligation of the responding party, nothing in this Section 9.1 shall limit or restrict the ability of the other party to act on its own behalf and at its own expense to prevent or limit the required disclosure of Confidential Information.

The parties agree not to make each other's Confidential Information available in any form to any third party (other than to a User who is not a direct competitor of JA) or to use each other's Confidential Information for any purpose other than in the performance of this Agreement. Customer shall not disclose the results of any performance tests of the Programs to any third party without JA's prior written approval. The parties agree to hold each other's Confidential Information in confidence and to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in breach of this Agreement. Each party acknowledges and agrees that, due to the unique nature of Confidential Information, there can be no adequate remedy at law for breach of this Section 9.1 or Section 2 hereunder, and that such breach would cause irreparable harm to the non-breaching party; therefore, the non-breaching party shall be entitled to seek immediate injunctive relief, in addition to whatever remedies it might have at law or under this Agreement.

This Section 9.1 constitutes the entire understanding of the parties and supersedes all prior or contemporaneous agreements, representations or negotiations, whether oral or written, with respect to Confidential Information.

9.2 Assignment. Neither this Agreement, nor any rights or obligations under it may be assigned by Customer without the written consent of JA, which consent shall not be unreasonably withheld. Any merger, consolidation, or other reorganization of Customer, the sale of all or substantially all of the assets of Customer, or the sale or other transfer of a fifty percent (50%) or more interest in the outstanding voting or other equity interest of Customer by any person, or group of persons acting in concert, shall constitute an assignment for the purposes of this section. Any attempt that is contrary to the terms of this section to assign this Agreement or to delegate or otherwise transfer in any manner any rights or obligations arising under it will be void.

9.3 Audit. At JA's written request, but not more frequently than annually, Customer shall furnish JA with a document signed by Customer's authorized representative verifying that the Programs and the Services are being used pursuant to the provisions of this Agreement and the applicable Order Form. Customer is responsible for implementing reasonable means to monitor its compliance with the terms of this Agreement. JA reserves the right to audit Customer's use of the Programs and the Services no more than once annually at JA's expense. JA shall schedule any audit at least thirty (30) days in advance. Any such audit shall be conducted during regular business hours at Customer's facilities and shall not unreasonably interfere with Customer's business activities. If such audit reveals that Customer has underpaid fees to JA, Customer shall promptly pay to JA such fees at the prices previously agreed to for such Services.

9.4 Governing Law. This Agreement and all matters arising out of or relating to this Agreement shall be governed by the laws of the State of California, excluding its conflict of law provisions.

9.5 Attorneys' Fees. In the event of any litigation of any controversy or dispute arising out of or in connection with this Agreement, its interpretation, its performance, or the like, the prevailing party shall be awarded reasonable attorneys' fees and expenses, court costs, and reasonable costs for expert and other witnesses attributable to the prosecution or defense of that controversy or dispute. In the event of a non-adjudicative settlement of litigation between the parties or a resolution of dispute by arbitration, the term "prevailing party" shall be determined by that same process.

9.6 Notices. All notices required to be sent hereunder shall be in writing and shall be deemed to have been given upon (i) the date sent by confirmed facsimile, (ii) on the date it was delivered by courier, or (iii) if by certified mail return receipt requested, on the date received, to the addresses set forth above and to the attention of the signatories of this Agreement and the relevant Order Form, or to such other address or individual as the parties may specify from time to time by written notice to the other party.

9.7 Severability. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.

9.8 Waiver. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment or breach of JA's proprietary rights in the Programs and the Services, no action, regardless of form, arising out of this Agreement may be brought by either party more than one year after the cause of action has accrued.

9.9 Force Majeure. Each party will be excused from performance for any period during which, and to the extent that, it or its subcontractor(s) is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond its reasonable control, and without its fault or negligence including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failures, and power failures.

9.10 Successors and Assigns. All provisions of the Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the respective successors and permitted assigns of JA and Customer.

9.11 Export Controls. Customer agrees to comply fully with all relevant export laws and regulations, including but not limited to the U.S. Export Administration Regulations (collectively, "Export Controls"). Without limiting the generality of the foregoing, Customer expressly agrees that it shall not, and shall cause its representatives to agree not to, export, directly or indirectly, re-export, divert, or transfer the Programs, Documentation, or any direct product thereof to any destination, company or person restricted or prohibited by Export Controls. In the event that Customer, only as expressly permitted by this Agreement, provides the Programs, Documentation or any direct product thereof to a third party located in any destination outside the country of delivery by JA, Customer shall ensure that it enters into a written agreement with such third party that protects JA's rights and interests to the same extent protected under this Agreement and specifies JA as a third party beneficiary. Customer agrees to provide a copy of such agreement to JA at JA's request and to assist JA at Customer's expense in enforcing JA's rights if JA is not recognized as a third party beneficiary in the applicable jurisdiction.

9.13 Right to Promote. JA will retain the right to use any and all footage created for promotional purposes, including posting Customer videos on Jill Addison Inc.'s website, YouTube channel, social media sites, or other internet platforms and displaying it during presentations or trade shows.

9.14 Relationship Between the Parties. JA is an independent contractor; nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties.

9.15 Entire Agreement. This Agreement, together with the attached exhibits that are incorporated by reference, constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement and such exhibits. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party. No other act, document, usage or custom shall be deemed to amend or modify this Agreement.

9.16 Electronic Execution. This Agreement shall be executed electronically via Customer's acceptance of Software License and Services Agreement (via on-line acknowledgement) when placing order via an Order Form. Customer agrees that this on-line acknowledgement shall be sufficient to bind the parties to the terms and conditions of this Agreement.

The Effective Date of this Agreement shall be the date the Order Form is executed.