

JESAP™ SOFTWARE License and Support Agreement

This JESAP™ SOFTWARE License and Support Agreement, hereinafter referred to as AGREEMENT, is made and entered into as of the dates set forth below by and between DB Squared, LLC, an Arkansas Limited Liability Company, hereinafter referred to as DB SQUARED, and

City of Jonesboro, Arkansas

hereinafter referred to as LICENSEE.

WITNESSETH:

WHEREAS, LICENSEE is desirous of licensing JESAP™ SOFTWARE from DB SQUARED and receiving support for the JESAP™ SOFTWARE and DB SQUARED is desirous of providing said licenses and support services to LICENSEE, pursuant to the terms and conditions more particularly described herein;

NOW THEREFORE, for and in consideration of the premises, the terms and conditions herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, DB SQUARED and LICENSEE hereby agree as follows:

- 1. Rates, Amounts and Taxes Applicable to this AGREEMENT.** The rates and amounts listed in this section constitute an offer by DB Squared that shall be null and void if not accepted by LICENSEE by the OFFER EXPIRATION DATE. Rates and amounts shown here do not include applicable federal, state or local taxes or any other type of tax which might be applicable to this agreement. Applicable taxes will be added at the time of invoicing.

The OFFER EXPIRATION DATE for this agreement shall be	10/15/2008
The EFFECTIVE DATE of this AGREEMENT shall be	10/7/2008
The EMPLOYEE COUNT on which this AGREEMENT is based is	500
The JESAP™ SOFTWARE License & Support Fee for 9/08-8/2009	\$15,000
The JESAP™ SOFTWARE License & Support Fee for 9/09-8/2010	\$12,500
The JESAP™ SOFTWARE License & Support Fee for 9/10-8/2011	\$12,500
The TERM OF THE AGREEMENT shall be	36 months
Training provided to LICENSEE at no additional cost shall be and be provided on line or in a regional training format	4 hours
All applicable taxes shall be	Added at Invoicing
The optional MARKET UPDATE FEE shall be and due upon completion of the market update (Fall – 2008)	\$3,000 per year
The optional JOHANSON GROUP CONSULTING FEE shall be and due upon invoice of services provided	\$150.00 per hour

2. Definitions

- 2.1 **"JESAP™ SOFTWARE"** means the object code version of the JOB EVALUATION AND SALARY ADMINISTRATION MODULE (Copyright © 2005 by DB Squared, LLC. All rights reserved), any UPDATES and UPGRADES thereto, and any related user guides, instructions, and reference materials provided to LICENSEE.
- 2.2 **"UPDATE"** means any subsequent minor modification of, or patch to, the JESAP™ SOFTWARE.
- 2.3 **"UPGRADE"** means any major new release of the JESAP™ SOFTWARE. The term UPGRADE does not include other MODULES.
- 2.4 **"MODULE"** means any software which constitutes a separate product offering by DB SQUARED.
- 2.5 **"JESAP™ METHODOLOGY"** means a methodology developed for the purpose of prescribing the process and structure for fairly and equitably determining job classification salary ranges and employee pay rates. The JESAP™ METHODOLOGY is proprietary to Johanson Consulting, Inc., d.b.a., Johanson Group, an affiliate of DB SQUARED.
- 2.6 **"LICENSEE"** means the legal entity which is a party to this AGREEMENT. It does not include subsidiaries of LICENSEE or other third parties. For the purposes of this AGREEMENT, the term "third party" means anyone other than LICENSEE.
- 2.7 **"EMPLOYEE COUNT"** means the number of employees on which this AGREEMENT is based. Fees for this AGREEMENT are based on this count.

3. Licenses

- 3.1 **JESAP™ SOFTWARE License.** DB SQUARED hereby grants LICENSEE a nonexclusive, nontransferable license to operate (but not to sublicense) the JESAP™ SOFTWARE on the computer platforms for which it was designed. Under this license, the JESAP™ SOFTWARE may be used with up to the number of employees specified in the EMPLOYEE COUNT in section 1 plus twenty percent.
- 3.2 **JESAP™ SOFTWARE License Termination.** DB SQUARED may terminate this JESAP™ SOFTWARE License if LICENSEE breaches this AGREEMENT. Upon termination of the license, LICENSEE shall cease using the JESAP™ SOFTWARE, and return to DB SQUARED or destroy all copies of the JESAP™ SOFTWARE, including copies in storage media, and any other JESAP™ confidential information, and provide DB SQUARED with written confirmation thereof. If this AGREEMENT is terminated for any reason prior to the end of the INITIAL TERM, the license will automatically terminate. Except as provided herein, if this AGREEMENT is terminated after the end of the INITIAL TERM, the license shall remain in force.
- 3.3 **Limitations on License.** LICENSEE may not: (a) disassemble, reverse engineer, decompile, modify, translate or create derivatives of the JESAP™ SOFTWARE; (b) operate the JESAP™ SOFTWARE in connection with any methodology other than the JESAP™ METHODOLOGY for which it was designed; or (c) permit any access to, or use of, the JESAP™ SOFTWARE by any third party. If LICENSEE violates provision (a) above, LICENSEE hereby quitclaims and assigns all intellectual property rights arising therefrom to DB SQUARED, and shall take all necessary steps to perfect DB SQUARED'S title therein. No rights are granted except as expressly set forth in this AGREEMENT, and no right or forbearance may be construed under any theory of implication, estoppel or otherwise.
- 3.4 **Ownership of JESAP™ SOFTWARE and JESAP™ METHODOLOGY.** The JESAP™ SOFTWARE and JESAP™ METHODOLOGY are owned by DB SQUARED and/or its affiliates. This AGREEMENT does not confer any ownership of the JESAP™ SOFTWARE or the JESAP™ METHODOLOGY to LICENSEE.

4. Support and Training

- 4.1 **Generally.** DB SQUARED will provide the following support for the JESAP™ SOFTWARE licensed hereunder, in accordance with DB SQUARED'S standard software support policies, as may be amended by DB SQUARED from time to time in its sole discretion: (a) JESAP™ SOFTWARE UPDATES AND UPGRADES; (b) telephone and/or e-mail consultation on use of the JESAP™ SOFTWARE and JESAP™ METHODOLOGY; and (c) assistance in error isolation and correction.
- 4.2 **LICENSEE Support Obligations.** LICENSEE agrees to install UPDATES in a timely manner. LICENSEE agrees that if it does not comply with the provisions of this paragraph, it does so at its own risk. LICENSEE agrees to test and verify any suspected error or defect in the JESAP™ SOFTWARE and to report such errors or defects to DB SQUARED in a timely manner. Upon request, LICENSEE agrees to provide DB SQUARED with reasonable assistance in reproducing such errors or defects.
- 4.3 **Limitations.** DB SQUARED'S support is limited to the JESAP™ SOFTWARE and JESAP™ METHODOLOGY, and does not cover hardware, operating systems, or third party software.
- 4.4 **Training.** DB SQUARED will provide training on the use of the JESAP™ SOFTWARE AND JESAP™ METHODOLOGY to LICENSEE as specified in section 1 of this AGREEMENT.
- 4.5 **Market Updates.** If LICENSEE has elected in section 1 to receive market updates, then 1) DB SQUARED agrees to provide market updates to LICENSEE once per year during the term of this AGREEMENT, and 2) LICENSEE agrees to provide salary data to DB SQUARED once per year during the term of this AGREEMENT. LICENSEE understands that said salary data will be included in a study which will be made available to clients of DB SQUARED and/or its affiliates and that LICENSEE is not entitled to remuneration for the use of said salary data. DB SQUARED agrees that it will make said salary data available only in a consolidated form using market averages and that it will not publish the details of any specific LICENSEE'S salary data. Salary data to be provided to DB SQUARED by LICENSEE shall include the following: job titles used by LICENSEE, salaries associated with employees having said job titles and points associated with said job titles. Salary data will not include employee names.
- 4.6 **UPDATES and UPGRADES.** LICENSEE shall be entitled to UPDATES and UPGRADES to the JESAP™ SOFTWARE only as long as 1) this AGREEMENT remains in force, 2) the LICENSEE has not been notified that they are in breach of this AGREEMENT, and 3) all fees which are due to DB SQUARED from LICENSEE have been paid.

5. Fees and Timing of Payments

- 5.1 **JESAP™ SOFTWARE License Fee.** The Software License Fee is based on the EMPLOYEE COUNT specified in section 1 and is a one-time fee which is due and payable at the signing of this AGREEMENT. This fee is non-refundable.
- 5.2 **JESAP™ SOFTWARE Support Fee.** The Software Support Fee is based on the EMPLOYEE COUNT specified in section 1 and is a monthly fee which is due and payable each month prior to the beginning of the month in which support is rendered.
- 5.3 **MARKET UPDATE FEE.** The MARKET UPDATE FEE is based on a flat dollar amount as specified in section 1 and is a monthly fee which is due and payable each month prior to the beginning of the month during the life of this AGREEMENT. If no MARKET UPDATE FEE is charged to LICENSEE, then no market update service will be provided to LICENSEE under this AGREEMENT.

6. Term and Termination of AGREEMENT

- 6.1 **Term.** This AGREEMENT will take effect upon the date specified above and will remain in effect for a minimum amount of time referred to as the INITIAL TERM of the AGREEMENT, as specified in section 1 of this AGREEMENT, after which the AGREEMENT will remain in force on a month to month basis until such time as the AGREEMENT is terminated by either party.
- 6.2 **Termination.** Either LICENSEE or DB SQUARED may terminate this AGREEMENT upon completion of the INITIAL TERM by a thirty (30) day written notice to the other party. DB SQUARED may terminate this AGREEMENT at any time if LICENSEE breaches this AGREEMENT and fails to cure such breach within thirty (30) calendar days following notice of such breach.
- 6.3 **Survival of Obligations.** The following provisions will survive termination of this Agreement for any reason: (a) Sections 3.3, 4.3, 7.1, 7.2, 8.2, 8.3, 8.4 and 9 (all paragraphs); and (b) any provision that expressly indicates it will survive.

7. Confidentiality and Proprietary Notices

- 7.1 **Nondisclosure and Nonuse.** The JESAP™ SOFTWARE, the JESAP™ METHODOLOGY, and the details of the use, operation and performance thereof, are confidential to DB SQUARED and its affiliates. To the extent the analyses and outputs produced by the JESAP™ Software are or become subject to laws and regulations pertaining to privacy, consumer information, or otherwise, they may constitute confidential information of LICENSEE's salary administration program. LICENSEE may allow its employees and contractors ("personnel") access to confidential information provided that: (a) such access is limited to a "need to know" basis; (b) all such personnel are bound under confidentiality and non-use restrictions substantially similar to those contained herein; and (c) upon termination of any personnel, such personnel no longer retain access to any confidential information. LICENSEE may not use or disclose to any third party any confidential information associated with the JESAP™ SOFTWARE or the JESAP™ METHODOLOGY except as permitted by this AGREEMENT or as authorized by the prior written consent of DB SQUARED.
- 7.2 **Proprietary Marks.** LICENSEE agrees not to alter, change, or remove from the JESAP™ SOFTWARE any proprietary mark of DB SQUARED or its affiliates, including, patent, copyright, trade secret, trademark, or other intellectual property right notices.

8. Warranty; Indemnification

- 8.1 **Warranties.** DB SQUARED warrants, during the term of this AGREEMENT, that: (a) the media on which the JESAP™ SOFTWARE is delivered, if any, is free from defects in workmanship and materials; and (b) the JESAP™ SOFTWARE licensed hereunder shall operate substantially in accordance with the specifications contained in the documentation accompanying the JESAP™ SOFTWARE. LICENSEE'S sole remedy for breach of the warranties shall be, at DB SQUARED'S sole discretion: (i) replacement of the defective media; or (ii) modification of either the program code of the JESAP™ SOFTWARE or the associated documentation to bring them into compliance with each other.
- 8.2 **DISCLAIMER.** EXCEPT FOR THE PROVISIONS OF PARAGRAPH 8.1, NO REPRESENTATIONS OR WARRANTIES ARE MADE, OR MAY BE IMPLIED, WITH RESPECT TO THE SOFTWARE AND/OR ANY SERVICES PROVIDED HEREUNDER. DB SQUARED SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. DB SQUARED, ITS DEVELOPERS AND AFFILIATES WILL NOT BE HELD LIABLE FOR ANY LIABILITY OR OUTCOME FROM LICENSEE'S USE OF THE JESAP™ SOFTWARE AS A MANAGEMENT SALARY ADMINISTRATION TOOL.
- 8.3 **HOLD HARMLESS.** LICENSEE SHALL HOLD DB SQUARED, ITS DEVELOPERS, AND AFFILIATES HARMLESS FROM ANY LOSS OR CLAIM RESULTING DIRECTLY FROM AND ATTRIBUTABLE TO LICENSEE'S USE OR POSSESSION OF THE JESAP SOFTWARE AND SHALL REIMBURSE DB SQUARED FOR THE LOSS CAUSED SOLELY BY LICENSEE'S USE OR POSSESSION OF THE JESAP SOFTWARE.

- 8.4 **LIMITATION ON LIABILITY.** EXCEPT FOR BREACHES OF SECTION 3.3, or 7.1, NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OR INTERRUPTION OF BUSINESS, LOSS OF USE OR DATA, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
9. **General Terms**
- 9.1 **Assignment.** Licensee may not assign any right or delegate any obligation under this AGREEMENT, or transfer this AGREEMENT, without prior written consent of DB SQUARED, and any such attempt shall be void.
- 9.2 **Waiver.** The failure of a party to enforce its rights with respect to a breach hereunder shall not constitute a waiver with respect to any other occurrence of breach. Except as otherwise specified, the rights and remedies of a party under this AGREEMENT are in addition to any other rights or remedies available at law or in equity
- 9.3 **Governing Law.** This AGREEMENT will be governed by the laws of the State of Arkansas, U.S.A., without regard to choice of law/conflict of law principles. Each party submits to the jurisdiction of the federal and state courts in Washington County, Arkansas, and agrees that any action brought in connection with this AGREEMENT shall be exclusively brought in such courts.
- 9.4 **Severability.** In the event that any provision of this AGREEMENT is found to be invalid or unenforceable, it will be enforced to the extent permissible and the remainder of this AGREEMENT shall remain in full force and effect.
- 9.5 **Modifications.** Any modification of this AGREEMENT must be in writing and executed by an authorized representative of both parties.
- 9.6 **Construction.** The headers of this AGREEMENT are for convenience only. The verb "to include" (and all variations thereof) shall not be construed as a term of limitation, unless expressly indicated by the context in which it is used.
- 9.7 **Compliance with Applicable Laws.** LICENSEE shall at all times comply with all applicable laws and regulations in using the JESAP™ SOFTWARE, and shall defend and hold harmless DB SQUARED against any liability directly or indirectly resulting from LICENSEE's failure to comply with the foregoing.
- 9.8 **Notices.** LICENSEE shall send all communications to DB SQUARED as follows: 1) technical communications to Technical Director of Software; and 2) business and legal communications to General Counsel; at DB Squared, LLC, 2928 McKee Circle, Suite 119, Fayetteville, AR 72703, phone: 479-587-0151, fax: 479-521-5453.
- 9.9 **Complete Agreement.** This AGREEMENT represents the complete agreement between DB SQUARED and LICENSEE.

APPROVAL

AGENT ACKNOWLEDGES AND AGREES THAT: 1) AGENT IS AUTHORIZED TO ENTER INTO THE TERMS AND CONDITIONS OF THIS AGREEMENT ON BEHALF OF THE LICENSEE AND 2) BY EXECUTING THIS AGREEMENT, LICENSEE IS LEGALLY BOUND BY THE TERMS OF THIS AGREEMENT.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be duly executed by their respective authorized representatives.

DB Squared, LLC.

By Blair Johanson

Name BLAIR JOHANSON

Title Principal

Date 10-8-08

Witness Alanisa Wagner