

Acceptable Use Policy

By clicking "Log In", or using the software and/or tools created by ADS Advanced Data Services, Inc. ("Software"), you are agreeing on behalf of the entity licensing the software ("Company") that Company will be bound by and is becoming a party to this Acceptable Use Policy ("Agreement") and that you have the authority to bind the Company. If Company does not agree to all of the terms of this Agreement, do not select the "Log In" box and do not install or use the Software. Company is not authorized to use the Software unless and until it has agreed to be bound by this Agreement. The "Effective Date" for this Agreement shall be the day you check/submit the "Log In" box.

1.0 Subscription Rights, Restrictions and Ownership

1.1 Grant to Company.

For the term of Company's Subscription Period (defined below) and subject to Company's payment of the Subscription Fee, if any and defined below, ADS Advanced Data Services, Inc. ("ADS") grants Company: (i) the non-exclusive, non-transferable, non sub-licensable right to use the Software only for Company's own internal use by the number of Subscription Users for which Company has paid the applicable fee, if any; and (ii) the right to receive support pursuant to the Standard Support Services Plan or to purchase a Premium Support Services Plan.

A "Subscription User" means a full time employee, contractor or agent of the Company and its Affiliates authorized by Company to use the Software per the terms of this Agreement. The Software shall be deemed accepted upon ADS' activation of the Software for Company use. "Affiliate" means a company which is controlled, under common control or controlling the Company during the period of such control. For the purposes of this Agreement, "control" shall mean ownership, directly or indirectly, of more than 50% of the voting securities which vote for the election of the board of directors or other managing body. Company shall be responsible for any act or omission of those Subscription Users that are contractors and agents, Company's Affiliates and of Company's Affiliates' compliance with all of the terms of this Agreement. Any action or breach by any of Company's contractors, agents or Affiliates shall be deemed an action or breach by Company and Company will indemnify and hold ADS harmless from any and all breaches of this Agreement by its contractors, agents and Affiliates. Company waives all of those defenses that Company may have as to why Company should not be liable for Company's contractors', agents' or Affiliates' acts, omissions and noncompliance with this Agreement.

1.2 Restrictions.

Company shall not, directly or indirectly: (i) sublicense, resell, rent, lease, distribute, market, commercialize or otherwise transfer rights or usage to: (a) the Software, (b) any modified version or derivative work of the Software created by the Company or for the Company, or (c) any software, either modified or not, for any purpose including timesharing or service bureau purposes; (ii) remove or alter any copyright, trademark or proprietary notice in the Software; (iii) transfer, use or export the Software in violation of any laws or regulations of any government or governmental agency; (iv) use or run on any of Company's hardware, or have deployed for use, any copy or version of the Software; (v) reverse engineer, decompile or modify any encrypted or encoded portion of the Software; (vi) modify any open source version of ADS' software source code ("Original Code") to develop a separately maintained source code program (the "Forked Software") so that such modifications are not automatically integrated with the Original Code or so that the Forked Software has features not present in the Original Code. The Software includes modules that reports the number of authorized Subscription Users and permits ADS the ability to monitor certain usage of the Software ("Critical Control Software") which is fundamental to the business of ADS. Notwithstanding the terms of this Agreement, neither the Company nor the Subscription Users may modify any portion of the Critical Control Software. The violation of this prohibition shall be deemed a material breach of this Agreement and ADS may immediately terminate this Agreement. Notwithstanding anything to the contrary in this Agreement, during the Subscription Period the Company may continue

to use the Software initially provided under this Agreement with the subscription key and use differing databases, web servers or operating systems than the database, web server or operating system initially selected by Company on installation of the Software at no charge. The number of licensed copies may increase, as long as the combined usage does not exceed the number of Subscription Users for which Company has paid. The foregoing is limited to operating systems, web servers or databases supported by ADS as of the Effective Date and any additional operating systems, web servers or databases supported by ADS in the future.

1.3 Proprietary Rights.

ADS and its licensors shall own all right, title, and interest to the Software, technology, information, code or software provided to Company, including all portions, copies or modifications thereof. Except as expressly provided herein, no license of any kind are granted hereunder, whether by implication, or otherwise. ADS has no obligation to monitor the Software, but may do so and disclose information regarding use of the Software for any reason if the ADS, in its sole discretion, believes that it is reasonable to do so, including to: satisfy laws, regulations or governmental or legal requests; operate the Software properly; or protect itself and its customers. Likewise, ADS may cooperate with legal authorities and/or third parties in the investigation of any suspected or alleged crime or civil wrong.

1.4 Grant to ADS.

During any term of this Agreement, Company grants to ADS a non-transferable, non-exclusive, license to reproduce and display Company's logos, trademarks, trade names and similar identifying material so that ADS may refer to Company as a user of the Software should ADS so desire, such as on the ADS website, in press releases and in other marketing materials.

2.0 Fees and Payment

2.1 Subscription User Accounts:

Company shall designate a Subscription Administrator and notify ADS of the identity and contact information for said Subscription Administrator. The Subscription Administrator may add Subscription Users to the Company's subscription for the Software by placing an order with ADS. Company is responsible for all activity occurring under Company's Subscription User's accounts. Company shall notify ADS immediately of any unauthorized use of any password, account, copying or distribution of the ADS Technology. Subscription User accounts cannot be shared or used by more than one individual Subscription User but may be reassigned to new Subscription Users replacing former Subscription Users.

2.2 Subscription Fee – for paid services (*not applicable to services provided without a fee*).

Company shall pay to ADS an amount specified on ADS' e-commerce website for the number of Subscription Users that Company selects ("Subscription Fee"). Payment for the Subscription Fee shall be due and payable as set forth in ADS' e-commerce shopping cart. All fees paid to ADS are non-refundable. Company will also pay all taxes, including sales, use, personal property, value-added, excise, customs fees, import duties, stamp duties and any other similar taxes and duties, including penalties and interest, imposed by any United States federal, state, provincial or local government entity or any non-US government entity on the transactions contemplated by this Agreement.

3.0 Confidentiality

Company and ADS agree to maintain the confidentiality of any proprietary information received by the other party during, or prior to entering into, this Agreement that a party should know is confidential or proprietary based on the circumstances surrounding the disclosure, including, without limitation, non-public technical and business information ("Confidential Information") for a period of two (2) years after the termination of this Agreement. This section shall not apply to any publicly available or independently developed information or the open source version of the ADS software

licensed under the ADS Public License. The receiving party of any Confidential Information of the other party agrees not to use said Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. The receiving party shall protect the secrecy of and avoid disclosure and unauthorized use of the disclosing party's Confidential Information to the same degree that it takes to protect its own confidential information and in no event less than reasonable care.

4.0 Infringement and Disclaimer of Warranty

4.1 Infringement.

During any term of this Agreement, if any portion of the Software (except for third party software) is held by a court of competent jurisdiction to infringe any third party intellectual property rights and Company incurs a liability or expense as a result of such holding, then Company's sole remedy shall be, and ADS will, at its option: (i) obtain the right for Company to continue to use the Software consistent with this Agreement; (ii) modify the Software so that it is non-infringing; or (iii) replace the infringing component with a non-infringing component, or (iv) refund all of Company's money paid under this Agreement during the prior twelve (12) months and all of Company's rights and licenses under this Agreement shall automatically terminate.

4.2 As Is/Disclaimer of Warranty

To the maximum extent permitted by Texas law, except as expressly stated in this Agreement, the Software as provided by ADS is provided and licensed "AS IS" without warranty of any kind, either express, implied, statutory or otherwise, including, but not limited to the implied warranties of merchantability, non-infringement and fitness for a particular purpose. ADS does not warrant or guarantee that the use of the Software will be uninterrupted or error free.

5.0 Limitation of Liability

5.1 Force Majeure.

Except for the payment of fees, neither party shall be in breach of this Agreement due to failure of performance that arises out of causes beyond its reasonable control.

5.2 Disclaimer of Consequential Damages.

To the maximum extent permitted by applicable law, in no event will ADS be liable for any indirect, special, incidental, consequential or exemplary damages arising out of or in any way relating to this Agreement or the use of or inability to use the Software or documentation including, without limitation, damages for loss of goodwill, work storage, lost profits, loss of data, computer failure or any and all other commercial damages or losses even if advised of the possibility thereof and regardless of the legal or equitable theory (contract, tort (including negligence) or otherwise) upon which the claim is based.

5.3 Limitation of All Damages.

In no event shall ADS' liability hereunder for claims in the aggregate, exceed the amount that Company paid to ADS under this Agreement during the twelve (12) months immediately preceding the act or omission giving rise to the liability.

5.4 Failure of Essential Purpose.

The limitations set forth in this Section shall apply notwithstanding any failure of essential purpose of this Agreement or any limited remedy hereunder.

6.0 Term and Termination – for paid services (not applicable to services provided without a fee).

The initial term shall commence on the Effective Date of this Agreement and shall continue for a period of one (1) year unless a different term is specified by the parties at the time of purchase (the "Subscription Period"). Thereafter, the Agreement shall renew at the then-current Subscription Fees and Additional Subscription User Fees set forth at www.ADS.com for successive terms of one (1) year, unless either party gives written notice to the other of its intention not to renew at least sixty (60) days prior to the end of a term. Company shall remain obligated for all fees through the date of termination. Either party may terminate this Agreement prior to the end of a term if the other party materially breaches its obligations hereunder and, where such breach is curable, such breach remains uncured for thirty days following written notice of the breach. Company's obligation to make a payment of any outstanding, unpaid fees and to keep Confidential Information confidential and the terms of Section 1.2 shall survive termination or expiration of this Agreement.

7.0 Government Users

The Software under this Agreement is "commercial computer software" as that term is described in DFAR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms and this Agreement as specified in 48C.F.R. 12.212 (Computer Software) and 12.11 (Technical Data) of the Federal Acquisition Regulations ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

8.0 Jurisdiction

This Agreement is governed by Texas law without regard to conflict of law provisions. The federal and state courts located in Texas alone have jurisdiction over all disputes arising out of or related to this Agreement and the Software. User consents to the personal jurisdiction of such courts sitting in Texas with respect to such matters.

9.0 General

User agrees not to use or attempt to use the Software for any fraudulent, unlawful, harassing, or abusive purpose or so as to damage or cause risk to ADS, its business, reputation, employees, other Users, equipment or any third person. Improper uses specifically include (but are not limited to):

1. Violating any applicable federal, state, or local law, tariff, or regulation;
2. Posting or transmitting content Company does not have the right to post or transmit;
3. Posting or transmitting content that infringes a third party's trademark, patent, trade secret, copyright, publicity, privacy, or other right;
4. Posting or transmitting content that is unlawful, untrue, stalking, harassing, libelous, defamatory, abusive, tortuous, threatening, obscene, hateful, abusive, harmful or otherwise objectionable as determined in the ADS's sole discretion;
5. Attempting to intercept, collect or store data about third parties without their knowledge or consent;
6. Sending or attempting to send unsolicited messages, including without limitation, promotions or advertisements for products or services, "pyramid schemes," "spam," "chain mail" or "junk mail";
7. Impersonating any person or entity or falsely stating or otherwise misrepresenting your affiliation with a person or entity;
8. Forging headers or otherwise manipulating identifiers in order to disguise the origin of any material transmitted;

9. Transmitting any material that contains software viruses or any other “mal-code” designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
10. Interfering with or disrupting the Software or servers or networks connected to the Software, or disobeying any requirements, procedures, policies or regulations of networks connected to the Software;

Company agrees and certifies that neither the Software nor any other technical data received from ADS, nor the direct product thereof, will be exported outside the United States or re-exported except as authorized and as permitted by the laws and regulations of the United States and/or the laws and regulations of the jurisdiction, (if other than the United States) in which Company rightfully obtained the Software. Except as expressly provided herein, Company may not assign its rights or delegate its obligations under this Agreement, without the prior written consent of ADS. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. If any provision of this Agreement is found void and unenforceable, it will be replaced to the extent possible with a provision that comes closest to the meaning of the original provision. This Agreement and the documents referenced in this Agreement, constitutes the entire agreement between Company and ADS relating to its subject matter and all terms herein and super cede all prior or contemporaneous agreements or understandings. This Agreement may be modified or changed only in writing by authorized representatives of Company and ADS. Notices hereunder shall be in writing and addressed to Company at the address provided when purchasing this subscription, or, in the case of ADS, when addressed to webmaster@adsadsi.com.

If Company experiences a problem accessing or using the Software, the problem should be reported by sending an e-mail with details of the problem to webmaster@adsadsi.com within two (2) days of the date on which the problem occurred.