

SOFTWARE LICENSE AGREEMENT

This Software License Agreement (the "Agreement") is between **Titanium Software, Inc.** ("TITANIUM") and _____ ("LICENSEE"), to license the software product **Titanium Schedule** (the "SOFTWARE").

Effective date: _____ License number: _____
(Assigned by TITANIUM)

Total number of user licenses: _____
(Must be a multiple of 5)

TERMS AND CONDITIONS

- 1) **LICENSING FEES.** LICENSEE shall pay to TITANIUM licensing fees of:
First year: \$1,300 for the first 5 user licenses and \$200 for each additional block of 5 user licenses.
After the first year: \$1,075 per year for the first 5 users and \$40 for each additional block of 5 users.
TITANIUM reserves the right to change the licensing fees by providing LICENSEE with no less than 6 months prior notice.
- 2) **COPYRIGHT AND OWNERSHIP.** LICENSEE acknowledges that the SOFTWARE (including, but not limited to, any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the SOFTWARE), the accompanying printed materials, and all copies of the SOFTWARE are owned by TITANIUM, and that TITANIUM retains all rights to the SOFTWARE. LICENSEE acknowledges that the SOFTWARE is protected by copyright and other intellectual property laws and international copyright and other laws and treaties. The SOFTWARE is licensed, not sold. TITANIUM acknowledges that LICENSEE's data is distinct and separate from the SOFTWARE and is owned by LICENSEE.
- 3) **GRANT OF LICENSE.** TITANIUM grants to LICENSEE:
 - a) A non-exclusive, non-transferable right to install and use one copy of the SOFTWARE with one database for multiple, simultaneous users at a single center, department, or business unit.
 - b) This License for one (1) consecutive twelve (12) month period, which annual License shall automatically renew unless LICENSEE provides TITANIUM with written notice otherwise.
 - c) The right to terminate this License at the end of any License Term by sending TITANIUM a letter stating that LICENSEE is terminating this LICENSE and specifying the date LICENSEE will stop using and destroy all copies of the SOFTWARE.
 - d) Free updates to the SOFTWARE.
 - e) Access to phone and email support. TITANIUM support staff will make commercially reasonable efforts to solve any problem.
- 4) **RESTRICTIONS.** LICENSEE may not: (i) use the SOFTWARE other than solely for personal or internal business purposes; (ii) sell, rent, lease, sublicense the SOFTWARE, or otherwise transfer rights to the SOFTWARE; or (iii) copy, modify, reproduce, republish, distribute, display, or transmit for commercial, non-profit or public purposes all or any portion of the SOFTWARE, (including without limitation making the SOFTWARE available to users of the Internet); (iv) commercially exploit, reverse engineer, decompile, disassemble (or allow the same to occur to) all or any part of the SOFTWARE.
- 5) **LIMITED WARRANTY.** Except as expressly stated herein, TITANIUM makes no warranties (express, implied or statutory) with respect to the SOFTWARE and the accompanying written materials including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose. TITANIUM warrants that the SOFTWARE will operate in accordance with its specifications during the term of the License. In the event that the SOFTWARE fails to operate within reasonable specifications for more than twenty (20) consecutive business days, then TITANIUM will give LICENSEE a prorated refund or credit for those days. In no event will TITANIUM be liable to LICENSEE for any direct or indirect damages resulting from LICENSEE's use of or inability to use the SOFTWARE, including, but not limited to, lost savings, loss of data, or other special, incidental or consequential damages. This Limited Warranty is void if failure of the SOFTWARE results from accident, abuse, misapplication, improper or abnormal use or a virus. In no event, will TITANIUM's liability exceed the amount of the first year's licensing fee.

6) **INDEMNITY.** LICENSEE shall indemnify and hold TITANIUM harmless from and against any and all claims, losses, liabilities (including negligence, tort and strict liability), damages, judgments, suits and legal proceedings, including court costs, expenses and reasonable attorneys' fees, related to LICENSEE's use of the SOFTWARE; however in no event shall TITANIUM be liable for any special, indirect, incidental or consequential loss or damage, even if advised of the possibility of such potential loss or damage. TITANIUM shall indemnify, defend and hold LICENSEE harmless from and against any and all claims, damages, losses, liabilities, judgments, suits and legal proceedings arising from the SOFTWARE's violation of the intellectual property rights of another. In the event that LICENSEE hereunder is a public university or otherwise an institution which is part of a sovereign state government, then this paragraph shall be amended solely to the extent necessary to comply with such university or institution's state's governing laws regarding indemnification. Such statutory provision shall be attached hereto as an exhibit and thereby incorporated herein. In no event shall this indemnity provision be altered for default or statutory language not absolutely required by LICENSEE's governing state.

7) **NON-WAIVER.** Either party's failure at any time to require strict performance from the other of any of the provisions hereof shall not waive or diminish the waiving party's right thereafter to demand strict compliance therewith or with any other provision. Waiver of any default shall not waive any other default. Each party's rights hereunder are cumulative and not alternative.

8) **DEFAULT.**

- a) If LICENSEE fails to observe, keep or perform any provision of this License and cure any default hereunder within ten (10) days of written notice thereof, then TITANIUM or its agents shall have the right to exercise any one or more of the following remedies:
 - i) To sue for and recover damages for LICENSEE's default.
 - ii) To demand the destruction of all copies of the SOFTWARE in LICENSEE's possession. LICENSEE waives any and all costs and liabilities associated with loss of use of the SOFTWARE. Enforcement of this provision by TITANIUM shall not constitute a termination of this License and shall not relieve LICENSEE of its original obligations under this License, unless TITANIUM expressly notifies LICENSEE in writing.
 - iii) All additional rights and remedies available at law or in equity by reason of LICENSEE's default hereunder.
- b) If TITANIUM defaults in its obligations hereunder and fails to cure said default within ten (10) days hereunder (said default specifically excluding any situation otherwise addressed herein), then
 - i) LICENSEE shall have the right to pursue all rights and remedies available at law or in equity by reason of TITANIUM's default hereunder.
 - ii) TITANIUM shall have the right to demand the destruction of all copies of the SOFTWARE in LICENSEE's possession and demand written confirmation of the same.

9) **ENTIRE AGREEMENT AND MODIFICATION.** This Agreement represents the entire understanding of the parties with respect to the matters addressed herein may only be altered, amended or modified by a writing duly executed by the parties.

10) **SEVERABILITY.** If any provision hereof or any remedy herein provided for is invalid under any applicable law, such provision shall be inapplicable and deemed omitted. However, the remaining portions herein, including remaining default remedies, shall be given full force and effect in accordance with the intent of this document.

Licensee: _____

Licensor: Titanium Software, Inc.

Signature: _____

Signature: _____

Name: _____

Name: Karl Zercoe

Title: _____

Title: President

Date: _____

Date: _____