

Read the following License Agreement carefully before installing the software. By your opening the software, you agree to be bound by the terms and conditions set forth in this Agreement. If you do not agree to be bound by these terms and conditions, you must promptly return the software, postage pre-paid, to ProTracker Software, Inc., within thirty days of purchase. Upon receipt, your purchase price will be refunded in full. A full refund will not be paid if the software is returned more than thirty days after purchase.

### **The Term of This License is Limited**

#### **ProTracker Software, Inc. ProTracker Advantage License Agreement**

This License Agreement ("Agreement") is a binding legal contract between you (either an individual or a legal entity) and ProTracker Software, Inc. ("PSI"). By signing this Agreement OR downloading, installing, accessing or using the software and any associated documentation and Enhancements (as defined below) provided with this Agreement (collectively, the "Application") you will be bound by the terms of this Agreement. Unless a separate license agreement is provided by PSI at the time of delivery of an Application, this Agreement shall govern your use of each Application provided by PSI, whether now or in the future. If you do not agree to the terms of this Agreement, PSI is not willing to license any right to use or access the Application to you. In such event, you may not download, install, access, use or copy the Application, and you should promptly contact PSI for instructions with respect to a refund of fees paid by you, if any. For certain Applications, you must contact PSI at the address and telephone number provided below to obtain a registration number to activate the Application.

#### **APPLICATION ACCESS AND USE LICENSE**

The Application is licensed to you, not sold. Except for the limited license granted in this Agreement, PSI and its licensors retain all right, title and interest in the Application, all copies thereof, and all proprietary rights in the Application, including copyrights, patents, trademarks and trade secret rights.

#### **1. GRANT OF LICENSE.**

This Agreement grants you the following rights, as applicable:

- **License.** During the term of this Agreement, PSI grants you a revocable, nontransferable (except as provided below), nonexclusive license to use the object code version of the Application for the purpose of local installation and operation (e.g., installation and use on a computer at your business) for your internal use only. In connection with your license of the Application, you will be required to identify the name of the individual or entity who will be the designated licensee for the Application. Except as otherwise provided in this Agreement, only the designated licensee may use the Application.
- **Enhancements.** PSI reserves the right to upgrade, enhance, change or modify the Application at any time in its sole discretion ("Enhancements"). Any Enhancements made available to you by PSI, if any, will be subject to the terms of this Agreement, except to the extent that conflicting or more restrictive provisions are agreed upon in future agreements relating to such Enhancements.
- **Beta Applications.** PSI may designate certain Enhancements or new releases of an Application as "Beta Software." Such Beta Software will not be ready for use in a production environment. At this early stage of development, operation of the Beta Software may be unpredictable and lead to erroneous results. You acknowledge and agree that:
  - (i) the Beta Software is experimental and has not been fully tested;
  - (ii) the Beta Software may not meet your requirements;
  - (iii) the use or operation of the Beta Software may not be uninterrupted or error free;
  - (iv) your use of the Beta Software is for purposes of evaluating and testing the product and providing feedback to PSI;

(v) you shall inform your employees, staff members, and other users regarding the nature of the Beta Software; and

(vi) you will hold all information relating to the Beta Software and your use of the Beta Software, including any performance measurements and other data relating to the Beta Software, in strict confidence and shall not disclose such information to any unauthorized third parties.

Your use of the Beta Software shall be subject to all of the terms and conditions set forth herein relating to the Application. You shall promptly report any errors, defects, or other deficiencies in the Beta Software to PSI. Notwithstanding any other provision of this agreement, all beta software is provided "as is" and "as available," without warranties of any kind. You hereby waive any and all claims, now known or later discovered, that you may have against PSI and its suppliers/licensors arising out of your use of the Beta Software.

- **Transfer of License.** You may transfer the license and all copies of the Application to a third party, provided that: (i) notice of such transfer together with the written agreement of the transferee to comply with the terms and conditions of this Agreement is given to PSI at the time of such transfer, and (ii) you irrevocably delete the Application from your systems and all associated backup copies.
- **Term.** There are two types of licenses for PSI Applications:
  - (a) Term Licenses. If you purchase a term license, the term of this Agreement and the license granted to you is one (1) year from the first day of the month following the date the Application is delivered to you. This Agreement and the license to use the Application may be extended by your payment of an annual maintenance fee that will be invoiced at the end of the term of the license. Without the payment of the maintenance fee, the Application will automatically cease to function at the end of the term and the license granted will expire.
  - (b) Demo Licenses. If you receive the Application and documentation on a trial basis, this license is for a forty-two (42) day period only. The Application will cease to operate at the end of that time. Upon the payment of the term license fee, PSI will provide you with a registration code to restore operation of the Application.

## 2. LIMITATIONS ON LICENSE.

The license granted to you in this Agreement is restricted as follows:

- **Limitations on Copying and Distribution.** You may not copy or distribute the Application except to the extent that copying is necessary to use the Application for purposes set forth herein. You may make a single copy of the Application for backup and archival purposes. You may install the Application on an unlimited number of computers. The number of licenses for which you have paid a license fee determines the number of users who can use the Application concurrently.
- **Limitations on Reverse Engineering and Modification.** You may not reverse engineer, decompile, disassemble, modify or create works derivative of the Application. You may not alter or modify any disabling mechanism that may be resident in the Application.
- **Sublicense, Rental and Third Party Use.** You may not assign, sublicense, rent, timeshare, loan, lease or otherwise transfer the Application, or directly or indirectly permit any third party to use or copy the Application. You will keep any passwords or registration numbers associated with the use of the Application in strict confidence, and will not share such passwords or registration numbers with any third party. You will be solely responsible for all use of the Application made with your passwords and registration numbers, if any. If you desire to have a third party outsource vendor operate the Application on your behalf, before the vendor is provided with a copy of the Application, it must: (i) be approved by PSI in writing and (ii) agree to be bound by PSI's Outsource Vendor License Agreement.

- **Proprietary Notices.** You may not remove any proprietary notices (e.g., copyright and trademark notices) from the Application. You must reproduce the copyright and all other proprietary notices displayed on the Application on each permitted back-up or archival copy.
- **Use in Accordance with Documentation.** All use of the Application shall be in accordance with its then current documentation.
- **Daily Backups.** You retain full responsibility for data loss or corruption of data files. You agree to perform daily backups of the ProTracker Advantage database as a condition of this license agreement.
- **Compliance with Applicable Law.** You shall be solely responsible for ensuring that your use of the Application is in compliance with all applicable foreign, federal, state and local laws, rules and regulations, including but not limited to the Investment Advisers Act of 1940, and the rules and regulations of any self-regulatory organization of which you are a member and you shall make no representations regarding the compliance of the Application with any of the foregoing.
- **Confidentiality.** You shall maintain the Application and associated documentation in strict confidence and shall not disclose them or make them available to any unauthorized third parties.

### 3. MAINTENANCE FEES.

During the period for which you pay for Maintenance Fees, PSI will provide you with any Enhancements that PSI distributes to its other customers without additional charge. If PSI distributes any Enhancement as an option or new product for which it charges an additional fee, it will make such option or new product available to you on the same terms as it offers to other similarly situated customers. PSI will provide reasonable telephone support to assist you in resolving problems encountered in the use of the Application, in PSI's judgment, are attributable to the Application. Such support will be provided during PSI's normal business hours, Monday through Friday, excluding PSI's regularly scheduled holidays.

### 4. FEES.

You agree to pay the license fee and the annual maintenance fees required for the Application. License fees and annual maintenance fees are payable in advance at PSI's then current rates.

### 5. DISABLING MECHANISM.

You acknowledge and agree that the application may have a mechanism whereby PSI can disable the application. You agree that PSI may use any such mechanism in the event of expiration of this Agreement, including any trial period, or your breach of this Agreement.

### 6. TERMINATION.

- **Breach of Agreement.** Without prejudice to any other rights, PSI may immediately and without notice terminate this Agreement and all rights granted hereunder if you fail to comply with any of the terms and conditions of this Agreement.
- **Infringement Claims.** In the event of a claim of intellectual property infringement by any third party relating to the Application ("Infringement Claims"), PSI reserves the right to immediately terminate this Agreement and the rights granted hereunder. In such event, PSI shall refund a pro rata portion of any prepaid fees.
- **Termination for Convenience.** You may terminate this Agreement at any time by discontinuing use of the Application, complying with your termination obligations set forth below, providing PSI written notice, and returning the Application to PSI.

- **Licensee's Termination Obligations.** In the event of any expiration or termination of this Agreement for any reason, you must remove all copies of the Application and all of its components from all of your systems, and destroy all related media and documentation. Unless you return the Application without using it, as described in the introductory paragraph of this Agreement, you shall not be entitled to any refund (except as provided above relating to infringement claims) upon termination of the license, no matter what the reason.

## **7. LIMITED WARRANTY.**

PSI warrants the physical media and documentation, if any, provided with the Application to be free of defects in materials and workmanship under normal use for a period of ninety (90) days from the date you purchase the license of the Application. If PSI receives notification within the warranty period of defects in materials or workmanship, and such notification is determined by PSI to be correct, as your sole and exclusive remedy PSI will replace the defective media or documentation. All warranty claims not made in writing within the warranty period shall be deemed waived. The warranty provided in this Section is solely for your benefit and you shall have no authority to extend the warranty to any third party. PSI shall not be liable for failures caused by third-party hardware and software (including your own systems), misuse of the Application, or your negligence or willful misconduct. Do not return any product without having first obtained a return authorization number from PSI.

## **8. WARRANTY DISCLAIMER.**

Except as provided in Section 7 (Limited Warranty), the application and maintenance services are provided on an "as available," "as is" basis. To the maximum extent permitted by law, PSI and its licensors disclaim all warranties with respect to the Application and Maintenance Services, including, but not limited to, the implied warranties of non-infringement, title, merchantability, quiet enjoyment, quality of information, and fitness for a particular purpose. PSI does not warrant that the Application will meet your requirements, or that the operation of the Application will be uninterrupted or error-free, or that defects in the Application will be corrected. No oral or written information or advice given by PSI shall create any additional PSI warranties or in any way increase the scope of PSI's obligations hereunder.

The Application may be used to access and transfer information over the Internet. You acknowledge and agree that PSI does not operate or control the Internet and that:

- viruses, worms, Trojan horses, or other undesirable data or software; or
- unauthorized users (e.g., hackers) may attempt to obtain access to and damage your data, web sites, computers, or networks. PSI shall not be responsible for such activities. You are solely responsible for the security and integrity of your data and systems.

## **9. LIMITATION OF LIABILITY.**

To the maximum extent permitted by law, in no event shall PSI or its suppliers/licensors be liable to you or any third party for any special, incidental, consequential, punitive, or indirect damages, which shall include, without limitation, damages for personal injury, lost profits, lost data and business interruption, arising out of the use or inability to use the application, even if PSI has been advised of the possibility of such damages. In any case, the entire liability of PSI and its suppliers/licensors under this Agreement shall be limited to the initial license fee paid by you for the Application. You agree that you will have sole and complete responsibility for any decisions made or

actions taken by you in reliance upon the Application. You agree and acknowledge that the Application is not intended to supply tax, investment, financial planning, or legal advice.

Some states do not allow the exclusion of incidental or consequential damages, or the limitation on how long an implied warranty lasts, so some of the above may not apply to you.

#### **10. INDEMNITY.**

You agree to indemnify, defend and hold harmless PSI and its officers, directors, shareholders, agents, affiliates, and licensors from and against any and all third-party claims of any kind (along with attorney's fees and litigation costs) arising out of, resulting from, or in connection with your breach of this Agreement or your use or misuse of the Application.

#### **11. NO RECORDKEEPING.**

PSI expressly disclaims, and you acknowledge and agree that PSI and its directors, officers, employees, agents and affiliates shall not have, any responsibility for maintenance of the books and records, in whole or in part, of you or your affiliates, as may be required under federal, state, local and foreign laws and regulations, including but not limited to the Investment Advisers Act of 1940, the Investment Company Act of 1940 and the Securities Exchange Act of 1934, all as amended.

#### **12. GOVERNING LAW.**

This Agreement is governed by and construed in accordance with the laws of the State of New Hampshire, as applied to agreements entered into and wholly performed within New Hampshire between New Hampshire residents. This Agreement shall not be governed by the 1980 U.N. Convention on Contracts for the International Sale of Goods. Any action or proceeding brought by either party hereto shall be brought only in a state or federal court of competent jurisdiction located in Concord, New Hampshire and the parties submit to the in personam jurisdiction of such courts for purposes of any action or proceeding.

#### **13. PSI WEB SITE.**

Your access and use of any PSI web site, including [www.protracker.com](http://www.protracker.com), shall be subject to the terms and conditions of use posted on the web site. Any software, documentation, and other information downloaded from the web site shall be subject to the licenses provided with such material or, if no license is provided, the materials shall be treated as an Application under this Agreement and subject to all limitations and restrictions provided herein.

#### **14. GENERAL.**

This Agreement constitutes the entire understanding and agreement between PSI and you with respect to the transactions contemplated in this Agreement and supersedes all prior or contemporaneous oral or written communications with respect to the subject matter of this Agreement, all of which are merged in this Agreement. In particular, if you are a current licensee of the Application, this Agreement shall supersede your existing license agreement and that agreement shall be of no further force or effect. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by authorized representatives of both parties. In the event that any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree, the remainder of this Agreement shall remain valid and enforceable according to its terms. Any failure by PSI to strictly enforce any provision of this Agreement will not operate as a waiver of that provision or any subsequent breach of that provision. The following provisions shall

survive any termination or expiration of this Agreement: Sections 2 (Limitations on License), 6 (Termination), 8 (Warranty Disclaimer), 9 (Limitation of Liability), 10 (Indemnity), 12 (Governing Law), and 14 (General). PSI may assign any of its rights or obligations hereunder as it deems necessary. It is expressly understood and agreed that in the event any remedy hereunder is determined to have failed its essential purpose, all limitations of liability and exclusions of damages set forth herein shall remain in effect.

**15. AUTHORIZATION.**

By signing this Agreement OR by downloading, installing, accessing, or using the Application, you indicate that you have the authority to bind yourself and your organization to the terms of this Agreement.

AGREED AND ENTERED INTO as of the date written below.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

If you have any questions concerning this agreement, please contact:

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