

RightNow Technologies
Shrinkwrap Software License Agreement

PLEASE READ THIS LICENSE AGREEMENT BEFORE INSTALLING AND USING THE LICENSED SOFTWARE. BY INSTALLING AND USING THE SOFTWARE, YOU AGREE TO ALL THE TERMS OF THIS LICENSE AGREEMENT, INCLUDING ITS WARRANTY & DISCLAIMER PROVISIONS

1. LICENSE GRANT

(a) Rightnow grants Licensee an object code-only, non-exclusive, non-transferable license to use the object code version of the proprietary computer software identified on a Rightnow invoice ("the RNT Invoice"), and any subsequent revisions or modifications thereto furnished to Licensee by Rightnow ("the Software") and the user documentation provided by Rightnow for use with the Software (the "Documentation"), solely for Licensee's internal business purposes and subject to the terms of this License Agreement. Licensee may use the Software only on the number of databases and computers acting as Internet servers, listed on the RNT Invoice.

(b) Unless otherwise agreed in writing by the parties, Licensee shall be solely responsible for the installation of the Software. Licensee may copy the Software, in whole or in part, only as necessary in connection with (i) Licensee's installation thereof under this Agreement and (ii) Licensee's backup copies maintained for archival or emergency restart purposes. Licensee may also copy the Documentation only for its authorized use of the Software. The Software does not include licenses to any third party software, and Licensee will be responsible for obtaining licenses to third party software necessary to use the Software as described in the systems requirements section of the Documentation.

2. OWNERSHIP AND LIMITATIONS ON USE

(a) Licensee acknowledges that the Software and Documentation and all right, title and interest therein (including without limitation any copyright, patent, trade secret or other intellectual property right in and to the Software and Documentation) are the sole property of Rightnow and its suppliers and that Licensee receives no rights, title or interests in the Software or Documentation except as expressly set forth herein.

(b) Licensee shall not (i) sell, rent, lease, sublicense or otherwise transfer or distribute any copies of the Software or Documentation to any third parties; (ii) modify, translate, reverse engineer, decompile, or disassemble the Software (except to the extent applicable law specifically permits such activity) or modify the Documentation; (iii) create derivative works based upon the Software or Documentation; or (iv) alter, destroy or otherwise remove any proprietary notices or labels on or embedded within the Software or Documentation.

3. MAINTENANCE AND HOSTING SERVICES

(a) Rightnow shall provide to Licensee the support services listed on the RNT Invoice, and described in Appendix A. However, Rightnow is under no obligation to provide support to Licensee if Licensee is not using the then-current release or the immediately prior release. Licensee shall pay the maintenance fees set forth on the RNT Invoice.

(b) This paragraph shall apply only if the parties have agreed that Rightnow shall provide Licensee with access to web hosting services. Rightnow shall provide to Licensee access to an Internet web server for the hosting of an on-line technical support system (the "Webpages"), as described on the hosting appendix. Licensee shall pay the hosting fee set forth on the RNT Invoice. The hosting services are offered under the terms set forth on the hosting appendix.

(c) The support and hosting services are provided for the terms set forth in RNT Invoice.

4. FEES AND PAYMENTS

Licensee shall pay Rightnow the license, maintenance and hosting fees set forth on the RNT Invoice. The fees shall be payable net 30 days from the invoice date. Licensee shall pay a finance charge on any overdue payment hereunder of one and one-half per cent (1-1/2%) for each month or portion thereof that such payment is overdue, or the highest interest rate permitted by applicable law, whichever is the lower. Interest shall accrue daily and compounds monthly. Such fees do not include any taxes, and Licensee shall pay any sales, use, value added or other taxes or import duties (other than corporate income taxes payable by Rightnow) based on or due as a result of any amounts paid to Rightnow hereunder. Licensee shall bear all of Rightnow's costs of collection of overdue fees, including reasonable attorneys' fees.

5. TERM AND TERMINATION

The License Agreement starts on the invoice date and continues for the term identified on the RNT Invoice. Licensee may terminate this License Agreement for convenience at any time by destroying the Software, together with all copies and merged portions of the Software in any form. However, that shall not relieve Licensee of responsibility for continuing to make any payments due under this Agreement. Rightnow may terminate this License Agreement if Licensee breaches any term of this License Agreement and such breach is not cured within 30 days of written notice thereof. Upon expiration or termination of this Agreement, Licensee's rights and licenses hereunder shall cease and Licensee agrees to destroy the Software together with all copies, modification, and merged portions in any form. Sections 6, 7, 8, 9 and 11 shall survive expiration or termination of this Agreement.

6. WARRANTY AND DISCLAIMER

(a) Rightnow warrants to Licensee that: (1) the Software will function substantially as described in the Documentation for so long as Licensee is entitled to receive maintenance services hereunder; (2) Rightnow owns or otherwise has the right to license the Software and Documentation to Licensee under this Agreement; and (3) the media on which the Software and Documentation are delivered shall be free of physical defects.

(b) If there is a material breach of the above warranties, Rightnow's entire liability and Licensee's exclusive remedy shall be: (1) if the Software does not function substantially in accordance with the applicable Documentation, Rightnow shall, at its option, (i) modify the Software to conform to the Documentation, unless the Documentation is in error; or (ii) provide a reasonable workaround solution which will reasonably meet Licensee's requirements; (2) if the normal operation, possession or use of the Software by Licensee is found to infringe any third party U.S. intellectual property right or Rightnow believes that the Software is likely to do so, Rightnow may, at its option, (i) obtain a license from such third party for the benefit of Licensee; (ii) replace or modify the Software so that it is no longer infringing; or (iii) if neither of the foregoing is commercially feasible, terminate this Agreement with no further liability to Licensee; or (3) if the media are not free from physical defects, Rightnow shall replace the defective media with a replacement copy of the Software or Documentation, as applicable, at no additional charge to Licensee; provided, however, that Licensee shall have first returned all defective media to Rightnow.

(c) The remedies set forth above shall be Licensee's sole and exclusive remedies. Rightnow shall have no obligation hereunder for any Software that has been modified by Licensee or any third party or any Software other than the then-current release and the immediately prior release thereof. Rightnow shall have no obligation hereunder for errors, damage or problems caused by failure to provide a suitable operating environment, by any third party software, by accidental damage or by other matters beyond Rightnow's reasonable control.

(d) EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6(a), THE SOFTWARE IS PROVIDED WITH NO OTHER WARRANTIES OF ANY KIND, AND RIGHTNOW DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. RIGHTNOW DOES NOT WARRANT THAT THE SOFTWARE WILL BE VIRUS FREE OR THAT THE USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE.

7. LIMITATION OF LIABILITY

(a) RIGHTNOW SHALL NOT BE LIABLE UNDER THIS AGREEMENT TO LICENSEE OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST OR CORRUPTED DATA, LOST PROFITS, LOST BUSINESS OR LOST OPPORTUNITY), OR ANY OTHER SIMILAR DAMAGES UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY), EVEN IF RIGHTNOW HAS BEEN INFORMED OF THE POSSIBILITY THEREOF. LICENSEE ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE AND DOCUMENTATION NECESSARY TO ACHIEVE LICENSEE'S INTENDED RESULTS, AND FOR THE INSTALLATION, USE AND RESULTS OF THE SOFTWARE.

(b) RIGHTNOW'S TOTAL LIABILITY FOR ANY LOSS, COST, CLAIM OR DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID BY LICENSEE TO RIGHTNOW HEREUNDER DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LOSS, COST, CLAIM OR DAMAGES. THIS LIMITATION ON LIABILITY WAS AND IS AN EXPRESS PART OF THE BARGAIN BETWEEN RIGHTNOW AND LICENSEE AND WAS A CONTROLLING FACTOR IN THE SETTING OF THE FEES PAYABLE TO RIGHTNOW HEREUNDER.

8. CONFIDENTIALITY.

Licensee acknowledges that the Software contains valuable trade secrets which are the sole property of Rightnow, and agrees to use reasonable care to prevent other parties from learning of these trade secrets. Licensee will take all reasonable steps to prevent unauthorized access to or duplication of the Software. The obligations of this Section 8 shall not extend to any information that is or becomes publicly available (through no fault of the Licensee), or is rightfully obtained from third parties.

9. INDEMNIFICATION

(a) Subject to Section 7(b), Rightnow shall indemnify, defend and hold Licensee harmless from any damages awarded against Licensee (including, without limitation, reasonable costs and legal fees thereby incurred by Licensee) arising out of any third party suit, claim or other legal action alleging that the use of the Software by Licensee as permitted hereunder infringes any United States patent, copyright or trade secret ("Legal Action"). Notwithstanding the foregoing, Rightnow shall have no indemnification obligations with regard to any Legal Action arising out of: (i) combination of the Software with software or products not supplied by Rightnow; (ii) any repair, adjustment, modification or alteration to the Software by Licensee or any third party; (iii) any breach by Licensee of its obligations under this Agreement; or (iv) any refusal by Licensee to install and use a non-infringing version of the Software offered by Rightnow under Section 6(b). Section 6(b) and this Section 9(a) state the entire liability of Rightnow with respect to any intellectual property infringement by the Software.

(b) Notice of Legal Action. Licensee shall give prompt written notice to Rightnow of any Legal Action within thirty (30) days of its first knowledge thereof and shall furnish copies to Rightnow of all communications, notices and/or other actions relating to any Legal Action. Licensee shall give Rightnow the sole control of the defense of any Legal Action, shall act in accordance with the reasonable instructions of Rightnow and shall give Rightnow such assistance as Rightnow reasonably requests to defend or settle such claim. Licensee shall not settle or compromise any Legal Action without Rightnow's express written consent. Licensee's material failure to comply with this Section 9(b) shall relieve Rightnow of its indemnification obligation under Section 9(a).

10. USE OF NAME

Licensee agrees not to remove the "Powered by Rightnow" link from Licensee's webpages.

11. MISCELLANEOUS

This Agreement, including the Appendices, represents the entire agreement of the parties, and supercedes any prior or contemporaneous understandings, whether written or oral. This Agreement may not be amended, waived or modified except as expressly provided herein or in writing by the parties. This Agreement will be governed by and construed in accordance with the laws Montana (excluding its choice of law rules). The parties hereby consent to the exercise of exclusive jurisdiction by the state or federal courts in the State of Montana for any claim relating to the enforcement of, or any rights under, this Agreement. Licensee may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of Rightnow. Licensee shall not export or reexport, directly or indirectly, any Software, Documentation or Confidential Information to any countries outside the United States except as permitted under the U.S. Commerce Department's Export Administration Regulations.

APPENDIX A

1. **RightNow Standard Support Package**

If Licensee has purchased the The RightNow Standard Support Package, Licensee will receive:

- Tele-training required to successfully install, configure and deploy the Software
- Live phone support from 7am-6pm, MST, Monday-Friday
- Access to site status Web page for site information and problem notification
- Free software downloads – all upgrades are available for download from RightNow Web

2. **RightNow Premier Support Package**

If Licensee has acquired the RightNow Premier Support Package, Licensee will receive the following in addition to the RightNow Standard Support Package:

- Live 24x7 phone support via toll-free number
- Level Two Support
- Incidents handled on Priority basis