

ONLINE TRIAL AGREEMENT

This Software Trial Evaluation Agreement ("Agreement"), dated and effective as of the latter date of execution by the parties hereto ("Effective Date"), is entered into by and between "User" and "Vendor" for the trial evaluation of Vendor's software product and related materials and documentation, as described in the attached Exhibit A ("Products").

The terms and conditions that govern this trial evaluation are as follows:

1. **Trial Evaluation Period.** The trial evaluation period for the Product shall commence on the Effective Date and expire thirty (30) business days thereafter, with extensions available for necessary testing up to ninety (90) days. Vendor hereby grants to User and User hereby accepts a non-exclusive, non-transferable, royalty-free, limited term license to use the Product for the purposes of this trial evaluation, subject to the terms and conditions of this Agreement. Vendor shall provide to User without charge, reasonable telephone and written consultation requested by User for the trial evaluation period in connection with the use and operation of the Product and any problems therewith.

2. **Charges.** This trial evaluation is offered by Vendor at no charge to User.

3. **Confidentiality.** The Product is and shall remain the proprietary and confidential property of Vendor and will not be used, disclosed or reproduced by any means except for purposes of User's internal use during the trial evaluation period. Employees, agents, independent contractors, affiliates and subsidiaries of User may use and access the Product during the evaluation. User agrees to exercise at least the same degree of care to safeguard the Product as User does its own property of a similar nature. It is specifically understood and agreed, however, that User shall not be liable for (1) inadvertent use, publication or dissemination of Vendor's proprietary Product received hereunder provided that (a) it uses the same degree of care in safeguarding such information as it uses for its own information of like importance, and (b) upon discovery of such it shall endeavor to prevent any further inadvertent use, publication or dissemination; and/or (2) unauthorized use, publication or dissemination of the Product received hereunder by persons who are or have been in User's employ unless User fails to safeguard such information with the same degree of care as it uses for User's own proprietary information of like importance.

Notwithstanding, the restrictions contained herein against disclosing and disseminating the Product shall not apply to information previously known or independently developed by User, rightfully acquired from third parties, subsequently publicly disclosed by Vendor, or by means other than a breach of duty by User.

4. **Infringement.** Vendor represents and warrants its ownership and/or marketing and licensing rights to the Product. Vendor further represents and warrants that neither Product nor any portion(s) thereof, is derived from or infringes upon any patent, copyright, trade secret or other intellectual property right of any other person, firm or entity, nor is subject to any interest, proprietary or otherwise, or any claim or cause of action of any third party ("Infringement").

5. **Liability.** Vendor agrees to indemnify, defend and hold User, its officers, agents, employees, affiliates and subsidiaries harmless from and against any and all losses, costs, damages or liabilities as a result of any claim or cause of action for Infringement asserted against such parties by virtue of User's use of Product provided by Vendor to User hereunder.

Except for Infringement, Vendor shall not be liable for indirect, special or consequential damages. In no event shall User be liable for indirect, special or consequential damages.

6. **Survival.** Vendor's representations, warranties and obligations set forth in this Agreement shall survive the expiration, termination or rescission of this Agreement and continue in full force and effect.

7. **Expiration.** Upon expiration of this trial evaluation, User agrees to notify Vendor, in writing, of its intention to enter into negotiations concerning the acquisition of Vendor's Product. Upon said notification, the parties agree to negotiate mutually acceptable terms and conditions for said acquisition. In the event mutually acceptable terms and conditions cannot be reached within 30 days of such written notification by User or if User has notified Vendor of its intention not to acquire the Product, User agrees to return Product and purge its computer(s), and all storage media, of all copies of the Product. Thereupon, neither party shall have any obligation or liability to the other, except as regards to Infringement and Vendor's indemnification obligation for Infringement.

8. **Applicable Law.** This Agreement shall be governed by the laws of the State of New Jersey without regard to conflicts of laws. Vendor and User hereby agree on behalf of themselves and any person claiming by or through them that the sole jurisdiction and venue for any litigation arising from or relating to this Agreement shall be an appropriate federal or state court located in Newark, New Jersey.

9. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties in connection with the subject matter hereof and supercedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there are no warranties, representations and/or agreements among the parties in connection with the subject matter hereof except as set forth in this Agreement.

AGREED TO AND ACCEPTED BY:

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User

Vendor

Company: _____

Data 21, Inc.

By:

By:

Print Name: _____

Print Name: _____

Title:

Title:

Date: _____

Date: _____

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EXHIBIT A

List of Products

- ZIP/390 MP