

**RESOLUTION OF THE  
WHITE MOUNTAIN APACHE TRIBE OF THE  
FORT APACHE INDIAN RESERVATION**

**WHEREAS,** the White Mountain Apache Tribe currently utilizes computerized financial information system software purchased through, and maintained by, J.D. Edwards; and

**WHEREAS,** the Tribal Council has recently learned, through its MIS Director, that an upgrade for its J.D. Edwards software is available, and such upgrade - entitled "One World" - is designed to keep the Tribe and its software technologically advanced; and

**WHEREAS,** the MIS Director has also informed the Tribal Council that J.D. Edwards is offering a discounted purchase price of \$72,700 for the upgrade - provided the Tribe signs the contract purchasing the upgrade no later than the close of business on May 8, 2002 - saving the Tribe \$630,800 over the retail purchase price of \$703,500; and

**WHEREAS,** the MIS Director has informed the Tribal Council that the J.D. Edwards software upgrade to the One World suite will ensure that the Tribe's software and operations depending thereon are technologically advanced helping ensure that the Tribe's operations keep pace with the exponential advancements in the computer software industry.

**WHEREAS,** given the Tribal Council's belief that there is a need for the software, the Tribal Council has balanced this need against the briefing from the Legal Department informing that the dispute resolution process outlined in the J.D. Edwards One World software license agreement may be construed as a waiver of the Tribe's sovereign immunity from suit because the Tribe is required to agree:

- (1) to submit any disputes it may have to binding arbitration after failing to resolve the dispute in mediation proceedings;
- (2) that such arbitration is governed by applicable federal law and the laws of the state of Arizona;
- (3) that the Tribe will not dispute jurisdiction of any arbitration proceeding pursuant to the legal doctrine requiring exhaustion of tribal court remedies prior to submitting to the jurisdiction of any other legal forum.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that, given the information it has received today on the need that the Tribe purchase of the One World software upgrade with J.D. Edwards, it hereby agrees to the terms and agreements of the software licensing agreement as attached hereto, including the following requirements:

The Tribe agrees:

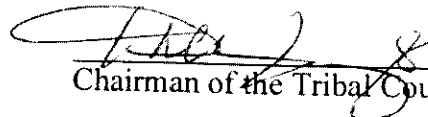
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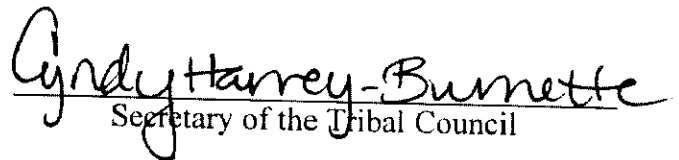
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- State of Arizona;
- (3) that the Tribe will not dispute jurisdiction of any arbitration proceeding pursuant to the legal doctrine requiring exhaustion of tribal court remedies prior to submitting to the jurisdiction of any other legal forum.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the Chairman, or in his absence the Vice Chairman, to sign documents necessary to effectuate the intent and purpose of this Resolution.

The foregoing resolution was on June 5, 2002 duly adopted by a vote of THREE for, ZERO against, and TWO abstentions by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (b), (h), (i), (k), (s), (t) and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

  
Chairman of the Tribal Council

  
Secretary of the Tribal Council

This Section governs any and all disputes, disagreements, claims or controversies between the parties arising out of or relating to this Agreement or its breach (the "Disputed Matter"). Except for the matters specified in section (D), below, all Disputed Matters shall be submitted to the following dispute resolution process:

(A) Internal Mediation. First the Disputed Matter shall be referred jointly to Customer's and J.D. Edwards' respective Vice Presidents with operating authority over the Disputed Matter or such other senior executives as may be mutually agreed upon by the parties from time to time. If such executives do not agree upon a decision within ten (10) days after referral of the matter to them, the parties shall proceed to the next stage of the dispute resolution procedure.

(B) Outside Mediation. Either party may, upon written notice and within ten (10) days after the conclusion of Internal Mediation, elect to utilize a non-binding resolution procedure whereby each presents its case at a hearing (the "Hearing") before a panel consisting of a senior executive of each of the parties and a mutually acceptable neutral adviser. If a party elects to utilize outside mediation the other party agrees to participate.

- (i) The Hearing will occur no more than ten (10) days after a party serves written notice to use outside mediation. Each party may be represented at the Hearing by lawyers. The location of the Hearing will be chosen by the party not initiating the mediation.
- (ii) If the matter cannot be resolved at such Hearing by the senior executives, the neutral adviser may be asked to assist the senior executives in evaluating the strengths and weaknesses of each party's position on the merits of the disputed matter. Thereafter, the senior executives shall meet and try again to resolve the matter.
- (iii) If the matter cannot be resolved at such meeting, the parties' only recourse is binding arbitration as provided for herein and the outside mediation proceedings will have been without prejudice to the legal position of either party. No arbitration may commence concerning the Disputed Matter until fifteen (15) days have elapsed from the first day of the Hearing.
- (iv) The parties shall each bear their respective costs incurred in connection with this procedure, except that they shall share equally the fees and expenses of the neutral adviser and the costs of the facility for the Hearing.

(C) Arbitration. If the Disputed Matter is not submitted to outside mediation or, if submitted, cannot be resolved pursuant to outside mediation, then either party may within ten (10) days after the completion of inside or outside mediation, as appropriate, upon written notice, submit the Disputed Matter to formal binding arbitration.

All disputes involving this Agreement and not resolved in steps (A) and (B) above shall be determined under the following law, *in descending order of priority*: (i) Federal law including, without limitation, 15 U.S.C.A. § 1051 et seq. (U.S. Trademark law), 17 U.S.C.A. § 101 et seq. (U.S. Copyright law), and 35 U.S.C.A. § 101 et seq. (U.S. Patent law); and (ii) the laws of the state of **ARIZONA** without regard to its conflict of law provisions. All disputes related to this Agreement shall be submitted to a panel of three (3) arbitrators appointed and operating under the Federal Arbitration Act and the procedural rules of the American Arbitration Association, **EXCEPT AS MODIFIED BELOW FOR COURT ENFORCEMENT**. Such panel shall include only persons with experience in the areas of information technology or computer software licensing, installation, or implementation. Each party shall choose one (1) arbitrator and the two (2) arbitrators thus selected by the parties shall choose the third arbitrator. The party not initiating the arbitration or action shall choose the location of the arbitration hearing.

The written decision of the arbitrators shall be final, binding, and convertible to a court judgment in any appropriate jurisdiction. Each party shall bear its own costs and fees incurred in any such arbitration and the arbitrators shall not have the power or authority to award costs or fees to a prevailing party. Arbitration proceedings shall not be delayed or disputed by Customer based on any doctrine requiring or allowing exhaustion of tribal court remedies or recourse to tribal courts. Nothing in this section shall be construed to restrict either party's right to seek and obtain injunctive relief through appropriate channels for actions arising under 15 U.S.C.A. § 1051 et seq., 17 U.S.C.A. § 101 et seq., and 35 U.S.C.A. § 101 et seq.

**ANY ACTIONS, EITHER: (I) FOR INJUNCTIVE RELIEF ARISING UNDER 15 U.S.C.A. § 1051 ET SEQ., 17 U.S.C.A. § 101 ET SEQ., OR 35 U.S.C.A. § 101 ET SEQ.; OR (II) TO DOMESTICATE OR ENFORCE AN AWARD ENTERED IN AN ARBITRATION ACTION, MAY BE BROUGHT IN ANY FEDERAL OR STATE COURT, EXCEPT THAT FOR ANY SUCH ACTION AGAINST THE WHITE MOUNTAIN APACHE TRIBE, ALL SUCH ACTIONS SHALL BE BROUGHT ONLY IN FEDERAL COURT OR THE COURTS OF THE WHITE MOUNTAIN APACHE TRIBE. IT IS FURTHER AGREED THAT IN THE EVENT OF SUCH TRIBAL COURT ACTION, THE WHITE MOUNTAIN APACHE TRIBE SHALL APPOINT A SITTING OR RETIRED ARIZONA SUPERIOR COURT JUDGE OR FEDERAL DISTRICT COURT JUDGE AS A VISITING TRIBAL COURT JUDGE. BOTH PARTIES IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE APPROPRIATE COURT AS SET FORTH ABOVE AND WAIVE ANY OBJECTION THEY MIGHT HAVE TO SUCH JURISDICTION. THE ASSUMPTION OF JURISDICTION BY ANY FEDERAL COURT SHALL NOT BE DELAYED OR DISPUTED BY CUSTOMER BASED ON ANY DOCTRINE REQUIRING OR ALLOWING EXHAUSTION OF TRIBAL COURT REMEDIES OR RECOURSE TO TRIBAL COURTS.**

(D) Neither party will institute any action or proceeding against the other party in any court concerning any Disputed Matter other than:

- (i) a request for injunctive relief to halt violations of a party's obligations of confidentiality;
- (ii) any action based upon or arising out of a violation of J.D. Edwards' Proprietary Rights;
- (iii) any action based upon or arising out of a violation of a party's copyright under Title 17 of the U.S. Code; or
- (iv) the entry of a judgment upon or the request for injunctive relief in support of an award rendered by the arbitrators pursuant to this section.