



# JCC LogMiner Loader

## End-User License Agreement

This End-User License Agreement is between **JCC Consulting, Inc.** a corporation organized and existing under the laws of Ohio, having its principal offices at 600 Newark Road, Granville, Ohio (herein also referred to as "**JCC**") and

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having its principal offices at \_\_\_\_\_, on its own behalf and on behalf of its subsidiaries and Affiliates (herein referred to as "**Licensed User**" or "**Licensee**"). This agreement is effective as of the date of the last signature.

The following terms and conditions ("AGREEMENT") shall govern the Licensee's installation and use of the JCC LogMiner Loader software. The Software or Loader programs and related explanatory materials are also referred to as "the software" or "the Loader". If you do not accept or agree with these terms, you may not install or use the JCC LogMiner Loader software and must delete the license key, if one has been provided to you.

Subject to the terms and conditions of this Agreement, JCC grants to Licensee and its affiliates and Licensee accepts from JCC a world-wide, non-exclusive, non-transferable, royalty free, perpetual license with rights to access and use the Software identified as JCC LogMiner Loader for internal use only at Licensee's place of business. Licensee shall limit access and use of the Software to Licensee's employees and agents or sub-contractors and it shall require its employees and agents and sub-contractors to comply with the terms and conditions of this Agreement.

Except as provided in this Agreement, no license under any patents, copyrights, trademarks, trade secrets, or any other intellectual property rights, express or implied are granted by JCC to Licensee under this Agreement.

By using the JCC LogMiner Loader software and/or by signing this agreement, the licensed user agrees to be bound by the terms of this Agreement.

### 1. DEFINITIONS

**Licensed User or Licensee** means (i) if Licensee is an individual, solely Licensee; (ii) if Licensee is a legal entity, any employee, independent contractor, third-party and other temporary worker authorized by Licensee to use the software while performing duties within the scope of their employment or assignment.

**License Key** is the key provided to Licensee for the Loader software.

**Source Database** means the Oracle Rdb database where data changes occur that are processed by the LogMiner. Source databases is the plural.

**Units** are the number of CPU cores that access the source database(s). The unit count is not the count of CPU cores of computers running the Loader, but the total count of the CPU cores among all computers accessing the source database. If the computer is providing virtual computer resources, the number of units is the number of “virtual” cores presented to OpenVMS. If there is a combination of resources that access the Source database(s), the total will be the number of license units required.

**Licensed Units** is the number of units for which a license has been purchased by Licensee and granted by JCC. The Licensee is responsible for accurately reporting to JCC the number of License Units required at any time.

**The Software** refers to the JCC LogMiner Loader which publishes changes made to a source database to one or more targets. The source database must be one that utilizes Oracle Rdb, as the Loader relies on Oracle Rdb’s After Image Journaling (AIJ) and LogMiner to provide the updates.

**Target** is the software, whether database or other, that receives the JCC LogMiner Loader output. The Loader can publish the data changes made to the Source Database to a number of targets.

**Documentation**, as referenced here, refers to the documentation provided with the Loader product, including the document that is updated with each major release and the release notes that accompany each release.

**Affiliate** means an entity that controls, is controlled by, or is under common control with a party, where “control” means the direct or indirect holding of more than 50% of equity ownership or voting rights.

## **2. ESTABLISHING THE NUMBER OF LICENSED UNITS**

Licensee is responsible for working with JCC to establish the initial number of Units required on the license. Additionally, the Licensee shall notify JCC when hardware and software configurations increase the number of Units that access the Source Database or add Source Databases that are accessed by additional units regardless of whether Support is active or not. The License is not extensible to additional Units without notifying JCC and paying for additional Licensed Units.

Upon JCC request, the Licensee will provide JCC with a duly signed statement confirming that the Licensee met these obligations. The statement will be signed by a senior officer (such as VP Finance). Should a question arise as to the accuracy of the number of units needed, JCC

may audit Licensee's use of the software to ensure that the Licensee is in compliance with the terms of this Agreement. If an audit reveals that the number of Units accessing the source database is greater than the number of Licensed Units paid for by Licensee, Licensee shall be invoiced for such underpaid fees based upon JCC current rate per Unit in effect at the time the audit is completed with late fees applied. Licensee shall pay JCC an additional fee of 25% of the applicable unpaid fee disclosed by the audit.

### **3. LIMITED WARRANTY**

JCC confirms that for a period of one hundred and twenty (120) days after the receipt by Licensee, the software, will operate in substantial conformance with the documentation.

JCC Consulting, Inc. disclaims implied warranties of merchantability and fitness for a particular purpose, with respect to the software and any accompanying written materials.

If any component of the Software fails to conform materially to the functions contained in the Documentation, JCC's sole obligation shall be, at JCC's option, to correct the defect by bringing the performance of the Software into substantial compliance with the functions contained in the Documentation or to replace the defective component. JCC shall have a reasonable opportunity to make corrections and shall submit corrections to Licensee within a reasonable period of time.

JCC disclaims any warranty where the Software is not defective and the defect is contained on the Source Database, the Licensee's software, third-party software, networking, operating systems used, and/or hardware.

JCC does not warrant that the Software will operate uninterrupted, that it will be free from minor defects or errors which do not materially affect such performance, or that the functionality contained in the Software is designed to meet all of Licensee's business requirements.

### **4. LIMITATIONS OF LIABILITY**

**EXCEPT AS OTHERWISE NOTED IN THIS AGREEMENT, UNDER NO CIRCUMSTANCES SHALL JCC BE LIABLE TO ANY ENTITY FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR FOR ANY AMOUNT IN EXCESS OF THE LICENSE FEE OR FOR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSS, OR EXEMPLARY OR PUNITIVE DAMAGES, EXCEPT WITH RESPECT TO INDEMNITIES ARISING OUT OF IP CLAIMS , UNDER NO CIRCUMSTANCES, SHALL JCC'S AGGREGATE LIABILITY ARISING FROM OR OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE FEES PAID UNDER THIS AGREEMENT.**

### **5. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS**

The Loader software is the property of JCC. The Loader software is licensed, not sold. Title, patents, copyrights, trade secrets, and other proprietary rights to the software, in whole and

in part and all copies thereof, and all modifications, enhancements, derivatives and other alterations of the software regardless of who made any modifications, if any, are, and will remain, the sole and exclusive property of JCC.

Licensee shall not take any action that jeopardizes JCC's proprietary rights or acquire any right in the Loader software.

Licensee shall not use the Loader software for any purposes beyond publication of data changes from the source to the approved target(s), as specified in the Documentation, within the License's own company without explicit, written approval from JCC. The Loader may not be transferred, sold, assigned, sublicensed or otherwise conveyed to another party without JCC's prior written consent. Licensee shall not redistribute the license key(s) provided, either on paper or electronically unless the License is explicitly authorized to do so in writing from JCC Consulting, Inc. Licensee shall not permit its employees, affiliates, or any third party to reverse engineer, decompile, recompile, update, modify, or disassemble the software, except to the extent that the foregoing restriction is expressly prohibited by applicable law.

Licensee shall not assign or transfer its interests, rights or obligations under this Agreement or any order by written agreement, merger, consolidation, operation of law or otherwise, without the prior written consent of an authorized executive officer of JCC. Any attempt to assign this Agreement by Licensee shall be null and void. Furthermore, for the purposes of this Agreement, the acquisition of an equity interest in Licensee of greater than 25 percent by any third party shall be considered an "assignment".

Use of the Loader software is restricted according to the terms as specified herein. The software is protected by United States of America copyright laws including international treaty provisions, but not limited to, export control laws. All Intellectual Property Rights (IPR) remain the property of JCC Consulting, Inc.

Further, the structure, organization, and code embodied in the software are the valuable and confidential trade secrets of JCC and are protected by intellectual property laws and treaties.

JCC warrants that it has the necessary rights, title and interest in all Intellectual Property Rights subsisting in the Software and the Documentation to enable it to grant the permanent license and otherwise perform its obligations under this Agreement.

## **6. DELIVERY**

The Loader kit includes the Loader software, the documentation, examples and supporting routines. The current kit and other material may be downloaded directly from <http://www.jcc.com/lml>. The documentation for the Loader is in PDF format. The documentation is distributed without needing a license key to read it. The Loader software requires a license key in order to install and/or use the Loader software.

## **7. NEW RELEASES**

New releases of the Loader software will be announced via email to all Licensee technical contacts. The new release including the release notes will be available from the JCC web site.

The Loader software includes an option to install new releases for testing without removing older releases and the license key continues to work on new releases. If, at any time, a purchased license key fails to work with a new release, a replacement key will be issued upon request.

## **8. SUPPORT**

Support includes access to JCC's Support Center and to new releases of the Loader software. Basic support for the first year is included in the License Fee. Basic support may be extended for subsequent years with an annual payment of 22% of the current license fee. JCC will use commercially reasonable efforts to make its Support Center available to Basic support customers Monday through Friday, during JCC's normal business hours, excluding JCC's scheduled holidays.

For an additional fee, JCC offers Gold support. For Gold support customers, JCC will use commercially reasonable efforts to make its Support Center available 24 X 7 without restriction.

A valid corporate email address is required to access JCC Support Services.

All communication with JCC will be to the email account or accounts indicated for the purpose.

If Licensee finds a flaw in the Loader software or difficulty in its use, Licensee must provide sufficient documentation that the issue or flaw may be reproduced in the JCC labs or must provide access to the computational environment where the flaw or issue is manifested.

If Licensee asks JCC to repair a problem or modify the Loader software, JCC, at its discretion, may elect to patch an old version of the software or create a new release. To address a problem, the Licensee may be required to upgrade to a new release. The Licensee may opt not to upgrade, but then must accept the software as is.

As error corrections, improvements and updates become available, new releases are created. All current Basic and Gold Support Licensees will receive notifications of the release as part of their paid maintenance support fee. The Licensee may download and install the new release or not, according to their own judgment.

Although JCC is generally able to make new versions "backwardly compatible" with previous releases, JCC makes no guarantee that this will be true in all cases. Should a new version fail to be backwardly compatible and, thereby, require a change in use or user procedures from an earlier version, the release notes will include an explanation.

Future versions of the Loader software on new platforms may not be functionally equivalent to the current Alpha and Integrity releases and may not be automatically available to existing Licensees.

Support renewal fees are due 60 days prior to the expiration of the previous support period. Support is arranged on an annual basis and is based upon all of the units licensed, not a portion thereof. If Support is not renewed, it may be available after payment of the Support fee for the intervening time and for the subsequent year. Once JCC has quoted the total cost of renewing support that has been allowed to lapse, the Licensee must provide payment before maintenance is resumed.

## **9. PAYMENT, TAXES, AND DUTIES**

Payment terms are stated on the invoice. Unless other arrangements are made, all overdue amounts shall bear a finance charge of one and one-half percent (1.5%) per month, or the maximum amount permitted by applicable law, whichever is less, until paid in full. Finance charges shall accrue on a daily basis. All fees payable to JCC are on an inclusive basis and include all current and future applicable taxes and duties, including, but not limited to, value added tax, sales tax and withholding tax, if applicable to such payments. If, for any reason withholding taxes are not applied to fees payable to JCC and at a later date JCC is requested by the relevant tax authorities to remit such withholding taxes with respect to any such payments to JCC, then Licensee shall fully indemnify JCC for any payments actually made in this regard in addition to any reasonable expenses (e.g., legal, tax, or other) incurred in connection with such request.

## **10. NON-DISCLOSURE**

Both parties to this Agreement recognize that, from time to time, they may come into contact with information that the other party considers confidential. **Confidential Information** is defined for this agreement as all information (whether written or oral) that comes into a Party's possession under or in connection with this Agreement that is reasonably considered by the disclosing Party to be confidential and is clearly identified as confidential. The Parties shall keep all Confidential Information in strict confidence.

The recipient will use a reasonable standard of care in protecting Confidential Information, which will not be less than the standard of care the recipient uses to protect its own Confidential Information; only use Confidential Information to perform its obligations and exercise its rights under this Agreement; not disclose Confidential Information to any third party; when requested by the disclosing Party, return or destroy the Confidential Information.

Information is not "Confidential Information" if it is:

- in or enters the public domain other than by breach of this non-disclosure agreement;
- already in the recipient's lawful possession or is obtained by the recipient through a third party who is free to disclose it without confidentiality restrictions;

- authorized for release by the disclosing Party's written consent; or
- required to be disclosed by law or by a competent court or regulatory body, provided that reasonable advance notice is provided to the owner of Confidential Information.

## **11. TERMINATION OF THE LICENSE**

This License and the rights granted hereunder will terminate automatically upon any breach by the Licensee of the terms of this Agreement.

## **12. MISCELLANEOUS**

The following shall also apply:

1. Any amendments to this Agreement must be agreed to in writing and signed by both Parties.
2. If any provision of this Agreement is held by a court to be unenforceable, then, that provision will be deemed to be amended to the extent necessary, and in a manner consistent with the intentions of the Parties, to make it and the Agreement fully enforceable. The unenforceability of any provision of this Agreement will not affect the remaining provisions.
3. The Parties recognize and agree that their obligations under Sections 2, 3, 4, 5, 9, and 10 of this Agreement survive the cancellation, termination, or expiration of this Agreement and apply for the duration of the Licensee's use of the Loader software licensed under this Agreement. Further, Sections 4, 5, and 10 survive in perpetuity.
4. A failure by either Party to enforce any of its rights under this Agreement is not a waiver of those rights or any other rights it has under this Agreement.
5. The Parties are independent parties; and this Agreement does not make the Parties principal and agent, partners, employer and employee; nor does it create a joint venture.
6. This Agreement sets out the entire understanding of the Parties in relation to the JCC LogMiner Loader End-User License Agreement and supersedes any prior understanding or agreement between the Parties in relation to the JCC LogMiner Loader End-User License Agreement, whether oral or written.
7. This Agreement shall not be superseded by any Licensed User's terms and conditions contained in a purchase order, statement of work order or any other document. This Agreement may only be superseded or changed by an amendment and signed by both Parties.
8. This Agreement shall be construed in accordance with and all disputes hereunder shall be governed by the laws of the United States of America and the State of Ohio. The Parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Ohio.

This license is, initially, for \_\_\_\_\_ license units.

The following will be the contacts, unless amended.

	JCC Consulting, Inc.	Licensee
Business contact	<a href="mailto:Office-Administration@JCC.com">Office-Administration@JCC.com</a>	Business contact email address
	JCC Consulting, Inc. 600 Newark Rd P.O. Box 381 Granville, OH 43023 USA  Attn: Office Administration	Business contact name and mailing address
Technical contact	The email listed for the support account was supplied with the license key.	Technical contact email address Technical contact name(s), and mailing address(es), plus any additional email addresses

**SIGNED**

For JCC Consulting, Inc.

For Licensed User

\_\_\_\_\_  
Keith Hare, CFO

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Printed name and title

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Dated:

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Dated: