

EX-10.14 2 ex10-14.txt EX-10.14 28 EXHIBIT V NONDISCLOSURE AGREEMENT THIS AGREEMENT (the "Agreement"), is made as of , 2000, (the "Effective Date") by and between JDA SOFTWARE, INC., an Arizona corporation ("JDA") and COMPUWARE CORPORATION, a Michigan corporation ("Compuware").

RECITALS 1. In connection with the evaluation or pursuit of certain mutually beneficial business opportunities, JDA and Compuware may disclose valuable proprietary information to each other relating to their respective operations and businesses. 2. JDA and Compuware would like to protect the confidentiality of, maintain their respective rights in and prevent the unauthorized use and disclosure of such information. AGREEMENT JDA and Compuware hereby agree: 1. CONFIDENTIAL INFORMATION. As used in this Agreement, "Confidential Information" means all information of either party that is not generally known to the public, whether of a technical, business or other nature (including, without limitation, trade secrets, know-how and information relating to the technology, software, designs, specifications and prototypes, customers, business plans, promotional and marketing activities, finances and other business affairs of such party), that is disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party"), and that has been identified as being proprietary and/or confidential or that by the nature of the circumstances surrounding the disclosure ought to be treated as propriety and confidential. Confidential Information also includes all information concerning the existence and progress of the parties' dealings. 2. USE OF CONFIDENTIAL INFORMATION. The Receiving Party, except as expressly provided in this Agreement, will not disclose it to anyone without the Disclosing Party's prior written consent. The Receiving Party will not use, or permit other to use, Confidential Information for any purpose other than to pursue discussion and evaluation of potential business dealings between the parties in accordance with the nature of discussions between the parties. The Receiving Party will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information, including, at a minimum, those measures it takes to protect its own confidential information of a similar nature. 3. EXCEPTIONS. The provisions of Section 2 will not apply to any information that (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to the Receiving Party at the time of its receipt from the Disclosing Party; (iii) is rightfully received from a third party who did not acquire or disclose such information by a wrongful or tortuous act; or (iv) can be shown by documentation to have been independently developed by the Receiving Party without reference to any Confidential information. 4. RECEIVING PARTY PERSONNEL. The Receiving Party will restrict the possession, knowledge, development and use of Confidential Information to its employees, agents, subcontractors and entities controlled by or controlling it (collectively, "Personnel") who have a need to know Confidential Information in connection with the purposes set forth in Section 2. The Receiving Party's Personnel will have access only to the Confidential Information they need for such purposes. The Receiving Party will ensure that its personnel comply with this Agreement. 5. DISCLOSURES TO GOVERNMENTAL ENTITIES. If the Receiving Party becomes legally obligated to disclose Confidential Information by any governmental entity with jurisdiction over it, the Receiving Party will give the Disclosing Party prompt written notice sufficient to allow the Disclosing Party to seek a protective order or other appropriate remedy. The Receiving Party will disclose only such information as is legally required and will use its reasonable best efforts to obtain confidential treatment for any Confidential Information that is so disclosed. -28- 29 6. OWNERSHIP OF CONFIDENTIAL INFORMATION. All Confidential Information will remain the exclusive property of the Disclosing Party, and the Receiving Party will have no rights, by license or otherwise, to use the confidential information except as expressly provided herein. 7. RETURN OF CONFIDENTIAL INFORMATION. Upon the Disclosing Party's written request, the Receiving Party promptly will return all tangible material embodying Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information). 8 GOVERNING LAW; ETC. This Agreement will be governed by internal laws of the State of Arizona, without reference to its choice of law rules, and may be executed in counterpart copies. If a provision of this Agreement is held invalid under any applicable law, such invalidity will not affect any other provision of this Agreement that can be given effect without the invalid provision. All terms and conditions of this Agreement will be deemed enforceable to the fullest extent permissible under applicable law, and, when necessary, the court is requested to reform any and all terms or conditions to give them such effect. Further, the venue for arbitration or litigation will be in Phoenix, Arizona, and the parties consent to such jurisdiction. 9. NONWAIVER. Any failure by either to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement. 10. TERMINATION. This Agreement will terminate automatically upon the completion or termination of dealings between JDA and Compuware; provided, however, that each party's obligations with respect to the other party's Confidential Information will survive completion or termination of the dealings between the parties. 11. EXPORTATION/TRANSMISSION OF CONFIDENTIAL INFORMATION. The Receiving Party acknowledges that the Confidential Information and any related materials or information provided hereunder are subject to the export control laws and regulations of the U.S., and any amendments thereof. The Receiving Party confirms that it will not export or re-export these items, directly or indirectly, either to (i) any countries that are subject to U.S. export restrictions (currently including, but not necessarily limited to, Cuba, the Federal Republic of Yugoslavia (Serbia and Montenegro), Iran, Iraq, Libya, North Korea, and Syria); and (ii) any development production of nuclear, chemical or biological weapons; or (iii) any third party who has been prohibited from participating in the U.S. export transactions by any federal agency of the U.S. government. 12. INDEPENDENT DEVELOPMENT. The Disclosing Party acknowledges that the Receiving Party may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information. Accordingly, nothing in this Agreement will be construed as a representation or agreement that the Receiving Party will not develop or have developed for its products, concepts, systems or techniques that are similar to or compete with products, concepts, systems or techniques contemplated by or embodied in the Confidential Information, provided that the Receiving Party does not violate any of its obligations under this Agreement in connection with such development. 13. INJUNCTIVE RELIEF. The Receiving Party acknowledges that disclosure or use of Confidential Information in violation of this Agreement could cause irreparable harm to the Disclosing Party for which monetary damages may be difficult to ascertain or an inadequate remedy. The Receiving Party therefore agrees that the Disclosing Party will have the right, in addition to its other rights and remedies, to seek injunctive relief for any violation of this Agreement. 14. LIMITED RELATIONSHIP. This Agreement will not create a joint venture, partnership or other formal business relationship or entity of any kind, or an obligation to form any such relationship or entity. Each party will act as an independent contractor and not as an agent of the other party for any purpose, and neither will have the authority to bind the other. -29- 30 15. CUMULATIVE OBLIGATIONS. Each party's obligations hereunder are in addition to, and not exclusive of, any and all of its other obligations and duties to the other party, whether express, implied, and in fact or in law. 16 INTEGRATION/PURCHASE ORDER. This Agreement constitutes the entire agreement between the parties with respect to the Confidential Information and supersedes all previous proposals (both oral and written), negotiations, representations, commitments, writings, agreements, and all other communications between the parties. This Agreement may only be altered or modified by written instrument duly executed by both parties. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of any purchase order, the terms and conditions of this Agreement will control. The undersigned represent that they are duly authorized representatives of the parties and have full authority to bind the parties, including any indicated affiliates of the parties, by execution of this Agreement. The parties have executed and delivered this Agreement, and it will be effective as of the Effective Date.

COMPUWARE CORPORATION JDA SOFTWARE, INC. Signature _____ Signature _____

Name _____ Name _____ Title _____

Title _____ Date _____ Date _____