

THE GUARD - LICENSE, IMPLEMENTATION AND SERVICES AGREEMENT

This License, Implementation and Services Agreement ("Agreement") is entered between ("Licensee") and ("Licensor").

SECTION 1: LICENSE

A. The Guard is a Licensor proprietary Internet-based suite of software made available as a service, as described in Schedule 1 (the "Application Services"). Upon payment of the license fees set forth in the Order Form, Licensor hereby grants to Licensee a limited, nonexclusive, non-transferable right to access and use (and to permit its Authorized Users (as defined below) to access and use) the Application Services for Licensee's own internal business purposes and the internal business purposes of its Affiliates, each in accordance with the terms and conditions of this Agreement and any user documentation provided online. For the purposes of this Agreement, an "Affiliate" of an entity, is any entity controlled by, controlling or under common control with such entity.

B. "Authorized Users" are those employees and contractors of Licensee and its Affiliates who are authorized to use the Application Services and have been assigned an individual user ID. Licensee shall require any contractors that are designated as Authorized Users to be bound by confidentiality provisions that are substantially as protective of Licensor's Confidential Information as those provisions set forth in this Agreement. Licensor agrees to provide Authorized Users with access to the Application Services via the URL <https://www.compliancegroup.com> and any successor site thereto or such other web sites as may be designated by Licensor ("Web Site"). Licensee is responsible for providing Internet access, Web browsers, and appropriate hardware and software to all Authorized Users as necessary for access to the Application Services.

C. Licensee acknowledges and agrees that it is possible to link to third party applications and services ("Third Party Services"). Such Third Party Services are not part of the Application Services, and Licensor disclaims all responsibility, warranties and liability pertaining to same. Any such Third Party Service shall be provided to Licensee pursuant to the terms and conditions offered (and if applicable, for the fees charged) by such Third-Party Services provider and Licensor is not a party to any such agreement.

SECTION 2: USER ID AND PASSWORD PROTECTION POLICIES

Authorized Users shall maintain as personal and confidential the assigned unique USER IDs and activating passwords for the Software Service. Authorized Users are prohibited from transferring or sharing the Licensee assigned unique USER IDs and from revealing the activating passwords to any other person. Any violation of the foregoing may result in an immediate termination of Licensee's access rights to the Application Services. Licensee is responsible for all use or misuse of the Application Services by the Authorized Users of any third party using the USER ID and password of an Authorized User. Licensee and each Authorized User are responsible for maintaining the security and confidentiality of the USER IDs and passwords assigned to them for accessing the Application Services. Licensee shall be responsible for assigned account USER IDs, active passwords, and or granting permissions, and authorizing vendor/client account associations in the Application Services.

SECTION 3: LICENSOR RESERVATION OF RIGHTS; RESTRICTIONS

Licensee acknowledges that the Application Services are the valuable and proprietary property of Licensor. Licensor reserves all rights not expressly granted to Licensee and the Authorized Users hereunder. Neither Licensee nor any Authorized User may: (a) modify, translate, reverse engineer, decompile, disassemble, create derivative works of, or otherwise attempt to derive any source code of the Application Services; (b) alter or copy, or permit a third party to alter or copy, any part of the Application Services; (c) use the Application Services to provide service bureau, time sharing, or other such services to third parties; (d) sublicense, distribute, sell, assign, transfer, lease or rent the Application Services to any third party.

SECTION 4: DATA RETENTION AND OWNERSHIP

Licensor shall maintain all transaction and customer data throughout the lifetime of a Licensee's subscription. Licensor does not own any data, information or material that Authorized Users submits to the Application

Services ("Licensee Data"). The Licensee has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Licensee Data. Licensee hereby grants to Licensor a limited, non-exclusive, non-transferable, license to access, host, copy, format, display, distribute, store and use (and to permit Licensor subcontractors to do the same) Licensee Data for the sole and exclusive purpose of providing the Application Services (and if applicable, the Consulting Services) for the benefit of Licensee in accordance with this Agreement. Upon the termination or expiration of this Agreement or at the request of Licensee, Licensor will within (90) days and at no additional charge provide Licensee with all Licensee Data in Licensor's possession in the native format of such data with the Application Services. If Licensee requires such Licensee Data to be provided in a different format (including, a request for a subset of Licensee Data as opposed to all Licensee Data), such work shall be performed for additional charges at Licensor's then-current fee for such services. In such event, the Licensee Data shall be provided to Licensee within sixty (60) days after request and payment of the additional fees for such services.

SECTION 5: CONFIDENTIALITY; SECURITY

A. Definition. "Confidential Information" shall mean information, whether provided or retained in writing, verbally, by electronic or other data transmission or in any other form or media whatsoever or obtained through on-site visits and whether furnished or made available before or after the date of this Agreement, that is confidential, proprietary or otherwise not generally available to the public including, without limitation, trade secrets, marketing and sales information, product information, technical information and technology, and supplier information, information about trade techniques and other processes and procedures, financial information and business information, compliance information, plans and prospects.

B. Protection of Confidential Information. Neither party shall disclose to any third party during the Term or after the termination or expiration of this Agreement and each party shall keep confidential all Confidential Information or the other, protecting the confidentiality thereof with the same level of efforts that it employs to protect the confidentiality of its own proprietary and confidential information of like importance to it and in any event, by reasonable means. Each party may, however disclose the Confidential Information of the other to those of such party's personnel engaged in a use permitted by this Agreement and with a need to know, provided that such personnel (i) are directed to treat such Confidential Information confidentially and not to use it other than as permitted by hereby and (ii) are subject to a legal duty to maintain the confidentiality thereof. Neither party shall use the Confidential Information for the other party except as necessary in and during the performance of this Agreement, or as expressly permitted hereunder. Each party shall be responsible for any improper use or disclosure of any Confidential Information of the other by such party's officers, partners, principals, employees, agents or independent contractors (including individuals who hereafter become former partners, principals, employee agents or independent contractors). Customer acknowledges that elements of the Confidential Information of Licensor, including, without limitation, the Application Services and the terms, conditions and fees under this Agreement, are trade secrets of Licensor.

C. Confidentiality Exceptions. The obligations of this Section shall not apply (i) to any Confidential Information for a period longer than it is legally permissible to restrict disclosure of that item of Confidential Information or (ii) to any Confidential Information that a party can demonstrate was: (a) at the time of disclosure to such party, in the public domain or commonly known in either party's industry; (b) after disclosure to such party, published or otherwise entered the public domain through no fault of such party; (c) in the possession of such party at the time of disclosure to it, if such part was not then under an obligation of confidentiality with respect thereto; (d) received after disclosure to such party from a third-party who had a lawful right to disclose such Confidential Information to it; (e) independently

developed by such party without reference to Confidential Information of the other party; or (f) disclosed with the prior written approval of the other party.

D. Required Disclosure. Either party may disclose Confidential Information (including, as applicable, Licensee Data) to the extent required by law or by order of a court or governmental agency; provided, however, that the recipient of such Confidential Information shall give the owner of such Confidential Information prompt notice, and shall provide reasonable cooperation to the owner of such Confidential Information if the owner wishes to obtain a protective order or otherwise protect the confidentiality of such Confidential Information. The owner of such Confidential Information reserves the right to obtain, and shall be solely responsible for obtaining, a protective order, order to quash or other similar form of protection for the confidentiality of such Confidential Information.

E. Notification; Survival. In the event of any unauthorized disclosure or loss of Confidential Information, the receiving party shall immediately notify the disclosing party. Notwithstanding anything in this Agreement to the contrary, the obligations of the parties set forth in Section 5(A)-(E) with respect to Confidential Information will remain in effect during the term of this Agreement and (i) with respect to Confidential Information that does not qualify as a trade secret under applicable law, for a period of three (3) years following the expiration or termination of this Agreement, and (ii) with respect to trade secrets, for so long as such Confidential remains a trade secret.

F. Security. Licensor will use all commercially reasonable (i.e., standard in the industry) efforts to implement and maintain Web Site security features and standards to protect the confidentiality and integrity of Licensee's Confidential Information. In addition, Licensor will implement the following policies and practices.

(1) All physical access to the Web Site and Application Services where nonpublic personal and company information is maintained is controlled and monitored by security systems.

(2) The computer systems will offer a high degree of resistance to tampering and circumvention. These systems will limit data access to Licensor staff and contract staff on a "need-to-know" basis for maintaining the Guard system, and control individual Authorized User's ability to access and alter records within the Web Site and Application Services.

(3) All Authorized Users of the Application Services and Web Site will be given unique USER IDs with encrypted personal identifiers. Licensor will record interactions by individual users with the Application Services and Web Site.

SECTION 6: CHARGES AND TAXES

A. License Fees. The Annual Subscription fees ("ASL") entitles the Authorized Users to the following for a period of one year; the use of the Application Services; technical support via email and support tickets; periodic Application Services updates; and access to the user documentation.

B. Consulting Services. The ASL does not cover fees for the Consulting Services. The Consulting Services are determined on an individual case basis, based upon the unique requirements involved and are charge on a separate basis in accordance with the Order Form.

C. Additional Fees. Licensee shall be responsible for any charges for Licensor Application Services incurred through use of any USER ID assigned to Authorized Users and any password Authorized Users adopt, unless such charges result from Licensor's error.

D. Taxes. In addition, Licensee shall be solely liable for any state or local sales, use, excise, value added or other taxes or a similar nature, if any, that may be due on account of Licensee's and Authorized Users' use of the Application Services, and if applicable, the Consulting Service.

E. Invoicing. All payments hereunder shall be made in U.S. dollars. Unless otherwise stated of the Order Form, all amounts invoiced hereunder shall be

due and payable thirty (30) days after the date of the invoice. Not more than once every twelve months during the term of the Agreement, Licensor reserves the right to change the fees charged under this Agreement, to institute new or additional fees, and to change its policies, methods, or procedures with respect to pricing and billing, upon not less than sixty (60) days' notice to Licensee.

F. Expenses. Licensee shall reimburse Licensor for all reasonable expenses incurred by Licensor in connection with Consulting Services, when applicable, including but not limited to, travel and lodging expenses, communications charges and the cost of supplies.

G. Failure to Pay. If Licensee fails to pay any outstanding balance for four (4) months following the date upon which such charge was incurred, Licensor reserves the right to suspend its performance of the Application Services and Consulting Services without notice to Licensee and without any liability for any damages incurred as a result of such suspension. If Licensor elects to suspend such performance, only upon payment of the appropriate balance (and, if requested by Licensor, receipt of adequate assurances of future payment from Licensee) shall Licensor reinstate its performance.

SECTION 7: TERM AND TERMINATION

A. Term. This Agreement is effective until terminated. This Agreement shall be effective for a period of one year commencing upon the date the Order Form for the Application Services was executed by the parties ("Initial License Year") unless terminated as set forth herein. At the end of the Initial License Year, this Agreement will ("Auto-Renew") for a period of one (1) year, each year thereafter, unless Licensee provides notice of termination not less than thirty (30) days prior to end of the then current term.

B. Termination by Licensor. Licensor may terminate the Application Services provided hereunder (either individually or collectively) in the event that Licensee fails to cure a material breach of this Agreement within thirty (30) days after written notice thereof. In addition, following the Initial License Year, Licensor may terminate the Application Services upon at least sixty (60) days prior written notice to Licensee. If Licensor terminates the Application Services for its convenience in accordance with the preceding sentence, Licensor will provide a pro rata refund of any prepaid but unused portions of the ASL applicable to such Additional License Year.

D. Effect of Termination. Upon termination of this Application Services, Licensee shall no longer be permitted access to the Application Services and each Authorized User ID shall be deactivated. Termination for any reason shall not affect Licensor's entitlement to any sums due for Application Services or Consulting Services performed prior to such termination.

E. Transition Assistance. Prior to and for a period not to exceed sixty (60) days following any termination or expiration of this Agreement, Licensor agrees to cooperate in good faith with Licensee at Licensee's request in connection with transition matters, including the transfer to Licensee or an entity designated by Licensee of all Licensee Data that may be stored, housed or hosted by Licensor or on the Application Services. During the applicable transition period, Licensor will cooperate and work in consultation with Licensee to provide for the orderly transfer of the operations to an in-house representative of Licensee as defined in Section 4. Notwithstanding the foregoing, in the event of any termination of this Agreement due to a material breach by Licensee of its obligations to pay Licensor fees that are due and outstanding, Licensor will not be responsible to provide the termination assistance set forth in this Section until such time as Licensee has paid all undisputed fees that are due and outstanding in accordance with the terms of this Agreement.

SECTION 8: WARRANTIES AND INDEMNITIES BY LICENSOR

A. Licensor represents and warrants that it has the legal right to enter into this agreement and perform its obligations hereunder.

B. Licensor will not be held responsible in any way for limitations, if any, in Licensee's hardware or software. Licensor is not responsible for loss of data in transmission, improper transmission by Licensee or failure by Licensee or

any third party to act on any communication transmission to or by Licensee through Application Services.

C. Licensor also warrants that the hardware and software utilized by Licensor in providing the Application Services are adequate to allow Licensor to provide the Application Services in accordance with this agreement.

D. Indemnification.

(1) Licensor shall defend, indemnify and hold Licensee harmless from and against any and all damages, losses, fines, penalties, costs, and other amounts (including reasonable attorney's fees and expenses) (collectively, "Losses") arising from or in connection with third party claims based on or arising from any allegations that the Application Services as delivered by Licensor hereunder and used by Licensee in accordance with the terms and conditions of this Agreement, infringes upon or misappropriates the United States patent, copyright, trademark, trade secret or other intellectual property rights of such third party.

(2) Licensor shall not indemnify or defend Licensee and the other indemnities hereunder or be liable for any claim or Losses under this Section if the finding of infringement is based on (i) the use of a superseded or altered release of the Application Services if the infringement would have been avoided by the use of a current unaltered release of the Application Services which Licensor made available to Licensee; (ii) the modification of the Application Services by Licensee or any third party not authorized in writing by Licensor to do so; (iii) the use of the Application Services other than in accordance with its documentation and this Agreement or in combination with any intellectual property, hardware, software, data or technology not supplied by Licensor or approved by Licensor in writing; or (iv) any intellectual property supplied by Licensee (including, the Licensee Data).

(3) If Licensee is enjoined or otherwise prohibited, or is reasonably likely in the opinion of Licensor to be enjoined or prohibited, from using the Application Services or any part thereof, due to a claim covered by Licensor's indemnification obligations under this Section, then Licensor shall, at its sole expense and option, and in addition to its other indemnification obligations: (i) attempt to procure for Licensee the right to continue using the infringing portion of the Application Services; (ii) modify the infringing portion of the Application Services so as to render it non-infringing while maintaining substantially similar functionality; or (iii) replace the infringing portion of the Application Services with a functionally substantially similar non-infringing item. If Licensor is unable to procure any of the foregoing after using commercially reasonable efforts to do so, Licensor shall grant Licensee a refund of all prepaid but unused sums paid Licensor or such infringing item and Licensee shall cease using such infringing portion of the Application Services. This Section D states Licensor's entire liability and Licensee's sole exclusive remedy for any claim of infringement.

SECTION 9: INDEMNITY OF LICENSEE

Except as provided in the foregoing Section 8D, Licensee shall defend, indemnify and hold harmless Licensor, any Third-Party provider and any third-party contributor to the Application Services, from and against any and all claims and Losses arising from Licensee's use of the Application Services or Consulting Services, except that this indemnity shall not apply where such third party claim or Losses would not have occurred but for the gross negligence or the willful misconduct of Licensor, any Third-Party Service provider, or any third-party contributor to the Application Services or Consulting Services

SECTION 10: INDEMNIFICATION PROCEDURES

With respect to any claims to which the indemnification provisions of this Agreement apply, the Parties shall comply with the following procedures. Promptly after receipt of notice by any entity entitled to indemnification under this Agreement of the commencement or threatened commencement of any claim in respect of which a party entitled to be indemnified hereunder (each an "Indemnified Party") will seek indemnification under this Agreement, the Indemnified Party shall notify the party obligated to

indemnify the Indemnified Party (the "Indemnifying Party") of such claim in writing. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Agreement except to the extent that it can demonstrate that its rights have been prejudiced as a result of such failure. Provided that the Indemnifying Party promptly and appropriately performs its indemnification obligations hereunder, the Indemnifying Party shall be entitled to have sole control over the defense and settlement of such claim. The Indemnified Party shall provide reasonable cooperation (at the Indemnifying Party's expense) and full authority to defend or settle the Claim. The Indemnifying Party shall keep the Indemnified Party fully informed concerning the status of any litigation, negotiations or settlements of any such Claim. The Indemnified Party shall be entitled, at its own expense, to participate in any such litigation, negotiations and settlements with counsel of its own choosing. The Indemnifying Party shall not have the right to settle any Claim if such settlement arises from or is part of any criminal action or proceeding, or contains a stipulation to, or an admission or acknowledgement of, any wrongdoing (whether in tort or otherwise) on the part of the Indemnified Party without prior written consent of such Indemnified Party.

Section 11: OWNERSHIP

The Application Services are valuable, confidential, copyrighted, and trade secret property of Licensor or third parties that have contributed to the Application Services. As between the parties, Licensor owns all right, title and interest in and to the Application Services, including without limitation, all ancillary and interface software, all current and future enhancements, modifications, revisions, new releases and updates thereof and any derivative works based thereon and all documentation thereto, all copyrights, trade secrets, and patents therein. Nothing in this provision shall preclude Licensor from implementing features, ideas, processes or technology suggested by a customer, and promoting the implements to the marketplace. Moreover, Licensor shall own any rights, intellectual property, and title to the code associated with said implementation. Except as expressly permitted hereby, copying of any portion of the content and intellectual property included in the Application Services is prohibited.

SECTION 12: ASSIGNMENT

The Agreement may not be temporarily or permanently transferred or assigned by a party without the prior consent of the non-assigning party, provided however, a party may, upon written notice to other party, assign this Agreement to a successor pursuant to a merger, consolidation, sale of all or substantially all of its assets, or all or a substantial portion of the business to which this Agreement relates. Any assignee of Licensee's rights to use the Application Services must first agree to be bound by the terms and conditions of this Agreement.

SECTION 13: LICENSEE RESPONSIBILITY

THE LICENSEE ASSUMES ALL RESPONSIBILITIES AND OBLIGATIONS WITH RESPECT TO THE SELECTION OF THE APPLICATION SERVICES TO ACHIEVE LICENSEE'S INTENDED RESULTS.

SECTION 14: DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

EXCEPT AS EXPRESSLY PROVIDED ELSEWHERE IN THIS AGREEMENT, THE APPLICATION SERVICES AND CONSULTING SERVICES ARE PROVIDED 'AS IS' AND LICENSOR HEREBY DISCLAIMS ALL OTHER WARRANTIES, ORAL OR WRITTEN, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTIES OF NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

LICENSOR IS NOT AN INSURER WITH RESPECT TO LICENSEE'S USE OF THE APPLICATION SERVICES AND CONSULTING SERVICES AND, THEREFOR, EXCEPT AS PROVIDED ELSEWHERE IN THIS AGREEMENT, LICENSOR SHALL NOT BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES

(INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, GOVERNMENTAL COMPLIANCE SANCTIONS, LOSS OF DATA OR OTHER INFORMATION, AND THE LIKE) ARISING OUT OF, OR RELATED TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, LIABILITY RELATED TO THE USE OF OR UNAVAILABILITY OF THE APPLICATION SERVICES, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE LIMIT OF LICENSOR'S LIABILITY, INCLUDING ANY LIABILITY OF ANY LICENSOR CONTRACTOR OR AFFILIATE, TO LICENSEE OR ANY THIRD PARTY CONCERNING THE PERFORMANCE OR NON-PERFORMANCE OF LICENSOR, OR IN ANY MANNER RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, BY STATUTE, NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHERWISE, SHALL IN THE AGGREGATE BE LIMITED TO THE FEES PAID BY LICENSEE TO LICENSOR HEREUNDER DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE MONTH IN WHICH THE EVENT GIVING RISE TO THE CLAIM OCCURRED.

SECTION 15: SERVICE LEVEL PROVISIONS

A. NOTIFICATION AND PROBLEM REPORTING

(1) Licensor shall notify Licensee by electronic notification of any planned outages of the Application Services for maintenance purposes at least 24 hours prior to the planned outage.

(2) The designated Licensee representative(s) will contact licensor Technical Support for all problems related to the Application Services. Licensor will determine the nature of the problem, set the relative priority and open a trouble ticket to initiate the problem resolution process in accordance with Section (3) below. Licensor Technical Support is available via email and support tickets, 8:00 a.m. to 8:00 p.m. Eastern Time, Monday through Friday.

(3) **ESCALATION PROCEDURES:** In the event the availability or the functionality of the Application Services is affected due to a software problem or outage, the following escalation procedures apply: Severity of problems will be classified according to the following descriptions and administered by the Product Support Group (Level 1) as part of their problem management processes.

- **HIGH:** Problems that cause critical impact to the business function(s) of Licensee. Justifies immediate management attention and dedicated resources applying continuous efforts to resolve as soon as possible.
- **MEDIUM:** Problems causing degradation of service resulting in impact to the business function(s) of Licensee. Justifies priority attention and application of resources to resolve in a timely manner.
- **LOW:** Problems causing low impact to the business function(s) of Licensee. Requires timely resolution to minimize future impacts. Resources should be allocated in accordance with normal managerial planning prioritization.

Notification Levels are define below:

- **LEVEL 1:** Licensor's Technical Support Group
- **LEVEL 2:** Licensor's Software Engineering Group. The Software Engineering liaison will then contact the Account Representative and communicate the problem resolution status, if any, and an anticipated date of resolution.

(4) **AVAILABILITY AND UPTIME:** Licensor shall make the Web Site available for use by the Licensee 95% or normal business hours (M-F, 8AM to 11PM ET), and 90% of off-business hours (M-F, 11PM to 8AM ET) during the term of the Agreement.

(5) Specifically excluded from the definition of "Availability" are:

- Scheduled maintenance windows as defined in Section (3) above.
- Reasons of Force Majeure, as defined in Section 16 below.
- Issues associated with the Licensee's personal computers, local area networks or the Internet.
- Licensee's Internet Service Provider (ISP) connections.

- Issues arising from misuse of Application Services or Web Site by the Licensee.
- Any period of unavailability lasting 15 minutes or less per day.
- Outages caused by third-party provided data and their supporting systems.

a) In order to determine Web Site availability, Licensor will utilize an industry standard, third party external web auditing tools. These tools will provide regular monitoring of application availability from a point external to the Licensor infrastructure (i.e. as an Internet "user" of the system). The Web Site and Application Services will be deemed to be unavailable if this external auditing tool indicates its inability to access the Application Services. These tools will trigger alerts to Licensor Data Center Operations (DCO) staff that will then execute the defined notification and escalation procedures.

b) In addition, Licensor DCO performs internal best practice automated and manual monitoring for all key elements of the infrastructure. This monitoring includes the availability to set appropriate threshold levels for system capacity and trigger alerts to DCO staff when either thresholds are exceeded or elements of the Web Site or Application Services become unavailable.

c) In the event that the Web Site falls below 95% availability during normal business hours in any given calendar month, as measured by the third party auditing tools, Licensor agrees that a foregoing remedy shall be given full force and effect as Licensor's sole obligation and Licensee's sole and exclusive remedy.

B. PREDICTIVE CAPACITY PLANNING

The monitoring applications in place will supply information to allow Licensor to perform predictive capacity planning.

C. DATA RETENTION AND BUSINESS CONTINGENCY

Licensor will back up Licensee Data on a daily basis after each available calendar day. In the event of a major system outage, Licensee will recover backed-up Licensee Data via "point in time" recovery. Licensor will store copies of encrypted Licensee Data backups at both an on-site and a secure third party contracted offsite location. Access to these backups will be limited to Authorized personnel.

Licensor will limit restoration of backup data to instances relating to system outages. Any special requests by Licensee for access to or restoration of backup Licensee Data as business service is not considered part of this Agreement. Any special request by Licensee for deletion of all records to be purged from all production and backup Licensee Data as a business service is not considered part of this Agreement.

Licensor maintains contractual service level agreements with its systems providers that allow internal recovery of impacted systems within generally accepted industry standard timeframes.

If Licensor determines it cannot continue to operate the Application Services from the Licensor data center due to catastrophic events, it will exercise a standing agreement with a third party supplier of disaster recovery services located off premises. Licensor will reinstate Application Services availability at the off premises location in accordance with Licensor's disaster recovery procedures.

D. CHANGES TO SERVICE LEVELS

Service Levels shall be reviewed periodically and each party shall cooperate in good faith to adapt the Application Services provided as quantities increase or decrease in any way. Service Levels shall not be modified, nor shall any breach hereunder be waived, unless such modification and/or waiver are in writing. No course of dealings between the parties shall be construed as a waiver of any subsequent breach or a modification hereof.

SECTION 16: FORCE MAJEURE

Other than with respect to Customer's failure to make payments under this Agreement, neither Party shall be liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused by, or due to any cause

beyond its reasonable control, including, but not limited to acts of God, acts of any government, war or other hostilities, the elements, fire, explosion, power failure, telecommunications failure, industrial or labor dispute, inability to obtain supplies and the like, or breakdown or equipment or any other causes beyond its reasonable control.

SECTION 17: GENERAL

A. The laws of the State of New York, excluding the application of its conflicts of law rules, will govern this Agreement. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. No action arising under this Agreement may be brought more than one year after the cause of action has accrued. The exclusive jurisdiction for any action arising under this Agreement shall be the Courts of New York County, State of New York.

B. If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms. This agreement may only be modified in writing signed by both parties.

C. Licensor may subcontract for the provision of custom programming services with other qualified subcontractors, but such subcontracting shall not relieve Licensor of its Service Level obligations hereunder.

D. If Licensor is subpoenaed, with respect to services provided to Licensee, Licensee will reimburse Licensor all reasonable and necessary cost associated with the subpoenaed actions.

E. Licensor is an independent contractor in the performance of services under this Agreement and, except as may be expressly set forth in a Schedule or Appendix hereto, shall not be considered to be or permitted to be an agent, employee, joint venture, partner or subcontractor of Licensee.

F. The headings of sections of this Agreement are for convenience of reference only and will not affect the meaning or interpretation of this Agreement in any way.

G. The provisions contained in this Agreement that by their context are intended to survive termination or expiration will survive.

H. This Agreement and any other Exhibit, Schedules, Appendices, or other documents reference herein, constitute the entire agreement between the parties with respect to the subject matter hereof, and superseded all other communications, including but not limited to all prior agreements, between the parties with respect to such subject matter.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS STATE HEREIN. THE PARTIES FURTHER AGREE THAT THIS AGREEMENT SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN THE PARTIES HERETO RELATIVE TO THE SUBJECT MATTER OF THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day, month and year first written below.

[print name]

[signature]

[today's date]