



VFP Master Service Agreement

The services provided to the Customer (“you” or “Customer”) identified in the Order Form are subject to your assent to the terms and conditions contained in the Order Form and the terms and conditions of this Service Agreement entered into between Inter-Images, Inc. dba VFP and any of its direct or indirect affiliates (“Company”) and you, together with any other terms and conditions which may be incorporated by reference herein or therein (collectively, the “Agreement”), which together constitute a binding legal agreement between the Customer and Company.

YOU ACCEPT THESE TERMS AND CONDITIONS BY (1) SIGNING THE ORDER FORM BETWEEN YOU AND COMPANY INTO WHICH THESE TERMS AND CONDITIONS ARE INCORPORATED BY REFERENCE OR (2) ACTUALLY ACCESSING OR USING THE SERVICES. THE TERMS AND CONDITIONS STATED HEREIN MAY BE UPDATED AND REVISED FROM TIME TO TIME. YOU AGREE THAT SUCH UPDATED AND REVISED TERMS OF USE SHALL BE EFFECTIVE AS OF THE DATE YOU ARE PROVIDED NOTICE OF THE UPDATED AND REVISED TERMS AND ACCEPT THE SAME IN ACCORDANCE WITH THE PRECEDING PROCESS.

1. DESCRIPTION OF SERVICES

All Services will be provided to Customer or other Customer Users (defined below) over the internet and, subject to and conditioned on Customer’s and its Customer Users’ compliance with the terms of this Agreement, Company will use commercially reasonable efforts to make the Services available to Customer or any applicable Customer User at all times in accordance with the terms of this Agreement. Customer must provide a stable internet connection required for the Services to function properly. As used herein, “Customer User” shall mean a named or specified (by password and other appropriate user identification) employee of Customer authorized by Customer to use certain Services related to Company’s mobile application, user portal, and similar software and services. Company is not responsible for Customer’s or its Customer Users’ system performance or system inaccessibility, or any loss of business resulting therefrom, due to schedule downtime or maintenance, or any factors outside of Company’s control or unrelated to the Services. Customer and its Customer Users are responsible for the security regarding their respective passwords, access and usage of the Services. During the Term of the Agreement, Company agrees to provide Customer with all fixes, upgrades and new releases of the Services licensed under this Agreement which are made generally available to all Company customers at no additional charge. Company may, in Company’s sole discretion, release other modules, updates, upgrades and new releases for an additional fee. Customer agrees that Customer’s obligations hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Company regarding future functionality or features. Pursuant to the terms and conditions of this Agreement, Company will provide the Services described in the Order Form, including the following:

a. **License for Services Selected:** Subject to the terms and conditions of this Agreement and the performance by Customer of its obligations under this Agreement, Company grants to Customer a non-exclusive, revocable, non-transferable, non-sublicensable license during the Term of this Agreement for the Customer Users to access and use, for Customer’s internal business purposes, the Services as described in the Order Form.

b. **Data Conversion:** For the provision of Services, Company may provide data conversion services necessary to convert Customer’s membership demographic and billing information Delivered in a format determined by Company. Customer will be given a template to which the format of the data must adhere. Customer agrees to obtain any and all rights of access required by any third party, with respect to Customer’s data and existing software systems, in order for Company to perform its Services under this Agreement, and agrees to provide Company with access to Customer’s operations during normal business hours or at such other times and days as may be mutually agreed to by the parties, in order to perform data conversion under this Agreement. As part of Company best practices, six (6) months after the data conversion process is completed, Company may, in its sole discretion, irrevocably destroy any copies of the legacy Customer data used in the data conversion process that are still in Company’s possession. Company will make all commercially reasonable efforts to import data from Customer’s current software system, where available, to allow for use of such Customer data in providing the Services in accordance with Company’s data conversion policies.



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c. **Services:** Company will be responsible for the hosting, maintenance, and support of all Company -hosted software and Company -owned equipment used to perform Services. Customer acknowledges and agrees that as part of this Agreement, Customer shall arrange for, pay for, and maintain the communications lines between Company hosted servers and Customer's own equipment. Customer shall be solely responsible for establishing and maintaining the telecommunications connection of its choice at Customer's sole cost and expense. Customer acknowledges that Company (i) does not control communications via third party telecommunications providers and (ii) shall not be responsible for any error or inaccessibility associated with such telecommunications or any violation of law, rule or regulation applicable to transmission of data via such telecommunications. Company may use third party service providers to provide the Services to Customer.

d. **API Service:** Company may, if indicated in the Order Form or by a separate consent form, provide third parties with access to the Services (upon Customer request) for the purpose of facilitating the Services. The term API Service may include a reference to any secure means of data exchange including API access, FTP access, or other secure method.

e. **Technical Support:** Company agrees to provide Customer with technical support for the Services during the Term of the Agreement as follows:

- Phone and e-mail support provided for Customer's point of contact through a customer care center during normal business hours (7 a.m. to 7 p.m. CST Monday to Friday, exclusive of holidays). Customer's point of contact is the liaison between Company and Customer.
- Acknowledgement responses during normal business hours.
- System outages receive red-alert priority, which means that Company will provide immediate assistance (24 hours per day / 7 days per week) until such outage is resolved. If Customer experiences a system outage then Customer will contact Company at an emergency number available on Company's support website. Company will contact Customer regularly, providing status updates until final resolution.
- Customer agrees that from time to time Company may perform periodic routine scheduled maintenance, which generally will occur between the hours of midnight and 5AM CST.
- Customer shall promptly provide Company with detailed error notices describing all errors at a level of detail sufficient for Company to resolve errors, and Customer shall assist Company in recreating errors and resolving errors by providing Company with any requested information or material.

2. TERMS & CONDITIONS OF TRANSACTION PROCESSING

a. **Customer's Obligations for Transaction Processing:** Customer is solely responsible for obtaining authorization from its customers ("Card Holder") to perform transactions. Customer is solely responsible for the accuracy and completeness of all data provided by Customer or its authorized users or Card Holders. Customer acknowledges and agrees that: (a) any transactions are between Customer and Customer's Card Holder; (b) Company is a third-party service provider and payment facilitator for Customer, and not a party to any transaction; (c) Company is not a buyer or seller in connection with any transaction; (d) Company will not be responsible for and does not control any aspect of the services provided by Customer; and (e) Customer is solely responsible for disputes with Card Holders regarding payments, and Company is not a party to and will not be responsible for any such disputes.

b. **Transaction Processing Services:** Company collects and relays payment information generated in connection with payment transactions to process the transactions on behalf of Customer using the appropriate networks. Company, through Company Payment Services or a third- party provider, will establish a credit card or EFT transaction gateway to the designated merchant account to provide payment processing services to Customer. Customer acknowledges and agrees that Company or the third-party provider, as applicable, shall have the right to terminate services upon (i) request of Customer's payment processor or financial



institution with which Customer has a merchant account or bank account; (ii) a good faith belief that providing services to Customer will violate a law, regulation or rule of any governmental authority; or (iii) if Customer violates any applicable law or regulation, or if as a result of Customer's use of the transaction gateway service, the provider or Company becomes the subject of an investigation by a law enforcement agency or are otherwise threatened with suit or prosecution. Customer acknowledges and agrees that its use of transaction processing services under this Agreement shall be subject to additional terms and conditions, including, without limitation, the terms and conditions of the merchant processing agreements entered into by Customer related to this Agreement. Customer shall maintain valid merchant processing agreements, including for Company Payment Services if selected in the Order Form, with providers approved by Company during the Term of this Agreement. Customer acknowledges that Company is subject to certain requirements imposed by its service providers, and such service providers may modify such requirements. In the event of any such modification, Company may modify the terms of this Agreement, provided that Customer (within ten (10) days of receiving notice of the modification) may elect, as its sole and exclusive remedy for such modification, to terminate the payment processing services provided under this Agreement with thirty (30) days' notice, but only if the modification materially and adversely affects Customer and Company is unable to rectify such situation, including by reverting to previously acceptable terms. The foregoing does not grant Customer any rights of termination with respect to any third-party agreements which may be entered into by Customer.

c. Data Transmission. Customer acknowledges that Company is not a financial or credit reporting institution. Company is responsible only for providing data transmission to effect or direct certain payment authorizations for Customer (or its customers) and is not responsible for the results of any credit inquiry, the operation of websites or internet service providers, financial institutions, financial processors, the availability of the internet, or for any damages or costs that Customer may suffer or incur as a result of any instructions given, actions taken or omissions made by Customer or its authorized users, Customer's financial processor, financial institution, or internet service provider.

d. PCI DSS Compliance. Company adheres to Payment Card Industry Data Security Standards ('PCI DSS'). Customer agrees to adhere with PCI DSS requirements with respect to any handling of cardholder data. Customer shall be solely responsible for any and all liability related to the handling of cardholder data by Customer or its users. Company reserves the right to temporarily suspend access to the Services in order to minimize threats to the security and to protect operational stability and security of the Services. Company does not guarantee the security of the Services and will not be responsible for any infiltration of its security systems so long as Company has used commercially reasonable efforts to prevent such infiltration. In no event will Company be liable for transaction processing or other services performed by any third party. Company is PCI-DSS Level 1 compliant. PCI Attestation on Compliance (AOC) is available upon request.

3. TERMINATION; SUSPENSION:

This Agreement may be terminated or suspended as follows:

- **Upon Termination of Merchant Processing Agreement(s):** In the event that one or more of Customer's merchant processing agreement(s), including any agreement(s) for Company Payment Services, is terminated with the credit card or EFT payment processor utilized in connection with this Agreement, Company may, in Company's sole discretion, elect to terminate this Agreement, or only such portions of this Agreement which are applicable to the payment processing services, and be relieved of any and all of its obligations relating thereto upon written notice to Customer.
- **Termination for Unlawful Use:** Company reserves the right to immediately terminate Customer's use of the Services, if Company, in its sole discretion, determines that Customer's use of the Services is unlawful or if Customer transmits any Prohibited Material (as defined herein).
- **Termination for Insolvency:** This Agreement shall be deemed terminated immediately in the event that:
 - Customer files a petition in bankruptcy, makes an assignment for the benefit of its creditors, petitions for the appointment of a receiver or trustee for all or a portion of Customer's property, or dissolves or liquidates; or (ii) a petition for bankruptcy is filed against Customer, or a receiver or trustee is appointed for



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all or a portion of Customer's property; or (iii) Customer admits in writing its inability to pay debts when due. In the event of termination for insolvency of Customer, Company may block Customer's access to the Services, and in addition, may retain all payments made hereunder, and recover charges and costs owed by Customer, as well as any other damages Company may have sustained because of Customer's insolvency, including, but not limited to, attorney and collection agency fees.

- **Termination for Breach:** Either party may terminate this Agreement in the event of a material breach of this Agreement by the other party, if such breach remains uncured thirty (30) days after receipt of written notice thereof from the non-breaching party; provided, however, Company, notwithstanding such cure period, may require Customer to cease and discontinue use of the Services during the period of such material breach by Customer. No such termination shall relieve Customer's obligation to pay fees and miscellaneous charges accrued up to the effective date of the termination. Furthermore, in the event of early termination of this Agreement (other than due to material uncured breach by Company) prior to the expiration date of the Term, Customer shall be obligated to pay to Company 100% of the fees that Company would have received if this Agreement had remained in effect until its scheduled expiration date (with the amount of each remaining month's fee being equal to the average monthly fee charged during the immediately preceding six (6) month period). Such fees shall be paid within thirty (30) days after the effective date of termination and prior to any release of Customer data from Company service. Customer agrees that (a) a breach by Customer under this Agreement is a breach under all other agreements between Customer and Company, and a breach by Customer under any other agreement between Company and Customer is a breach of this Agreement, and (b) all other agreements between Customer and Company are amended to include this provision.
- **Suspension of Services:** Company may suspend Customer's access to the Services immediately, without notice, if: (i) certain third party licenses or access to third party components of the payment processing services are terminated; (ii) Customer causes or fails to fix a security breach; (iii) Company reasonably believes Customer's breach compromises the security of the payment processing services; (iv) Company reasonably believes fraudulent transactions are being submitted on Customer's account knowingly or negligently; (v) Customer's financial processor or financial institution requires such suspension; (vi) Customer fails to pay any fees when due and does not cure such failure within 10 days ; (vii) Customer fails to upgrade to the most current software version, security updates and/or patches; or (viii) Customer fails to materially comply with this Agreement and does not cure such failure within 10 days.

4. ADDITIONAL PAYMENT TERMS

a. **On-Site Expenses:** Customer will be billed for the expenses incurred in connection with the performance of any services, training, consulting or other services provided on-site at Customer's location (including in connection with launching the Services), including the reasonable travel and per day expenses of each trainer or consultant. Pre-scheduled services which are to be performed on-site at Customer's location may not be cancelled or re-scheduled within thirty (30) days of the beginning of such pre-scheduled services. In the event that Customer cancels or reschedules pre-scheduled on-site services within such thirty (30) day period, Customer shall be required to reimburse Company for any pre-paid non-cancellable pre-scheduled expenses associated with the on-site services.

b. **Service Fees:** Customer shall pay monthly service fees in accordance with terms set forth in the Order Form. All payments are denominated in United States dollars.

c. **Additional Fees:** Additional services are offered at the then current Company rate. Customer will provide authorization to Company before any additional services are performed. Additional services may include, but are not limited to, data conversion, additional training, programming, exit data fees, data extract fees, de-tokenization fees, marketing, and other professional services.

d. **Past Due Payments; Late Fees:** Interest charges of one and a half percent (1.50%) per month (or the highest rate permissible under applicable law, if less) will accrue daily on all amounts not received by Company when due. Company shall be entitled to block



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Customer's access to Services (with or without terminating this Agreement or affecting Customer's obligation to make payments under this Agreement) if Customer is more than thirty (30) days delinquent on any payments under this Agreement or any other agreement with Company. The obligation to pay monthly service fees and all other amounts due hereunder is an independent, unconditional covenant, and under no circumstances shall Customer have any right to offset its payments to Company. If any amount owed by Customer under this Agreement or any other agreement with Company is sixty (60) or more days overdue, Company may, without limiting Company other rights and remedies, accelerate Customer's unpaid fee obligations under this and such other agreements so that all such obligations become immediately due and payable, and suspend Company's Services to Customer until such amounts are paid in full. If any payment due Company pursuant to this Agreement is not made within ten (10) days of the due date, Company reserves the right to charge to Customer a late fee equal to Thirty-Five and No/100 Dollars (\$35.00) in addition to the interest provisions contained herein.

e. Taxes: Customer shall pay any and all applicable international, federal, state, and local sales, use, value-added, excise, duty, and any other taxes, fees or duties (other than taxes based on Company's net income) that are assessed on or as a result of the Services. Any such taxes, fees and duties collected by Company from Customer on behalf of a governmental agency shall not be considered a part of, a deduction from, or an offset against, payments due to Company for the Services hereunder.

f. Data Export. Upon termination of the Agreement, and subject to payment of all fees due under this Agreement, Company agrees to provide, in an industry standard format, an export of Customer's data in accordance with Company's then-current data export policy at then current standard fees.

g. Statements for Fees: Statements for the fees quoted herein will be sent via electronic mail to Customer within the first five (5) business days of the service month. If Customer does not dispute the statements within five (5) days of receipt, then Customer's designated bank account will be automatically debited on the fifteenth (15th) day of the month. Statements for one-time, training, and consulting fees and other reimbursable expenses will be sent via electronic mail to Customer following the performance of the services and will be automatically debited ten (10) days from the date of the statement if not contested. Company does not accept payment by check. All payments in the Agreement are denominated in United States dollars.

5. CUSTOMER RESPONSIBILITIES; COMPLIANCE WITH THE LAW

a. Authorized Representatives: Customer agrees that it will only allow Customer Users to have access to Services and that it shall be responsible for any use or misuse of Services by such persons.

b. Compliance with Law; Prohibited Material: Customer represents and warrants that Customer will comply with all laws and regulations applicable to Customer's use of the Services and agrees to use Services only as permitted by applicable law, including but not limited to export control laws, intellectual property laws, financial services laws and regulations, communication laws and regulations, and all relevant state and federal privacy and/or data security laws. The transmission of any material in violation of applicable law is prohibited. This prohibition includes, but is not limited to, the transmission of copyrighted material without permission of the copyright holder and the transmission of threatening or obscene material or trade secrets.

BOTH PARTIES AGREE NOT TO POST OR TRANSMIT ANY UNLAWFUL, HARMFUL, THREATENING, ABUSIVE, HARASSING, DEFAMATORY, VULGAR, OBSCENE, PROFANE, HATEFUL, FRAUDULENT, LIBELOUS, PORNOGRAPHIC, RACIALLY, ETHNICALLY OR OTHERWISE OBJECTIONABLE MATERIAL OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY MATERIAL WHICH ENCOURAGES CONDUCT THAT WOULD CONSTITUTE A CRIMINAL OFFENSE, VIOLATE THE RIGHTS OF OTHERS, OR OTHERWISE VIOLATE ANY APPLICABLE LOCAL, STATE, NATIONAL OR INTERNATIONAL LAW ("PROHIBITED MATERIAL").

Company reserves the right to terminate Customer's use of Services, if Company, in its sole discretion, determines that Customer's use of Services is in violation of this Agreement, unlawful or inappropriate as described above. Notwithstanding the above, Company



has no obligation to monitor any material posted through the Services. Any liability for any such inappropriate or unlawful material posted by Customer shall be Customer's. Customer agrees that all email addresses used by this service have been properly obtained and has followed all provisions of the CAN-SPAM Act (USA) or all Canadian Radio-television and Telecommunications Commission (CRTC) regulations (Canada).

c. Compliance with Privacy and Data Security Laws: Customer will comply with all applicable federal, state and local laws, rules, regulations, governmental requirements and recognized self-regulatory principles and standards, with respect to privacy, data protection, confidentiality or security of Personal Information. "Personal Information" means any information relating to an identified or identifiable individual or information that when combined with other information, may identify an individual. In providing the Services, Customer shall provide Company with such cooperation, assistance, and information, and execute all documents as Company may reasonably request, to enable Company to comply with its obligations under applicable law. Customer further agrees not to use the Services to collect, manage, or process Personal Information, except with permission and to the limited extent required for the provision of services to Customer's customers. Customer further agrees that prior to collecting, managing or processing any information regarding children under the age of 16, Customer must obtain the consent of the holder of parental responsibility over the child. Customer represents and warrants that for Personal Information that Customer discloses to Company, or that is included in the Customer Data, Customer will comply with all laws, regulations, rules, Federal Trade Commission guidelines, and other publicly known industry best practices regarding the collection, disclosure, and use of any Personal Information, which may require Customer to provide customers and consumers with privacy notices and choices (for example, opt-outs regarding certain data sharing); and, that Customer will obtain all required consents from customers and consumers, and that Customer will also disclose to Company any required consents related to Company's use of that Personal Information under this Agreement. Customer agrees not to utilize the Services to store any protected health information.

d. Privacy Notice: Customer will provide notice, where required by law, informing its end users, including its member customers and customer users to whom the Customer Data (as defined below) relates about Company's collection, use, storage or other processing of Customer Data.

6. Implementation / Setup / Training

The deployment process for installation and training regarding Customer's use of the Services is set forth in the Order Form and a subsequent statement of work ("SOW"). The time for such installation and training is only an estimate and may be shorter or longer depending on the circumstances. Customer shall be responsible for the Startup and Training Costs set forth in the Order Form or SOW, which such costs are non-refundable and include the following:

- **Initial Setup:** Company will create a unique instance of the Services for Customer in accordance with applicable industry practice. The Customer instance ensures that Customer's data, users, business policies, and security policies are maintained separately. Company will also have staff available for specific questions pertaining to Customer's installation.
- Customer authorizes Company to withdraw the Startup and Training fee from the bank account indicated in its EFT Authorization Form due upon receipt of the executed Agreement.

The fees specified above explicitly exclude the items described below, which shall be borne by Customer or separately reimbursed by Customer to Company as set forth below:

- **Reimbursable Expenses:** In addition to the fees set forth in this Agreement, Customer shall reimburse Company for out-of-pocket expenses, including travel expenses (flight, rental car, hotel, meals) incurred in providing any on-site training ("Reimbursable Expenses"). Training will be scheduled on dates and times mutually agreed to between the Parties. Once a mutually agreeable schedule is made, Company will notify Customer via email of the proposed schedule. If Customer cancels or reschedules training after this notification has been made ("Late Travel Cancellation Notice"), then Customer shall be



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responsible for the reimbursement of any change fees, cancellation fees, non-reimbursable deposits, or related expenses incurred by Company in connection with such cancellation or rescheduling, which shall also be deemed "Reimbursable Expenses."

- **Hardware and POS Equipment:** Customer, at its sole cost and expense, is responsible for procuring computer hardware and POS equipment as requested by Company in connection with the implementation. Hardware cannot be returned for a refund.
- **Internet Connection.** Customer, at its sole cost and expense, must at all times provide a stable internet connection as required for the Services to function properly.

7. TITLE TO PRODUCTS AND SERVICES

All title to equipment and software licenses provided by Company for performing the Services are the property of Company or its licensors and remain the property of Company or its licensors during and after the term of this Agreement. This Agreement is a services agreement and is not intended to and will not constitute a lease or sale of real or personal property. No title, intellectual property rights or copyright in the software or in any modifications of the software shall pass to the Customer under any circumstances. The software is licensed, not sold. To the extent that Customer provides Company with any feedback relating to the Services (including, without limitation, with respect to any software related thereto, and any feedback related to usability, performance, interactivity, bug reports and test results) ("Feedback"), Company or its licensors (as appropriate) shall own all right, title and interest in and to such Feedback (and Customer hereby makes all assignments necessary to achieve such ownership).

Except as otherwise permitted in this Agreement, Customer shall not: (i) modify, translate, or create derivative works based on the Services; (ii) frame or mirror any content contained or accessible from the Services, unless expressly authorized in writing by Company; (iii) reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Services; or (iv) access or modify the Services in order to (a) build a competitive product or service, or (b) copy any ideas, features, functions or graphics of the Services. Furthermore, unless otherwise authorized in writing by Company, Customer agrees to access the Services only through the interface that is provided by Company for use in accessing the Services. Customer agrees not to use any automated means, including but not limited to agents, robots, scripts, spiders, and screen scraping tools, to access, monitor, download or copy all or any part of the Services, unless Company has provided prior written consent.

Customer Data is the property of Customer and remains the property of Customer during and after the term of this Agreement. "Customer Data" means non-publicly available data and information that Customer (or a user) loads, transmits to or enters into the Services, including data of Customer that the Services are configured to obtain from Customer's servers or systems or from third parties on Customer's behalf, but specifically excluding any Derivative Data, which Derivative Data (defined below) shall be owned by Company. Customer understands that Company may use Customer's information, including Customer Data, for non-identifiable, aggregate reporting for all Company clients, and Customer agrees that any aggregate non-identifiable information or data compiled or collected by Company shall be "Derivative Data" under this Agreement. "Derivative Data" shall also include all modifications, compilations, derivative works and results from processing (including analyses, usage statistics and patterns, datasets, databases, reports, recommendations and visual representations) created or developed from Customer Data or on the basis of Customer's use of the Services or in connection with data a third-party transmits to Company through the API Service. Customer acknowledges that Customer Data shall not include any data obtained by Company through means other than direct use of the Services by a member.

In the event that Customer is a U.S. government user, any software licensed in connection with the Services is provided with restricted rights: (a) If the Customer is a civilian agency, the software: (i) was developed at private expense and is existing computer software and no part was developed with government funds; (ii) is a trade secret of Company for all purposes of the Freedom of Information Act; (iii) is a commercial item and thus, pursuant to Section 12.212 of the Federal Acquisition Regulations (FAR), the government's (and any government agency's) use, duplication or disclosure of the software is subject to the restrictions set forth in this Agreement; (iv) is in all respects proprietary data of Company and all rights are reserved under the copyright laws of the United States; (b) If the Customer is part of the Department of Defense, the software is commercial computer software (and commercial



computer software documentation), and pursuant to DFAR § 227.7202, use, duplication or disclosure of the software is subject to the restrictions set forth in this Agreement. In the event any technical data are not covered by these provisions, it shall be deemed “technical data-commercial items” pursuant to DFAR § 252.227- 7015(a). Any use, modification, reproduction, release, performing, displaying, or disclosing of such technical data shall be governed by the terms of DFAR § 252.227-7015(b).

Customer hereby acknowledges and agrees that the software constitutes valuable IP Rights of Company, including, but not limited to, copyrights and trade secrets, and that except for the rights of use, modification, and copying expressly granted to Customer herein, Company now holds and shall retain all rights, title, and interest to the software, as well as trade names or trademarks as Company may from time to time by written notice permit or require Customer to use in connection with the software (such trade names and trademarks are collectively referred to as the “Product Name”), and any documentation with respect thereto, title to all intellectual property rights, including, without limitation, copyrights, patent rights, trade secrets, trademarks, service marks, trade dress, and other similar property rights (“IP Rights”) with respect thereto. Upon termination of this Agreement, Customer shall retain no rights of any nature with respect to the software or the Product Name. Customer shall not cause or allow the Product Name to be associated with any product other than the software and shall not (during the term of this Agreement or at any time thereafter) create, copy, reproduce, use, distribute, promote, sell, or sub-license any product (other than as expressly authorized herein) bearing the Product Name or any name confusingly similar thereto. Company may, at its own discretion and at its expense, take any steps necessary and proper to protect and preserve its rights and interests in the software and component parts thereof. At Company’s request and Company’s sole expense, Customer shall use reasonable efforts to assist Company in protecting such rights and interests.

8. TRADEMARK AND DOMAIN NAME RIGHTS

Customer grants to Company and its affiliates a limited, non-exclusive license to use the name, trademarks, trade names, logos, slogans and copyrights related thereto of Customer in connection with providing the Services, and for promotional and marketing purposes related to this Agreement, provided that all such uses shall inure to Customer’s benefit. Customer shall be solely responsible for the selection, registration, payment, maintenance and defense of any domain name or trademark utilized by Customer. Customer agrees to indemnify and hold Company and its affiliates harmless from any claims relating to or against Customer’s domain name, trademarks or copyrights, including but not limited to any claims with respect to infringement or dilution of trademarks.

9. TREATMENT OF CONFIDENTIAL INFORMATION

From time to time one party (the “Receiving Party”) may receive from the other party (the “Disclosing Party”) proprietary and confidential information (“Confidential Information”), including, without limitation, the terms and conditions of this Agreement, financial information, personal information, pricing, business plans, usernames, passwords, Company Technology, and any information that is marked as “confidential” or should be reasonably understood to be confidential or proprietary to the Disclosing Party. The Receiving Party agrees that the Receiving Party will not disclose the Confidential Information to any third party, nor use the Confidential Information for any purpose not permitted under this Agreement. The Receiving Party agrees to use at least the same degree of care that it uses to protect the confidentiality of its own information, but in any event, no less than a reasonable degree of care. Except with respect to Personal Information, the nondisclosure obligations set forth in this paragraph shall not apply to information that the Receiving Party can document (i) is generally available to the public (other than through breach of this Agreement), or (ii) was already lawfully in the Receiving Party’s possession at the time of receipt of the information from the Disclosing Party, or (iii) was obtained by the Receiving Party from a third party without a breach by the third party of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without reference to the Disclosing Party’s Confidential Information. “Company Technology,” for purposes of this Agreement, means the proprietary technology of Company, including hardware designs, algorithms, software, software tools, user interface designs, architecture, class libraries, objects, documentation, know-how, trade secrets, and any related intellectual property rights, and also including any derivatives, improvements, enhancements or extensions of any of the foregoing conceived, reduced to practice, or developed by or on behalf of



Company (including, without limitation, any Feedback), whether during the term of this Agreement or otherwise.

Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party's Confidential Information pursuant to applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction (a "Legal Order"), provided that the Receiving Party shall first make commercially reasonable efforts to provide the Disclosing Party with (a) prompt written notice of such requirement so that Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy and (b) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. In addition, Company may use third party service providers in providing the Company's Services. Company may share confidential information of Customer with these service providers so long as a confidentiality agreement is in place to maintain confidentiality.

As between Company and Customer: (i) Company shall own all Company Confidential Information and, except as expressly provided herein, Customer shall not have any right, title, or interest therein; and (ii) Customer shall own all Customer Confidential Information and, except as expressly provided herein, Company shall not have any right, title, or interest therein.

10. API Service (Daxko Exchange)

a. Customer Data Access Request Form: To grant access to Customer Data to a third party through Company's Daxko Exchange API Service, at Customer's request, Customer must execute a Customer Data Access Request Form authorizing Company to provide such access to a third party. Company will only provide such Customer requested access to third parties participating in the Daxko Exchange API Program (each, a "Vendor").

b. Privacy Notice: Customer shall be responsible for informing its end users to whom the Customer Data relates, where required by law, about Company or Vendor's collection, use, storage or other processing of Customer Data.

c. Termination of Access: Customer acknowledges that it has the affirmative obligation to immediately inform Company if it seeks to revoke Vendor's access to its Customer Data, including if Customer terminates its relationship with Vendor. Customer acknowledges that informing Company that it seeks to revoke Vendor's access to Customer Data or termination of its relationship with a third party is essential to end the flow of data via the API Service between Company and Vendor with respect to the Customer Data.

d. Revocation of Access. In the event that Company reasonably believes that Vendor's access to Customer Data through the API Service is likely to cause harm or damage to the API Service, Company may immediately revoke Vendor's access. Customer acknowledges that Company may filter, alter, limit or otherwise restrict Customer's or Vendor's queries and results, and databases included, with respect to access through the API Service.

e. Technical Support. Customer acknowledges that any and all technical assistance and support provided by Company relating to the API Service is beyond the scope of standard technical support under this Agreement and shall be billed at Company's then-current standard rates.

f. Security Breach. Customer agrees that in the event of any breach or suspected breach in relation to (i) any Customer Data disclosed in violation of Vendor's agreement with Company with respect to the API Service or the Customer Data Access Request Form, or (ii) any actual or suspected unauthorized access, disclosure or use of Customer Data that Vendor accesses via the API Service (each event being a "Security Breach"), Vendor, and not Company, shall be responsible for containing such Security Breach, mitigating potential risks to affected individuals and notifying affected individuals and regulatory authorities of the Security Breach where required by law. Vendor shall be solely responsible for all costs or expenses associated with any remedial actions or notifications.



g. Release: Customer hereby expressly releases Company and its affiliates, and their respective officers, directors, employees, consultants and agents from any claims, demands, damages, causes of action, suits or liability for any losses or damages (either to Customer or Vendor) of any kind, whatsoever, that may arise in connection with the access, use (or misuse), handling, receipt, disclosure, or storage of data by any Vendor whom Customer authorizes Company to provide access to Customer Data through the API Service.

11. WARRANTIES; DISCLAIMERS; LIMITATIONS OF LIABILITY

a. Company warrants that:

- (i) all software and equipment utilized by Company in providing Services will, on the date installed and during the Term of this Agreement, be in good working order and will substantially conform in all material respects to Company's Service specifications;
- (ii) all work performed by Company in providing Services will be performed in a good and workmanlike manner;
- (iii) Company has good and valid title, or has otherwise licensed such rights as are necessary, with respect to all software and equipment utilized to provide Services; and
- (iv) Company has sufficient legal rights to provide Services to Customer.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THE IMMEDIATELY PRECEDING SENTENCE, COMPANY PROVIDES, AND CUSTOMER ACCEPTS, THE SERVICES IN "AS-IS" CONDITION; AND COMPANY DISCLAIMS ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (STATUTORY, EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE SERVICES OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, ACCURACY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT COMPANY KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING. COMPANY SHALL HAVE NO LIABILITY ARISING FROM CARD HOLDER DATA TRANSMISSION WHICH OCCURS PRIOR TO ENCRYPTION AND RECEIPT BY SERVERS OWNED OR CONTROLLED BY COMPANY. WITHOUT LIMITING THE GENERALLITY OF THE FOREGOING, COMPANY SHALL HAVE NO LIABILITY FOR DAMAGES RESULTING FROM FRAUD, EMBEZZLEMENT, THEFT, IDENTIFY THEFT, OR INVASION OF PRIVACY BY ANY THIRD PARTY. COMPANY DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. COMPANY EXPRESSLY DISCLAIMS ANY WARRANTY AND SHALL HAVE NO LIABILITY WITH RESPECT TO ANY SERVICES OR PRODUCTS PROVIDED BY THIRD PARTIES. COMPANY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN CUSTOMER WITH RESPECT TO THE SERVICES OR ANY PART THEREOF. SOME STATES OR COUNTRIES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO CERTAIN OF THE ABOVE EXCLUSIONS MAY NOT APPLY. TO THE EXTENT THAT THIS AGREEMENT MAY BE INTERPRETED UNDER THE LAWS OF A STATE NOT ALLOWING ANY SUCH A LIMITATION ON DAMAGES, THE FOREGOING PROVISION SHALL BE INTERPRETED TO PROVIDE THE MAXIMUM BENEFIT OF THE FOREGOING PROVISION ALLOWED BY THAT STATE'S LAWS. IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, LOSS OF DATA, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION OR LOSS OF BUSINESS INFORMATION ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL COMPANY'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE FEES PAID FOR THE MONTH IN WHICH THE BREACH, OUTAGE OR DEFAULT OCCURRED. ALL DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH HEREIN ARE MADE ON BEHALF OF BOTH COMPANY AND ITS AFFILIATES AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, REPRESENTATIVES, CONTRACTORS, LICENSORS, SUPPLIERS AND SERVICE PROVIDERS.

b. In the event of any default by Company hereunder, Customer's sole and exclusive remedies shall be the adjustment, repair or replacement of the goods or services as deemed mutually appropriate by Customer and Company. Customer agrees that any claim that the foregoing warranties have been materially breached or violated must be described in sufficient detail in a written notification to Company pursuant to the notification requirement of this Agreement. Such written notification must be provided to



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Company within thirty (30) days of the occurrence of the breach or violation, or else such alleged breach or violation shall be deemed immaterial and waived by Customer.

c. Certain portions of the Services provided under the Agreement may be provided by third party service providers ("Third-Party Services"). Customer acknowledges that in order to receive the Third-Party Services Customer may be required to agree to separate and additional terms and conditions with such third-party service providers ("Third-Party Agreement") and that Company is not responsible for the services or products of such third parties.

12. INDEMNIFICATION

Except as provided below, Customer agrees to defend, indemnify, and hold harmless Company and its directors, members, officers, employees, licensors and agents, from and against any and all claims, losses, damages, suits, fees, judgments, costs, and expenses, including attorneys' fees, arising from: (i) Customer's failure to use Services as permitted under this Agreement; (ii) from any violation or breach of this Agreement by Customer; (iii) any action or inaction of Vendor to whom Customer grants access to the API Service related to Vendor's access, use, handling, receipt, disclosure or storage of Customer Data and (vi) any failure of Vendor or Customer to comply with state or federal regulations related to privacy, data protection, confidentiality or security of Personal Information; provided that Company (a) gives Customer written notice of any such claim within fifteen (15) days of Company's receipt of such claim, (b) permits Customer to have sole control and authority with respect to the defense or settlement of any such claim, and (c) provides Customer all reasonable cooperation, information, and assistance in connection with the defense or settlement of any such claim, at Customer's cost and expense.

Except as provided below, Company agrees to defend, indemnify, and hold harmless Customer and its directors, members, officers, employees, and agents, from and against any and all claims, losses, damages, suits, fees, judgments, costs, and expenses, including reasonable attorneys' fees, arising out of any and all third party claims that the Services infringe a valid U.S. patent or copyright or misappropriate a trade secret of a third party provided that Customer (a) gives Company written notice of any such claim within fifteen (15) days of Customer's receipt of such claim, (b) permits Company to have sole control and authority with respect to the defense or settlement of any such claim, and (c) provides Company all reasonable cooperation, information, and assistance in connection with the defense or settlement of any such claim. If the Services becomes, or in Company's opinion, is likely to become the subject of any injunction preventing its use as contemplated herein, Company may, at its option and expense, (i) procure the right to allow Customer to continue to use the Services or (ii) modify or replace the Services or infringing portions thereof to become non-infringing, without loss of material functionality. If Company is unable to provide one of the remedies in (i) or (ii) within forty-five (45) days of notice of the claim, Company shall have the right to terminate this Agreement. Notwithstanding the foregoing, Company shall have no liability or obligations with respect to any patent, copyright, or trade secret infringement claim based upon or arising out of (i) any modification or alteration to the Services not approved by Company, (ii) any combination or use of the Services with products or services not supplied by Company or approved in writing by Company in advance of such combination, (iii) any patent, copyright or trade secret in which Customer or its affiliates have an interest, or (iv) use of the Services not in accordance with its documentation or outside the scope of the license granted under this Agreement. Customer agrees to defend, indemnify, and hold harmless Company and its directors, members, officers, employees, and agents, from and against any and all claims, losses, damages, suits, fees, judgments, costs, and expenses, including reasonable attorneys' fees, arising out of any and all third party claims enumerated in clauses (i) through (iv) above. The foregoing states the entire liability of Company with respect to infringement of patents, copyrights, trade secrets, or other proprietary rights by the Services or any part thereof. Customer will immediately inform Company as soon as Customer becomes aware of any threatened or actual liability claim by a third party relating to the Services.

13. NOTICES

Unless expressly stated otherwise herein, any notice, demand, request or delivery required or permitted to be given by either Party pursuant to the terms of this Agreement shall be in writing and shall be deemed given (a) when delivered personally, (b) on the next



business day after timely delivery to an overnight courier, (c) on the third business day after deposit in the U.S. mail (certified or registered mail return receipt requested, postage prepaid), or (d) upon confirmation of receipt by email, in each case, addressed to the Party at such Party's address as set forth on the signature page of this Agreement or as subsequently modified by written notice.

14. SUNSET POLICY.

The Services are subject to Company's sunset or discontinuation policy ("Sunset Policy") and Company reserves the right to discontinue all support for the Services, or for any features, services or content accessible through the Services, in accordance with such Sunset Policy. Company focuses on supporting rapidly-changing technologies, and on innovating to provide customers with the most stable and useful set of products and services possible, and consequently, products and services may go through major updates or be replaced with newer products. As new versions, products, and services are introduced, Company actively plans for sunset of older services and software versions as well as specific product features. Below is Company sunset policy ("Policy") to help customers better manage their end-of-life transition and to understand the role Company can play in helping to migrate to updated alternative Company technologies. This Policy explains the type of support services Company will provide for Licensed Product and services during a product's life cycle. For the purposes of this document, "Support" and "Maintenance" are used interchangeably.

a. Definitions.

- Sunset/Sunsetting or End of Life (EOL) refers to when Company ceases marketing or offering a particular Licensed Product or a Major Release for a particular Licensed Product. When a Licensed Product is sunsetted, it enters the sunset, or EOL, period. The Sunset or EOL Period starts when the next major version of a product is released—or at such other time when Company announces to customers that a given product has been discontinued—and ends at the time designated by Company in the EOL or Sunset announcement, which may vary.
- End of Support (EOS) begins after the expiration of the sunset period when software shall be deemed at End of Support, or as an EOS version or product.
- Licensed Product refers to the Company software product or services you license, which is governed by the applicable agreement between you and Company.
- Releases for Licensed Product are categorized as Major Releases or Maintenance Releases.
- Major Release/Version means a new release of the Licensed Product that incorporates the last Maintenance Release(s) (if any) and may include additional enhancements to the Licensed Product. Major Releases may include architectural changes and major feature changes, as well as new features and functionality. The terms "Release" and "Version" are used interchangeably in this document.
- Maintenance Release means a release of the Licensed Product that provides cumulative patches for a particular Major Release. A Maintenance Release typically does not contain new features or new functionality. Patches are software code updates that resolve specific software deficiencies. These are typically designated as a build number associated with a specific release.
- Support Services are the maintenance support services for Licensed Product. Customers must have a current agreement and be up to date on all amounts due under the agreement in order to receive Support Services (in accordance with this Policy).

b. Full Support. Company provides Full Support for Licensed Product for which the customer has a current agreement for the current version of any software or services with all Maintenance Releases applied. For customers with the current major version of the software who have not applied all available patches, support may be limited to configuration assistance, activation assistance, and general questions.

c. Sunset Support. Company provides a more limited level of Support Services for software that is in the Sunset Period. Limited support is provided for customers who have installed all patches available to the Sunset Version. Support services may not be provided if all available fixes have not been installed. If all patches have been installed, the customer shall provide Company with a fully reproducible scenario in which the error occurs. For the first nine (9) months after Sunset is initiated for a product, Company



may, at its option, provide an additional patch to the Sunset Version or offer a work-around. Partial support will be subject to the availability of resources and may be limited as Company determines. At nine (9) months after Sunset, Company shall provide configuration support or work-arounds only. No defects shall be corrected in Sunsetting versions after nine (9) months. No new features or enhancements shall be added to Sunsetting versions of software.

d. End of Support. After Sunset or End of Life (EOL), a product shall be deemed at End of Support (EOS). EOS products and versions shall have Company Community (self-help) support only. Customers may opt to purchase pay-per-incident (PPI) support for EOS products or versions; however, this support shall be limited to configuration only and shall not include any fixes, patches, or enhancements to the unsupported version. PPI support entitles the customer of an EOS product or version to submit a ticket through the online HelpDesk. Fees for PPI shall be at Company's then-current applicable rates.

e. Contract Commitments. Notwithstanding any of the foregoing, in the event that any Licensed Products or Versions thereof are scheduled to reach EOL or EOS without a replacement or new version of the Licensed Products being made available to the customer, such Licensed Products will be supported by Company in accordance with the applicable Order Form and Service Agreement for the remainder of the then-current term of such agreement.

15. GENERAL

a. Limitation of Action. Any legal action arising out of Company's provisioning of Services, including the failure, malfunction or defect in the Services shall be brought within one (1) year of the occurrence or deemed waived.

b. Non-Solicitation. Neither party to this Agreement will solicit for employment nor knowingly employ any then current employee of the other party either directly or indirectly through a third-party during the term of this Agreement, including any renewal thereof, without the mutual agreement of the parties.

c. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama excluding the conflicts of law provisions thereof and both parties stipulate to the exclusive jurisdiction of the state and federal courts of that jurisdiction. <<The parties agree that any disputes among them arising from or related to this Agreement shall be resolved by binding arbitration conducted under the auspices of the American Arbitration Association in a mutually agreed upon location. The parties shall each be responsible for initial payment of one-half of any arbitration fees, but upon final resolution the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs. Notwithstanding the foregoing arbitration provision,>> Customer acknowledges that a breach or threatened breach of this Agreement by Customer or its representatives may cause irreparable harm to Company for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by Customer or its representatives, Company shall, in addition to any and all other rights and remedies that may be available at law (which Company does not waive by the exercise of any rights hereunder), be entitled to seek a temporary restraining order, injunction, specific performance and any other equitable relief that may be available from a court of competent jurisdiction, and the parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.

d. No Assignment. Customer shall not assign any of its rights under this Agreement nor delegate its duties hereunder to another person or entity without the prior written consent of Company, which consent may be granted or withheld in Company's sole and absolute discretion. Any permitted assignment shall be subject to the permitted assignee or transferee agreeing in writing to comply with all the terms and restrictions contained in this Agreement. Any attempted assignment in violation of this Section shall be void. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective trustees, successors, permitted assigns and legal representatives.



e. Password Security. Strong passwords must be used to access all IT services, including the Admin Website logon. Strong passwords are defined as having more than eight characters, not matching standard “dictionary” definitions. Customer acknowledges that Company may maintain, or use a third party who maintains, physical and technical security of the servers at a level commensurate with reasonable commercial practices for similar types of information (such as, but not limited to, lock and key, encryption, and blocking and identifying unauthorized access to data).

f. Severability. In the event that any term or provision in this Agreement is held to be invalid, void, illegal or unenforceable in any respect, this Agreement will not fail, but will be deemed amended, to the least extent necessary, to delete the void or unenforceable term or provision, and the remainder of this Agreement will be enforced in accordance with its terms and will not in any way be affected or impaired thereby. In the event that any term or provision of this Agreement is held to be overboard or otherwise unreasonable, the same will not fail, but will be deemed amended only to the extent necessary to render it reasonable, and the Parties agree to be bound by the same as thus amended.

g. Changes. Company reserves the right, in its sole discretion, to make any changes to the Services from time to time that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of Company’s services to the Customer and/or any Customer Users, (ii) the competitive strength of or market for Company’s services, or (iii) the Services’ cost efficiency or performance; and/or (b) to comply with applicable law. In addition, upon Customer’s request, Company may (in Company’s discretion) add or delete some portion of the Services, without requiring a separately signed agreement, provided that such changes do not increase or decrease the total fees under this Agreement by more than ten percent (10%). Company reserves the right to modify this Agreement to correct errors and omissions, or substitute Services with reasonably equivalent Services (provided that the change will have no effect on the total fees under the Agreement).

h. Rights upon Termination. Upon the expiration or any termination of the Agreement, Customer shall promptly return to Company, or with Company’s prior written consent destroy, any information from the Services in Customer’s possession or control. If the Agreement is terminated prior to the expiration of the Initial Term or the applicable Renewal Term, Customer shall pay to Company within thirty (30) days after the effective date of such termination an amount equal to the total remaining annual license and maintenance fees owed in accordance with the Monthly Service Fee, defined as the current monthly fee multiplied by the number of months in the Initial Term or the then current Renewal Term, as applicable, less the aggregate amount of the license and maintenance fees actually paid by Customer to Company during the Initial Term or the then current Renewal Term, as applicable plus any additional fees and costs at Company’s then current rates. Upon termination of the Agreement, and subject to payment of all fees due under this Agreement, Company agrees to provide, in an industry standard format, an export of Customer’s available data in accordance with Company’s then-current data export policy following payment of any applicable fees at then current standard fees.

i. Force Majeure. In no event will Company be liable or responsible to Customer, or be deemed to have defaulted under or breached the Agreement any failure or delay in fulfilling or performing any term of these Terms and Conditions, when and to the extent such failure or delay is caused by any circumstances beyond Company’s reasonable control (a “Force Majeure Event”), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, pandemic, epidemic, quarantine, embargoes or blockades in effect on or after the date of the Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of law, rules, regulations or orders, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation.

j. No Third-Party Beneficiaries. Except as expressly provided, the Agreement are for the sole benefit of the Parties and nothing herein expressed or implied will give or be construed to give to any person, other than the Parties, any legal or equitable rights hereunder.



k. Setoff. All amounts payable to Company under the Agreement shall be paid by Customer to Company in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable law).

l. Monitoring. Company may monitor Customer's and Customer User's use of and access to the Application or Services to ensure compliance with the Agreement and any other applicable rules, policies, deadlines and instructions. By using the Application or Service, each of Customer and Customer User expressly consents to such monitoring.

m. Collection and Use of Private Information. Each of Customer and Customer User acknowledges that when such party download, install or use the Application or Service, Company may use automatic means (including, for example, cookies and web beacons) to collect information about Customer User's mobile device and about Customer User's use of the Application or Service. Customer and Customer User also may be required to provide certain information about Customer User as a condition to downloading, installing or using the Application or certain of its features or functionality. All information we collect through or in connection with this Application is subject to our Privacy Policy. By downloading, installing, using and providing information to or through this Application, Customer User's consent to all actions taken by us with respect to Customer User's information in compliance with the Privacy Policy.

n. No Waiver. The rights and remedies provided by the Agreement are cumulative. No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder. In the event of a conflict between this Agreement and any applicable purchase or other terms, the terms of this Agreement shall govern.

o. Exclusivity. During the Term, Customer agrees that Company will be the exclusive provider of the Services at all present or future locations, sites, or facilities that Customer owns or controls. Customer shall not solicit bids, quotes, or contracts from another provider of the Services during the Term of this Agreement for the provision of Services to such additional locations, sites, or facilities not presently covered by this Agreement.

16. Terms Specific to SMS / Text Messaging Services.

Company automates text message communications, but Customer is responsible for ensuring that the recipients of those communications have provided prior express written consent to receive them. The prior express written consent must identify that Customer may be sending text messages related to the Services using automated technology and that the Customer User affirmatively agrees to receive such messages. The prior express consent must include the Customer User's written or electronic acceptance. Specifically, by entering a cell phone number into the Customer's Systems in connection with the Services and not opting such cell phone out of the Company text message feature, Customer is directing Company to automatically send text message reminders and other communications to such cell phone and certifying that the user of such cell phone consents to the receipt of those messages. Customer is responsible for all liability for any failure to receive consent or failure to opt users out of the text message feature. Additionally, Customer may not attempt to spoof sender domains, send spam or other offending text message practices. Company makes no expressed or implied warranty of individual message receipt. Company shall not be liable for any issues that arise associated with the content that Customer provides or unforeseen liabilities of it being delivered. Customer shall be solely liable to comply with applicable laws and regulations within Customer's jurisdiction in connection with telecommunication (e.g., email and text) messages that

17. Privacy Policy Incorporated

Customer acknowledges that Company's Privacy Policy is an integral part of this Agreement and agrees to abide by the terms and spirit of the Privacy Policy, which may be found at <https://vfp.us/privacy-policy/>



18. ENTIRE AGREEMENT

This Agreement and all order forms, schedules, attachments, and terms and conditions, including, without limitation, the Order Form, the Customer Data Access Request Form (as applicable) and all other terms and conditions, which are incorporated by reference herein, or in an applicable Order Form, collectively represent the complete agreement and understanding between Company and Customer with respect to the subject matter herein and supersede any other written or oral agreement.