

Your election to download or use or otherwise obtain software and/or computer programs and/or Components (collectively "Software Systems") from EWR, Inc. constitutes your agreement to the following terms.

## **Section 1.**

### **DEFINITIONS**

The following terms as used in this Agreement have the following specified meanings:

1.1 "Components "means (a) Equipment, (b) computer programs (including source code and object code), including without limitation, software, firmware, application programs, operating systems, applicable licensing, files and utilities; (c) supporting documentation for such computer programs, (d) tangible media on which such programs are recorded; and (e) any other materials or matter needed to operate the software or programs..

1.2 "Confidential Information" shall include all materials and information supplied or made accessible by EWR, Inc. to you. Confidential Information includes information that relates to the technical, marketing, product, and/or business affairs of EWR, Inc.; any services performed by EWR, Inc.; trade secrets; business methods or processes; marketing plans; financial information or data; customer data or information pertaining to the customers of EWR, Inc.; and any information belonging to EWR, Inc. or in its possession to which you may have access via EWR, Inc. The following information will not be considered to be Confidential Information:

1.2.1 Information that is already known to you at the time the information is transmitted, or becomes known by you independently of EWR, Inc. through no wrongful act by you.

1.2.2 Information that is explicitly approved for release by EWR, Inc.

1.2.3 Information that is known or available to the general public or becomes known or available to the general public through no wrongful act on your part.

1.3 "Software Systems" are those systems, programs and Components obtained by you from EWR.

1.4 "EWR, Inc." is a Tennessee corporation having its principal office at Memphis, Tennessee and a satellite office in Raleigh, NC "EWR" refers to "EWR, Inc."

## **Section 2.**

### **COOPERATION**

2.1 Cooperation and Personnel. You will designate personnel to work with and communicate with staff of EWR, Inc. concerning the use of, and any defects or problems with, the Software Systems.

2.2 Accessibility. You will be responsible for providing, at your location, compatible internet browser technology and a PC that will have high speed internet connectivity, and for obtaining licenses therefore.

## **Section 3.**

### **OWNERSHIP**

3.1 Ownership. As between you and EWR, INC, all Components and Software Systems supplied by EWR, or

created pursuant to any agreement with you, shall at all times remain the exclusive property of EWR and EWR will retain exclusive ownership of all rights to the Components and Software Systems and any and all ideas and information embodied therein including certain rights, if any, that EWR has pursuant to license(s) from any other party. Upon full payment of the annual license fees set by EWR, Inc. EWR will grant to you a non-exclusive limited license to use the Software Systems owned by EWR in your own business during the term of the annual license only. You acknowledge that the Software Systems is software that is proprietary to EWR. The Software Systems provide you with services, information, text, content, and/or interactive features which have been provided by or through and/or specially designed by EWR to perform certain functions in EWR's designed format and appearance (collectively "EWR's features and/or its Look and Feel"). You agree that you will not copy, reproduce, reverse engineer, decompile, disassemble, or retransmit EWR's features and/or its Look and Feel, or any part thereof.

3.2 Modification and Redistribution. Without EWR, Inc.'s express written consent you will not modify the Software Systems or use any portion thereof with any open source software or take any action that would result in redistribution of the Software Systems.

#### **Section 4.**

##### **BACKUP AND RECOVERY**

4.1 If EWR, Inc. maintains any data of yours, EWR will maintain throughout the term of the license, disaster recovery policies and procedures and off-System disaster recovery capabilities consistent with those used for EWR's data.

4.2 Should you become aware of any error, defect or other problem related to the Software Systems you will promptly notify EWR, Inc. thereof, and cooperate with EWR, Inc. at your expense to determine the source thereof.

#### **Section 5.**

##### **SECURITY AND SYSTEM ACCESS**

5.1 Authorized Access. Only the parties' authorized personnel, users, and subcontractors shall have access to system data. EWR will use reasonable efforts to prevent unauthorized access to restricted areas of its servers. In addition, the parties will respond immediately to remedy any known security breaches.

5.2 Hours of Operation. EWR's hours of operation will be 8:00 A.M. CT to 5:00P.M. CT on customary business days.

5.3 Use of Access Codes . EWR, Inc. may provide access codes to you, and if so, you will provide them only to your employees whom you have authorized to act for you.

#### **Section 6.**

##### **CONFIDENTIALITY**

6.1 General Provisions. You agree to hold all Confidential Information received from EWR, Inc. in strict confidence and to use the confidential information only for implementing this agreement. You will use all reasonable

efforts to safeguard such Confidential Information from unauthorized disclosure. You agree that you will not, directly or indirectly, use any Confidential Information for any purpose without the prior written consent of EWR, Inc. and you shall restrict the dissemination thereof to your respective employees with a specific need to know such information. You will promptly notify EWR, Inc. in writing of any loss, misuse or misappropriation of EWR, Inc.'s Confidential Information that may come to your attention.

6.2 Return of Confidential Information. Upon termination or expiration of this Agreement, or at any other time upon request, you will promptly deliver to EWR, Inc. all documents or electronic records (and all copies or reproductions thereof) which constitute or contain Confidential Information belonging to the other party. Any such information that is incapable of being returned will be destroyed.

6.3 Injunctive Relief. You acknowledge and agree that the failure by you to adhere to the terms of this Section 6 would cause the other irreparable damage for which money damages alone would be inadequate compensation. Without limiting any other available remedy, you agree that EWR, Inc. shall be entitled to an injunction or other equitable relief for a violation of this Section. You consent to the entry of an injunction for any established violation of this Section, and you waive the making of a bond as a condition of obtaining such relief.

6.4 Data Received From You. Particularized data received from you will not be resold or otherwise provided to third parties by EWR, Inc. without your consent. EWR, Inc. may use and resell data that is not particularized. Data that has been aggregated such that the particular individual or company that originated the data cannot be identified is data that is not particularized.

## **Section 7.**

### **REGULATORY COMPLIANCE**

7.1 Compliance. You alone are responsible for complying with all applicable local, state, federal and international laws, rules, regulations and requirements for your operations.

## **Section 8.**

### **WARRANTIES; DISCLAIMERS**

8.1 LIMITATION. EWR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, WITH RESPECT TO THE OPERATION, CAPACITY, SPEED, FUNCTIONALITY, SOFTWARE, HARDWARE OR OTHER MATERIALS, OR RESULTS TO BE DERIVED FROM THE USE OF ANY INFORMATION TECHNOLOGY SERVICES, SOFTWARE, HARDWARE OR OTHER MATERIALS PROVIDED UNDER THIS AGREEMENT, OR THAT THE OPERATION, CAPACITY, SPEED, FUNCTIONALITY, QUALIFICATIONS OR CAPABILITIES OF ANY SUCH SERVICE, SOFTWARE, HARDWARE SYSTEM OR OTHER MATERIALS WILL BE UNINTERRUPTED OR ERROR-FREE.

## **Section 9.**

### **LIMITATION OF LIABILITY**

9.1 MEASURE OF DAMAGES. IN NO EVENT WILL THE DAMAGES PAYABLE BY EWR, Inc. INCLUDE, NOR WILL EWR, Inc. BE LIABLE TO YOU OR TO ANY PERSON OR ENTITY CLAIMING THROUGH YOU FOR, LOSS OF INCOME, PROFIT OR SAVINGS OR INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT EWR, Inc. HAS BEEN ADVISED OF, OR OTHERWISE MIGHT HAVE ANTICIPATED, THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

9.2 LIMIT TO TOTAL OF FEES PAID. UNDER NO CIRCUMSTANCES SHALL EWR, Inc. BE LIABLE TO YOU FOR ANY AMOUNT OF DAMAGES IN EXCESS THE FEES PAID FOR THE WORK, DELIVERIES AND SERVICES PROVIDED OR REQUIRED TO BE PROVIDED TO YOU.

## **Section 10.**

### **MISCELLANEOUS**

10.1 No Third-Party Beneficiaries. This Agreement shall be for the benefit of the parties hereto and none of the provisions of this Agreement shall be for the benefit of or enforceable by any third party.

10.2 Force Majeure/Excused Performance. EWR, Inc. will not be deemed to be in default hereunder, or will be liable to you, for failure to perform any of its obligations to you to the extent that such failure results from any event or circumstance beyond EWR, Inc.'S reasonable control, including without limitation acts or omissions of third parties, severe weather, floods or other natural disasters, fire, riots, acts of war, civil disorder, court orders, acts or regulations of governmental bodies imposed after the fact, labor disputes or failures or fluctuations in electrical power, heat, light, air conditioning or telecommunications equipment or lines, or other equipment failure, and which it could not have prevented by reasonable precautions or could not have remedied by the exercise of commercially reasonable efforts.

10.3 Waiver. None of the provisions of this Agreement shall be considered waived by EWR, Inc. unless such waiver is agreed to in writing by it.

10.4 Arbitration. Any dispute under or relating to this agreement shall be resolved by final and binding arbitration in Memphis, Tennessee in accordance with and subject to the Commercial Arbitration Rules of the American Arbitration Association ( "AAA ").

10.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee, exclusive of choice-of-law rules. The state and federal courts located in Memphis, Tennessee shall have jurisdiction and venue over you for purposes of litigation concerning this agreement or arbitration.

10.6 Severability. In the event that any term or provision of this Agreement shall violate any applicable statute, ordinance, or rule of law and for that or any reason be unenforceable, such provision shall be ineffective without invalidating any other provision hereof.

10.7 Headings, Interpretation. The headings used in this Agreement are for convenience only.