

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 and conditions (collectively "Agreement").

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 to you. Confidential Information includes information that relates to the technical, marketing, product, and/or business affairs of EWR; EWR's computer programs (including source code and object code), including without limitation, software, firmware, application programs, operating systems, files and utilities, supporting documentation for such computer programs, and other materials or matter needed to operate the software or programs; any services performed by EWR; trade secrets; business methods or processes; marketing plans; financial information or data; customer data or information pertaining to the customers of EWR; and any information belonging to EWR or in its possession (such as licensed third-party computer programs) to which you may have access via EWR. 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 through no wrongful act by you;

1.2.2 Information that is explicitly approved for release by EWR; and

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 specified combinations of Components obtained by you from EWR that are configured to work together for the purposes specified by EWR

1.4 "EWR" refers to EWR, Inc., a Tennessee corporation having its principal office at Collierville, Tennessee and a satellite office in Raleigh, North Carolina.

Section 2.

COOPERATION

2.1 Cooperation and Personnel. You will designate personnel to work with and communicate

with staff of EWR 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.

LICENSE GRANT AND OWNERSHIP

3.1 License Grant. Upon full payment of the annual license fees set by EWR, EWR will grant to you a non-exclusive, non-assignable limited license to use the Software Systems owned by EWR in your own business during the term of the annual license only.

3.2 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 inventions, ideas, information, and creative expressions comprising the same or embodied therein, including certain rights, if any, that EWR has pursuant to license(s) from any other party. 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").

3.3 License Restrictions. You will not, nor will you permit any other person having access to any Software System or Component licensed by you under this Agreement to do any one or more of the following:

- (a) copy the Software Systems or Components, in whole or in part, other than as necessary for backup purposes or for installation and use of EWR's proprietary software on computers owned, controlled, and utilized by you in the ordinary course of your business;
- (b) modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improvements of any software, firmware, application programs, operating systems, files and utilities, or supporting documentation comprising or included in the Software Systems or Components;
- (c) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software Systems or Components to any third party;
- (d) reverse engineer, disassemble, decompile, decode, or adapt any software, firmware, application programs, operating systems, files or utilities comprising or included in the Software Systems or Components, or otherwise attempt to derive or gain access to the source code of any software, firmware, application programs, operating systems, files or utilities comprising or included in the Software Systems or Components, in whole or in part;
- (e) bypass or breach any security device or protection used for or contained in the Software Systems or

Components;

(f) remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any trademarks, terms of the documentation, warranties, disclaimers, or intellectual property rights, proprietary rights or other symbols, notices, marks, or serial numbers on or relating to any copy of the Software Systems or Components;

(g) use the Software Systems or Components in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable Law;

(h) use the Software Systems or Components for purposes of: (i) benchmarking or competitive analysis of the Software Systems or Components; (ii) developing, using or providing a competing software product or service; or (iii) any other purpose that is to Licensor's detriment or commercial disadvantage;

(i) use the Software Systems or Components other than for a permitted use or in any manner or for any purpose or application not expressly permitted by this Agreement

Section 4.

BACKUP AND RECOVERY

4.1 If EWR 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 thereof and cooperate with EWR 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 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. You are solely responsible for notifying EWR in writing in the event you revoke the access authorization of any employee. EWR will employ reasonable efforts to delete the access codes of your employees listed in any such written notice as having their access authorization revoked.

5.4 Security Measures. The Software Systems may contain technological measures designed to prevent unauthorized or illegal use of the Software Systems or Components. You acknowledge and agree that: (a) EWR may use these and other lawful measures to verify your compliance with the terms of this Agreement and enforce EWR's rights, including all intellectual property rights, in and to the Software; (b) EWR may deny any individual access to and/or use of any Software System if EWR, in its sole discretion, believes that person's use of the Software System would violate any provision of this Agreement, regardless of whether you designated that person as an authorized user; and (c) EWR and its representatives may collect, maintain, process and use diagnostic, technical, usage and related information, including information about your computers, systems and software, that EWR may gather periodically to improve the performance of the Software Systems or Components.

Section 6.

CONFIDENTIALITY

6.1 General Provisions. You agree to hold all Confidential Information received from EWR 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 and you shall restrict the dissemination thereof to your respective employees with a specific need to know such information. You will promptly notify EWR in writing of any loss, misuse or misappropriation of EWR'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 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 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 without your consent. EWR 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. THE SOFTWARE SYSTEMS AND COMPONENTS ARE PROVIDED "AS-IS." 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 OF ANY SOFTWARE SYSTEMS, OR COMPONENTS, OR RESULTS TO BE DERIVED FROM THE USE OF ANY SOFTWARE SYSTEM OR COMPONENTS PROVIDED UNDER THIS AGREEMENT, OR THAT THE OPERATION, CAPACITY, SPEED, FUNCTIONALITY, QUALIFICATIONS OR CAPABILITIES OF ANY SUCH SERVICE, SOFTWARE SYSTEM, OR COMPONENT 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 INCLUDE, NOR WILL EWR 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 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 BE LIABLE TO YOU FOR ANY AMOUNT OF DAMAGES IN EXCESS THE FEES PAID FOR THE SERVICES, SOFTWARE SYSTEMS, AND COMPONENTS PROVIDED OR REQUIRED TO BE PROVIDED TO YOU PURSUANT TO THIS AGREEMENT.

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 will not be deemed to be in default hereunder, or 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'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 unless such waiver is agreed to in writing by it.

10.4 No Implied Rights. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to you or any third party any intellectual property rights or other right, title, or interest in or to any of the Software Systems or Components.

10.5 Dispute Resolution.

Non-binding Mediation. All disputes and disagreements between the parties may be submitted for non-binding mediation in Memphis, Tennessee at a location acceptable to each party involved in the dispute or disagreement by a mediator with the arbitration tribunal described below or such other person as is mutually acceptable to the parties. Each party shall bear its own attorney's fees and equally share the costs of mediation.

Binding Arbitration.

Arbitration Mandate. In the event the parties fail to resolve a dispute or disagreement through mediation or either of the parties elects not to participate in mediation, such dispute or disagreement shall be settled by binding arbitration and judgment upon the award may be entered in any Court having jurisdiction. This mandate does not preclude either party from seeking extraordinary relief under applicable law from a court having appropriate jurisdiction as such party deems necessary or appropriate to preserve its rights pending the issuance of the final arbitral award.

Governing Rules. The arbitration shall be conducted in accordance with the rules and practices of the arbitration tribunal, which shall be the American Arbitration Association, or such other arbitral association to which the parties both agree. The arbitration shall be conducted by a single arbitrator acceptable to both sides of the dispute or disagreement, or if none, then by a panel of three arbitrators selected from a list supplied by the arbitration tribunal, with each side having the right to select one member of the panel and the third member being selected by the other panel members. In the event the dispute or disagreement is submitted to a panel of arbitrators, a majority vote of the arbitrators seated on the panel shall be required to resolve the dispute or disagreement. The arbitrator or arbitrators shall have the power to authorize discovery and compel the production of all records that are relevant to the submitted dispute or disagreement.

Forum Selection. Each arbitration held pursuant to this provision shall be held in Memphis, Tennessee.

Language of Proceeding. The arbitration shall be conducted in English.

Confidentiality.

Except as may be required by law, neither a party nor the arbitrator[s] may disclose the existence,

content or results of any arbitration without the prior written consent of both parties, unless to protect or pursue a legal right.

Arbitrator Selection Procedure. The party initiating the arbitration shall, no later than fourteen (14) days after notifying the other party of its decision to demand arbitration, notify the arbitration tribunal of the pending dispute and request a list of qualified and impartial arbitrators. To be qualified, an arbitrator must, in addition to meeting the general qualification set by the arbitration tribunal, have an agribusiness background, and have no past or present, direct or indirect relationship with any of the parties or their counsel, whether financial, professional, social, or otherwise. The arbitrator shall otherwise be selected in accordance with American Arbitration Association Rules. In the event that no arbitrator is selected in accordance with the above procedure, the case administrator, after inviting consultation with the parties, shall select a suitable, qualified, impartial and independent arbitrator. In the event any arbitrator selected in accordance with the foregoing procedure dies, fails or refuses to act, or becomes incapable of acting, the case administrator shall, after inviting consultation with the parties, select a qualified, impartial and independent substitute arbitrator.

Attorneys' Fees and Costs. Any reasonable and necessary expenses, other than attorneys' fees, incurred pursuant to the arbitration provided herein, including but not limited to, arbitration fees, shall be paid equally by the parties to this Agreement. The arbitrator[s] shall have discretion to award attorneys' fees to the prevailing party.

10.6 **Export Regulation.** The Software Systems and Components may be subject to US export control laws, including the US Export Administration Act and its associated regulations. You will not directly or indirectly, export, re-export, or release the Software Systems or Components to, or make the Software Systems or Components accessible from, any country, jurisdiction or person to which export, re-export, or release is prohibited by applicable law. You will comply with all applicable laws and complete all required undertakings (including obtaining any necessary export license or other governmental approval) prior to exporting, re-exporting, releasing, or otherwise making the Software Systems or Components available outside the US.

10.7 **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.

10.8 **Severability.** If any provision of this Agreement, or the application of any such provision to any circumstance or person is held invalid, such invalidity shall not affect any other provisions of this Agreement which can be given effect without the invalid provision or application, and to this end this Agreement is declared to be severable.

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