

## TERMS AND CONDITIONS (RISKCONSOLE EXPRESS ONLINE AGREEMENT)

1. **GENERAL.** The following terms and conditions (“**Terms and Conditions**”) govern this Agreement. To the extent there is a conflict between the Terms and Conditions and any Schedule, Exhibit or Statement of Work, the order of precedence of documents constituting this Agreement will be as follows: (a) any Statements of Work; (b) Terms and Conditions; (c) Schedules; (d) attachments or exhibits to Schedules; and (e) any other document incorporated herein.
2. **DEFINITIONS.** As used in this Agreement, and in addition to any other terms defined in this Agreement, the following terms will have the following meanings:
  - 2.1 “**Affiliate**” means any entity that controls, is controlled by, or is under common control with Ventiv. For purposes of the Agreement, “control” means possessing, (i) directly or indirectly, the power to direct or cause the direction of the management, policies or operations of an entity, whether through ownership of voting securities, by contract or otherwise; or (ii) the ownership of, or the power to vote, at least fifty percent (50%) of the voting stock, shares or interests of such entity.
  - 2.2 “**Business Day**” collectively means Monday through Friday of each week, other than days on which banks in Marietta, Georgia, U.S.A, are closed for banking and any other date designated by Ventiv as a holiday to Customer from time-to-time as such in advance in writing (because different holidays may be recognized on different days each year);
  - 2.3 “**Change Request**” has the meaning set forth in Section 8.2;
  - 2.4 “**Confidential Information**” means any information or material in tangible or intangible form that: (i) is confidential and proprietary to the disclosing party, possesses an element of value to the disclosing party, is not generally known to the disclosing party’s competitors, and would damage the disclosing party if disclosed; or (ii) the disclosing party obtains from any third party which the disclosing party treats as proprietary whether or not owned by the disclosing party;
  - 2.5 “**Customer Data**” means any and all data and information related to the data (including text, graphics, photographs, audio visual elements, music, illustrations, video or other content) provided to Ventiv by or on behalf of Customer for processing, and any and all updates or modifications thereto or Derivative Works thereof made by Customer or Ventiv;
  - 2.6 “**Customer Support Services**” has the meaning set forth in Section 8.1(d);
  - 2.7 “**Deliverables**” means those Services detailed in the Statement of Work to be performed during implementation of the System to enable Production Use of the System, including without limitation, (i) Project Management – managing the project delivery; (ii) Business Analysis – requirements gathering, specifications, QA testing; (iii) Configuration – setup of Customer database including custom fields and custom business rules; (iv) Data Conversion – convert source data into format used by the Software; (v) Reporting – deploy standard templates, complete custom report development, as applicable, (vi) Training – training for Customer testing and go-live;
  - 2.8 “**Derivative Works**” means any suggestions, contributions, enhancements, improvements, modifications or changes to the referenced materials;
  - 2.9 “**Documentation**” means the user documentation and any other operating, training, and reference manuals relating to the use of the Software, as supplied by Ventiv to Customer, as well as any Derivative Works thereto;
  - 2.10 “**Intellectual Property Rights**” means all rights in and to any of the following, however constituted: trade secrets, patents, copyrights, trademarks, service marks, URLs, trade dress, brand features, know-how, moral rights, contract rights, code (executable, source and other) and similar rights of any type under the laws of any applicable governmental authority, or international treaty, including, without limitation, all applications and registrations relating to any of the foregoing;
  - 2.11 “**Order Form**” means the initial order form signed by the parties as well as subsequent order forms, which will serve as the mechanism by which Customer may purchase additional software and services following the Effective Date that incorporates the terms and conditions of this Agreement;
  - 2.12 “**Production Use**” means the capability to use, or the actual use of, the System in a live environment;
  - 2.13 “**Project**” means the scope of work to be performed by Ventiv as set forth in the Statement of Work;
  - 2.14 “**Project Plan**” means the methodology for completing the Project to be agreed by the parties at the initial requirements meeting following execution of the Agreement;
  - 2.15 “**Services**” is the collective reference to all services Ventiv performs for Customer under this Agreement and includes without limitation, the services specifically described in Section 8 as well as any new services purchased under an Order Form;
  - 2.16 “**Software**” means the object code to Ventiv’s proprietary software products listed in Schedule A, and any modified, updated or enhanced versions of, or additional modules related to, such software products that Ventiv provides to Customer either pursuant to the maintenance and support provisions or pursuant to an Order Form, as well as the Software Configurations and Documentation for such software products, including any Derivative Works of such software and documentation;
  - 2.17 “**Software Configurations**” means any of the Deliverables set forth in the SOW related to configuration or modification of the Software or of the standard reports or templates within the Software or the creation of business rules using the Software;
  - 2.18 “**Specifications**” means the software specifications set forth in the Documentation and in the Statement of Work for the relevant Software product;
  - 2.19 “**Statement of Work**” or “**SOW**” means the statement of work set forth in Attachment 1, if any, to this Agreement as well as any changes or amendment to such SOW or any new SOWs that may be attached to a new Order Form;
  - 2.20 “**System**” is the collective reference to the Software, Software Configurations, Documentation, Ventiv Server, and other technology that together comprises the software as a service offered to Customer under this Agreement; and
  - 2.21 “**Term**” has the meaning set forth in Section 13.1 of this Agreement.
  - 2.22 “**Ventiv Content**” means any information, data, materials, software, files, text, graphics, photographs, audio visual elements, music, illustrations, video or other content available through the System which is proprietary to Ventiv, its licensors, or Ventiv’s affiliates;
  - 2.23 “**Ventiv Server**” means those computer servers that Ventiv owns, leases or otherwise controls whether in its own data center or the data center of another entity with which Ventiv has a contractual relationship;
3. **LICENSE GRANT & LIMITATIONS.**
  - 3.1 **License Grant.** Subject to the terms and conditions of this Agreement, including, but not limited to, payment by Customer of the applicable fees set forth on the Order Form, Ventiv grants to Customer a limited, non-exclusive, non-transferable (except as permitted under Section 15.4 of the Terms and Conditions) license, without the right to sublicense (except as permitted under Section 3.2 below), to remotely access and use the System that is located on the Ventiv Server in accordance with the terms of this Agreement for the length of the Term solely for Customer’s internal business purposes. Use of the System is limited to employees of Customer for whom Ventiv has received notification and those parties specifically authorized in Section 3.2 below, such notification provided when requesting passwords for such users. Use of the System is further limited to the number of users designated in the Order Form. Users may be divided into user type describing the level of access granted to such user (such access rights detailed in Schedule A); users may not exceed the access granted to them by the user type they have been assigned. Ventiv authorizes Customer to use, copy and distribute Ventiv Content provided that (1) the use and distribution of Ventiv Content is limited to Customer, its representatives, and/or its clients, and (2) all copies of Ventiv Content will retain all copyright or proprietary notices. Any other use or distribution of Ventiv Content, unless authorized in writing by Ventiv, is prohibited.
  - 3.2 **Other Authorized Users.**
    - (a) *Third-Party Vendors.* Ventiv acknowledges and agrees that Customer may use certain third-party vendors for purposes of performing some of Customer’s internal business processes (“**Third-Party Vendors**”). Customer may allow its Third-Party Vendors (other than Ventiv’s direct competitors) to access and use the System subject to the terms and conditions of this Agreement solely for Customer’s internal business processing services, subject to the following conditions: (i) Customer agrees to be fully responsible for all use of the System by its Third-Party Vendors; (ii) Customer will ensure compliance by Third-Party Vendors of the terms and conditions of this

Agreement, including without limitation, Section 6 of this Agreement (Confidential Information); (iii) Customer will notify Ventiv of any such Third-Party Vendors (such notification provided when requesting passwords for such Third-Party Vendors) and will ensure that each such Third-Party Vendor uses its own unique password as detailed in Section 4 below; and (iv) upon termination of its relationship with such Third-Party Vendors or of this Agreement, Customer will ensure that all access to the System by such Third-Party Vendors ceases immediately.

### 3.3 Limitations.

(a) *Use Restrictions.* Unless otherwise expressly authorized in this Agreement, Customer will not, and will ensure that its end-users will not: (i) modify, adapt, alter, translate, or create derivative works from the System; (ii) merge the System (or any part thereof) with any other software, products or services (other than Ventiv-provided interfaces); (iii) sublicense, resell, re-distribute, lease, rent, loan, disclose or otherwise transfer the System (or any part thereof) or any other associated products and services to any third party; (iv) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source or object code of the System (or any part thereof); (v) use the System (or any part thereof) to provide any facility management, service bureau or similar services to third parties, permit third parties to remotely access and use the System (or any part thereof) or use the System (or any part thereof) to develop a product line that is similar to the Software or System; (vi) publish or share with any third party any results of any benchmark or performance tests run on the System (or any part thereof); (vii) otherwise use or copy the System (or any part thereof) except as expressly allowed under this Agreement or (viii) alter, distort, or remove any confidential, proprietary, copyright, trademark, trade secret, or patent legends from any copy of the System (or any part thereof).

(b) *Unauthorized Actions.* In addition, Customer agrees that it will not use the System to take any action that: (i) violates any applicable law or regulation or is legally libelous, defamatory, indecent, obscene or pornographic; (ii) would violate copyright, trademark, trade secret or other property right of any third party; (iii) involves the addition, removal or modification of identifying network header information in an effort to deceive; (iv) uses the System to access, or attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of Ventiv's or another entity's computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in access to or the corruption or loss of data; (v) uses the System to collect, or attempt to collect, personal information about third parties without their valid consent.

(c) *Removal of Files.* Ventiv reserves the right to remove from the Ventiv Server(s) any files that may damage the System or any files that are in violation of Section 3.3(b), provided that Ventiv agrees to give Customer written notice within two (2) Business Days after removing such files. The removed files will be placed in a temporary quarantined area until both parties mutually agree how to handle the files. Customer consents to such removal and waives any claim arising out of any such file removal.

(d) *Mapping functionality.* Ventiv obtains from selected mapping data source(s) (e.g. ESRI, USGS, AccuWeather, etc.) geographic, hazard and weather mapping data that provides a basis for the mapping of client information in relation to these sources. Neither Ventiv, nor these source systems, their affiliates nor any third-party licensor will have any liability for the accuracy or completeness of the information in the source content or for delays, interruptions or omissions therein. Access to the mapping data source(s) content is subject to termination in the event that any agreement between Ventiv and the mapping data source(s) is terminated in accordance with its terms.

**3.4 Additional Software.** To the extent Customer wishes to purchase additional Ventiv software products other than that set forth in Schedule A, Customer and Ventiv will execute an Order Form to purchase such additional software.

**3.5 Proprietary Rights.** As between the parties, and subject to the terms and conditions of this Agreement and the applicable Statement of Work, Ventiv and its third-party suppliers will retain ownership of all Intellectual Property Rights in the System, and any and all Derivative Works made to the System or any part thereof, as well as all Work Product provided to Customer ("**Ventiv Proprietary Technology**"). Customer acquires no rights to Ventiv Proprietary Technology except for the licensed interests granted under this Agreement or any SOW. The term "**Work Product**" means all other materials, reports, manuals, visual aids, documentation, ideas, concepts, techniques, inventions, processes, or works of authorship developed, provided

or created by Ventiv or its employees or contractors during the course of performing work for Customer (excluding any Customer Data or Derivative Works thereof and excluding any output from the System generated by Customer's use of the System, including without limitation, reports, graphs, charts, modified Customer Data, etc., but expressly including any form templates of such reports, graphs or charts by themselves that do not include Customer Data). Customer also acknowledges that the Ventiv Proprietary Technology contains Confidential Information belonging to Ventiv and its third-party suppliers, and that nothing herein gives Customer any right, title or interest in such Ventiv Proprietary Technology except as otherwise expressly set forth in this Agreement or in any SOW. Customer acknowledges and agrees that Ventiv may use, without restriction, all suggestions, improvements and ideas concerning any part of the System (including without limitation any Beta Versions as defined in Section 16 below) or Intellectual Property Rights therein that may be communicated to Ventiv by Customer. Customer agrees to inform Ventiv immediately of any infringement or other improper action with respect to Ventiv's Confidential Information, the System or the Intellectual Property Rights therein that comes to Customer's attention.

**3.6 Rights Reserved.** Title, ownership rights, and all Intellectual Property Rights in and to the System will remain the sole property of Ventiv or its suppliers. Customer acknowledges that the Software in source code form remains Confidential Information or a trade secret of Ventiv and/or its suppliers, that the source code is not covered by any license hereunder and will not be provided by Ventiv. Except as set forth in this Agreement, no right or implied license or right of any kind is granted to Customer, regarding the System or any part thereof. Nothing in this Agreement confers upon either party any right to use the other party's trade names and trademarks, except for permitted license use in accordance with this Agreement. All use of such marks by either party will inure to the benefit of the owner of such marks, use of which will be subject to specifications controlled by the owner.

## 4. PASSWORDS.

**4.1 Customer's Obligations.** Customer will be given all applicable passwords to use in connection with the System and will ensure that each user is given their own individual user ID and password, which may not be shared with another individual for any reason. Customer will be responsible for changing such passwords immediately upon first use of the System. Customer is entirely responsible for maintaining the confidentiality of such passwords and of its accounts (including, if applicable, the passwords and accounts of each of the Customer personnel accessing the System by means of an account established by Customer). Customer is responsible for all access to and use of the System through Customer's passwords.

**4.2 Unauthorized Access.** Ventiv is not responsible for any unauthorized access and/or use by any third party who independently gains access to Customer's instance of the Software on the System and/or related information, provided that such access is not caused or contributed to by Ventiv. Customer will notify Ventiv promptly of any unauthorized use of any user accounts or of any other breach of security occurring as a result of any activities of any of Customer's end-users or of any vulnerabilities that Customer believes are contained in or caused by the System such that Ventiv may take or recommend appropriate remedial measures. Ventiv will have no liability for any loss or damage arising from Customer's failure to comply with the provisions of this Section 4.

**4.3** Ventiv and Customer agree (a) to maintain and update an industry standard anti-virus program within their respective computer systems and (b) to use commercially reasonable efforts to check attachments to e-mail messages that a party receives before saving such attachments to their respective organization's hard drives or servers.

## 5. FEES AND PAYMENT TERMS.

**5.1 Payments.** Customer will pay to Ventiv all fees due to Ventiv under this Agreement, including without limitation, any Expenses (as defined below) incurred, as set forth on the Order Form in U.S. dollars (collectively "**Fees**"). Unless otherwise set forth in this Agreement, all Fees will be due within thirty (30) days after the date of the invoice for same. All Fees payable under this Agreement are fully earned, non-cancelable and the sums paid are non-refundable. If any amounts are withheld by Customer, Customer will, within fifteen (15) days from receipt of invoice ("**Dispute Period**"), provide Ventiv a reasonably detailed written explanation of the nature of the dispute, which explanation will set forth the dollar amounts withheld and the reasons for withholding such amounts. If Customer does not dispute the applicable invoice during the Dispute Period, any such dispute will be deemed

waived. For clarity, Customer remains obligated to pay Ventiv for all portions of the applicable invoice that are not under reasonable and good faith dispute.

**5.2 Expenses.** Customer will reimburse Ventiv for all expenses, including travel-related expenses reasonably incurred in rendering Services to fulfill this Agreement and further detailed in an Order Form or any SOW (“**Expenses**”).

**5.3 Overdue Accounts.** A late fee may be charged by Ventiv on all undisputed Fees and Expenses not paid to Ventiv by Customer within thirty (30) days after receipt of the invoice for same at the lesser of the maximum amount chargeable by law or one and one-half percent (1½%) per month commencing with the date payment was due. Customer will be liable for all costs of collection of such undisputed, overdue amounts including, without limitation, all court costs and attorneys’ fees incurred by Ventiv. Fees and Expenses due from Customer under this Agreement may not be withheld or offset by Customer against other amounts for any reason.

**5.4 Taxes.** The Fees and other charges do not include any applicable sales, use, and other taxes (including value added tax) and all applicable export and import fees, customs duties and similar charges, and Customer will also be responsible for the payment of all such taxes (other than taxes based on Ventiv’s income), fees, duties, and charges, and any related penalties and interest, which will be above and beyond, and in addition to, the Fees, arising from the payment of the Fees and from the delivery or license of the Software and Services to Customer, whether such taxes are assessed before or retroactively following the issue of any invoice by Ventiv. If Customer is required by law to deduct or withhold any tax or other amount from any sum payable to Ventiv, then the sum payable by Customer will be increased to the extent necessary to ensure that after such tax or other amount has been deducted, withheld or paid, Ventiv receives on the due date and retains (free from any liability in respect of any such deduction, withholding or payment) a net sum equal to what it would have received and so retained had no such deduction, withholding or payment been required or made.

## **6. CONFIDENTIAL INFORMATION.**

**6.1 Disclosure of Confidential Information.** Neither party may use or disclose any Confidential Information of the other party, except on a need-to-know basis for purposes of performing its obligations under this Agreement. This Agreement and its terms are Confidential Information. Disclosure of Confidential Information to employees of the parties hereto will be limited to those who have a need to know such information in connection with carrying out the obligations of that party pursuant to this Agreement. Customer acknowledges that the all parts of the System are the Confidential Information of Ventiv and/or Ventiv’s licensors, and Customer agrees to treat such information as Confidential Information in accordance with the terms of this Agreement. A “party” (as used in this Section 6) will be deemed to include each party’s respective subsidiaries, affiliates and sister companies or any other organization in which such party has an ownership stake or over which such party can exert control, each of which such party will cause to observe the confidentiality requirements of this Agreement with respect to the information disclosed by the other party under this Agreement. The receiving party will only allow its independent contractors to receive the Confidential Information if such contractors execute nondisclosure agreements with Confidential Information restrictions no less protective than those of this Agreement; provided that the receiving party will not under any circumstances provide access to such Confidential Information to competitors of Ventiv.

**6.2 Legally Required Disclosures.** If a receiving party is presented with legal process under which it could be legally compelled to disclose any Confidential Information of the disclosing party (whether by oral question, deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process or by rule, regulation or other applicable law), such receiving party will promptly notify the disclosing party of the same before any disclosure is made so that the disclosing party may, at its discretion, seek a protective order or other appropriate remedy or may waive compliance with the confidentiality terms of this Agreement. If such protective order or other remedy is not obtained, or if the disclosing party waives compliance with the provisions hereof, then only that portion of the Confidential Information that it is legally required to be disclosed (as advised by a written opinion of counsel) may be disclosed.

**6.3 Exclusions to Confidential Information.** For purposes of this Agreement, “Confidential Information” will not include information or material which (a) enters the public domain (other than as a result of a breach of this Agreement); (b) was in the receiving party’s possession prior to its receipt from the disclosing party; (c) is independently developed by the receiving party without the use of Confidential Information; or (d) is obtained

by the receiving party from a third party under no obligation of confidentiality to the disclosing party. The receiving party will be entitled to use for any purpose any Residual Information obtained as a result of this Agreement, provided that the receiving party will not disclose Confidential Information of the disclosing party except as expressly permitted pursuant to the terms of this Agreement. The term “Residual Information” means the ideas, know-how and techniques retained in the unaided memories of the receiving party’s personnel who have had access to the Confidential Information of the disclosing party in the course of this Agreement. The receiving party will not have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of Residual Information. However, this sub-paragraph will not be deemed to grant to the receiving party a license under the disclosing party’s copyrights or patents. Section 7 of this Agreement and any business associate agreement Customer requires Ventiv to execute will govern all use and protection of Customer Data.

**6.4 Duration and Injunctive Relief.** The confidentiality obligations set forth in this Section 6 will continue indefinitely following termination or expiration of this Agreement for as long as the Confidential Information remains a Trade Secret under applicable law and will continue for three (3) years following termination or expiration of this Agreement with respect to Confidential Information that does not rise to the level of a trade secret. The receiving party acknowledges that disclosure of any Confidential Information or trade secret by it or its employees will give rise to irreparable injury to the disclosing party or the owner of such information, not adequately compensated by damages. Accordingly, the disclosing party will be entitled to seek equitable relief, including injunctive relief and specific performance against the breach or threatened breach of the undertakings in this Section 6, in addition to any other legal remedies which may be available.

## **7. CUSTOMER DATA AND SECURITY.**

**7.1 Customer Data Generally.** Customer is the sole and exclusive owner of all Customer Data and all Intellectual Property Rights in the foregoing, whether or not provided to any other party under this Agreement. Customer Data will be governed under this section of the Agreement. Ventiv will not use Customer Data for any purpose other than that of providing the Software or rendering the Services under this Agreement, nor sell, assign, lease, or dispose of Customer Data. Customer assumes full responsibility for its employees, vendors, representatives, agents, and its clients (“**Customer Representatives**”) with respect to the transmission of Customer Data sent directly by Customer to Ventiv. Customer must ensure that all Customer Representatives provide such Customer Data to Ventiv via either an encryption process or a secure transport mechanism. Customer assumes full responsibility to safeguard against unauthorized access and provide appropriate protection of its Customer Data prior to and during the transmission or transfer of its Customer Data to Ventiv. Customer and Ventiv acknowledge that the accuracy of delivering the Software and Services depends upon the accuracy and completeness of the Customer Data and/or business requirements needed to deliver the Software and Services by Ventiv. Customer accepts sole responsibility for errors in the Software or Services to the extent resulting from inaccurate or incomplete Customer Data supplied to Ventiv by Customer or Customer Representatives. Ventiv has the right to use the Customer Data for benchmarking purposes provided that Ventiv completely de-identifies all such Customer Data.

**7.2 Security Generally.** Ventiv represents and warrants that Ventiv, its partners, and/or its vendors, will maintain the Customer Data in a manner that conforms to applicable laws, utilizing generally accepted industry standard data management practices and no less than reasonable measures in the circumstances as it concerns environmental stability, data backup, backup frequency, media retention, data loss prevention, data/system security, and contingency plans/disaster recovery in accordance with the Information Security Protocols set forth below in Section 7.4. Access to Customer Data will be restricted to Ventiv employees who have been properly trained and instructed as to security and privacy policies, controls and procedures.

**7.3 Security Auditing Standards Report.** Upon written request from Customer, Ventiv will provide Customer with a copy of its current certification or attestation report(s) concerning Ventiv’s operation of the System. For example URAC HIPAA Security Accreditation, ISO27001:2005, or replacement standard, concerning Ventiv’s operation of the System.

**7.4 Information Security Protocols.** Ventiv uses a layered approach to information security. Ventiv will use commercially reasonable efforts to maintain the security, integrity and availability of all Customer Data to which it has access, including but not limited to commercially reasonable efforts reflecting changing technological approaches, to comply with the following

measures: (a) HIPAA Security Rule; (b) ISO 27001; (c) maintain a documented Information Security Program which includes annual risk assessment and management procedures; (d) maintain the principle of least privilege; (e) classify and handle all Customer data as confidential and apply the necessary security and controls to support HIPAA/HITECH Act compliance; (f) maintain commercially customary physical security and access controls for its data center(s); (g) maintain commercially customary network security controls including firewall and intrusion prevention solutions; (h) maintain commercially customary redundancy at the demark, network and system layers; (i) maintain commercially customary monitoring solutions to continually manage health and capacity of the IT infrastructure components; (j) provide data encryption in a commercially customary manner of all data transmissions; (k) require a minimum of 128-bit SSL encryption for application access and use; (l) maintain and update anti-virus program; (m) require individual user accounts and passwords for any access; (n) maintain strong password requirements for all Ventiv-managed accounts; (o) maintain generally acceptable user account management processes and procedures; (p) maintain industry accepted data protection program; (q) maintain whole disk encryption for all laptops; (r) deploy software security patches in accordance with generally accepted industry best practices; (s) maintain and periodically test (at least annually) a commercially customary disaster recovery plan that provides adequate system backup, technology replacement, and alternate (backup-site) site capabilities; (t) follow commercially customary hardening procedures for system/device builds; (u) conduct ongoing vulnerability management through the use of commercially customary tools; (v) conduct periodic (at least annually) third party vulnerability assessments; (w) follow Open Web Application Security Project (OWASP) methodologies, guidelines and techniques for application development; (x) follow commercially customary change and release management practices for hardware and software changes; (y) follow commercially customary asset sanitization procedures to ensure decommissioned equipment is free of any and all Customer Data; (z) maintain Customer Data security using commercially customary database and application controls; (aa) notify Customer of any unauthorized access to Customer Data immediately upon discovery; and (bb) maintain at least one certification or attestation covered in Section 7.3 above or replacement standard on security practices from a nationally or globally recognized provider of such reports.

## 8. PROFESSIONAL SERVICES.

**8.1 Services Generally.** Subject to payment by Customer of the Fees detailed in the Order Form (Initial Order Form), Ventiv will provide Customer with the services listed below in (a) through (f) (collectively “**Services**”). Ventiv has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed the Services to be performed by Ventiv hereunder unless otherwise provided herein. Ventiv may, as it deems appropriate, use subcontractors for all or any portion of the Services. Ventiv may at any time remove and replace any such subcontractors.

(a) *Implementation Services.* Ventiv will provide the implementation services described in the Statement of Work in Attachment 1, if any, to this Agreement (“**Implementation Services**”).

(b) *Training Services.* Ventiv will provide the training services to Customer described in the SOW or Initial Order Form, if any (“**Training Services**”).

(c) *Hosting Services.* Ventiv will host the Software on Ventiv's Servers to provide the System to Customer in accordance with the terms of this Agreement, which will include administration of database objects, table structure, table space, scheduled programs, stored procedures, and automated backup and recovery processes performed by Ventiv to the Software (“**Hosting Services**”).

(d) *Support and Maintenance Services.* Ventiv will provide the customer support and maintenance services described in Section 9 (“**Customer Support Services**” or “**Support**”).

(e) *Ongoing Data Loads.* Ventiv will provide the ongoing data loads described in the Order Form (“**Ongoing Data Loads**”).

(f) *Transitional Services.* At Customer's expense on a time-and-materials basis, Ventiv will provide Customer with reasonable assistance in the winding down of the Services and/or transition of such Services to a new service provider in the event of any termination or expiration of this Agreement.

**8.2 Change Control Procedures.** Either party may during the implementation of the Project (as detailed in the SOW) request a change to any aspect of the Project Plan (“**Change Request**”). Such Change Request is to be delivered by the requesting party's Project manager (a “**Project**

**Manager**”) to the other party's Project Manager. For the avoidance of doubt, any redefinition of the scope of services by Customer, or the provision by Customer of new details in respect of the implementation, will be deemed to constitute a Change Request. A Change Request must contain a detailed and complete explanation of the proposed changes. If there is any dispute as to whether a change requested by Customer is within or beyond the scope of the Project Plan, Ventiv will not be obliged to proceed with that change until that dispute is resolved and will proceed in accordance with the Project Plan as it then exists. If a Change Request is executed by authorized signatories of both parties, Ventiv will perform the services detailed in the Change Request in accordance with the terms and conditions of this Agreement (subject to any specific terms of the Change Request itself), and such executed Change Request will constitute an amendment to this Agreement and the applicable Statement of Work.

**8.3 Customer Obligations.** Customer will maintain a designated representative who will be authorized to act as the primary point of contact for Ventiv in dealing with Customer with respect to each party's obligations under this Agreement and on a timely basis and at no charge to Ventiv, issue all consents or approvals and make all requests on behalf of Customer. Customer will establish and maintain, at its own expense, all telecommunications equipment and access lines necessary to gain access to and support transmission of the Software via the System. Customer agrees to perform all tasks assigned to Customer as set forth in this Agreement, the SOW, or any Project Plan or as reasonably requested by Ventiv, and provide all assistance and cooperation to Ventiv in order to accomplish timely and efficiently the Services. Ventiv will not be deemed in breach of this Agreement or SOW in the event Ventiv's failure to meet the responsibilities and time schedules set forth in the SOW or any Project Plan is caused by Customer's failure to meet (or delay in) its responsibilities and time schedules set forth in the applicable SOW, this Agreement or as otherwise requested by Ventiv. In the event of any delay in Customer's performance of any of the obligations set forth in this Agreement, including any Statement of Work, or any other delays caused by Customer, the milestones, fees and date(s) set forth in the Statement of Work or Project Plan will be adjusted as reasonably necessary to account for such delays.

**8.4 Additional Services.** In the future, Customer may purchase additional services by executing an Order Form describing the proposed services and fee payment schedule. A new Statement of Work describing in detail the services to be provided may be attached to such Order Form (a “**New Statement of Work**”). Once the Order Form and New Statement of Work are signed by both parties it will be incorporated herein by reference and made a part of this Agreement. No New Statement of Work will become effective until it has been executed by an authorized representative of both Ventiv and Customer and attached to an Order Form. Any services detailed in a New Statement of Work will be deemed to be “**Services**” under this Agreement.

## 9. CUSTOMER SUPPORT SERVICES AND SLAS.

**9.1 Customer Support Services.** Ventiv will provide the maintenance and support services set forth in Sections 2 through 10 of Schedule B (“**Customer Support Services**”).

**9.2 SLAs.** Ventiv will provide the System in accordance with the service levels set forth in Schedule B.

## 10. WARRANTY AND DISCLAIMER.

**10.1 General Warranty.** Each party represents and warrants that it is not subject to any agreement that would prevent it from complying with this Agreement. Ventiv represents and warrants that it will comply with all applicable laws and regulations relating to its performance of the Services under this Agreement.

**10.2 Software Warranty.** Following Production Use of the System, Ventiv represents and warrants that during the Term the System will perform substantially in accordance with the Specifications for the System. If Ventiv receives written notice that the System does not perform as warranted within sixty (60) days of such non-performance, Ventiv will, at its option and at no additional charge to Customer, undertake to correct errors, or replace such portions of the System free of charge with software that performs as warranted hereunder. If Ventiv is unable to repair or replace the non-conforming software, then Customer's sole and exclusive remedy against Ventiv will be to terminate this Agreement and receive a pro-rata refund of Subscription Fees paid under the Agreement for its use of the System for the terminated portion of the Term. For the avoidance of doubt, Ventiv will not be responsible for payment of any fines assessed against Customer by any regulatory authority

for failure of the Customer to comply with statutory or regulatory requirements of any kind.

**10.3 Services Warranty.** For sixty (60) days after the performance of any Services under this Agreement, Ventiv warrants that such Services will be performed in a professional and workmanlike manner consistent with generally accepted industry practices. For any breach of this services warranty, Customer's exclusive remedy, and Ventiv's entire liability, will be the re-performance of such deficient Ventiv Services. Customer must identify in a written notice to Ventiv any deficiencies in such Services within ninety (90) days of completion of such deficient Services in order to receive the above warranty remedies.

**10.4 Customer Warranty.** Customer represents and warrants that Customer is authorized to provide Ventiv with the Customer Data and that Ventiv is authorized to use such Customer Data solely for the purpose of providing the System and Services.

**10.5 Exclusions.** Ventiv does not warrant and is not responsible for (a) any third-party products not provided by Ventiv, or (b) services not provided solely by Ventiv, its agents and subcontractors.

**10.6 DISCLAIMER.** OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER VENTIV, ITS AFFILIATES, LICENSORS OR SUPPLIERS, NOR THEIR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES MAKES ANY EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, OR REPRESENTATIONS TO CUSTOMER, OR ANY OTHER PERSON OR ENTITY WITH RESPECT TO THE SOFTWARE, SYSTEM AND SERVICES PROVIDED HEREUNDER OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, THE IMPLIED WARRANTY AGAINST INFRINGEMENT, AND THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE. VENTIV DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE, SYSTEM OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

## **11. INDEMNIFICATION.**

**11.1 Ventiv Indemnity.** Ventiv will indemnify, defend, and hold Customer, its individual directors, officers, employees and agents, harmless from and against any claims, actions or proceedings, arising out of any third-party claim (a) that the Software or the permitted use thereof infringes or violates any third party's valid U.S. patent, copyright or trade secret ("**IP Claim**"); or (b) arising from Ventiv's or Ventiv's employees' or subcontractors' gross negligence or intentional misconduct in the performance of the Services under this Agreement. If in Ventiv's reasonable judgment any such IP Claims, or threat of an IP Claim, materially interferes with Customer's use of the Software, Ventiv will consult with Customer, and Ventiv will have the option, in Ventiv's sole discretion, to (i) substitute functionally equivalent non-infringing software or documentation, (ii) modify the Software to make it non-infringing, (iii) obtain for Customer at Ventiv's expense the right to continue using the infringing Software; or, if the foregoing is not feasible in Ventiv's sole discretion, Ventiv will (iv) require Customer to cease using the System, refund a pro-rata portion of the Subscription Fees (as defined in the Order Form) for the System for such period of time in which Customer was unable to use the Software or System. Ventiv will have no indemnity obligation for claims of infringement resulting or alleged to result from (i) any combination, operation, or use of any Software with any programs or equipment not supplied by Ventiv or not specified in this Agreement for such purpose if in Ventiv's reasonable judgment such infringement would have been avoided by the combination, operation, or use of such Software with items supplied by Ventiv or specified in this Agreement for such purpose; (ii) inclusion of Customer Data; (iii) any modification of the Software by a party other than Ventiv if such infringement would have been avoided in the absence of such modifications; or (iv) the use of the Software in a manner other than for its intended purposes or contrary to the Specifications. This Section 11.1 states Ventiv's entire liability and Customer's sole and exclusive remedy for infringement claims and actions.

**11.2 Customer Indemnity.** Customer will indemnify, defend, and hold Ventiv, its individual directors, officers, employees and agents, harmless from and against any claims, actions or proceedings, arising out of any third-party claim: (a) resulting from Customer's reliance on results obtained through the use of the System (provided the System has functioned in accordance with the Documentation); (b) that the Customer Data or Ventiv's transmission to Customer or hosting thereof infringes or violates the rights of such third party.

**11.3 General.** The defense and indemnification obligations set forth in this Section 11 are conditioned upon (i) the indemnified party providing the

indemnifying party timely notice of any claim or cause of action upon which the indemnified party intends to base a claim of indemnification hereunder, (ii) the indemnified party providing reasonable assistance and cooperation to enable the indemnifying party to defend the action or claim hereunder; and (iii) allowing the indemnifying party to control the defense and all related settlement negotiations; provided that the indemnifying party may not settle any claim that results in the indemnified party's liability and the indemnifying party will be required to consult with the indemnified party during any settlement discussions.

## **12. LIMITATION OF LIABILITY.**

**12.1 LIMITATION OF REMEDY.** EXCEPT AS PROHIBITED BY LAW, IN NO EVENT WILL EITHER PARTY, OR ITS CONTRACTORS, LICENSORS OR SUPPLIERS OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE TO THE OTHER PARTY, OR ANY OTHER PERSON OR ENTITY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES OR LIABILITIES FOR ANY CAUSE WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ALL STATEMENTS OF WORK, ORDER FORMS, OR AMENDMENTS THERETO, WHETHER IN CONTRACT OR TORT OR BY WAY OF INDEMNITY OR OTHERWISE, INCLUDING A BREACH THEREOF OR INCLUDING DAMAGES OR LIABILITIES FOR LOST PROFIT, LOST REVENUE, LOSS OF USE, LOSS OF GOODWILL, LOSS OF REPUTATION, LOSS OF DATA, REGULATORY FINES, COSTS OF RECREATING LOST DATA, THE COST OF ANY SUBSTITUTE EQUIPMENT, SOFTWARE PROGRAM, OR DATA, REGARDLESS OF WHETHER THE POSSIBILITY OF SUCH DAMAGES OR LIABILITIES HAVE BEEN COMMUNICATED TO SUCH PARTY AND REGARDLESS OF WHETHER SUCH PARTY HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES OR LIABILITIES.

**12.2 MAXIMUM LIABILITY.** EXCEPT FOR (I) THE RECOVERY OF SUMS DUE UNDER THIS AGREEMENT OR IN AN SOW, (II) AS PROHIBITED BY LAW OR (III) FOR CLAIMS ARISING UNDER SECTIONS 6, 11.1(A) AND 11.2(B), IN NO EVENT WILL EITHER PARTY'S LIABILITY FOR ANY DAMAGES TO THE OTHER, ANY OF ITS AFFILIATES, OR TO ANY THIRD PARTY REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE, EVER EXCEED IN THE AGGREGATE THE ACTUAL FEES RECEIVED BY VENTIV UNDER THIS AGREEMENT IN THE PREVIOUS TWELVE (12) MONTH PERIOD FOR THE PORTION OF THE SOFTWARE OR SERVICES GIVING RISE TO SUCH CLAIM.

## **13. TERM AND TERMINATION.**

**13.1 Term and Renewals.** The initial term of this Agreement will be as set forth in the Order Form (the "**Initial Term**"), unless earlier terminated in accordance with this Section 13. The Initial Term will automatically renew for successive one year periods commencing on the anniversary of the end of the Initial Term (each a "**Renewal Term**"; the Initial Term and all Renewal Terms are collectively referred to as the "**Term**"), unless either party notifies the other on or before ninety (90) days prior to the end of the then Term.

**13.2 Termination for Breach.** In the event that either party materially defaults in the performance of any of its duties or obligations under this Agreement and does not substantially cure such default, or commence a cure, within thirty (30) days after being given written notice specifying the default, the non-defaulting party may, by giving written notice thereof to the defaulting party, terminate this Agreement. Ventiv may, by written notice to Customer, terminate Customer's right to use the System without liability to Customer, if Customer fails to pay the applicable fees for the System as set forth in the Order Form within thirty (30) days after Ventiv gives Customer notice of such nonpayment. Any such suspension or termination of access to the System does not relieve Customer from paying any past due amounts and any amounts due Ventiv through the expiration date of this Agreement.

**13.3 Effect of Termination.** Within thirty (30) days (or earlier upon Ventiv's reasonable written request) after the effective date of a termination of this Agreement for any reason, Customer will (i) pay Ventiv for all Services performed by Ventiv up to the effective date of such termination and all other amounts owed by Customer to Ventiv under this Agreement including, but not limited to, all Fees owed by Customer as of the effective date of termination according to the payment schedule set forth in the Order Form, regardless of the date of termination; and (ii) destroy or return to Ventiv all Ventiv property, including, but not limited to all Documentation and the Confidential Information of Ventiv. Upon the destruction or return of such materials, Customer will provide Ventiv with a signed written statement certifying that it has destroyed or returned all Ventiv property to Ventiv. Upon termination of this Agreement for any reason, all rights and licenses granted by Ventiv hereunder to Customer will immediately cease.

**13.5 Return of Customer Data.** When requested in writing by Customer, based upon termination of this Agreement, Ventiv will deliver (within sixty (60) days of receipt of request) electronic files containing all available Customer Data. Ventiv will deliver the data files in a normalized, ASCII, flat file format. The files will be encrypted and posted to an agreed to SFTP site. Standardized documentation describing the data files will be included. All work completed by Ventiv for the extract of the data will be billed to the Customer on a time and materials basis. Sixty (60) days following termination of this Agreement, all Customer Data in the System will no longer be available on Ventiv's Systems, as Ventiv will purge all such Customer Data from its Systems, and all such Customer Data will either be returned to Customer if requested in accordance with this Section 13.5 or, if return of data is not requested, it will be destroyed, unless otherwise agreed by the parties in writing. All data received from third parties for Customer will also be deleted from Ventiv's Systems within the 60-day period.

**13.6 Survival.** Termination of this Agreement will not affect survival of the provisions regarding Ventiv's or Customer's treatment of Confidential Information, provisions relating to the payments of amounts due that have accrued prior to termination, indemnity provisions, provisions limiting or disclaiming the party's liability, provisions on non-solicitation of employees, or the provisions on termination, which provisions will survive such termination.

#### **14. DISPUTES.**

If at any time a dispute arises out of or in connection with this Agreement or any part thereof (e.g., a SOW), then Ventiv and Customer (together the "Parties") will have their respective Project Managers meet in good faith with a view to resolving the dispute within a period of fifteen (15) working days from the day the dispute first arises. Should the Parties not be able to resolve the dispute within the fifteen (15) working days, then both Parties will refer the matter to their own appropriate level of senior executive management respectively for resolution. If the relevant senior executive management of Ventiv and Customer are unable to resolve the dispute within a further ten (10) working day period, then the Parties will attempt to settle the dispute through discussions between each Parties' respective Chief Executive Officer. In the absence of an amicable resolution within fifteen (15) days from the meeting of the respective Chief Executive Officers in accordance with the conditions set forth in this Section 14, the dispute may then be submitted to the appropriate courts having jurisdiction over the matter as governed by Section 15.6. Nothing in this Agreement will prevent either party from taking such action as it deems appropriate (including any application to a relevant court) for injunctive or other emergency or interim relief in relation to its Intellectual Property Rights or Confidential Information.

#### **15. GENERAL.**

**15.1 Marketing.** With Customer's prior written approval, Customer agrees to permit Ventiv's reasonable reference to Customer's status as a user of the Software, including captioned quotations in product literature or advertisements, websites, articles, press releases, marketing literature, presentations and the like, and occasional use as a reference for potential new users.

**15.2 Force Majeure.** Neither Ventiv nor Customer will be liable to the other for any delay or failure to perform (other than a failure to pay monies due under this Agreement) arising out of causes beyond its reasonable control including, but not limited to, riots, epidemics, severe weather, acts of the other party, fire, flood, terrorism, war, acts of the enemy, embargoes or work stoppages, labor disputes or strikes. Ventiv and Customer will notify each other promptly upon learning of any event that may result in any delay or failure to perform. If the force majeure event occurs and continues to prevent substantial performance for more than thirty (30) days the other party has the right to terminate this Agreement.

**15.3 Entire Agreement.** This Agreement and any Addenda hereto signed by the parties, constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior agreements, negotiations, representations and proposals, written or oral. Neither party has relied upon any representation not contained in this Agreement as an inducement to enter into this Agreement. This Agreement will prevail over any conflicting or additional provision of any click-through agreement, purchase order or any other instrument of Customer, it being understood that any purchase order issued by Customer will be for Customer's convenience only, and any differing or additional terms and conditions contained therein are hereby expressly rejected by Ventiv. This Agreement will be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there

will be no presumption or inference against the party drafting this Agreement in construing or interpreting the provisions hereof. No modifications, additions, or amendments to this Agreement will be effective unless made in writing and signed by duly authorized representatives of the parties.

**15.4 Assignment.** Except as otherwise set forth in this Agreement, this Agreement and all rights and obligations may not be assigned (by operation of law or otherwise) in whole or in part by Customer, and any such attempted assignment will be void and of no effect; provided, however, that either party hereto will have the right to assign this Agreement to another entity in connection with a reorganization, merger, consolidation, acquisition or other restructuring involving all or substantially all of the voting securities and/or assets of the assigning party upon written notice to the non-assigning party. This Agreement will be binding upon and inure to the benefit of the parties, their legal representatives, permitted transferees, successors, and assigns as permitted by this Agreement. There are no third-party beneficiaries of this Agreement and, in particular but without limiting the generality of the foregoing, no end-users of the Customer or any Customer affiliate will have any legal rights or entitlements of any kind hereunder under any circumstances

**15.5 Waiver and Invalidity.** No delay or failure in exercising any right hereunder and no partial or single exercise thereof will be deemed to constitute a waiver of such right or any other rights hereunder. If any provision hereof is declared invalid by a court of competent jurisdiction, such provision will be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement will be valid and enforceable to the fullest extent permitted by applicable law.

**15.6 Choice of Law.** This Agreement will be exclusively construed, governed and enforced in all respects in accordance with the internal laws (excluding all conflict of law rules) of the State of Georgia and any applicable federal laws of the United States of America, as from time to time amended and in effect. Each party agrees that any claim or cause of action whether in law or equity, arising under or relating to this Agreement may be brought in a court of appropriate jurisdiction in the State of Georgia. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply in any respect to this Agreement or the parties hereto. The parties hereby agree that their respective rights and obligations hereunder will be solely and exclusively as set forth herein and that UCITA, whether enacted in whole or in part by any state or applicable jurisdiction, regardless of how codified, will not apply to this Agreement and is hereby disclaimed. Each party represents and warrants that it is aware of, understands and has complied and will comply with, all applicable U.S. and foreign anti-corruption laws, including without limitation, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act.

**15.7 Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original but all of which together will be deemed for all purposes to constitute one and the same instrument. Signatures transmitted and received via facsimile or other electronic means will be treated as original signatures for all purposes of this Agreement.

**15.8 Solicitation.** To promote an optimum working relationship, the parties agree in good faith not to knowingly solicit for employment, directly or indirectly, employ or otherwise engage any employee who has been involved in rendering or receiving services hereunder as an employee of the other party without that party's prior written consent. This restriction will apply during the term of and for a period of one (1) year after the termination of this Agreement. The provisions of this Section 15.8 will not restrict the hiring of any person who: (i) has not been involved in rendering or receiving services, on behalf of Ventiv or Customer, under this Agreement; (ii) as of the time of hiring, has not been an employee of the other party at any time during the preceding one hundred eighty (180) days; or (iii) responds to a publicly announced vacancy notice.

**15.9 Government Entities.** The Software is "commercial computer software" or "commercial computer software documentation" and that, absent a written agreement with Ventiv to the contrary, the government's rights with respect to such Software are, in the case of civilian agency use, Restricted Rights, as defined in FAR §52.227.19, and if for Department of Defense use, limited by the terms of this Agreement, pursuant to DFARS §227.7202.

**15.10 Restricted Nations.** The term "Restricted Nation" means any country, individual, group or organization on the U.S. Department of Treasury's Office of Foreign Assets Control's Country Sanctions Program or list of Specially Designated Nationals, or the U.S. Department of Commerce's

Bureau of Export Administration's List of Denied Persons, as each may be amended from time to time. Customer represents and warrants that it will not allow access to the Software and/or System to any user and/or perform a transaction related to (i) an individual located in a Restricted Nation; (ii) a business or organization owned, controlled by or acting on behalf of an individual, business or organization in a Restricted Nation; (iii) a government of a Restricted Nation; (iv) a business or organization owned, controlled by or acting on behalf of a government of a Restricted Nation; and (v) an individual, group or organization on the U.S. Department of Treasury's Office of Foreign Assets Control's list of Specially Designated Nationals or the U.S. Department of Commerce's Bureau of Export Administration's List of Denied Persons. Customer will defend, indemnify, and hold Ventiv, and Ventiv's officers, directors, employees, agents, suppliers, or representatives harmless from and against any and all losses, damages, costs, and expenses, including legal fees, incurred directly or indirectly as a consequence of Customer's failure to comply with this Section. This obligation will survive termination of this Agreement.

**15.11 Notices.** Any and all notices permitted or required to be given hereunder will be deemed duly given (a) upon actual delivery, if delivery is by hand; or (b) upon delivery into the United States mail if delivery is by postage paid registered or certified return receipt requested mail. Each such notice must be sent to the respective party at the addresses indicated on the signature page.

**16. Beta Testing and Sunset.** In the event that Customer agrees to beta-test any new software or new functionality ("**Beta Versions**") for Ventiv under the terms of this Agreement, Customer acknowledges and agrees that THE BETA VERSIONS ARE PROVIDED ON AN "**AS-IS**" BASIS and none of the warranties set forth in this Agreement with respect to the Software or System will apply to any Beta Versions. Ventiv will not be liable for any damages whatsoever that arise out of Customer's use of the Beta Version if Customer attempts to use the Beta Versions with anything other than test data in a test environment. Ventiv will have the right upon 120 days prior written notice to sunset and discontinue support of any of the Software provided under this Agreement in its sole discretion.

## Schedule A to the RiskConsole Express Online Agreement

### Software Description (RiskConsole Express)

The Software being provided to Customer is the RiskConsole® Express product that includes specific standard modules, and a defined support package. Part I below includes a description of each module within the Software that the Customer will have a right to access within the System based on the Fees set forth in the Order Form. Part II below describes the different user types and the level of access granted to each type of user. The Order Form will designate what type of users the Customer has purchased.

#### **I. Modules Ordered by Customer**

##### Organizational Hierarchy

Customer will be using an Organizational Hierarchy structure to organize data in relation to the modules included in RiskConsole Express.

The Organizational Hierarchy structure must meet Ventiv guidelines.

- Hierarchy cannot contain more than 15 levels
- Organizations may not be duplicated within the hierarchy
- Organizations may not be more than 50 characters in length
- An organization may only roll up to one (1) parent

Note: Spreadsheet Import is not available for loading new organization into the hierarchy. Spreadsheet Update is not available to move existing locations within the hierarchy.

##### Occurrence Module

RiskConsole's Occurrence Module relates all claims associated with an event or accident. RiskConsole has a flag on the claim record that denotes if a claim is the lead claim for the occurrence. There may only be one lead claim on the occurrence. This allows for reporting at an occurrence or claim level.

##### Claims Management Module

RiskConsole Express's Claims Module is a comprehensive claims management system for managing the life cycle of a claim from pre-loss incident through claim closure and settlement with full status and financial audit of the process. Claim/incident records as well as corresponding fields can be viewed, edited, created, or deleted as dictated by security privileges assigned to the user. Field level security can be further restricted to protect sensitive information from being displayed or edited as necessary. Users can record all status value changes, financial reserving and settlement information with transaction support for payments. Provisions are provided for tracking/recording all loss descriptor information such as cause, nature and body part for Safety/Loss Control purposes. The Claims Module also includes support for claim notes, diary tasks and file attachments. Claim information can be linked to other information being tracked in RiskConsole Express, i.e. Policy, etc.. An occupational employee absence record can be associated to the claim record and allows for tracking of employee absence details. This information will be used to drive OSHA reports. OSHA specific fields are tracked on the claim record.

##### Policy Management Module

RiskConsole's Policy Management Module provides the ability to track policies and understand the premium spending, coverage afforded (deductibles and limits) and identify the insurers providing the coverage. Customer also has the ability to manage all the aspects of the policy structure including:

- Policy header- basic policy details including period of policy, policy description, premium and any policy level limits or aggregates.
- Policy Sections- identify coverages involved with respective deductible, limits and portion of Organization covered. Also identifies any policy exclusions.
- Policy Participants- insurers and optionally re-insurers involved and their respective share of the coverage.
- Combined Limits- identify any combined limits between policies.

The following standard capabilities are available for use as needed:

- Program: the Customer can optionally define their programs with layers (derived logically) so that the physical policies in place can be viewed in relation to the Customers program structure using MUD Map Report.
- Premium: optionally track the premium payments and calculations for the policy.
- Policy Endorsement: optionally track modifications to a policy such as changes to coverage, limits, dates, etc.
- Claim Link: Use the Policy details to identify insurance coverage on a claim, with a specific link from the Claim to Policy and establishing the deductible and limits applicable to the Claim per the Policy definition.
- Policy Performance: Manage the performance of the Policy in terms of the aggregate claim financials, loss ratio and managing of basic aggregates. Note this capability is limited to the Claims connected to the Policy and does not cater for linked Policies in the program (see Risk Financing module for expanded capabilities).

##### Summary Exposure Values

Operational Summary exposure data can be captured, tracked and summarized at any level within the organizational hierarchy (division, region, district, community, etc.). This data can be updated manually by end-users, or by utilizing our unique spreadsheet update functionality. This information can be used to assist in the renewal process as well as be used as an internal benchmark for reports (revenues, hours worked, sales, employee concentration, etc.).



II. User Types & Access Rights

	Type of User	
	Full User (F)	Administrator (A)
<b>Add Records</b>	X	X
<b>Edit Records</b>	X	X
<b>View Records</b>	X	X
<b>E-Mail Individual Records</b>	X	X
<b>Add Attachments to Records</b>	X	X
<b>Quick Search</b>	X	X
<b>Use Mail Merge Templates</b>	X	X
<b>Create Mail Merge Templates</b>	X	X
<b>View Report/Dashboards</b>	X	X
<b>Download Reports to Excel</b>	X	X
<b>Drill through from Report to Record Detail</b>	X	X
<b>Advanced Query</b>	X	X
<b>Run/schedule existing report templates</b>	X	X
<b>Query Studio</b>	N/A	X
<b>Spreadsheet Update</b>	N/A	X
<b>Spreadsheet Import</b>	N/A	X
<b>Delete Records</b>	X	X
<b>Manage Hierarchy/Lookup Values</b>	N/A	X
<b>Administration Options: User Management, Group Management, Exchange Rates</b>	N/A	N/A

Functionality

**Schedule B to the RiskConsole Online Agreement**

**Support Schedule and Service Levels (SaaS Model) for RiskConsole Express**

**1. Definitions.**

- 1.1 “**Business Hours**” means the hours of 8:00am to 9:00pm Eastern Time on all Business Days.
- 1.2 “**Customer’s Support Contacts**” has the meaning set forth in Section 6 of this Schedule B.
- 1.3 “**Error**” means a material failure of the applicable Software to conform to the functional specifications described in its Documentation.
- 1.4 “**Error Corrections**” means any modification, workaround, or routine intended to correct the practical adverse effect of an Error.
- 1.5 “**Excusable Downtime**” means the total minutes in the Measurement Window during which the Software or the Hosting Environment (as applicable) was not available due to (a) any negligent or wrongful act or omission by Customer or its users; (b) any negligent or wrongful act or omission by Third-Party Vendors; or (c) any force majeure events or disruption in public internet access.
- 1.6 “**Hosting Environment**” means the data center and related infrastructure encompassing the Software and System as a whole maintained by Ventiv, including the data loading servers and application reporting servers as well as the system servers.
- 1.7 “**Measurement Window**” means a period of thirty (30) days.
- 1.8 “**Recovery Declaration**” means the time period in which a disaster would be declared and recovery plans are enacted.
- 1.9 “**Release**” means a modification of the Software, normally denoted with a new number to the immediate right or left of the decimal, which contains new features and functionality. Release does not include new products or modules of the Software for which Ventiv generally charges its customers an additional license or subscription fee.
- 1.10 “**Response Time**” means the amount of time from when the customer properly reports an issue until a support consultant acknowledges receipt and initiates troubleshooting to resolve.
- 1.11 “**RPO**” means Recovery Point Objective, which is the maximum amount of time for potential data loss in the event of a disaster.
- 1.12 “**RTO**” means Recovery Time Objective, which is the period of time to restore services from point of Recovery Declaration.
- 1.13 “**Scheduled Downtime**” means the total number of minutes of actual time the Software or Hosting Environment, as applicable, were not available as a result of scheduled time to perform system maintenance or Updates.
- 1.14 “**Updates**” means a change to the Software that may include patches, fixes, minor updates and Error Corrections, which Ventiv generally provides to its customers who receive customer support services.
- 1.15 “**Unscheduled Downtime**” means total number of minutes of actual time the Software or Hosting Environment, as applicable, were not available, which does not qualify as Scheduled Downtime, but specifically excludes any Excusable Downtime.

**2. Support Generally.**

Ventiv will provide one or more reasonable means of communication to allow Customer’s Support Contacts to contact Ventiv for assistance in resolving problems with the Software (“**Help Desk**”) in accordance with and during the hours of operation more specifically set forth in this Schedule B. The Help Desk will allow communication in accordance with the table set forth in Section 8.2 below. The terms and conditions of this Schedule B will govern the delivery of any support and/or maintenance services by Ventiv for any Software listed on an Order Form signed by the parties. Subject to your timely payment of the applicable annual Support fees set forth in the Order Form(s) (the “Support Fees”), Ventiv will provide the level of Support (i.e., total number of hours) identified in your Order Form(s) in accordance with the Support descriptions set forth below. Ventiv will notify (electronically or otherwise) Customer of any amendments to such Support descriptions in each notice of term renewal. No other maintenance or support for the Software is included in this Agreement.

**3. Error Corrections and Updates.**

- 3.1 As a part of the Customer Support Services, Ventiv will use commercially reasonable efforts to provide Error Corrections for all verifiable and reproducible Errors in the Software in accordance with the Agreement and this Schedule B.
- 3.2 As a part of the Customer Support Services, Ventiv will provide Updates to the Software that Ventiv makes generally available to its customers who receive support services.

**4. New Releases.**

- 4.1 As a part of the Customer Support Services, Ventiv will provide to Customer new Releases of the Software as and when developed, except for new products or modules for which Ventiv generally charges a separate license or subscription fee. Ventiv is not obligated to develop new Releases of the Software.
- 4.2 Ventiv will provide Customer, as part of the Customer Support Services, with new Releases created by Ventiv as a result of a change in law or new law that directly applies to existing functionality within the Software currently offered by Ventiv. As an accommodation and not as provision of legal advice, Ventiv will take commercially reasonable efforts to promptly notify Customer in writing upon becoming aware of any material changes to any applicable law or governmental regulations that may cause the current Release of the Software not to conform to such law or regulations. Notwithstanding the foregoing, in the event that the required modifications to the Software (i) would require a material re-architecture or other significant product re-design, (ii) would require Ventiv to obtain data which is either unavailable, or, which is only available at a material cost, or (iii) would otherwise require Ventiv to incur material expenditures (as measured against the fees charged under this Agreement), and Ventiv is not otherwise making such modifications for its other customers, then Ventiv may cease providing the affected Software in the affected jurisdiction. Customer is strongly encouraged to consult with its own attorneys and other advisors as to legal requirements in effect from time to time.

4.3 In the event that Ventiv intends to withdraw any Software from general availability for any reason whatsoever, Ventiv will provide Customer at least six (6) months prior written notice of such withdrawal.

5. **Limitations and Exclusions.**

5.1 Ventiv is under no obligation to provide Customer Support Services with respect to: (a) Software used on a system that does not meet the minimum hardware, software, operating system, mobile device, and other system and configuration requirements set forth in the Documentation or provided by Ventiv; or (b) any systems or software not both supplied by Ventiv and identified on an Order Form.

5.2 Ventiv will have no obligation of any kind to provide Customer Support Services for problems caused by or arising out of any of the following (each, a “**Licensee-Generated Error**”): (i) modifications to the Software not made by Ventiv; (ii) use of the Software other than as authorized in the Agreement or as provided in the documentation for the Software; or (iii) third-party products not expressly supported by Ventiv. If Ventiv determines that it is necessary to provide support for a problem caused by a Licensee-Generated Error, Ventiv will notify Customer as soon as Ventiv is aware of such Licensee-Generated Error and Ventiv will invoice Customer in accordance with Section 5.5 below.

5.3 Customer Support Services does not include researching Customer requests, researching and fixing anomalies caused by other vendors, making changes resulting from internal Customer business practices, enhancing system configuration and other similar tasks that are requested or required, but are outside of Ventiv's control.

5.4 If Ventiv has created a third party interface (“**Third Party Interface**”) to one of Customer’s third party products provided by another vendor (“**Third Party Product**”) and such vendor modifies the Third Party Product causing the Third Party Interface to stop functioning properly, then the services required to modify the Third Party Interface as a result of the changes to the Third Party Product are considered outside the scope of Customer Support Services and would incur additional fees in accordance with Section 5.5 below. Services required to resolve any Customer-Created Error are outside the scope of Customer Support Services and would incur additional fees in accordance with Section 5.5 below.

5.5 If a problem reported is outside the scope of this Agreement as indicated in Sections 5.1 through 5.4 above, Ventiv will notify Customer to that effect and reserves the right to charge Customer at Ventiv’s then current standard hourly rates, for which Customer agrees to pay Ventiv promptly upon receiving an invoice.

5.6 Certain requests, such as building custom modules, database objects, reports, utilities or other complex projects (“**Additional Services**”) will incur additional fees and will be detailed in a new Order Form and Statement of Work agreed between the parties and subject to the terms and conditions of this Agreement. The following are examples of Additional Services that are available from Ventiv: (i) add-on data conversions; (ii) implementation for any optional software modules; (iii) supplemental training; (iv) custom reports – defining, creating, testing or troubleshooting (Ventiv will help with “how do I add a table, column, field, etc.” in Report Designer, but Ventiv will require an SOW to help troubleshoot or clean up a modified or custom report (unless the custom report is specifically under maintenance; for example: “I tried to tweak or modify my custom report and now my outstanding indemnity figures are incorrect”)); (v) data conversion issues once transitioned from implementation to support; (vi) Ventiv database changes, such as organization changes, combining insureds, reference table changes, etc.; and (vii) corrections to Customer’s data, including, but not limited to, data modification for purposes of exporting/importing to/from the Ventiv database.

5.7 The following types of requests will incur additional fees: (i) password resets; (ii) performance troubleshooting outside of the application; (iii) any hardware or software problems beyond the control of Ventiv; (iv) Customer network changes and network performance problems; (v) training questions; and (vi) documentation requests for documents available on the portal.

5.8 Customer Support Services is delivered in English only unless Customer is in a location where Ventiv has made localized Customer Support Services available

6. **Customer Obligations.** Customer will be responsible for the following: (a) reporting errors promptly; (b) providing sufficient information for Ventiv to duplicate the circumstances of a reported Software defect or duplicate the error, as described in the Specifications, so Ventiv can duplicate the error, assess the situation, and/or undertake any needed or appropriate maintenance action hereunder; (c) designating only the number of members of its technical staff as designated on the Order Form to serve as Customer’s sole representatives to contact Ventiv with maintenance issues (“**Customer’s Support Contacts**”); and (d) carrying out procedures for the rectification of errors or malfunctions within a reasonable time after such procedures (or revisions, upgrades, enhancements, etc.) have been received from Ventiv. Customer’s Support Contact(s) must be trained on the Software. When contacting the Helpdesk, Customer will be asked to designate Customer’s Support Contacts, including their primary email address and RiskConsole Express Login ID following Ventiv’s acknowledgment of Customer’s Order Form(s).

7. **Case Priority Levels.** Ventiv assigns case priorities based on the technical importance of the problem on Customer’s environment as set forth in the table below.

<b>P1</b> = System is completely inaccessible or the majority of its functionality is unusable and no workaround exists. All P-1 issues must be called into the 24 x 7 Ventiv Support toll free telephone number: 1-800-980-9460
<b>P2</b> = One or more key features of the System are unusable and no work around exists.
<b>P3</b> = Any other case where a System feature is not operating as documented.
<b>P4</b> = All enhancement requests, how to, training items for the System; requests for general information on the System.

8. **Target Fix, Workaround, Escalation and Response Times.** Ventiv provides the following target fix, workaround, escalation and response times:

**Initial Response & Acknowledgment, by case priority**

<b>P1:</b> 4 Business Hours if called into the 24 x 7 Ventiv Support toll free telephone number: 1-800-980-9460
<b>P2:</b> 8 Business Hours
<b>P3:</b> 5 Business Days
<b>P4:</b> 30 Business Days

**Targeted**

**Fix Date or Workaround, by case priority**

<b>P1:</b> 1 Business Day
<b>P2:</b> 1 week
<b>P3:</b> Next release
<b>P4:</b> At Ventiv's discretion

**Email Status Updates for Open Cases, by case priority**

<b>P1:</b> Daily
<b>P2:</b> Weekly
<b>P3:</b> None
<b>P4:</b> None

**8.1** Ventiv reserves the right to provide Customer with a workaround in lieu of fixing an Error should it in Ventiv's sole judgment determine that it is more effective to do so.

**8.2** Support is provided via telephone, email and web portal. Support will be delivered by a member of Ventiv's technical support team during the regional hours of operation listed in the table below. All support will be provided by Ventiv's Support Services team (Help Desk). Access to the support team will be through the following channels:

- Toll free 1-800-980-9460
- Ventiv\_support@ventivtech.com
- http://support.ventivtech.com

<b>P1:</b> 24 x 7 through Ventiv Support toll free telephone number: 1-800-980-9460.
<b>P2:</b> 24 hours per day during the five business days (Monday through Friday), excluding Ventiv holidays
<b>P3:</b> During standard business hours (8am to 9pm) during the five business days (Monday through Friday), excluding Ventiv holidays
<b>P4:</b> Monday through Friday by region (North America, APAC and EMEA) during standard business hours (8 am to 9 pm); excluding Ventiv holidays

**9. Changes in Support and Software.** Ventiv reserves the right to alter Support from time to time, using reasonable discretion but in no event will such alterations result in (i) diminished support from the level of Support set forth herein; (ii) materially diminished obligations for Ventiv; (iii) materially diminished Customer's rights; or (iv) higher Support Fees during the then-current term. Ventiv will provide Customer with thirty (30) days prior written notice (delivered electronically or otherwise) of any permitted material changes to the Support contemplated herein.

**10. Escalation Levels.**

Escalation Level	Contact Notified	
State 1	Support Manager	
State 2	Global Support Services Director	
State 3	VP Hosting & IT Operations	

  

Severity	Support State Levels	Escalation within the following time frames
P1 - Critical	State 1	2 Business Hours
	State 2	4 Business Hours
	State 3	8 Business Hours

**11. Maintenance Windows.** Ventiv will conduct regular weekly maintenance. The standard maintenance window will be six (6) hours in length. In the event that the required maintenance will require an extension, Ventiv will provide a written notice ten (10) days in advance. Such extension will not exceed fifteen (15) total hours per week and all reasonable efforts will be taken for such extensions not to occur more than once in a five (5) week period.

<b><u>Standard Maintenance Window:</u></b>
ATLANTA Time: Friday 23:00– Saturday 05:00

<b><u>Extended Maintenance Window:</u></b>
ATLANTA Time: Friday 21:00 – Saturday 12:00

**12. Incident Response for Hosting Environment.** Ventiv provides proactive monitoring of the Hosting Environment. The Ventiv IT Operations staff is automatically notified by the monitoring systems within ten (10) minutes of an incident occurring that causes a material disruption, material performance degradation or outage to the Hosting Environment. The Ventiv customer support team will coordinate resolution and communication (status updates) with the Ventiv IT Operations staff and the Customer.

**13. Software Availability Service Level.** The Software will be available (as calculated below) to Customer ninety-nine percent (99%) of the time during business hours with the exception of scheduled interruptions for maintenance and time required for deployment of vendor security patches or downtime resulting from general virus or denial of service attacks.

$$\text{Availability \%} = \frac{\text{Total Minutes minus Scheduled Downtime minus Unscheduled Downtime of the Software}}{\text{Total Minutes minus Scheduled Downtime of the Software}}$$

**14. Disaster Recovery Service Levels.**

Objective	Metric
Recovery Declaration	< 12 hours
RTO	< 24 hours
RPO	< 12 hours

**15. Hosting Environment Service Levels.**

Objective	Metric
Vulnerability Management	Weekly Vulnerability Scans and review of hosting and applications
Penetration Testing	Quarterly Penetration hosting and application testing performed by trusted independent third party
Uptime	99.0% , except as detailed above
Calculation	$\% = \frac{\text{Total Minutes minus Scheduled Downtime minus Unscheduled Downtime}}{\text{Total Minutes minus Scheduled Downtime of the Hosting Environment}}$
Monitoring	24x7x365
Redundancy	Maintain redundant or high availability infrastructure for production environment
Control Audit	Maintain a minimum of a SAS70 Type II or AICPA current standard process control certification