

Partner End User License Agreement

This End User License Agreement (“**Agreement**”) governs your use of the FWS Comply software, (including all related documentation, manuals, and instructions, the “**Software**”). This Agreement is a binding agreement between Fleetworthy Solutions, Inc. (“**Company**”) and you. The Company only offers this Agreement to a business entity (“**Customer**”) that has entered into a Master Services Agreement (“**Service Agreement**”) with Cive (“**Partner**”). You represent and agree that (i) you are entering into this agreement on behalf of the Customer you are employed or affiliated with, (ii) you have full legal capacity and authority to bind such Customer to this Agreement, and (iii) the terms “Authorized User”, “you” or “your,” as used herein shall, unless the context otherwise reasonably requires, refer to both (A) such Customer, and (B) the individual or individuals accessing or using the Software as authorized by such Customer.

IF YOU DO NOT MEET THE REQUIREMENTS ABOVE, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MAY NOT USE THE SOFTWARE.

ACCESS IS GRANTED TO YOU BASED ON YOUR COMPLIANCE WITH THE TERMS OF THIS AGREEMENT AND THE SERVICE AGREEMENT BETWEEN YOU AND THE PARTNER. THE SOFTWARE IS LICENSED, NOT SOLD, TO YOU.

THE COMPANY PROVIDES THE SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT YOU ACCEPT AND COMPLY WITH THEM. BY USING THE SOFTWARE YOU ARE AGREEING FOR YOURSELF AND THE CUSTOMER LICENSING THE SOFTWARE AND COMPANY MATERIALS (DEFINED BELOW) THAT (A) YOU AND THE CUSTOMER ACCEPT AND WILL BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND (B) YOU REPRESENT AND WARRANT THAT: (I) YOU ARE 18 YEARS OF AGE OR OLDER/OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, THE COMPANY WILL NOT AND DOES NOT LICENSE THE SOFTWARE TO YOU AND YOU MUST NOT USE THE SOFTWARE.

1. Definitions.

“**Access Credentials**” means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Hosted Services.

“**Authorized User**” means (1) any Person to whom, pursuant to this Agreement, the Company has granted a right to access and use the Software, including any employee, contractor, partner, or agent of the Customer, or (2) any academic, business, or governmental entity (and FWS employees) to which, pursuant to this Agreement and through the acceptance of this Agreement by an authorized representative, the Company has granted such right. All Authorized Users are bound by the terms of this Agreement.

“**Customer Data**” means, other than Resultant Data, information, data and other content, in any form or medium, that is collected or otherwise received, directly or indirectly from the Authorized User by or through the Software.

“**Customer Systems**” means the Authorized User’s or the Customer’s information technology infrastructure, including computers, software, hardware, databases, electronic systems, and networks, whether operated directly by the Authorized User or through the use of third party services.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar rights or forms of protection, in any part of the world.

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“**Person**” means an individual, including employees, agents, and contractors, as well as a corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

“**Personal Information**” means any information that, individually or in combination, does or can identify a specific individual or by or from which a specific individual may be identified, contacted, or located. Personal Information includes all “nonpublic personal information” as defined under the Gramm-Leach-Bliley Act, “protected health information” as defined under the Health and Insurance Portability and Accountability Act of 1996, “Personal Data” as defined in the EU Data Protection Directive (Directive 95/46/EEC), “Personal Information” as defined under the Children’s Online Privacy Protection Act of 1998, and all rules and regulations issued under any of the foregoing.

“**Process**” means to take any action or perform any operation or set of operations that the Software is capable of taking or performing on any data, information or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or block, erase, or destroy. “**Processing**” and “**Processed**” have correlative meanings.

“**Company Systems**” means the information technology infrastructure used by or on behalf of the Company in performing the services related to the Software, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Provider or through the use of third party services.

“**Company Materials**” means the Software and related Specifications, Documentation and Company Systems and any and all other information, data, documents, materials, and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by the Company or any Subcontractor in connection with the Software or otherwise comprise or relate to the Software or Company Systems. For the avoidance of doubt, Company Materials include Resultant Data and any information, data or other content derived from the Company’s monitoring of the Authorized User’s access to or use of the Software, but does not include Customer Data.

“**Resultant Data**” means information, data, and other content that is derived by or through the Software from Processing Customer Data that has all Personnel Information removed from the data and is sufficiently different from such Customer Data that such Customer cannot be identified from inspection, analysis or further Processing.

2. License Grant and Scope.

Subject to the terms of this Agreement, the Company grants you a limited, non-exclusive, and non-transferable, and non-sublicensable license during the Term to use, solely by the Authorized User or an Authorized User, the Software, only as set forth in this Section and subject to all conditions and limitations set forth elsewhere in this Agreement. This license grants you the right, exercisable solely by you, to access and use the Content and Services (as defined in **Section 7**) made available in or otherwise accessible through the Software, strictly in accordance with this Agreement and the Terms of Use applicable to such Content and Services as set forth in **Section 7**.

You acknowledge and agree that the Software is provided under license, and not sold, to you. You do not acquire any ownership interest in the Software under this Agreement or any other rights thereto other than to use the Software in accordance with the license granted, and subject to all terms, conditions and restrictions, under this

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Agreement. The Company reserves and shall retain their entire right, title and interest in and to the Software, including all copyrights, trademarks and other intellectual property rights therein or relating thereto, except as expressly granted to you in this Agreement.

3. License/Use Restrictions. You shall not:

- a. Copy the Software;
- b. Translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Software;
- c. Reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;
- d. Remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices from the Software, including any copy thereof;
- e. Rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Software, or any features or functionality of the Software, to any Third Party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud or other technology or service;
- f. Remove, disable, circumvent or otherwise create or implement any workaround to any copy protection, rights management or security features in or protecting the Software;
- g. Use the Software in violation of any law, regulation or rule;
- h. Use the Software for purposes of competitive analysis of the Software, the development of a competing software product or service, or any other purpose that is to the Company's commercial disadvantage;
- i. Bypass or breach any security device or protection used by the Software or access or use the Software other than through the use of your own then valid Access Credentials;
- j. Input, upload, transmit or otherwise provide to or through the Software any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code;
- k. Access or use the Software in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable law;

4. Responsibility for Use of the Software. You are responsible and liable for all uses of the Software through access thereto provided by you, directly or indirectly. Specifically, and without limiting the generality of the foregoing, you are responsible and liable for all actions and failures to take required actions with respect to the Software by any other Person to whom you may provide access to or use of the Software, whether such access or use is permitted by or in violation of this Agreement.

5. Collection and Use of Information. You acknowledge that when you use the Software, the Company may use automatic means to collect information about your use of the Software. You also may be required to provide certain information about yourself or others, including Personal Information, as a condition to using the Software or certain FWS features or functionality, and the Software may provide you with opportunities to share information about yourself or others. All information the Company collects through or in connection with this Software is subject to the Privacy and Security Policy of the Company found at <https://www.fleetworthy.com/privacy-policy> ("Privacy Policy"). You agree that the Company may use such information for any purpose related to any use of the Software

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by you, including but not limited to improving the performance of the Software or developing updates. By using and providing information to or through the Software, you consent to all actions taken by the Company with regard to your information in compliance with the Privacy Policy.

6. **Third Party Materials.** The Software may display, include or make available third party content (including data, content, materials, and information in any form or medium, software, and other products services and/or materials including specifications, or products) or provide links to third party websites or services, including through third party advertising, relating to the Software that are not proprietary to the Company (“**Third Party Materials**”). You acknowledge and agree that Company is not responsible for Third Party Materials, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect thereof. The Company does not assume and will not have any liability or responsibility to you or any other person or entity for any Third Party Materials. Third Party Materials and links thereto are provided solely as a convenience to you and you access and use them at entirely at your own risk and subject to such third parties’ terms and conditions.

7. **Content and Services.** The Software may provide you with access to the Company’s website located at <https://www.fleetworthy.com> (the “**Website**”) and products and services accessible thereon, and certain features, functionality, and content accessible on or through the Software located at <https://www.itscomply.com> may be available on the Website (collectively, “**Content and Services**”). Your access to and use of such Content and Services are governed by this Agreement and the Privacy Policy (collectively, “**Terms of Use**”). Your access to and use of such Content and Services may require you to acknowledge your acceptance of such Terms of Use and Privacy Policy and/or to register with the Website or Software, and your failure to do so may restrict you from accessing or using certain features and functionality. Any violation of such Terms of Use will also be deemed a violation of this Agreement.

7.1 **Suspension or Termination of Services.** The Company may, directly or indirectly, suspend, terminate or otherwise deny the Authorized User’s or any other Person’s access to or use of all or any part of the Software, without incurring any resulting obligation or liability, if:

- a. The Service Agreement between you and the Partner has expired or been terminated;
- b. the Company receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires the Company to do so; or
- c. the Company believes, in FWS sole discretion, that: (i) You have failed to comply with any term of this Agreement or the Service Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the Company Materials; (ii) You have been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; or (iii) This Agreement expires or is terminated. This **Section 7.1** does not limit any of the Company’s other rights or remedies, whether at law, in equity or under this Agreement.

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8. Access and Authorized User Restrictions.

8.1 Access by and Authentication of Authorized Users. Each person who accepts this Agreement, either on his or her individual behalf, or as an authorized representative of an academic, business, or governmental entity, shall be identified and authenticated by the use of a unique login name and email address provided to the Company during the registration process.

8.2 Restrictions. The Authorized User shall not, and shall not permit any other Person to, access or use the Software except as expressly permitted by this Agreement and, in the case of Third Party Materials, the applicable third party license agreement.

9. Authorized User Obligations.

9.1 Authorized User Systems and Cooperation. The Authorized User shall at all times during the Term:

a. Set up, maintain, and operate in good repair and in accordance with the Company Materials all Systems on or through which the Software is accessed or used; and

b. Provide all cooperation and assistance as the Company may reasonably request to enable the Company to exercise FWS rights and perform FWS obligations under and in connection with this Agreement.

9.2 Protection from Unauthorized Use. In the event of any unauthorized use of the Software by an Authorized User, the Company may terminate such Authorized User's access to the Software pursuant to **Section 7.1**.

9.3 Maintaining Confidentiality of Passwords. Where access to the Software is password controlled, Authorized Users shall not divulge their passwords to any third party.

9.4 Effect of Authorized User Failure or Delay. The Company is not responsible or liable for any delay or failure of performance caused in whole or in part by the Authorized User's delay in performing, or failure to perform, any of FWS obligations under this Agreement (each, an "**Authorized User Failure**").

10. Security.

10.1 Company Systems and Security Obligations. The Company will employ security measures in accordance with the Company's Privacy Policy and security controls program.

10.2 Data Breach Procedures. The Company maintains a data breach plan in accordance with the criteria set forth in the Company's Privacy Policy and shall implement the procedures required under such data breach plan on the occurrence of a "Data Breach" (as defined in such plan).

10.3 Authorized User Control and Responsibility. You have and will retain sole responsibility for: (a) the security and use of your Access Credentials; and (b) all access to and use of the Software directly or indirectly by or through the Authorized User Systems and Access Credentials, with or without your knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

10.4 Access and Security. You shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to:

a. Securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Hosted Services; and

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b. Control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Hosted Services.

11. Intellectual Property Rights.

11.1 Software. All right, title and interest in and to the Software, including all Intellectual Property Rights therein, are and will remain with the Company and the respective rights holders in the Third Party Materials. The Authorized User has no right, license or authorization with respect to any of the Software (including Third Party Materials), or the applicable third party license, in each case subject to **Section 8** All other rights in and to the Software (including Third Party Materials) are expressly reserved by the Company and the respective third party licensors. In furtherance of the foregoing, you hereby unconditionally and irrevocably grants to the Company an assignment of all right, title and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

11.2 Customer Data. As between you and the Company, the Authorized User is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in **Section 11.3**.

11.3 Consent to Use Customer Data. The Authorized User hereby irrevocably grants all such rights and permissions in or relating to Customer Data:

a. To the Company, FWS Subcontractors, Partners, and Company Personnel as are necessary or useful to perform the Services; and

b. To the Company as are necessary or useful to enforce this Agreement and exercise its rights and perform hereunder.

12. Confidentiality.

12.1 Protection of Personal Information. As a condition to being provided with any disclosure of or access to Personal Information, the Company shall:

a. Except as may be permitted by and subject to its compliance with **Section 12.2**, not disclose or permit access to Personal Information other than to its Representatives and third party licensors who: (i) need to know such Personal Information for purposes of the Company's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Personal Information and the Company's obligations under this **Section 12.1**; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Personal Information as the terms set forth in this **Section 12.1**;

b. Safeguard the Personal Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect FWS sensitive information and in no event less than a reasonable degree of care; and

c. Ensure FWS Representatives' compliance with, and be responsible and liable for any of FWS Representatives' non-compliance with, the terms of this **Section 12**.

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12.2 Compelled Disclosures. The Company shall be free to disclose any Personal Information or Customer Data to another party if required by any applicable statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent.

13. Term and Termination. The term of Agreement commences when you generate Access Credentials for accessing the Software and will continue in effect until terminated by you or the Company as set forth in **Section 7.1**.

a. Upon termination, (i) all rights granted to you under this Agreement will also terminate, and (ii) you must cease all use of the Software.

b. Termination will not limit any of the Company's rights or remedies at law or in equity.

13.1 Effect of Termination. Upon termination of this Agreement, except as expressly or otherwise provided in this Agreement:

a. All rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate;

b. You shall immediately cease all use of the Software;

c. Notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in FWS possession or control: (i) the Company may retain Customer Data in FWS then current state and solely to the extent and for so long as required by applicable law; (ii) the Company may also retain Customer Data in FWS backups, archives and disaster recovery systems until such Customer Data is deleted in the ordinary course; and (iii) all information and materials described in this **Section 13.1c** will remain subject to all confidentiality, security and other applicable requirements of this Agreement;

d. The Company may disable all Authorized User access to the Software;

e. If you request in writing at least 30 days prior to the effective date of expiration or termination, subject to **Section 13.1c**, the Company shall, within 60 days following such expiration or termination, deliver to you the then most recent version of Customer Data maintained by the Company, provided that the Customer has at that time paid all Fees and Reimbursable Expenses then outstanding and any amounts payable after or as a result of such expiration or termination, including any expenses and fees, on a time and materials basis, for the Company's services in transferring such Customer Data.

13.2 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: **Section 8, Section 12, Section 13.1, this Section 13.2, Section 14, Section 15, Section 16 and Section 18**.

14. Representations and Warranties.

14.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that it has the full right, power and authority to enter into and perform FWS obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement.

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14.2 Additional Company Representations, Warranties and Covenants. The Company represents, warrants, and covenants to that the Company will perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet FWS obligations under this Agreement.

14.3 Additional Authorized User Representations, Warranties and Covenants. You represent, warrant, and covenant to the Company that you own or otherwise have and will have the necessary rights and consents in and relating to the Customer Data so that, as received by the Company and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable law.

14.4 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN 14.1, 14.2 AND 14.3, THE SOFTWARE IS PROVIDED “AS IS” AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, THE COMPANY MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET THE AUTHORIZED USER’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN YOU AND THE THIRD PARTY OWNER OR DISTRIBUTOR OF THE THIRD PARTY MATERIALS.

15. Indemnification.

15.1 Authorized User Indemnification. The Authorized User shall indemnify, defend and hold harmless and advance defense costs (if requested by the indemnified parties) the Company and its Subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors and assigns (each, a “**Company Indemnatee**”) to the fullest extent provided by law for any losses, claims, damages, awards, judgments, costs, penalties or injuries incurred by any third party, including reasonable attorneys’ fees, which arise from, out of, or relate to:

- a. Customer Data, including any Processing of Customer Data by or on behalf of the Company in accordance with this Agreement;
- b. Any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of the Authorized User, including the Company’s compliance with any specifications or directions provided by or on behalf of the Authorized User to the extent prepared without any contribution by the Company;
- c. Allegation of facts that, if true, would constitute the Authorized User’s breach of any of its representations, warranties, covenants or obligations under this Agreement;

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d. Any act or omission by the Authorized User in connection with the Services;

e. Negligence or more culpable act or omission (including recklessness or willful misconduct) by the Authorized User or any third party on behalf of the Authorized User in connection with this Agreement.

The indemnifying party shall have the sole right to defend such claims at its own expense. The other party shall provide, at the indemnifying party's expense, such assistance in investigating and defending such claims as the indemnifying party may reasonably request. If the Authorized User is a government entity, or an employee of a governmental entity, that is subject to statutory limitations that apply to this paragraph, the government entity shall provide the indemnifications to the full extent permitted by the statutory limitations prior to the Authorized User gaining access to the Software.

15.2 Mitigation. If any part or all of the Software is, or in the Company's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third party Intellectual Property Right, or if the Authorized User's use of the Software is enjoined or threatened to be enjoined, the Company may, at its option and sole cost and expense:

a. Obtain the right for the Authorized User to continue to use the Software as contemplated by this Agreement;

b. Modify or replace the Software, in whole or in part, to seek to make the Software (as so modified or replaced) non-infringing, while providing equivalent features and functionality, in which case such modifications or replacements will constitute the Software, as applicable, under this Agreement; or

c. By written notice to the Authorized User, terminate this Agreement and require Customer to immediately cease any use of the Software or any specified part or feature thereof.

16. Limitations of Liability.

16.1 EXCLUSION OF DAMAGES. IN NO EVENT WILL THE COMPANY OR ANY OF FWS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR FWS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF FWS ESSENTIAL PURPOSE.

16.2 CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF THE COMPANY AND FWS LICENSORS, SERVICE PROVIDERS AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR FWS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO THE COMPANY PURSUANT TO THE SERVICE AGREEMENT, LESS PASS-THROUGH FEES PAID TO

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ANY THIRD PARTY, IN THE YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF FWS ESSENTIAL PURPOSE.

17. Force Majeure.

17.1 No Breach or Default. In no event will the Company be liable or responsible to the Authorized User, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by any circumstances beyond the Company's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. The Company may terminate this Agreement if a Force Majeure Event continues substantially uninterrupted for a period of 30 days or more.

17.2 Affected Obligations. In the event of any failure or delay caused by a Force Majeure Event, the Company shall give prompt written notice to the Authorized User stating the period of time the occurrence is expected to continue and use commercially reasonable/diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

18. Miscellaneous.

18.1 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

18.2 Notices. Notices sent in accordance with this **Section 18.2** will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or e-mail.

18.3 Entire Agreement. This Agreement, together with the Service Agreement, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement and related material the following order of precedence governs: (a) first, this Agreement, excluding exhibits, schedules, attachments and appendices; (b) second, any exhibits, schedules, attachments and appendices to this Agreement as of the Effective Date; (c) third, the Service Agreement; (c) forth, any other documents incorporated herein by reference.

18.4 Assignment. The Authorized User shall not assign or otherwise transfer any of FWS rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the Company's prior written consent. No delegation or

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other transfer will relieve the Authorized User of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this **Section 18.4** is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

18.5 No Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

18.6 Amendment and Modification; Waiver. No amendment to or modification of or rescission, termination, or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination, or discharge of this Agreement. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

18.7 Severability. If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

18.8 Governing law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Wisconsin without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Wisconsin. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Wisconsin in each case located in the city of Madison and County of Dane, and each party irrevocably submits to the jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.