

CERTIPATH, INC. END USER LICENSE AGREEMENT, PRODUCT WARRANTY, AND SUPPORT TERMS

1. Definitions.

“CertiPath Information” means all information relating to the Product, the Product Documentation and any information concerning CertiPath’s technology or business that is furnished to Licensee hereunder.

“Installation” means any deployment or configuration of the Product as set forth on an Order hereunder.

“Intellectual Property Rights” means all existing and future worldwide copyrights, trade secrets, inventions, patents, patent applications, moral rights, contract rights or other proprietary rights.

“Licensee Information” means confidential non-public information of Licensee concerning its network, its employees, or its authorized agents consultants and independent contractors.

“Product” means CertiPath’s currently general available products, including hardware and software.

“Product Update” shall mean any version of the Product, developed subsequent to the initial Order, which implements minor improvements or augmentations, or which corrects failures of the Product.

“Product Upgrade” shall mean any version of the Product, developed subsequent to initial Order, which implements additional features or functions, or which produces substantial and material improvements with respect to the utility and efficiency of the Product, but which does not constitute merely a Product Update, and which is not marketed and/or distributed by CertiPath as a separate and independent product.

“Product Documentation” means the then-current, generally available, text and/or graphical materials that describe the features, functions and use of the Product, which materials are designed to facilitate use of the Product and which are provided by CertiPath to Licensee.

“Order” means a written purchase order submitted by Licensee to CertiPath.

“Supported Environment” means the configuration of the hardware and the operating system(s) for which the Product is created to operate or depend.

“Term” means the term of Licensee’s license to use the Product and Product Documentation as set forth in an Order, unless earlier terminated as provided herein.

“User” means Licensee’s agents, employees, consultants or independent contractors authorized to use the Product on Licensee’s behalf as defined in an Order.

2. License Grant. Subject to Licensee’s compliance with this Agreement and payment of all license fees, CertiPath grants to Licensee during the Term, as set forth in the Order, a non-exclusive, non-transferable, limited license, without the right to grant sublicenses (other than to Users) to use the Product and Product Documentation. Such license permits Licensee and its Users to use the Product solely (i) for Licensee’s internal business purposes, (ii) in accordance with the Product Documentation and this Agreement (including any limitations on the number of User licenses set forth on the Order), and (iii) in compliance with all applicable laws. The foregoing license shall commence on the date of shipment or electronic availability of such Product to Licensee.

3. License Restrictions. Licensee acknowledges that the Product and its structure, organization, and source code constitute valuable Intellectual Property Rights of CertiPath, its suppliers, and licensors. Accordingly, Licensee shall not, nor shall it permit, assist or encourage any third party to: (i) modify, adapt, alter, translate, or create derivative works from the Product or Product Documentation; (ii) merge the Product with other software or hardware into a new product; (iii) sublicense, distribute, sell, use for service bureau use, lease, rent, loan, or otherwise transfer the Product or the Product Documentation to any third party; (iv) make available the Product via an outsourcing, timesharing, service bureau, or other arrangement; (v) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Product, or unbundle any of the programs embedded in the Product; (vi) exceed the permitted number of Users; (vii) remove any proprietary notices on or relating to the Product; (viii) permit any third party application to access the collection of data indexed by the Product; or (ix) otherwise exercise any rights in or to the Product or the Product Documentation except as expressly permitted hereunder.

4. Installation. If Licensee has purchased Installation to deploy or configure the Product from CertiPath via an Order, Licensee will grant CertiPath personnel adequate access to its facilities and applicable computer systems in order to install the Product and will make its personnel reasonably available during the installation procedures.

5. Maintenance and Support. If Licensee has purchased maintenance and support for the Product from CertiPath via an Order, delivery will occur as specified in Exhibit 1 below ("**Maintenance and Support**"). If Licensee ceases Maintenance and Support and later wishes to re-instate Maintenance and Support, then Licensee may be subject to Product inspection and/or re-certification fees.

In the event Licensee purchases a perpetual license, as identified on an Order, Maintenance and Support shall commence on the date of shipment or upon electronic availability of such Product to Licensee and remain in effect for the duration of the Maintenance and Support Term specified in an Order accepted by CertiPath. Thereafter, subsequent terms of Maintenance and Support may be purchased by Licensee via a subsequent Order accepted by CertiPath. All subsequent terms of Maintenance and Support shall be subject to the terms and conditions of this Agreement.

In the event Licensee purchases a term license, as identified on an Order, Maintenance and Support shall commence on the date of shipment or upon electronic availability of such Product to Licensee and remain in effect for the duration of the Term indicated in the Order accepted by CertiPath.

6. Proprietary Rights. The Product, the Product Documentation and all Intellectual Property Rights therein, are the exclusive property of CertiPath and its suppliers or licensors, respectively. All rights in and to the Product, Product Documentation and CertiPath's other Intellectual Property Rights not expressly granted to Licensee in this Agreement are reserved by CertiPath or its suppliers or licensors. Nothing in this Agreement shall be deemed to grant, by implication, estoppel or otherwise, a license under any of CertiPath's existing or future Intellectual Property Rights. Licensee shall not remove, alter, or obscure and proprietary notices (including without limitation copyright or trademark notices) of CertiPath on the Product or the Product Documentation or any copy thereof.

7. United States Government Use. If the Product is acquired by or on behalf of a unit or agency of the United States government, the following terms shall apply. The CertiPath Product (i) is existing computer software and hardware, and was developed at private expense, (ii) is a trade secret of CertiPath and its licensors for all purposes of the Freedom of Information Act, (iii) is "commercial computer software" subject to limited utilization as expressly stated in this Agreement, and (iv) in all respects is proprietary data belonging to CertiPath and its licensors. CertiPath and its licensors reserve all rights to the Product. For civilian agencies and entities acquiring Software under a GSA Schedule, the Product is licensed only with "Restricted Rights" and use, reproduction or disclosure is subject to restrictions set forth in subparagraph (a) through (d) of the Commercial Computer Software – Restricted Rights clause at 52.227-19 of the Federal Acquisition Regulations and its successors. For units of the United States Department of Defense ("DoD"), the Product is licensed only with "Limited Rights" and use, duplication, or disclosure is subject to restrictions as set forth in subdivision (b)(3) of the Rights in Technical Data and Computer Software clause at 252.227-7013 of the DoD Supplement to the Federal Acquisition Regulations and its successors.

8. Product Warranty. CertiPath warrants that the Product, when used only as permitted under this Agreement, in accordance with the instructions in the Product Documentation and in the Supported Environment, shall operate substantially as described in the Product Documentation. LICENSEE'S REMEDY FOR ANY BREACH OF THE FOREGOING WARRANTY SHALL BE THE REPAIR OR REPLACEMENT OF OR (AT CERTIPATH'S OPTION OR IF REPAIR OR REPLACEMENT IS IMPRACTICAL) REFUND OF THE FEES RECEIVED BY CERTIPATH FOR RETURNED NON-CONFORMING PRODUCT FOR WHICH FULL DOCUMENTATION AND ANY PROOF OF NON-CONFORMITY IS PROVIDED TO CERTIPATH (AND FOR WHICH A RETURN MATERIAL AUTHORIZATION HAS BEEN ISSUED) WITHIN ONE YEAR IN THE CASE OF A HARDWARE COMPONENT OF THE PRODUCT OR NINETY DAYS IN THE CASE OF A SOFTWARE COMPONENT OF THE PRODUCT (WHETHER OR NOT EMBEDDED) AFTER THE ORIGINAL NON-CONFORMING PRODUCT (BUT NOT REPLACEMENT PRODUCT) IS SHIPPED BY CERTIPATH OR MADE ELECTRONICALLY AVAILABLE TO LICENSEE.

9. Installation and Maintenance and Support Warranty. CertiPath warrants that Installation and Maintenance and Support will be performed in a competent, professional and workmanlike manner. IF INSTALLATION OR MAINTENANCE AND SUPPORT ARE NOT PERFORMED AS WARRANTED, THEN, UPON LICENSEE'S WRITTEN REQUEST WITHIN THIRTY DAYS AFTER COMPLETION OF THE NON-CONFORMING INSTALLATION OR MAINTENANCE AND SUPPORT, CERTIPATH SHALL RE-PERFORM OR CAUSE TO BE RE-PERFORMED, SUCH INSTALLATION OR MAINTENANCE AND SUPPORT, AT NO ADDITIONAL CHARGE TO LICENSEE. SUCH RE-PERFORMANCE SHALL BE LICENSEE'S EXCLUSIVE REMEDY AND CERTIPATH'S SOLE LIABILITY FOR ANY SUCH NON-PERFORMANCE.

10. Disclaimer. EXCEPT AS EXPRESSLY SET FORTH ABOVE, THE PRODUCT, THE PRODUCT DOCUMENTATION, THE MAINTENANCE AND SUPPORT, AND THE INSTALLATION, ARE PROVIDED BY CERTIPATH TO LICENSEE "AS IS" WITHOUT ANY OTHER WARRANTY OF ANY KIND. CERTIPATH, ON BEHALF OF ITSELF AND ITS SUPPLIERS AND LICENSORS, HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WITH REGARD TO THE PRODUCT, THE PRODUCT DOCUMENTATION, THE MAINTENANCE AND SUPPORT AND THE INSTALLATION, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT AND ANY WARRANTIES ARISING OUT OF THE COURSE OF DEALING OR COURSE OF PERFORMANCE. CERTIPATH DOES NOT WARRANT THAT LICENSEE'S USE OF THE PRODUCT SHALL BE ERROR-FREE, OR UNINTERRUPTED. LICENSEE ACKNOWLEDGES THAT IT HAS RELIED ON NO OTHER WARRANTIES AND THAT NO OTHER WARRANTIES ARE MADE HEREIN BY CERTIPATH OR ANY OF CERTIPATH'S SUPPLIERS OR LICENSORS. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO LICENSEE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ANY IMPLIED WARRANTIES ARE LIMITED TO THIRTY (30) DAYS.

11. Limitation of Liability and Indemnification.

11.1 Limitation of Liability.

IN NO EVENT SHALL CERTIPATH OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST DATA, LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF CERTIPATH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CERTIPATH'S AND ITS SUPPLIERS' AND LICENSORS' TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT OF FEES PAID TO CERTIPATH HEREUNDER. LICENSEE ACKNOWLEDGES THAT THIS ARRANGEMENT REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT CERTIPATH WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, SO THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO LICENSEE.

11.2 Indemnification.

Licensee will indemnify, defend and hold harmless CertiPath and its licensors against any liability, damage, loss or expenses (including reasonable attorney's fees and expense of litigation) incurred by or imposed upon CertiPath and its licensors in connection with any claims, suits, actions, demands or judgements arising out of any breach of the representations, warranties or covenants set forth in Sections 2, 3, 6 and 12.1 of the Agreement.

12. Confidentiality.

12.1 CertiPath Information; Right to Disclose.

Except as otherwise expressly provided in this Section 12.1, Licensee shall protect and keep confidential all CertiPath Information. Licensee shall use the CertiPath Information only for the purposes contemplated by this Agreement. Licensee may disclose CertiPath Information only (i) as necessary for its use of the Product in accordance with this Agreement to its Users who have agreed in writing to maintain such information in confidence; or (ii) if required to do so by subpoena, court order or legal process, provided that CertiPath is provided sufficient written notice to request a protective order.

12.2 Licensee Information; Right to Disclose.

Except as otherwise expressly provided in this Section 12.2, CertiPath shall protect and keep confidential all Licensee Information, and shall use Licensee Information only for the purposes contemplated by this Agreement and for purposes of improving and enhancing the Product. CertiPath may disclose Licensee Information only (i) as necessary to support Licensee's use of the Product in accordance with this Agreement to CertiPath's employees or third party agents who have agreed in writing to maintain licensee's information in confidence; or (ii) if required to do so by subpoena, court order or legal process, provided that Licensee is provided sufficient written notice to request a protective order.

12.3 Exceptions.

Sections 12.1 and 12.2 above shall not apply to information of the disclosing party that (i) is or becomes generally available to the public other than through a wrongful act of the receiving party; (ii) is or becomes available to the receiving party on a non-confidential basis from a source that is entitled to disclose it to the receiving party; or (iii) is independently developed by the receiving party, its employees or third party contractors without access to or use of the disclosing party's confidential information.

13. Termination.

Licensee may terminate this Agreement at any time by providing CertiPath written notice. If Licensee is not a U.S. Government agency, department, or instrumentality, upon thirty (30) days' notice, CertiPath may terminate this Agreement (and Licensee's License Grant) upon notice in the event that Licensee has breached any provision of this Agreement and has not cured the breach during such notice period. Notwithstanding the foregoing, a material breach of any license granted to Licensee shall be grounds for immediate termination.

If Licensee is a U.S. Government agency, department, or instrumentality, termination terms and conditions shall be governed by the FAR § 52.212-4.

Upon any expiration or termination of this Agreement, the rights and licenses granted hereunder will automatically terminate, and Licensee agrees to immediately cease using the Product and Product Documentation and remove from all computers, hard drives, networks and other storage media all copies of the Product, the Product Documentation and CertiPath Information (including all such copies on any User devices), and shall certify to CertiPath that such actions have occurred.

In the event of termination of this Agreement, CertiPath will have no obligation to refund any fees received from Licensee during the Term. Section 1 (Definitions), Section 3 (License Restrictions), Section 6 (Proprietary Rights), Section 10 (Disclaimer), Section 11 (Limitation of Liability), Section 12 (Confidentiality), Section 13 (Termination) and Section 14 (General) shall survive termination of this Agreement.

14. General.

14.1 Customer Lists; Press Releases.

In consideration of the license granted hereunder, CertiPath may publicly identify Licensee solely as a CertiPath customer (without reference to specific Product licenses). Any other publicity by either party shall require prior written approval from the other party.

14.2 Export Restrictions.

Licensee agrees to comply with U.S. export control laws, regulations and requirements. Without limiting the generality of the foregoing, hardware, software, technology or services provided under this Agreement may not be exported, re-exported, transferred or downloaded: (i) to or within (or to a national resident of) countries under U.S. economic embargo; (ii) to persons or entities listed on the U.S. Department of Commerce Denied Persons List, Entity List of proliferation concern or on any U.S. Treasury Department Designated Nationals exclusion list, or to parties directly or indirectly involved in the development or production of nuclear, chemical, biological weapons or in missile technology programs as specified in the U.S. Export Administration Regulations (15 CFR 744). Licensee acknowledges and agrees that it is not located in (or a national resident of) any country under U.S. economic embargo, not identified on any U.S. Department of Commerce Denied Persons List, Entity List or Treasury Department Designated Nationals exclusion list, and not directly or indirectly involved in the development or production of nuclear, chemical, biological weapons or in missile technology programs as specified in the U.S. Export Administration Regulations. Licensee is responsible for complying with applicable laws and regulations in all countries with jurisdiction over Licensee activities authorized by this Agreement, and for obtaining export, re-export and import authorizations that may be required due to these activities. Licensee's violation of applicable export control laws, regulations and requirements is a breach of this Agreement for which CertiPath may terminate, or suspend performance of, this Agreement.

14.3 Audit Rights.

Upon CertiPath's written request, Licensee shall furnish CertiPath with a signed certification verifying Licensee's use of the Product in compliance with the provisions of this Agreement. Upon CertiPath's written request, Licensee shall permit CertiPath or its representatives to review Licensee's relevant records and inspect Licensee's facilities. CertiPath shall give Licensee at least ten (10) business days' advance written notice of any such inspection and shall conduct the same during normal business hours in a manner that does not unreasonably interfere with Licensee's normal operations. Any such audit shall be conducted at CertiPath's expense, unless the audit reveals that Licensee has breached any provision of this Agreement or has underpaid for the Product, in which case Licensee shall (i) reimburse CertiPath for all reasonable costs and expenses incurred by CertiPath in connection with such audit and (ii) pay all additional Licensee Fees to CertiPath found to be due through the audit.

14.4 Assignment.

Licensee may not assign or transfer, by operation of law or otherwise, any of its rights or obligations under the Agreement to any third party without CertiPath's written consent. Any attempted assignment or transfer in violation of the foregoing shall be null and void. CertiPath shall have the right to freely assign the Agreement.

14.5 Waiver.

The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment or breach of CertiPath's proprietary rights in the Products, no action, regardless of form, arising out of the Agreement may be brought by either party more than one (1) year after the cause of action has accrued.

14.6 Severability.

In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force.

14.7 Third-Party Beneficiary.

In the event of a breach or a threatened breach by Licensee of this Agreement, CertiPath's third-party suppliers and licensors shall be deemed to be third-party beneficiaries of this Agreement and CertiPath's third-party suppliers and licensors may bring an action directly against Licensee to enjoin such breach and/or to enforce Licensee's obligations and obtain CertiPath's remedies hereunder.

14.8 Notices.

Except as otherwise specified herein, all notices, consents, and approvals under this Agreement must be delivered to the other party, in writing, by reputable overnight courier or certified or registered United States mail (postage prepaid and return receipt requested). If to Licensee, notices shall be sent to the address set forth in the most recent Purchase Order, attention: Legal Department. If to CertiPath, notices shall be sent to the address set forth at the beginning of this Agreement, attention: Legal Department. Notice shall be effective the next business day or three business days after being deposited in the mail, respectively. Either party may change its address by giving written notice of the new address to the other party, in accordance with this Section 14.8.

14.9 Choice of Law and Disputes.

The following Choice of Law and Disputes terms and conditions shall apply under this Agreement: (i) For other than the U.S. Government agency, department, or instrumentality as a party, this Agreement shall be governed by the laws of the State of New York, excluding its conflict of laws principles. Neither the United Nations Convention on Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act applies to this Agreement. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in New York, New York and the parties hereby consent to personal jurisdiction and venue therein. If a dispute arises between Licensee and CertiPath, and Licensee or CertiPath files suit in any court of competent jurisdiction to enforce rights under this Agreement, then the prevailing party shall be entitled to recover from the other party all costs of such action or suit, including, but not limited to, investigative costs, court costs and reasonable attorneys' fees (including expenses incurred to collect those expenses). (ii) If a dispute arises between Licensee and CertiPath that is related to a Government customer that is subject to the Contract Disputes Act, 41 U.S.C. § 7101 et seq., concerning issues of fact or law which relate to this Agreement (a "CDA Dispute"), the following dispute procedures shall apply. "CDA Dispute" shall include any claim, controversy or dispute between Licensee and the Government customer as well as any claim, controversy or dispute of CertiPath related to the Government customer or Licensee's agreement with the Government customer. If the U.S. Government issues a final decision regarding a CDA Dispute, such decision shall be provided within ten (10) days of receipt by Licensee by written notification to CertiPath and subsequently binding upon CertiPath to the same extent it is binding upon Licensee, subject to CertiPath's right to seek additional time, cost or both. CertiPath shall continue performance in accordance with the decision pending any appeal that may be initiated pursuant to the provisions below. If Licensee elects to appeal such decision under Licensee's prime contract "Disputes" clause, CertiPath shall be permitted to participate fully in such appeal concerning issues of fact or law which relate to this Agreement for the purpose of protecting CertiPath's interest. Licensee shall not enter into a settlement with the Government as to any portion of the appeal affecting CertiPath without CertiPath's prior written consent. If Licensee elects not to appeal a CDA Dispute, such election must be made within thirty (30) days of the Government's final decision and Licensee agrees to notify CertiPath within three (3) days after Licensee elects not to appeal. If CertiPath elects to pursue appeal of such decision by the Contracting Officer, CertiPath shall provide written notice of such election to Licensee, and the parties shall enter into a sponsorship agreement pursuant to which CertiPath shall have the right to prosecute in Licensee's name, any and all appeals arising from the Government's determination. Any such appeal brought by CertiPath in Licensee's name shall be at the expense of CertiPath, provided, however, that Licensee, at Licensee's expense, shall provide CertiPath with reasonable assistance in the presentation of such appeal. (iii) If Licensee is the U.S. Government as a party to this Agreement, this Agreement shall be governed by and interpreted in accordance with the Contract Disputes Act of 1978, as amended (41 U.S.C. §§ 7101-7109). Failure of the parties to reach agreement on any request for equitable adjustment, claim, appeal, or action arising under or relating to this Agreement shall be a dispute to be resolved in accordance with the clause at 48 C.F.R § 52.233-1, which is incorporated in this Agreement by reference.

EXHIBIT 1: MAINTENANCE AND SUPPORT

1. PRODUCT MAINTENANCE

a. Product Updates and Product Upgrades. Licensee shall be entitled to receive, and CertiPath shall provide Licensee e-mail notification of, all Product Updates and Product Upgrades as CertiPath, in its sole discretion, makes them generally available to its customers, without additional charge. The contents of all Product Updates and Product Upgrades shall be developed by CertiPath in its sole discretion. Licensee may obtain Product Updates and Product Upgrades from CertiPath's Support website located at (www.certipath.com/support) and may only be installed on Products that are covered under current Maintenance and Support Orders. Any such software provided by CertiPath shall be subject to the terms and conditions in the Agreement.

b. Supported Products. CertiPath supports the current major release of the Product, plus certain prior versions of the Product in accordance with CertiPath's support policy available at: www.certipath.com/support.

c. Product Errors. CertiPath shall use commercially reasonable efforts to correct any reproducible material error of nonconformity between the Product and the Product Documentation that is attributable to CertiPath ("Product Errors") with a level of effort appropriate with the severity of the error, provided that CertiPath shall have no obligation to correct all Product Errors. Licensee shall notify CertiPath of such error by means set forth in Section 3 of this Exhibit 1 and shall provide CertiPath with sufficient information to reproduce the error. CertiPath shall only be responsible for Product Errors that are attributable to CertiPath and reproducible by CertiPath on unmodified Product consistent with the Product delivered to Licensee. CertiPath may correct such Product Error solely by amending the Product Documentation, or by fixing the Product Error in the current release of the Product.

2. HARDWARE REPLACEMENT

- a. Return Material Authorization.** Before returning any Product, Licensee must contact CertiPath and obtain a Return Material Authorization ("RMA") number by means set forth in Section 3 of this Exhibit 1. If CertiPath verifies that the Product is likely to be defective, will issue Licensee a RMA number, which allows Licensee to return the defective unit to CertiPath for repair or replacement.
- b. Shipping.** CertiPath cannot accept any Product without a RMA number on the package. Licensee must deliver the Product along with the RMA number to the address designated by CertiPath at the time of RMA issuance. Licensee is responsible for its shipping costs, will ship such item on its own account and assumes the risk of damage or loss in transit. Licensee must use the original container (or the equivalent) and will be responsible for any damage in transit if it fails to use adequate packaging. Shipping costs for repair or replacement Products shall be borne by CertiPath.
- c. Repair or replace.** CertiPath may replace or repair the Product with either a new or a reconditioned Product.
- d. Dead on Arrival Products.** For RMAs that are issued by CertiPath within the first thirty (30) days after original Product shipment, CertiPath will ship a new (not refurbished) advance replacement Product via express delivery. Advance replacement for requests confirmed by 12:00 pm United States Eastern Time ("*US ET*") by CertiPath will be shipped for next business day delivery, provided that special configurations may require additional time before a new replacement unit can be shipped; delivery time may depend on the International customs clearing and export/import laws and regulations for non-US destinations. In the case of a Dead on Arrival Product, Licensee has thirty (30) days to return the defective Product after the replacement has been shipped and the cost thereof shall be borne by CertiPath.

3. SUPPORT

- a. Support.** CertiPath will provide Licensee with technical support ("*Support*") as follows:
 - i. Assistance related to questions on the installation and operational use of the Product;
 - ii. Assistance in identifying and verifying the causes of suspected errors in the Product; and
 - iii. Providing workarounds for identified Products Errors or malfunctions, where reasonably available to CertiPath.
 - iv. Licensee will designate the contact information for two named individuals to act as support liaisons to utilize CertiPath Support and will ensure that such persons will be properly trained in the operation and usage of the Product; CertiPath will not be obligated to provide Support to any other individuals. Licensee agrees to provide reasonable access to all necessary personnel to answer questions about any problems reported by Licensee regarding the Product. Licensee

also agrees to promptly implement all Product Updates and Product Upgrades provided by CertiPath under this Exhibit 1. Upon request, Licensee will provide access for on-line diagnostics of the Product during error diagnosis.

- b. **Support Methods.** Support is available through the following methods of communication:
- i. Via telephone at 1.855.758.0075.
 - ii. Via email at support@certipath.com.
 - iii. Via CertiPath's Support website at www.certipath.com/support
 - iv. Licensee may request maintenance and support not specifically provided for in this Agreement.
 - v. Support is available Monday through Friday, 8:00 am to 5:00 pm US ET.
 - vi. Support is not available on the following days: New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day, the days of December 25th through December 31st, and any other day upon which the offices of the United States government are closed as a holiday.
 - vii. Support will only be given using the English language.

4. **PRODUCT OBSOLESCENCE**

CertiPath's end of sale and end of Maintenance and Support policies are available at: www.certipath.com/support

5. **SUPPORT SERVICE LEVELS**

An incident is defined as a situation where the Product does not function as warranted ("**Incident**"). The detail below defines the severity level of each type of Incident. CertiPath will use commercially reasonable efforts to provide the targeted responses included below.

Severity Level: 1

Definition: Total service failure of (operational) system (e.g. failure of a component of a critical process). Failure results in a critical part of the Product being unavailable.

Targeted response time: Within 2 hours of the receipt of the Support request from Licensee's support liaison. If the request for Support is received after 5:00 pm US ET during the business day, targeted response time begins the next business morning.

Severity Level: 2

Definition: Failure of one or more system functions making use of the Product difficult (e.g. Product still running and operational, but not to full capacity).

Targeted response time: Within 4 hours of the receipt of the Support request from Licensee's support liaison. If the request for Support is received after 5:00 pm US ET during the business day, targeted response time begins the next business morning.

Severity Level: 3

Definition: Failure of a non-critical function having no significant effect on the Product's operation (e.g. failure of a sub-component), Product Users can adapt business practices to bypass the Incident in the short-term.

Targeted response time: Next business day.

Severity Level: 4

Definition: Any Incident having minimal impact on the Product's operation, defined as an error of inconvenience.

Targeted response time: Three business days.

6. **ESCALATION PROCEDURES**

CertiPath will use commercial reasonable efforts to respond to requests for Support as described in this Exhibit 1. CertiPath reserves the right to "stop the clock" on the targeted response time while awaiting action of or information from Licensee's support liaison.

If CertiPath has not responded as targeted above, Licensee's support liaison may escalate as follows:

Severity Level	Status	Escalation Step
1	Upon receipt	Immediate escalation to CertiPath's Vice President of Client Services
2	No response within 8 hours	Licensee's support liaison may request escalation to CertiPath's Vice President of Client Services
3	No response within 2 business days	Licensee's support liaison may request escalation to CertiPath's Support Manager
4	No response within 7 business days	Licensee's support liaison may request escalation to CertiPath's Support Manager

7. SUPPORT REQUEST HANDLING

All requests for Support shall be reported in accordance with the methods listed in Section 3(b) of this Exhibit 1. Requests for Support must be made by Licensee's support liaison. It is the responsibility of the Licensee's support liaison to provide the following information:

- * Serial number of the Product impacted
- * Product version
- * Detailed description of the Incident
- * Impact of the Incident
- * Indication of the activity that was being performed when the Incident occurred
- * Configuration data
- * All relevant Product log files

Support requests will be registered in CertiPath's online support tracking system, assigned a Severity Level, and allocated a unique request reference number. The Support request will be managed to resolution by a CertiPath technical support engineer. While working to resolve an Incident, the technical support engineer may need access to information on the Licensee system relative to the failure, or may need to recreate the failure to get additional information. If the Incident is related to system configuration, the Licensee's support liaison may be asked to provide a network diagram and configuration information. Any information sent to CertiPath to aid in the resolution of Licensee's Incident will be treated as confidential.

Licensee acknowledges that it will be required to install the most currently available Product Updates and Product Upgrades in order for CertiPath to resolve an Incident.

If upon providing Support CertiPath determines that the Incident was due primarily to the condition of Licensee's own equipment and systems, CertiPath reserves the right to charge a reasonable hourly fee for the Support services provided.

8. RESTRICTIONS

Licensee is entitled to receive Maintenance and Support only on Products under a current Maintenance and Support Order. Maintenance and Support commences on the date of shipment or electronic availability of Product to Licensee. CertiPath will not be obligated to provide any Maintenance and Support: (1) on Products that: (a) have been altered, modified, mishandled or damaged, (b) have not been installed, operated, repaired, or maintained in accordance with CertiPath's Product Documentation, specifications, instructions and the terms of this Exhibit 1 and the Agreement, (c) have been combined or integrated with hardware, software, and/or technology not provided by CertiPath and without the written approval of CertiPath, or (d) have been misused or operated outside the Supported Environment for that Product; (2) where the Incident relates to Licensee's or third party's network, systems, hardware, software, or other problem beyond the reasonable control of CertiPath; (3) to any geographic location or to any customers in violation of applicable laws or regulations or (4) where providing Support might reasonably be expected to jeopardize or harm CertiPath's or its licensor's rights in any intellectual property, or reveal trade secrets or other proprietary information of CertiPath or its licensors not generally available to the public or to customers of the Product. Licensee acknowledges and agrees that CertiPath's ability to provide Maintenance and Support is dependent on Licensee providing accurate Product installation location information, and any failure to do so may impact CertiPath's ability to provide Maintenance and Support. Remote access to the Products on Licensee's network may be required to diagnose or resolve an Incident, and

Licensee's failure to provide such access may impact CertiPath's ability to resolve the Incident. CertiPath will not be responsible for any Product replacement or repair delays caused by CertiPath's compliance with export/import laws and regulations. CertiPath's obligation under an Order for Maintenance and Support on any Product is subject to CertiPath's receipt of the applicable fees under the Order. CertiPath retains ownership of any intellectual property resulting from Maintenance and Support performed.

The following terms shall apply to Licensees who have procured the use of FedCheck Services within the TrustVisitor solution:

Ident Solutions Terms & Conditions

The following terms and conditions (“**Terms and Conditions**”) are a contract between Ident and Customer and governs Customer’s use of the FedCheck Services. By ordering the FedCheck Services through a Reseller, or by using Ident’s software or services that are offered subject to these Terms and Conditions, Customer is accepting and agreeing to be bound by these Terms and Conditions.

1. PARTIES

In these Terms and Conditions, the word “**Ident**” refer to Ident Solutions, LLC. The words “**Customer**” refer to the customer of Ident’s products or services, whether a corporation, government agency, or other entity, that purchases a subscription to use the FedCheck Services directly through Ident or through a Reseller of Ident. Customer may not use the FedCheck Services unless Customer accepts these Terms and Conditions and has the power and legal right to form a contract with Ident. Any individual subscribing to Ident’s services in the name of a company or other organization represents and warrants that he or she is authorized and intends by those actions to bind the company or other organization to these Terms and Conditions, and any individual having access to Ident’s software or services under Customer’s account may access and use them only in accordance with these Terms and Conditions.

2. DEFINITIONS

The following terms and any others defined in these Terms and Conditions will be interpreted according to the definitions given.

2.1 “**Authorized Facilities**” means Customer’s facility or facilities (which may include equipment, computer networks, or other access-controlled resources as well as physical premises) for which Customer is procuring the FedCheck Services, as identified in the Order Form.

2.2 “**Authorized User**” means an individual employee or agent of Customer’s who has been assigned unique credentials to access and use the FedCheck Services.

2.3 “**Database-Specific Terms**” means any usage limitations and other terms and conditions that are referenced in the Order Form, or that Customer may otherwise accept (such as a Facility Agreement or data access agreement executed by Customer, Ident, and a law enforcement agency or database provider), in relation to Customer’s use of the FedCheck Services to query or obtain information from any particular data source or collection or type of data sources.

2.4 “**FedCheck App**” means the mobile software application, if any, that Ident makes available to Customer for use in connection with, and to provide access to, the FedCheck Services.

2.5 “**FedCheck Services**” means Ident’s online database-querying services designed for use in screening individuals for facility access, as more specifically identified in the Order Form and described in Ident’s relevant published documentation, and where applicable, the associated web-based administrative tools that Ident makes available for use by Customer’s Authorized Users, either directly from Ident or through a Reseller.

2.6 “**Order Form**” means the order form, as agreed upon by Customer and a Reseller, that specifies the licenses and services being purchased by Customer, and that references or is accompanied by these Terms and Conditions.

2.7 “**Reseller**” means an authorized reseller, distributor, integrator or other channel partner of Ident that Customer contracts with to access and use the FedCheck Services.

3. SERVICES AND LICENSE

3.1 Service Subscription. Subject to Customer’s compliance with these Terms and Conditions and any Database-Specific Terms, Ident will provide Customer’s Authorized Users with access to and use of the FedCheck Services during Customer’s paid-up subscription period (as described below) and within any service usage limits indicated in the Order Form, solely for the purpose of screening individuals for access to the Authorized Facilities in accordance with Ident’s relevant end-user documentation and the Database-Specific Terms. The FedCheck Services may be accessed only through the FedCheck App, Ident’s designated web-based interface, or the Reseller furnished solution as applicable.

3.2 Software License. Subject to Customer's compliance with these Terms and Conditions and any Database-Specific Terms, Ident grants to Customer a non-exclusive, non-transferable, paid-up (for the fees specified in the Order Form), royalty-free license to install and run the FedCheck App during Customer's paid-up subscription period, only on devices that Customer owns or controls and that meet Ident's published compatibility criteria, solely in connection with Customer's use of the FedCheck Services as authorized above.

3.3 User Registration and Acknowledgement. Customer agrees that Ident may require, as a condition of any Authorized User's installation or use of the FedCheck App or FedCheck Services, that such Authorized User create an individual profile under Customer's account and acknowledge their awareness of, and agreement to abide by, these Terms and Conditions and Ident's privacy policy that accompanies these Terms and Conditions or the Order Form. This section does not limit any of Customer's responsibilities under these Terms and Conditions, including those pertaining to Customer's Authorized Users.

3.4 Usage Limitations. Customer may not, and agree not to, use or permit any person to use the FedCheck Services for any credit-verification or credit-reporting purposes, or in connection with any hiring or other employment-related actions (other than screening for access to the Authorized Facilities), or to screen individuals or otherwise discriminate based on race, color, national origin, religion, age, gender, sexual orientation, or disability or on any other unlawful or improper basis. In addition to these Terms and Conditions, Customer's and Customer's Authorized Users' rights to access and use the FedCheck Services and FedCheck App are subject to the relevant Database-Specific Terms and any limitations and restrictions indicated in the Order Form. To the extent of any conflict or inconsistency between or among any of these documents, the more restrictive terms will govern.

3.5 General Restrictions. Customer may not: (i) copy, reproduce, modify, decompile, disassemble, or reverse engineer the FedCheck Services, FedCheck App, or any associated software or materials (except to the extent that applicable law prohibits or restricts reverse engineering restrictions); (ii) provide any third parties with access to the FedCheck Services or FedCheck App, or use either of them for time sharing or similar purposes for the benefit of any third party; (iii) remove any copyright or proprietary notices contained in the FedCheck Services or FedCheck App or any output thereof; (iv) breach, disable, tamper with, or develop or use (or attempt) any workaround for, any security measure provided or used by the FedCheck Services or FedCheck App; (v) access the FedCheck Services via any bot, web crawler or non-human user, or to perform any data scraping, data mining, caching, or similar function; (vi) introduce or transmit any virus or other malicious code to or through the FedCheck App or FedCheck Services; or (vii) access or use (or permit a third party to access or use) the FedCheck Services or FedCheck App for any unlawful purpose, or for purposes of monitoring the availability, performance or functionality of the FedCheck Services or for any other benchmarking or competitive purposes.

3.6 Availability. Ident will use reasonable efforts to make the FedCheck Services available through the FedCheck App or through the Reseller furnished solution, on a 24/7/365 basis, subject to periodic downtime for scheduled maintenance during non-peak hours; however, the parties recognize that Internet connectivity issues, unavailability of third-party databases and systems, or other factors outside of Ident's reasonable control may limit or restrict this availability from time to time. Ident will use reasonable efforts to restore service in the event of unplanned unavailability within Ident's control, and to provide Customer with advance notice of any scheduled unavailability. Customer agrees that Ident makes no representations or warranties and has no responsibility or liability to Customer of any kind in relation to any other products or services that Customer obtains from a third party, including those offered by the Reseller configured to operate in conjunction with or to provide access to the FedCheck Services.

3.7 Maintenance and Support. Ident has no obligations or liability to Customer with respect to maintenance, support, training, or other services pertaining to the FedCheck Services. Customer is solely responsible for contracting with the Reseller for any such services that Customer desires to receive, and Ident will have no liability on account of Reseller's provision of or failure to provide any such services.

4. CUSTOMER RESPONSIBILITIES

4.1 Generally. Customer retains full responsibility for Customer's and Customer's Authorized Users' use of the FedCheck Services and FedCheck App, including how Customer or they use any information obtained through the FedCheck Services, and for any decisions and actions that Customer or they make or undertake in reliance on the FedCheck Services or such information. For clarity, the preceding sentence does not diminish any usage restrictions or limitations set forth here or in the Order Form. The FedCheck Services rely on various sources of data that are compiled or controlled by third parties, and neither Ident nor they will be liable to Customer or any other person for any inaccuracy, omission, or other defect in that data or any output based on that data. Furthermore, the FedCheck Services provide only indications of possible records that may be of interest to Customer in connection with screening individuals for access to Customer's Authorized Facility, and Customer must perform additional steps and exercise its own business judgment to determine how Customer may and will use such information.

4.2 Compliance. Customer is solely responsible for ensuring that Customer and its Authorized Users are aware of and comply with these Terms and Conditions, any Database-Specific Terms, and all laws and regulations that pertain to Customer's use of the FedCheck Services or the information made available through the FedCheck Services. Customer represents and warrant that Customer is knowledgeable as to all federal, state, and local laws and regulations pertaining to Customer's business, operations or intended use of the FedCheck Services. Ident encourages Customer to consult with legal counsel before using the FedCheck Services.

4.3 Additional Responsibilities. Without limiting the foregoing, Customer is solely responsible for: (i) obtaining appropriate permissions, waivers, and the like from individuals Customer screens, which must be at least as protective of Ident's and Customer's interests as any template or sample waiver that Ident may furnish from time to time (in Ident's reasonable discretion and upon reasonable notice to Customer), it being understood that Ident's templates and samples are not guaranteed to provide sufficient protection or meet all applicable legal requirements, nor do they diminish Customer's ultimate responsibility for these matters, (ii) assigning and revoking all Authorized User and administrator privileges under Customer's account (provided, however, that Ident may suspend or terminate any individual's access to the FedCheck Services as Ident deem appropriate to prevent or curtail unauthorized or improper use), (iii) maintaining the confidentiality of any user IDs, passwords and other credentials associated with Customer's account, (iv) all activities that occur with respect to Customer's account, and (v) any Customer-furnished data.

5. ORDERING AND PAYMENT

5.1 Ordering. Customer's ordering of FedCheck Services from Reseller will be subject to and governed by the applicable separate agreement in place between Customer and Reseller (and any Order Forms thereunder); provided, however, that in no event will such agreement or Order Forms be construed as expanding Customer's rights with respect to the FedCheck Services or Ident's obligations or liability to Customer beyond these Terms and Conditions.

5.4 Payment. Customer's rights under these Terms and Conditions are subject to Customer's timely payment of all service fees, renewal fees, and other FedCheck Services-related charges as separately agreed upon between Customer and Reseller. If Ident notifies Customer that Reseller is no longer an authorized channel partner of Ident, then Customer agrees, if directed by Ident, to remit directly to Ident any fees otherwise payable to Reseller for any FedCheck Services subscription or renewal that become due on or after the effective date of such notice.

6. TERM AND TERMINATION

6.1 Duration and Renewal. Unless otherwise agreed between Reseller and Customer, Customer's subscription for the FedCheck Services will remain in effect throughout the initial subscription term specified in the Order Form (unless terminated as set forth below), and will automatically renew for successive periods of the same duration or (if applicable) such other duration as may be specified in the Order Form (each, a "Renewal") unless and until either party or Reseller gives the other party written notice of non-renewal at least thirty (30) days in advance.

6.2 Termination. A party may terminate the subscription term for a material breach by the other party that remains uncured more than 30 days after receiving written notice of the breach. Ident may also terminate upon 30 days' notice if Ident becomes unable to provide the FedCheck Services due to unavailability of third-party databases or other causes outside Ident's reasonable control, or if Ident discontinues the FedCheck Services generally; if that occurs, Ident will work with Reseller to provide Customer with a prorated refund of prepaid fees for the period affected by Ident's termination.

6.3 Effect of Termination; Survival. Upon expiration or termination of any subscription for any reason, all outstanding fees will immediately become due and payable, Customer's subscription for the FedCheck Services and Customer's license for the FedCheck App will automatically terminate, and Customer will immediately cease using the same and delete the FedCheck App from Customer's devices. If requested in writing within 15 days after expiration or termination, Ident will provide Customer with an exported copy of the log data then stored under Customer's account. The following provisions will survive expiration or termination of the subscription: Sections 3.5, 4, 5 (to the extent of any outstanding payment obligations), 6.3, 7, 8, 9, 10, 11, and 12.

7. INTELLECTUAL PROPERTY, DATA, AND SECURITY

7.1 Ident IP. As between Ident and Customer, Ident is and will remain the sole owner of the FedCheck Services, FedCheck App, and all software and technologies embodied in or used to provide the FedCheck Services or FedCheck App, and all intellectual property rights therein or relating thereto. Ident reserves all rights in the foregoing other than the limited, non-exclusive license and access rights that Ident expressly grants to Customer in

these Terms and Conditions. If Customer provides any suggestions or other feedback in relation to Ident's products and services, Ident will be free to use (or not use) the same without restriction and without any compensation or other obligations to Customer.

7.2 Customer's Data. Subject to any underlying rights of individuals from whom Customer gathers information, and of any third-party service providers, licensors, and other entities whose data or databases are queried or used in connection with the FedCheck Services, Customer will have and retain sole ownership and control of: (i) all data that Customer submits to or through the FedCheck App or FedCheck Services, and (ii) all query logs and other output of the FedCheck Services (collectively, "**Customer's Data**"). The parties acknowledge and agree that Ident will transmit, store, and otherwise process Customer's Data only as a data processor, and not as a data controller.

7.3 Providers' Data. Ident's third-party service providers, licensors, and other entities whose data or databases are queried or used in connection with the FedCheck Services retain any rights they may have with respect to such data and databases, as applicable. To the extent, if any, that Ident transmits, stores, or otherwise processes any such data, Ident does so only as a data processor for such third parties, and not as a data controller.

7.4 Ident's Security Measures. Ident will employ reasonable and appropriate (and all legally mandated) environmental, safety and facility procedures, data security and backup procedures, and other safeguards to protect against the unauthorized accessing, use, destruction, corruption, loss or alteration of Customer's Data as stored or otherwise processed by the FedCheck Services. Ident's data security measures are outlined in more detail in Ident's [Data [Security Whitepaper](https://ident.solutions/wp-content/uploads/2020/09/FedCheck-Security-Whitepaper-.pdf) at <https://ident.solutions/wp-content/uploads/2020/09/FedCheck-Security-Whitepaper-.pdf>], as the same may be updated from time to time (Ident's "[Security Whitepaper](#)"). Updates to Ident's [Security Whitepaper](#) will be furnished to Customer upon request. Ident will promptly notify Customer of any actual or suspected breach of Ident's security that compromises or is anticipated to compromise Customer's Data, and Ident will indemnify Customer against any third-party claims by the subjects of Customer's Data to the extent those claims arise from any such security breach that is caused by Ident's negligent or intentional failure to meet the standards or requirements specified in Ident's [Security Whitepaper](#).

7.5 Customer's Security Measures. Customer agrees to limit access to the FedCheck App and FedCheck Services to only those Authorized Users who have a need to know the output of the same as a part of their official duties for Customer. Customer must immediately deactivate (or notify Ident to deactivate) the access credentials of any of Authorized User who has been terminated or who no longer has a need to know. Customer shall ensure that its Authorized Users keep their access credentials secure and that individual credentials are assigned to and known by no more than one Authorized User. Customer shall take reasonable and appropriate (and all legally mandated) measures to prevent unauthorized physical or electronic access to the FedCheck App or FedCheck Services by any unauthorized persons, and to prevent any unlawful access to or use of Customer's Data. Such measures will include appropriate data destruction policies where applicable. Without limiting the foregoing or any applicable Database-Specific Terms, if Customer is using a version of the FedCheck Services that enable queries of the FBI's National Crime Information Center, Customer must comply with all relevant provisions of the most current version of the Criminal Justice Information Services (CJIS) Security Policy located at <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>, as may be updated or amended from time to time.

7.6 Verification. Upon Ident's request, Customer agrees to provide Ident with: (i) documentation establishing and/or confirming that Customer is a legitimate business entity in good standing, and that Customer has a lawful and appropriate purpose for use of the FedCheck Services; and (ii) access to Customer's pertinent records, equipment, and facilities (subject to reasonable security policies and confidentiality restrictions), including the devices on which the FedCheck App has been installed, as reasonably necessary for Ident to verify that Customer's use of the FedCheck App and FedCheck Services is within the scope of rights granted in these Terms and Conditions. This provision will expire one year after expiration or termination of the subscription.

8. CONFIDENTIALITY

8.1 Obligations. "**Confidential Information**" means (subject to the exclusions below) any non-public information relating to or disclosed by one party to the other in connection with Ident's services that should be reasonably understood to be confidential (including Ident's pricing). The receiving party will use the same care to protect Confidential Information as it uses for its own similar information, but no less than reasonable care, will not disclose Confidential Information to any third party without prior written authorization, and will use Confidential Information only for the purpose of fulfilling its obligations or exercising its rights expressly reserved or granted under these Terms and Conditions. The receiving party will promptly return or destroy the other party's Confidential Information upon request.

8.2 Exclusions. Confidential Information does not include information that: (i) is or becomes publicly available through no fault of the receiving party; (ii) was already in possession of the receiving party without confidentiality restrictions at the time of receipt from the other party, as evidenced by written records; or (iii) was independently developed by the receiving party without violation of this Section. If a receiving party is

required to disclose Confidential Information by law, the receiving party will promptly notify the disclosing party and reasonably cooperate with its efforts to limit or protect the required disclosure, but will otherwise not be in violation of this Section on account of making the required disclosure.

9. DISCLAIMER

EXCEPT AS EXPRESSLY PROVIDED FOR IN THESE TERMS AND CONDITIONS, THE FEDCHECK SERVICES, FEDCHECK APP, AND ANY RELATED MATERIALS OR SERVICES IDENT MAY FURNISH UNDER THESE TERMS AND CONDITIONS ARE PROVIDED “AS IS” AND “AS AVAILABLE,” WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. IDENT DISCLAIMS, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

10. INDEMNIFICATION

10.1 By Ident. Ident will defend and indemnify Customer against any claims, demands, suits or proceedings made or brought by a third party (“**Claims**”) against Customer to the extent based upon an allegation that the FedCheck Services or FedCheck App, as furnished by Ident hereunder and used by Customer within the scope of these Terms and Conditions, infringe any copyright or any U.S. patent or trademark rights of any third party. THE FOREGOING STATES THE ENTIRE OBLIGATION OF IDENT WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE FEDCHECK SERVICES OR FEDCHECK APP. Ident will have no liability under this Section 10.1 to the extent that any Claims are based on any combination of the FedCheck Services or FedCheck App with products, services, methods, content or other elements not furnished by Ident, or any use of the FedCheck Services or FedCheck App in a manner that violates these Terms and Conditions, any Database-Specific Terms, or Ident’s applicable documentation.

10.2 Mitigation Measures. In the event of any Claim or potential Claim covered by Section 10.1, Ident may, in its discretion, seek to mitigate the impact of such Claim by modifying the FedCheck Services or FedCheck App to avoid the infringement, and/or by suspending or terminating Customer’s access to the FedCheck Services and FedCheck App upon reasonable notice (provided, in the case of such suspension or termination, that Ident will refund a portion of any fees that Customer has prepaid for the then-current subscription period, based on the portion of that subscription period that is affected by Ident’s suspension or termination).

10.3 By Customer. Except to the extent Customer is legally prohibited from agreeing to the following, Customer will defend and indemnify Ident against any Claims arising from or related to (i) Customer’s violation of these Terms and Conditions or the Database-Specific Terms, or (ii) any decisions, acts, or omissions that Customer or Customer’s Authorized Users make or undertake in connection with Customer’s screening of individuals for access to the Authorized Facilities or other use of the FedCheck Services or FedCheck App, including but not limited to any Claims asserting that individuals were improperly denied or allowed access to the Authorized Facilities, and any Claims that Customer’s collection or disclosure of any individuals’ personal information, or Ident’s processing of their information through the FedCheck Services on Customer’s behalf, violates their privacy or other rights.

10.4 Procedures. Each party’s indemnity obligations are subject to the following: (i) the aggrieved party will promptly notify the indemnifier in writing of the applicable Claim; (ii) the indemnifier will have sole control of the defense and all related settlement negotiations with respect to the Claim (provided that the indemnifier may not settle any Claim in a manner that would impair any of the aggrieved party’s rights or interests without prior written consent, which will not be unreasonably withheld); and (iii) the aggrieved party will, at the indemnifier’s expense, provide all cooperation, information and assistance reasonably requested by the indemnifier for the defense of such Claim.

11. LIMITATION OF LIABILITY

11.1 Waiver of Certain Damages. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IDENT AND ITS AFFILIATES, AGENTS, REPRESENTATIVES, LICENSORS, AND SERVICE PROVIDERS, AND ITS AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, (COLLECTIVELY, THE “**IDENT ENTITIES**”) WILL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR OTHER DAMAGES, OR FOR LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS OR INFORMATION, OR COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES, ARISING OUT OF THESE TERMS AND CONDITIONS THE USE OF OR INABILITY TO USE THE SOFTWARE OR SERVICES TO BE PROVIDED HEREUNDER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2 Liability Cap. THE CUMULATIVE LIABILITY OF THE IDENT ENTITIES FOR DAMAGES ARISING FROM OR RELATED TO THESE TERMS AND CONDITIONS THE SOFTWARE OR SERVICES TO BE PROVIDED HEREUNDER SHALL NOT EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER UNDER THE SUBSCRIPTION FOR THE SERVICE PERIOD TO WHICH SUCH DAMAGES PERTAIN.

11.3 Basis of Bargain. The foregoing exclusions of damages and limitations of liability, and the allocation of risk they represent, are an essential basis of the bargain between Ident and Customer, and will apply to the fullest extent permitted by law, even if any limited remedy fails of its essential purpose.

11.4 Limitations of U.S. Government Liability. If Customer is the U.S. government or any agency or division thereof, its liability hereunder shall be determined under the Federal Tort Claims Act or other governing federal authority, and Federal Statute of Limitations provisions shall apply to any related claims.

12. MISCELLANEOUS

12.1 Publicity. Ident may identify Customer, by name and (upon Customer's approval) by logo, as a customer of the FedCheck Services on Ident's website and other marketing materials. Otherwise, neither party will issue any press release or other public communications regarding the parties' relationship without the other party's prior written consent, which will not be unreasonably withheld.

12.2 Assignment. Customer may not assign these Terms and Conditions, in whole or in part, by operation of law or otherwise, without Ident's express prior written consent. Any attempt by Customer to assign these Terms and Conditions without such consent will be null and of no effect. Ident may assign the Terms and Conditions to any of Ident's affiliates or to any successor or acquirer of Ident's business or of Ident's rights or assets associated with the FedCheck Services. Subject to the foregoing, the Terms and Conditions will bind and inure to the benefit of each party's successors and permitted assigns.

12.3 Force Majeure. Neither party shall be liable for any delay or failure in performance (other than non-payment of amounts owing) due to causes beyond its reasonable control.

12.4 Export Compliance. Customer agrees to comply fully with all relevant export laws and regulations of the United States and other applicable jurisdictions to ensure that neither the FedCheck Services, nor any direct product thereof, are: (i) exported or re-exported directly or indirectly in violation of such export laws and regulations; or (ii) used for any purposes prohibited by the such export laws and regulations.

12.5 Government Rights. If Customer is the U.S. government or any agency or other division thereof, Ident's software and services are furnished under these Terms and Conditions as a "commercial item," and more specifically as "commercial computer software" and "commercial computer software documentation" (as applicable), as those terms are defined and used in the U.S. Code of Federal Regulations (48 C.F.R. § 2.101) and other applicable regulations, and the government's rights with respect to such software and services (and to any associated technical data or other materials) are limited to those rights expressly granted in these Terms and Conditions.

12.6 Severability. If any part of these Terms and Conditions is held to be unenforceable or invalid, in whole or in part, by a court of competent jurisdiction, its remaining provisions will remain in full force and effect, and the provision affected will be construed to be enforceable to the maximum extent permissible by law.

12.7 Waiver. The waiver of a breach of any provision of these Terms and Conditions will not operate or be interpreted as a waiver of any other or subsequent breach of that or any other provision.

12.8 Notices. All notices permitted or required under these Terms and Conditions shall be in writing, will reference these Terms and Conditions, and shall be delivered in person, by overnight courier or express delivery service, or by first class, registered or certified mail, postage prepaid, or by confirmed email delivery, to the address of the party specified on the Order Form or such other address as either party may specify by notice as described above. Notices will be deemed to have been given upon receipt.

12.9 Governing Law. These Terms and Conditions will be governed by both the substantive and procedural laws of Utah, excluding its conflict of law rules and the United Nations Convention for the International Sale of Goods. Any legal action or proceeding arising under these Terms and Conditions will be brought exclusively in the federal or state courts located in the state of Utah, and the parties irrevocably consent to the personal jurisdiction and venue therein. Notwithstanding the foregoing, if Customer is the U.S. government or any agency or division thereof, these Terms and Conditions shall be governed by and interpreted and enforced in accordance with the laws of the United States of America without reference to conflict of laws (provided that to the extent permitted under federal law, the laws of the State of Utah, excluding its conflict of law rules, will apply in the absence of applicable federal law)."

12.10 Revisions to Terms and Conditions. Ident may change these Terms and Conditions and Ident's policies from time to time. Ident will inform Customer of any such changes. Unless otherwise agreed by the parties, any such changes will take effect for Customer's subscription upon the next Renewal if Ident has informed Customer of the revision prior to the deadline for giving non-renewal notice.

12.11 Entire Agreement. Except as provided in Section 12.10, any amendment or modification to these Terms and Conditions must be in writing signed by both parties. These Terms and Conditions constitutes the entire agreement and supersedes all prior or contemporaneous oral or written agreements regarding the subject matter hereof.